THE

LAW

OF

INTELLECTUAL PROPERTY;

OR

AN ESSAY ON THE RIGHT OF AUTHORS AND INVENTORS
TO A PERPETUAL PROPERTY IN THEIR IDEAS.

VOL. I.

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NOTE.

In the second volume of this work, it is the intention of the author to discuss the following topics, viz.: —

1. The Common Law of England, relative to Intellectual Property — reviewing the English decisions.

2. The Constitutional Law of the United States — reviewing the acts of Congress and the judicial decisions.

3. International Law.

4. Various other topics of minor importance connected with the subject.

He expects to prove, among other things, that it is the present constitutional duty of courts, both in England and America — any acts of parliament or of congress to the contrary notwithstanding — to maintain the principle of perpetuity in intellectual property, and also to give to such property the protection of the criminal law

THE LAW OF INTELLECTUAL PROPERTY.

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CHAPTER I.

THE LAW OF NATURE IN REGARD TO INTELLECTUAL PROPERTY.

SECTION I.

The Right of Property in Ideas to be proved by Analogy.

In order to understand the law of nature in regard to intellectual property, it is necessary to understand the principles of that law in regard to property in general. We shall then see that the right of property in *ideas*, is at least as strong as — and in many cases identical with — the right of property in material things.

To understand the law of nature, relative to property *in general*, it is necessary, in the first place, that we understand the distinction between *wealth* and *property;* and, in the second place, that we understand how and when wealth becomes property.

We shall therefore consider:

1. *What is Wealth?*
2. *What is Property?*
3. *What is the Right of Property?*
4. *What Things are Subjects of Property?*

5. *How is the Right of Property Acquired?*
6. *What is the Foundation of the Right of Property?*
7. *How is the Right of Property Transferred?*
8. *Conclusions from the Preceding Principles.*

SECTION II.

What is Wealth?

Wealth is any thing, that is, or can be made, valuable to man, or available for his use.

The term *wealth* properly includes every conceivable object, idea, and sensation, that can either contribute to, or constitute, the physical, intellectual, moral, or emotional well-being of man.

Light, air, water, earth, vegetation, minerals, animals, every material thing, living or dead, animate or inanimate, that can aid, *in any way*, the comfort, happiness, or welfare of man, are wealth.

Things intangible and imperceptible by our physical organs, and perceptible only by the intellect, or felt only by the affections, are wealth. Thus liberty is wealth; opportunity is wealth; motion or labor is wealth; rest is wealth; reputation is wealth; love is wealth; sympathy is wealth; hope is wealth; knowledge is wealth; truth is wealth; for the simple reason that they all contribute to, or constitute in part, a man's well-being.

All a man's faculties, physical, intellectual, moral, and affectional, whereby he either procures, or enjoys, happiness, are wealth.

Happiness itself is wealth. It is the highest wealth. It is *the ultimate wealth*, which it is the object of all other wealth to procure.

Inasmuch as any given thing is wealth, *because*, and *solely because*, it may contribute to, or constitute, the happiness or

well-being of man, it follows that *every thing*, that can contribute to, or constitute, his happiness or well-being, is necessarily wealth.

The question whether a given thing be, or be not wealth, does not therefore depend at all upon its being tangible or perceptible by our *physical* organs; because its capacity to contribute to, or constitute, the happiness of man, does not depend at all upon its being thus tangible or perceptible. Things intangible and imperceptible by our physical organs, as liberty, reputation, love, and truth, for example, have as clearly a capacity to contribute to, and constitute, the happiness and well-being of man, as have any of those things that are thus tangible and perceptible.

Another reason why tangibility and perceptibility by our physical organs, are no *criteria* of wealth, is, that it really is not our physical organs, but the *mind, and only the mind*, that takes cognizance even of *material* objects. We are in the habit of saying that the *eye* sees any material object. But, in reality, it is only the *mind* that sees it. The mind sees it *through the eye.* It uses the eye merely as an instrumentality for seeing it. An eye, without a mind, could see nothing. So also it is with the hand, as it is with the eye. We are in the habit of saying that the *hand* touches any material thing. But, in reality, it is only the mind, that perceives the contact, or takes cognizance of the touch. The hand, without the mind, could feel nothing, and take cognizance of nothing, it should come in contact with. The mind simply uses the hand, as an instrument for touching; just as it uses the eye, as an instrument for seeing. It is, therefore, only the *mind*, that takes cognizance of any thing *material.* And every thing, of which the mind does take cognizance, is equally wealth, whether it be material or immaterial; whether it be tangible or perceptible, through the instrumentality of our physical organs, or not. It would be absurd to say that one thing was wealth, because the mind was obliged to use such material instruments as the hand, or the eye, to perceive it; and that another thing, as an *idea*, for example, was *not* wealth,

simply because the mind could perceive it *without using any material instruments.*

It is plain, therefore, that an *idea*, which the mind perceives, without the instrumentality of our physical organs, is as clearly wealth, as is a house, or a horse, or any *material* thing, which the mind sees by the aid of the eye, or touches through the instrumentality of the hand. The capacity of the thing, whether it be a horse, a house, or an idea, to contribute to, or constitute, the well-being of man, is the only criterion by which to determine whether or not it be wealth; and not its tangibility or perceptibility, through the agency of our physical organs.

An *idea*, then, is wealth. It is equally wealth, whether it be regarded, as some ideas may be, simply as, in itself, an object of enjoyment, reflection, meditation, and thus a *direct* source of happiness; or whether it be regarded, as other ideas may be, simply as a means to be used for acquiring other wealth, intellectual, moral, affectional, or material.

An idea is self-evidently wealth, when it imparts happiness *directly*. It is wealth, *because* it imparts happiness. It is also equally wealth, when it is used as an instrument or means of creating or acquiring other wealth. It is then as clearly wealth, as is any other instrumentality for acquiring wealth.

The idea, after which a machine is fashioned, is as clearly wealth, as is the material of which the machine is composed. *The idea is the life of the machine*, without which, the machine would be inoperative, powerless, and incapable of producing wealth.

The plan after which a house is built, is as much wealth, as is the material of which the house is constructed. Without the plan, the material would have failed to furnish shelter or comfort to the owner. It would have failed to be a house.

The idea, or design, after which a telescope is constructed, is as much wealth, as are the materials of which the telescope is composed. Without the idea, the materials would have failed to aid men in their examination of the heavens.

The design, after which a picture is drawn, is as clearly wealth, as is the canvas on which it is drawn, or the paint with which it is drawn. Without the design, the canvas and the paint could have done nothing towards producing the picture, which is now so valuable.

The same principle governs in every department and variety of industry. An idea is every where and always the guide of labor, in the production and acquisition of wealth; and the idea, that guides labor, in the production or acquisition of wealth, is itself as obviously wealth, as is the labor, or as is any other instrumentality, agency, object, or thing whatever, whether material or immaterial, that aids in the production or acquisition of wealth.

To illustrate — The compass and rudder, that are employed in guiding a ship, and without which the ship would be useless, are as much wealth, as is the ship itself, or as is the freight which the ship is to carry. But it is plain that the mind, that observes the compass, and the thought, that impels and guides the hand that moves the rudder, are also as much wealth, as are the compass and rudder themselves.

So the thought, that guides the hand in labor, is *ever* as clearly wealth, as is the hand itself; or as is the material, on which the hand is made to labor; or as is the commodity, which the hand is made to produce. But for the thought, that guides the hand, the commodity would not be produced; the labor of the hand would be fruitless, and therefore valueless.

Every thing, therefore — whether intellectual, moral, or material, however gross, or however subtile; whether tangible or intangible, perceptible or imperceptible, by our *physical* organs — of which the human *mind* can take cognizance, and which, either as a means, occasion, or end, can either contribute to, or of itself constitute, the well-being of man, is wealth.

Mankind, in their dealings with each other, in their purchases, and in their sales, both tacitly and expressly acknowledge and act upon the principle, that a *thought* is wealth; that it is a wealth whose value is to be estimated and paid for, like other

wealth. Thus a machine is valuable in the market, according to the idea, after which it is fashioned. The plan, after which a house is built, enters into the market value of the house. The design, after which a picture is drawn, and the skill with which it is drawn, enter into, and mainly constitute, the mercantile value of the picture itself. The canvas and the paint, as simple materials, are worth — in comparison with the thought and skill embodied in the picture—only as one to an hundred, a thousand, or ten thousand.

Mankind, ignorant and enlightened, savage and civilized, with nearly unbroken universality, regard ideas, thoughts, and emotions, as the most valuable wealth they can either possess for themselves, or give to their children. They value them, both as direct sources of happiness, and as aids to the acquisition of other wealth. They are, therefore, all assiduously engaged in acquiring ideas, for their own enjoyment and use, and imparting them to their children, for their enjoyment and use. They voluntarily exchange their own material wealth, for the intellectual wealth of other men. They pay their money for other men's thoughts, written on paper, or uttered by the voice. So self-evident, indeed, is it that ideas are wealth, in the universal judgment of mankind, that it would have been entirely unnecessary to assert and illustrate the fact thus elaborately, in this connection, were it not that the principle lies at the foundation of all inquiries as to what is *property;* and, at the same time, it is one that is so universally, naturally, and *unconsciously*, received and acted upon, in practical life, that it is never even brought into dispute; men do not stop to theorize upon it; and therefore do not form any such definite, exact, or clear ideas about it, as are necessary to furnish, or constitute, the basis, or starting point, of the subsequent inquiries, to which this essay is devoted. For these reasons, the principle has now been stated thus particularly.

SECTION III.

What is Property?

Property is simply wealth, *that is possessed—that has an owner;* in contradistinction to wealth, that has no owner, but lies exposed, *unpossessed*, and ready to be converted into property, by whomsoever chooses to make it his own.

All property is wealth; but all wealth is not property. A very small portion of the wealth in the world has any owner. It is mostly unpossessed. Of the wealth in the ocean, for example, only an infinitesimal part ever becomes property. Man occasionally takes possession of a fish, or a shell, leaving all the rest of the ocean's wealth without an owner.

A somewhat larger proportion, but still a small proportion, of the wealth that lies in and upon the land, is property. Of the forests, the mines, the fruits, the animals, the atmosphere, a small part only has ever became property.

Of intellectual wealth, too, doubtless a very minute portion of all that is susceptible of acquisition, and possession, has ever been acquired—that is, has ever become property. Of all the truths, and of all the knowledge, which will doubtless sometime be possessed, how little is now possessed.

SECTION IV.

What is the Right of Property?

The right of property is simply *the right of dominion.* It is the right, which one man has, *as against all other men,* to the exclusive control, dominion, use, and enjoyment of any particular thing.

The principle of property is, that a thing belongs to one man, and not to another — *mine*, and *thine*, and *his*, are the terms that convey the idea of property.

The word *property* is derived from *proprius*, signifying *one's own*. The principle of property, then, is the principle of one's personal ownership, control, and dominion, of and over any thing. The *right* of property is one's *right* of ownership, enjoyment, control, and dominion, of and over any object, idea, or sensation.

The proprietor of any thing has the *right* to an exclusive ownership, control, and dominion, of and over the thing of which he is the proprietor. The thing *belongs* to him, and not to another man. He has a *right*, as against all other men, to control it according to *his own* will and pleasure; and is not accountable to others for the manner in which he may use it. Others have no *right* to take it from him, against his will; nor to exercise any authority, control, or dominion over it, without his consent; nor to impede, nor obstruct him in the exercise of such dominion over it, as he *chooses* to exercise. It is not *theirs*, but *his*. They must leave it entirely subject to his will. *His* will, and not *their* wills, must control it. The only limitation, which any or all others have a right to impose upon his use and disposal of it, is, that he shall not so use it as to invade, infringe, or impair the equal supremacy, dominion, and control of others, over what is *their own*.

The legal idea of property, then, is, that one thing belongs to one man, and another thing to another man; and that neither of these persons have a right to any voice in the control or disposal of what belongs to the other; that each is the sole lord of what is his own; that he is its sovereign; and has a right to use, enjoy, and dispose of it, at his pleasure, without giving any account, or being under any responsibility, to others, for his manner of using, enjoying, or disposing of it.

This right of property, which each man has, to what is his own, is a right, not merely against any one single individual, but

it is a right against *all* other individuals, singly and collectively. The right is equally valid, and equally strong, against the will of all other men combined, as against the will of every or any other man separately. It is a right against the whole world. The thing is *his*, and is *not* the world's. And the world must leave it alone, or it does him a wrong; commits a trespass, or a robbery, against him. If the whole world, or any one of the world, desire anything that is an individual's, they must obtain his free consent to part with it, by such inducements as they can offer him. If they can offer him no inducements, sufficient to procure his free consent to part with it, they must leave him in the quiet enjoyment of what is his own.

SECTION V.

What Things are Subjects of Property?

Every conceivable thing, whether intellectual, moral, or material, of which the *mind* can take cognizance, and which *can* be possessed, held, used, controlled, and enjoyed, by one person, and not, *at the same instant of time*, by another person, is rightfully a subject of property.

All the *wealth*, that has before been described — that is, all the things, intellectual, moral, emotional, or material, that can contribute to, or constitute, the happiness or well-being of man; and that can be possessed by one man, and not at the same time by another, is rightfully a subject of property — that is, of individual ownership, control, dominion, use, and enjoyment.

The air, that a man inhales, is his, *while it is inhaled*. When he has exhaled it, it is no longer his. The air that he may inclose in a bottle, or in his dwelling, is his, *while it is so inclosed*. When he has discharged it, it is no longer his. The sun-light, that falls upon a man, or upon his land, or that comes

into his dwelling, is his; and no other man has a right to forbid his enjoyment of it, or compel him to pay for it.

A man's *body* is his own. It is the property of his mind. (It is the mind that owns every thing, that is property. Bodies own nothing; but are themselves subjects of property — that is, of dominion. Each body is the property — that is, is under the dominion — of the mind that inhabits it.) And no man has the right, as being the proprietor, to take another man's body out of the control of his mind. In other words, no man can *own* another man's body.

All a man's enjoyments, all his feelings, all his happiness, *are his property.* They are his, and not another man's. They belong to him, and not to others. And no other man has the right to forbid him to enjoy them, or to compel him to pay for them. Other men may have enjoyments, feelings, happiness, *similar*, in their nature, to his. But they cannot own *his* feelings, *his* enjoyments, or *his* happiness. They cannot, therefore, rightfully require him to pay them for them, as if they were theirs, and not his own.

A man's *ideas* are his property. They are his for enjoyment, and his for use. Other men do not own his ideas. He has a right, as against all other men, to absolute dominion over his ideas. He has a right to act his own judgment, and his own pleasure, as to giving them, or selling them to other men. Other men cannot *claim* them of him, as if they were *their* property, and not his; any more than they can claim any other things whatever, that are his. If they desire them, and he does not choose to give them to them gratuitously, they must buy them of him, as they would buy any other articles of property whatever. They must pay him his price for them, or not have them. They have no more right to *force* him to give his ideas to them, than they have to force him to give them his purse.

Mankind universally act upon this principle. No sane man, who acknowledged the right of individual property in *any* thing, ever claimed that, as a natural or general principle, he was the

rightful owner of the thoughts produced, and exclusively possessed, by other men's minds; or demanded them on the ground of their being *his* property; or denied that they were the property of their possessors.

If the ideas, which a man has produced, were not rightfully his own, but belonged equally to other men, they would have the right *imperatively to require him* to give his ideas to them, without compensation; and it would be just and right for them to punish him as a criminal, if he refused.

Among civilized men, ideas are common articles of traffic. The more highly cultivated a people become, the more are thoughts bought and sold. Writers, orators, teachers, of all kinds, are continually selling their thoughts for money. They sell their thoughts, as other men sell their material productions, for what they will bring in the market. The price is regulated, not solely by the intrinsic value of the ideas themselves, but also, like the prices of all other commodities, by the supply and demand. On these principles, the author sells his ideas in his volumes; the poet sells his in his verses; the editor sells his in his daily or weekly sheets; the statesman sells his in his messages, his diplomatic papers, his speeches, reports, and votes; the jurist sells his in his judgments, and judicial opinions; the lawyer sells his in his counsel, and his arguments; the physician sells his in his advice, skill, and prescriptions; the preacher sells his in his prayers and sermons; the teacher sells his in his instructions; the lecturer sells his in his lectures; the architect sells his in his plans; the artist sells his in the figure he has engraven on stone, and in the picture he has painted on canvas. In practical life, these ideas are all as much articles of merchandize, as are houses, and lands, and bread, and meat, and clothing, and fuel. Men earn their livings, and support their families, by producing and selling ideas. And no man, who has any rational ideas of his own, doubts that in so doing they earn their livelihood in as legitimate a manner as any other members of society earn theirs. He who produces food for men's minds, guides for their hands in

labor, and rules for their conduct in life, is as meritorious a producer, as he who produces food or shelter for their bodies.

Again. We habitually talk of the ideas of particular authors, editors, poets, statesmen, judges, lawyers, physicians, preachers, teachers, artists, &c., as being worth less than the price that is asked or paid for them, in particular instances; and of other men's ideas, as being worth more than the price that is paid for them, in particular instances; just as we talk of other and material commodities, as being worth less or more than the prices at which they are sold. We thus recognize ideas as being legitimate articles of traffic, and as having a regular market value, like other commodities.

Because all men *give* more or less of their thoughts gratuitously to their fellow men, in conversation, or otherwise, it does not follow at all that their thoughts are not their property, which they have a natural *right* to set their own price upon, and to withhold from other men, unless the price be paid. Their thoughts are thus given gratuitously, or in exchange for other men's thoughts, (as in conversation,) either for the reason that they would bring nothing more in the market, or would bring too little to compensate for the time and labor of putting them in a marketable form, and selling them. Their market value is too small to make it *profitable* to sell them. Such thoughts men give away gratuitously, or in exchange for such thoughts as other men voluntarily give in return — just as men give to each other material commodities of small value, as nuts, and apples, a piece of bread, a cup of water, a meal of victuals, from motives of complaisance and friendship, or in expectation of receiving similar favors in return; and not because these articles are not as much property, as are the most valuable commodities that men ever buy or sell. But for nearly all information that is specially valuable, or valuable enough to command a price worth demanding — though it be given in one's private car, as legal or medical advice, for example — a pecuniary compensation is demanded, with nearly the same uniformity as for a material commodity.

And no one doubts that such information is a legitimate and lawful consideration for the equivalent paid. Courts of justice uniformly recognize them as such, as in the case of legal, medical, and various other kinds of information. One man can sue for and recover pay for ideas, which, as lawyer, physician, teacher, or editor, he has sold to another man, just as he can for land, food, clothing, or fuel.

SECTION VI.

How is the Right of Property acquired.

The right of property, in *material* wealth, is acquired, *in the first instance*, in one of these two ways, viz.: first, by simply taking possession of natural wealth, or the productions of nature; and, secondly, by the artificial production of other wealth. Each of these ways will be considered separately.

1. The *natural* wealth of the world belongs to those who *first* take possession of it. The right of property, in any article of natural wealth, is *first* acquired by simply taking possession of it.

Thus a man, walking in the wilderness, picks up a nut, a stick, or a diamond, which he sees lying on the ground before him. He thereby makes it his property — *his own*. It is thenceforth *his*, against all the world. No other human being, nor any number of human beings, have any right, *on the ground of property*, to take it from him, without his consent. They are all bound to acknowledge it to be *his*, and *not theirs*.

It is in this way that all natural wealth is *first* made property. And any, and all natural wealth whatsoever, that *can* be possessed, becomes property in consequence, and solely in consequence, of one's simply taking possession of it.

There is no limit, fixed by the law of nature, to the amount of property one may acquire by simply taking possession of natural wealth, not already possessed, except the limit fixed by his power

or ability to take such possession, without doing violence to the person or property of others. So much natural wealth, remaining unpossessed, as any one *can* take possession of *first*, becomes absolutely his property. *

This mode of acquiring property, by taking possession of the productions of nature, is a *just* mode. Nobody is wronged — that is, nobody is deprived of any thing that is his own — when one man takes possession of a production of nature, which lies exposed, and unpossessed by any one. The first comer has the same right, and all the right, to take possession of it, and make it his own, that any subsequent comer can have. No subsequent comer can show any right to it, different in its nature, from that, which the first comer exercises, in taking the possession. The wealth of nature, thus taken, and made property, was provided for the use of mankind. The only way, in which it can be made useful to mankind, is by their taking possession of it individually, and thus making it private property. Until it is made property, no one can have the right to apply it to the satisfaction of his own, or any other person's, wants, or desires. The first comer's wants and desires are as sacred in their nature, and the presumption is that they are as necessary to be supplied, as those of the second comer will be. They, therefore, furnish to him as good

* Some persons object to this principle, for the reason that, as they say, a single individual might, in this way, take possession of a whole continent, if he happened to be the first discoverer; and might hold it against all the rest of the human race. But this objection arises wholly from an erroneous view of what it *is*, to *take possession* of any thing. To simply stand upon a continent, and *declare* one's self the possessor of it, is not to take possession of it. One would, in that way, take possession only of what his body actually covered. To take possession of more than this, he must bestow some valuable labor upon it, such, for example, as cutting down the trees, breaking up the soil, building a hut or a house upon it, or a fence around it. In these cases, he holds the land in order to hold the labor which he has put into it, or upon it. And the land is his, so long as the labor he has expended upon it remains in a condition to be valuable for the uses for which it was expended; because it is not to be supposed that a man has abandoned the fruits of his labor so long as they remain in a state to be practically useful to him.

an authority for taking possession of the wealth of nature, as those of the second comer will furnish to him. They may chance to be either less, or more, violent, in degree; but whether less, or more, (if that were important to his comparative right,) the first comer cannot know. It is enough for *him*, that his own wants and desires have their origin in his own human-nature, in the same way that those of the second comer will have theirs. And such wants and desires are a *sufficient* warrant for him to take whatever nature has spread before him for their gratification, unless it have been already appropriated by some other person.

After he has taken possession of it, it is his, by an additional right, such as no other person can have. He has bestowed his labor upon it — the labor, at least, of taking it into his possession; and this labor will be lost to him, if he be deprived of the commodity he has taken possession of. It is of no importance how slight that labor may have been, though it be but the labor of a moment, as in picking up a pebble from the ground, or plucking a fruit from a tree. Even that labor, trifling as it is, is more than any other one has bestowed upon it. And it is enough for him, that *that* was *his* labor, and not another man's. He can now show a better right to the thing he has taken possession of, than any other man can. He had an equal right with any other man before; now he has a superior one, for he has expended his labor upon it, and no other person has done the like.

It cannot be said that the first comer is bound to leave something to supply the wants of the second. This argument would be just as good against the right of the second comer, the third, the fourth, and so on indefinitely, as it is against the right of the first; for it might, with the same reason, be said of each of these, that he was bound to leave something for those who should come after him. The rule, therefore, is, that each one may take enough to supply his own wants, if he can find the wherewith, unappropriated. And the history of the race proves that under this rule, the last man's wants are better supplied than were those of the first, owing to the fact of the last man's having the

skill and means of *creating* more wealth for himself, than the first one had. He has also the benefit of all the accumulations, which his predecessors have left him. The first man is a hungry, shivering savage, with all the wealth of nature around him. The last man revels in all the luxuries, which art, science, and nature, working in concert, can furnish him.

Moreover, the wealth of nature is inexhaustible. The first comer can, at best, take possession of but an infinitesimal portion of the whole; not even so much, probably, as would fall to his share, if the whole were equally divided among the inhabitants of the globe. And this is another reason why a second comer cannot complain of the portion taken by the first.

There are still two other reasons why the first comer does no wrong to his successors, by taking possession of whatever natural wealth he can find, for the gratification of his wants. One of these reasons is, that when the wealth taken is of a perishable nature, as the fruit of a vine or tree, for example, it is liable to perish without ministering to the wants of any one, unless the first comer appropriate it to the satisfaction of his own. The other reason is, that when the wealth taken, is of a permanent nature, as land, for example, then the first comer, by taking possession of it—that is, by bestowing useful labor upon it—makes it more capable of contributing to the wants of mankind, than it would have been if left in its natural state. It is of course right that he should enjoy, during his life, the fruits of his own labor, in the increased value of the land he has improved; and when he dies, he leaves the land in a better condition for those who come after him, than it would have been in, if he had not expended his labor upon it.

Finally, the wealth of nature can be made available for the supply of men's wants, only by men's taking possession of portions of it individually, and making such portions their own. A man *must* take possession of the natural fruits of the earth, and thus make them his property, before he can apply them to the sustenance of his body. He must take possession of land, and

thus make it his property, before he can raise a crop from it, or fit it for his residence. If the first comer have no right to take possession of the earth, or its fruits, for the supply of his wants, the second comer certainly can have no such right. The doctrine, therefore, that the first comer has no natural right to take possession of the wealth of nature, make it his property, and apply to his uses, is a doctrine that would doom the entire race to starvation, while all the wealth of nature remained unused, and unenjoyed around them.

For all these reasons, and probably for still others that might be given, the simple taking possession of the wealth of nature, is a just and natural, as it is a necessary, mode of acquiring the right of property in such wealth.

2. The other mode, in which the right of property is acquired, is by the creation, or production, of wealth, by labor.

The wealth created by labor, is the rightful property of the creator, or producer. This proposition is so self-evident as hardly to admit of being made more clear; for if the creator, or producer, of wealth, be not its rightful proprietor, surely no one else can be; and such wealth must perish unused.

The *material* wealth, created by labor, is created by bestowing labor upon the productions of nature, and thus adding to their value. For example — a man bestows his labor upon a block of marble, and converts it into a statue; or upon a piece of wood and iron, and converts them into a plough; or upon wool, or cotton, and converts it into a garment. The additional value thus given to the stone, wood, iron, wool, and cotton, is a *creation* of new wealth, by labor. And if the laborer own the stone, wood, iron, wool, and cotton, on which he bestows his labor, he is the rightful owner of the additional value which his labor gives to those articles. But if he be not the owner of the articles, on which he bestows his labor, he is not the owner of the additional value he has given to them; but gives or sells his labor to the owner of the articles on which he labors.

Having thus seen the principles, on which the right of prop-

erty is acquired in *material* wealth, let us now take the same principles, and see how they will apply to the acquisition of the right of property in ideas, or intellectual wealth.

1. If ideas be considered as productions of nature, or as things existing in nature, and which men merely discover, or take possession of, then he who does discover, or first take possession of, *an idea*, thereby becomes its lawful and rightful proprietor; on the same principle that he, who first takes possession of any *material* production of nature, thereby makes himself its rightful owner.* And the first possessor of the *idea*, has the same right, either to keep that idea solely for his own use, or enjoyment, or to give, or sell it to other men, that the first possessor of any *material* commodity has, to keep it for his own use, or to give, or sell it, to other men.

2. If ideas be considered, not as productions of nature, or as things existing in nature, and merely *discovered* by man, but as entirely new wealth, *created* by his labor — the labor of his mind — then the right of property in them belongs to him, whose labor created them; on the same principle that any other wealth, created by human labor, belongs rightfully, as property, to its creator, or producer.

It cannot be truly said that there is any intrinsic difference in the two cases; that material wealth is created by physical labor, and ideas only by intellectual labor; and that this difference, in the mode of creation, or production, makes a difference in the rights of the creators, or producers, to the products of their respective labors. Any article of wealth, which a man creates or produces, by the exercise of any one portion of his wealth-producing faculties, is as clearly his rightful property, as is any other article of wealth, which he creates or produces, by any other portion of his wealth-producing faculties. If his mind

* "To discover," and "to take possession of," *an idea*, are one and the same act; while to discover, and to take possession of, a material thing, are separate acts. But this difference in the two cases cannot affect the principle we are discussing.

produces wealth, that wealth is as rightfully his property, as is the wealth that is produced by his hands. This proposition is self-evident, if the fact of creation, or production, by labor, be what gives the creator or producer a right to the wealth he creates, or produces.

But, secondly, there is no real foundation for the assertion, or rather for the distinction assumed, that material wealth is produced by *physical* labor, and that ideas are produced by *intellectual* labor. All that labor, which we are in the habit of calling *physical* labor, is in reality performed wholly by the mind, will, or spirit, which uses the bones and muscles merely as tools. Bones and muscles perform no labor of themselves; they move, in labor, only as they are moved by the mind, will, or spirit. It is, therefore, as much the mind, will, or spirit, that lifts a stone, or fells a tree, or digs a field, as it is the mind, will, or spirit, that produces an idea. There is, therefore, no such thing as the *physical* labor of men, independently of their intellectual labor. Their intellectual powers merely *use* their physical organs, as tools, in performing what we call physical labor. And the physical organs have no more merit in the production of material wealth, than have the saws, hammers, axes, hoes, spades, or any other tools, which the mind of man uses in the production of wealth.

All wealth, therefore, whether material or intellectual, which men produce, or create, by their labor, is, in reality, produced or created by the labor of their minds, wills, or spirits, *and by them alone*. A man's rights, therefore, to the *intellectual* products of his labor, necessarily stand on the same basis with his rights to the *material* products of his labor. If he have the right to the latter, on the ground of production, he has the same right to the former, for the same reason; since both kinds of wealth are alike the productions of his intellectual or spiritual powers.

The fact, that the mind uses the physical organs in the production of *material* wealth, can make no distinction between such wealth, and ideas — for the mind also uses a material organ, (the

brain,) in the production of ideas; just as, in the production of material wealth, it uses both brain and bone.

So far, therefore, as a man's right to wealth, has its origin in his production or creation of that wealth by his labor, it is impossible to establish a distinction between his right to material, and his right to intellectual, wealth; between his right to a house that he has erected, and his right to an idea that he has produced.

If there be any possible ground of distinction, his right is even stronger to the idea, than to the house; for the house was constructed out of that general stock of materials, which nature had provided for, and offered to, the whole human race, and which one human being had as much natural right to take possession of, as another; while the idea is a pure creation of his own faculties, accomplished without abstracting, from any common stock of natural wealth, any thing whatever, which the rest of the world could, in any way, claim, as belonging to them, in common with him.

SECTION VII.

What is the Foundation of the Right of Property?

The right of property has its foundation, first, in the natural right of each man to provide for his own subsistence; and, secondly, in his right to provide for his general happiness and well-being, in addition to a mere subsistence.

The right to live, includes the right to accumulate the means of living; and the right to obtain happiness in general, includes the right to accumulate such commodities as minister to one's happiness. These rights, then, to live, and to obtain happiness, are the foundations of the right of property. Such being the case, it is evident that no other human right has a deeper foundation in the nature and necessities of man, than the right of property. If, when one man has dipped a cup of water from the

stream, to slake his own thirst, or gathered food, to satisfy his own hunger, or made a garment, to protect his own body, other men can rightfully tell him that these commodities are not *his*, but *theirs*, and can rightfully take them from him, without his consent, his right to provide for the preservation of his own life, and for the enjoyment of happiness, are extinct.

The right of property in intellectual wealth, has manifestly the same foundation, as the right of property in material wealth. Without intellectual wealth — that is, without ideas — material wealth could neither be accumulated, nor fitted to contribute, nor made to contribute, to the sustenance or happiness of man. Intellectual wealth, therefore, is indispensable to the acquisition and use of other wealth. It is also, of itself, a direct source of happiness, in a great variety of ways. Furthermore, it is not only a thing of value, for the owner's uses, but, as has before been said, like material wealth, it is a merchantable commodity; has a value in the market; and will purchase, for its proprietor, other wealth in exchange. On every ground, therefore, the right of property in ideas, has as deep a foundation in the nature and necessities of man, as has the right of property in material things.

SECTION VIII.

How is the Right of Property Transferred?

From the very nature of the right of property, that right can be transferred, from the proprietor, only by his own consent. What is the right of property? It is, as has before been explained, a right of control, of dominion. If, then, a man's property be taken from him without his consent, his right of control, or dominion over it, is necessarily infringed; in other words, his right of property is necessarily violated.

Even to *use* another's property, without his consent, is to violate his right of property; because it is for the time being,

assuming a dominion over wealth, the rightful dominion over which belongs solely to the owner.

These are the principles of the law of nature, relative to all property. They are as applicable to intellectual, as to material, property. The *consent*, or *will*, of the owner alone, can transfer the right of property in either, or give to another the right to use either.

If it be asked, how is the consent of a man to part with his intellectual property to be proved? The answer is, that it must be proved, like all other facts in courts of justice, by evidence that is naturally applicable to prove such a fact, and that is sufficient to satisfy the mind of the tribunal that tries that question.

SECTION IX.

Conclusions from the Preceding Principles.

The conclusions, that follow from the principles now established, obviously are, that a man has a natural and absolute right — and if a natural and absolute, then necessarily a *perpetual*, right — of property, in the ideas, of which he is the discoverer or creator; that his right of property, *in ideas*, is intrinsically the same as, and stands on identically the same grounds with, his right of property in material things; that no distinction, *of principle*, exists between the two cases.

CHAPTER II.

OBJECTIONS ANSWERED.

The objections that will be urged to the principles of the preceding chapter, are the following.

SECTION I.

Objection First.

It will be said there can be no right of property in ideas, for the reason that an idea has no *corporeal substance.*

This is an ancient argument, but it obviously has no intrinsic weight or soundness; for *corporeal* substances are not the only things that have value; they are not the only things that contribute to the welfare of man; they are not the only things that can be possessed by one man, and not by another; they are not the only things that can be imparted by one man to another; nor are they the only things that are the products of labor. Indeed, correctly speaking, *corporeal* substances are never the *products*, (that is, the *creations*,) of human labor. Human labor cannot *create* corporeal substances. *It can only change their forms, qualities, adaptations, and values.* These forms, qualities, adaptations, and values are all *incorporeal* things. Hence, as will be more fully shown hereafter, all the products — that is, all the *creations* — of human labor, are incorporeal.

To deny the right of property in incorporeal things, is equivalent to denying the right of property in labor itself; in the products of labor; and even in those corporeal substances, that are acquired by labor; as will now be shown.

1. To deny the right of property in incorporeal things, is equivalent to denying the right of property in labor, because labor itself is incorporeal. It is simply motion; an *action* merely of the faculties. It has no corporeal substance. To deny, therefore, that there can be any right of property in incorporeal things, is denying that a man can have any right of property in his labor; and, of course, that he can have any right to demand pay for it, when he labors for another. Yet we all know that labor is a subject of property. A man's labor is his own. It also has value. It is the great dependence of the human race for subsistence. It is of ten thousand thousand kinds. Each of these kinds, too, has its well understood market price; as much so as any corporeal substance whatever. And each of these various kinds of labor is constantly bought and sold as merchandise.

Labor, therefore, being incorporeal, and yet, by universal confession, a subject of property, the principle of the right of property in incorporeal things is established.

2. To deny the right of property in incorporeal things, is equivalent to denying the right of property in the *products*, (that is, in the *creations*,) of human labor: for these products, or creations, are *all* incorporeal. Human labor, as has already been said, cannot *create* corporeal substances. It can only create, and give to corporeal substances, new forms, qualities, adaptations, and values. These new forms, qualities, adaptations, and values are *all* incorporeal things. For example — The new forms, and new beauties, which a sculptor, by his labor, creates, and imparts to a block of marble, are not corporeal substances. They are mere *qualities*, that have been imparted to a corporeal substance. They are qualities, that can neither be weighed nor measured, like corporeal substances. Scales will not weigh them, nor yard sticks measure them, as they will weigh and measure corporeal substances. They can be perceived and estimated only by the mind; in the same manner that the mind perceives and estimates an idea. In short, these new forms and new beauties, which

human labor has created, and imparted to the marble, are incorporeal, and not corporeal things. Yet they have value; are the products of labor; are subjects of property; and are constantly bought and sold in the market.

So also it is with all the new forms, qualities, adaptations, and values, which labor creates, and imparts to the materials, of which a *house*, for example, is composed. These new forms, qualities, adaptations, and values, are *all* incorporeal. They can neither be weighed, nor measured, as corporeal substances. Yet without them, the corporeal substances, out of which the house is constructed, would have failed to become a house. They, therefore, have value. They are also the products of labor; are subjects of property; and are constantly bought and sold in the market.

The same principle holds good in regard to all corporeal substances whatsoever, to which labor gives new forms, or qualities, adapted to satisfy the wants, gratify the eye, or promote the happiness of man — whether the substances be articles of food, clothing, utensils for labor, books, pictures, or whatever else may minister to the desires of men. The new forms and qualities, given to each and all these corporeal substances, to adapt them to use, *are themselves incorporeal.* Yet they have value; are the products of labor; and are as much subjects of property, as are the substances themselves. And the destruction or injury of these forms and qualities, by any person not the owner, is as clearly a crime, as is the theft or destruction of the substances themselves. In fact, correctly speaking, it is only the incorporeal forms, qualities, and adaptations of corporeal substances, that can be destroyed. The substances themselves are incapable of destruction. To destroy or injure the incorporeal forms, qualities, and adaptations, that have been given to corporeal substances by labor, destroys or injures the market value of the substances themselves; because it destroys or impairs their utility, for the purposes for which they are desired. How absurd then to say that incorporeal things are not subjects of property.

The examples already given, of labor, the products, or creations of labor, (by which is now meant those forms, qualities, adaptations, and values, imparted by labor to corporeal substances,) would be sufficient to prove that incorporeal things are subjects of property. But, saying nothing as yet of ideas, there are still other kinds of incorporeal things, that are subjects of property. For example. A man's pecuniary credit, or reputation for pecuniary responsibility, has value; is the product of labor; and is a subject of property. Various other kinds of reputation are also subjects of property. A magistrate's reputation for integrity; a soldier's reputation for courage; a woman's reputation for chastity; a physician's reputation for skill; a preacher's reputation for sincerity, &c., &c., are all subjects of property. They have value; and they are the products of labor. Yet they are not corporeal substances.

Health is incorporeal. Strength is incorporeal. So also the senses, or faculties, of sight, hearing, taste, smell, and feeling are incorporeal. A person might lose them all without the loss of any corporeal substance. Yet they are all valuable possessions, and subjects of property. To impair or destroy them, through carelessness or design, is an injury to be compensated by damages, or punished as a crime.

Melody is incorporeal. Yet it has value; is the product of labor; is a subject of property; and a common article of merchandise.

Beauty is incorporeal. Yet it is a subject of property. It is a property, too, that is very highly prized—whether it be beauty of person, or beauty in those animals or inanimate objects, which are subjects of property. And to impair or destroy such beauty, is acknowledged by all to be a wrong, to be compensated in damages, —or a crime, to be visited with penalties.

A ride, and the right or privilege of riding, or of being carried, as, for example, on railroads, in steamboats, and public conveyances of all kinds, are incorporeal things. They cannot be seen by the eye, nor touched by the hand. They can only be per-

ceived by the mind. Yet they have value; are subjects of property; and are constantly bought and sold in the market.

The right of going into a hotel, or a place of public amusement, is not a corporeal substance. It nevertheless has value, and is a subject of property, and is constantly bought and sold.

Liberty is incorporeal. Yet it has value; and if it be not sold, it is because no corporeal substance is sufficiently valuable to be received in exchange for it.

Life itself is incorporeal. Yet it is property; and to take it from its owner is usually reckoned the highest crime that can be committed against him.

Many other kinds of property are incorporeal.

Thus it will be seen that *thoughts* are by no means the only incorporeal things that have value, and are subjects of property. Civilized society could not exist without recognizing incorporeal things as property.

3: To deny the right of property in *incorporeal* things, is equivalent to denying the right of property even in *corporeal* things.

What is the foundation of the right of property in *corporeal* things? It is not that they are the products, or *creations*, of human labor; for, as has already been said, human labor never produces — that is, it never *creates* — corporeal substances. But it is simply this — that human labor has been expended *upon them* — that is, in *taking possession of them*. The right of property, therefore, *in corporeal things*, has its foundation *solely* in human labor, *which is itself incorporeal*. Now it is clear that if labor, which is *incorporeal*, were not itself a subject of property, it could give the laborer no right of property in those *corporeal* substances, upon which he bestows his labor. A right cannot arise out of no right. It is absurd, therefore, to say that a man has no right of property in his labor, for the reason that labor is *incorporeal*, and yet to say that that same labor, (which is not his,) can give him a right to a *corporeal* substance, to which he confessedly has no other right, than that he has

expended labor upon it. If labor itself be not a subject of property, it follows, of necessity, that it can give the laborer no right of property in any thing else.

The necessary consequence, therefore, of denying the right of property in *incorporeal* things, as labor, for example, is to deny the right of property in *corporeal* things; because the right to the latter is only a *result*, or *consequence*, of a right to the *former*. If, therefore, we deny the right of property in incorporeal things, we must deny all rights of property whatsoever.

The idea, therefore, that incorporeal things cannot be subjects of property, is simply absurd, since it goes necessarily to the denial of all property; and since also it is itself denied by the common sense, the constant practice, and, above all, by the universal necessities, of mankind at large. On the other hand, if we admit a right of property in incorporeal things at all, then *ideas* are as clearly legitimate subjects of property, as any other incorporeal things that can be named. They are, in their nature, necessarily personal possessions; they have value; they are the products of labor; they are indispensable to the happiness, well-being, and even subsistence of man; they can be possessed by one man, and not by another; they can be imparted by one man to another; yet no one can demand them of another, as a right; and, as has before been said and shown, they are continually bought and sold as merchandise.

The doctrine, however, that *corporeal* substances *only* could be subjects of property, was a somewhat natural one in the infancy of thought; when men's theories about property were superficial and imperfect, partaking more of the character of instinct, than of reason, and when things visible by the eye, and tangible by the hand, would naturally be regarded, by unreasoning minds, as of a very different character, in respect of susceptibility of ownership, from such incorporeal things as ideas, of which few men had any worth setting a price upon. The distinction, however, between corporeal and incorporeal things, as subjects of property, is one entirely groundless in itself, and entirely unworthy of the

advanced reason of the present day; or even of any modern day; although modern days have seen the argument urged.*

Mankind have doubtless *never consistently* adhered to the theory that only corporeal things could be subjects of property. Probably in the darkest barbarism — certainly since the earliest history of civilization — incorporeal things, of various kinds, have been subjects of purchase and sale. The illiterate have sold their labor, which is incorporeal; and the learned, powerful, and artful, as, for example, the law-givers, magistrates, priests, physicians, astrologers, and necromancers, have sold their ideas. And the nature of men assures us, that there was never a time known among them, when the injury or destruction of various kinds of incorporeal property, as, for example, strength, sight, health, beauty, liberty, and life, was not considered and treated as a wrong to be avenged.

In modern times, with the advance of civilization, incorporeal things in a thousand forms, ideas included, have come to be among the most common articles of traffic; and contracts, based solely upon the ground of property in incorporeal things — as, for example, contracts to pay lawyers, physicians, preachers, teachers, editors, &c., for their ideas — are continually enforced by courts of justice, with the same uniformity as are contracts for corporeal things; while at the same time, the very tribunals, who enforce these contracts — tribunals composed, too, of men, who earn their official salaries only by giving their ideas in exchange for them — deny the principle of property in ideas. Such has been, and still is, the inconsistency of men's opinions on this subject — an inconsistency that strikingly illustrates the immaturity of reason, the low state of legal science, and the imperfection of political and judicial institutions.

One obstacle to the universal acknowledgment of property in ideas, has been this. Mankind *freely give away* so large a portion of their ideas, and so few of their ideas are of sufficient

* *Justice Yates, in the case of Millar vs. Taylor, 4 Burrows 2303.*

value to bring anything in the market, (except in the market of common conversation, where men mutually exchange their ideas,) that persons, who have not reasoned on the subject, have naturally *fallen into the habit of thinking*, that ideas were not subjects of property; and have consequently been slow to admit that, as a matter of sound theory or law, men had a strict right of property in *any* of their ideas. And yet these same doubters have themselves been, and now are, in the constant practice of buying ideas, in various ways, of magistrates, lawyers, physicians, preachers, teachers, editors, &c., and paying their money for them, without once dreaming that there was any more hardship or injustice in their being necessitated to do so, than in their being necessitated to buy their food or clothing.

Another reason, why the absolute right of property in ideas, has not been earlier, more consistently, and universally acknowledged, has been that, in the infancy of civil society, and even until a comparatively recent date, owing to the general ignorance of letters, and the want of records for that purpose, there has been a nearly or quite insuperable difficulty in maintaining that right in practice, by reason of there being *no means of proving one's property* in an idea, after the idea itself had gone out among men. But that difficulty is now removed by the invention of records, by which a man may have his idea registered, and his right to it established, before it is disclosed to the public.

But what must settle, absolutely and forever, this question of the right of property in incorporeal things, is this — *that the right of property itself is an incorporeality. The right of property is a mere incorporeal right of dominion, or control, over a thing.* It is neither tangible by the hand, nor visible by the eye. It is a mere abstraction, existing only in contemplation of the mind. Yet this incorporeal *right* of dominion or control over a thing, *is itself a subject of property — of ownership;* one that is continually bought and sold in the market, *independently of possession of the thing to which it relates.*

To make this point clear to the unprofessional reader. There

are two *kinds* of property, which pertain to every corporeal thing that is owned. One is the *right* of property, or ownership, in the thing owned — that is, the *right* of dominion or control over the thing. The other is the *possession* of the thing owned. These two kinds of property are the only *kinds* of property, that any man *can have* in any corporeal thing. Yet these two kinds of property can exist, and often do exist, separately from each other. Thus one man may *own* a thing — that is, have the *right of property* in a thing — as a house, for example — and another man have the possession of it. One man has the abstract incorporeal *right* of dominion, or control, over the house; the other has, for the time being, the *actual* dominion — that is, the possession — which he holds, either with, or without, the consent of the owner, as the case may be.

Now, any one can see that this *incorporeal right* of the true owner, *is itself a subject of property.* It is a thing that may be owned, bought, and sold, independently of the other kind of property, viz.: possession. It often *is* owned, bought, and sold, independently of possession. For example, a man often buys, pays for, and owns, a house to-day, which he is not to have possession of until next week, next month, or next year. Yet, though out of possession of the house, his *incorporeal* right of property in it, is itself a legal and *bona fide* property, of which he *is* possessed. It is a property, which he himself may sell, if he so choose.

This *incorporeal right* of property is *the* property, that is principally regarded by the laws. Possession is comparatively of little importance. It is comparatively of little importance, because if a man own the *right* of property in a thing, he can then claim the possession, solely by virtue of that right, *and the law will give it to him.* On the other hand, if a man have *possession* of a thing, without the *right* of property in it, the law will compel him to surrender the possession to the one who owns the *right* of property. Hence, in nearly all controversies, in law, about property, the question is, Who has the *right* of property?

Not, Who has the possession? These facts show that the *right of property*, in any corporeal thing, *is itself a subject of property, of ownership, independently of possession;* and is so regarded by the laws. *Yet it is but an incorporeality.*

This incorporeal *right* of property is also *the* property, which is of chief consideration in the minds of men, in all their dealings with each other. It is what one man buys, and the other sells. They care little for possession; because they know that the *right* will, sooner or later, give them the *possession.* On the other hand, they know that possession, without the right, will be insecure, and of little value. For these reasons, in all legitimate traffic, the purchaser is careful to know that he buys the *right* of property — that is, that he buys of one, who really *owns* the property — has the *abstract incorporeal right to it;* and not of one who merely has the possession of it. This fact, too, shows that the *right* of property *is itself a subject of property — of ownership — independently of possession* of the commodity to which it relates; and is universally so recognized by mankind, in their every day dealings. *Yet it is but an incorporeality.*

To accumulate evidence on this point. That this *right* of property is itself a *subject of property, and an incorporeality,* is proved by the fact, that it is transferred from one man to another, *simply by consent — by a mere operation of the mind* — without any corporeal delivery of the thing, to which the right attaches. Thus two men, in New York, may exchange their respective *rights of property,* in two ships, that are, at the time, in the Pacific ocean. And this *incorporeal* transfer, of the *incorporeal right of property,* in the ships, enables each purchaser afterwards to claim the possession, dominion, and control of the ship itself, that he has purchased. Here it is clear that the *incorporeal right of property, or dominion, is a legal entity, and a subject of property, of ownership;* one, which is transferred, from one man to another, by an *incorporeal* act, a simple operation of the mind, viz.: the act of consent. Manifestly this *incorporeal right of property, or dominion,* is, of itself, independently of possession

of the commodity to which it relates, a subject of property, *of ownership.*

Again. This *incorporeal right* of property, being, of itself, *a subject of property*, it follows that no man can assert that he has a *right* of property even in a *corporeal* thing, without, at the same time, asserting, that an *incorporeality* is a subject of property, of ownership.

To conclude. The *right of property* being *incorporeal*, and being itself a *subject of property*, it demonstrates that the right of property may attach to still *other incorporeal* things; for it would be plainly absurd to say, that there could be an *incorporeal* right of property to a *corporeal* thing, but could be no incorporeal right of property to an *incorporeal* thing. Clearly an *incorporeal* right of property could attach to an *incorporeal* thing — *a thing of its own nature* — as easily as to a *corporeal* thing, a thing of a different nature from its own. The attachment of this *incorporeal* right of property, to a *corporeal* thing, is not a phenomenon visible by the eye, nor tangible by the hand. It is perceptible only by the mind. And the mind can as easily perceive the same attachment to an *incorporeal* thing, as to a *corporeal* one.

It will now be taken for granted, that this point is established, namely, that on principles of natural law, *incorporeal* things are subjects of property. If that point be established, it is self-evident that *ideas* are naturally subjects of property; that their *incorporeality* is no objection whatever to their being owned as property.

SECTION II.

Objection Second.

The second objection, that is urged against the right of property in ideas, is, that, admitting, (what cannot with the least reason be denied,) that a man is the sole proprietor of an idea,

so long as he retains it in his exclusive possession, he nevertheless loses all exclusive right of property in it the moment he communicates the idea to another person, *because that other person thereby acquires as complete possession of the idea, as the original proprietor.*

This is a very shallow objection, since it is founded wholly on the assumption, that if a man once intrust his property in another man's keeping, he thereby loses his own right of property in it; whereas men are constantly intrusting their property in other men's hands, in many different ways, and for many different purposes, as for inspection, for hire, for sale, for safe keeping, for the purpose of having labor performed upon it, and for purposes of kindness and accommodation, without their *right of property* being in the least affected by it. Possession has nothing to do with a man's *right of property*, after that right has once been acquired. He can then lose his *right of property*, only by his own *consent* to part with it.

This impossibility of losing one's *right of property*, otherwise than by his own *consent*, is involved in the very nature of the right of property, which is a right of *dominion* — that is, a right to have a thing *subject to one's will*. It is an absurdity, a contradiction, to say that a man's *right* to have a thing *subject to his will*, can be lost *against his will;* or can be separated from him by any other process than his own will that it shall be separated from him. Hence a man can never sell, or give away, any thing that is his, by any other process than an act of his will, namely, his *consent* to part with his *right of property* in it. Otherwise a man would lose his right of property in a thing, every time he suffered another to take possession of that thing. He could not intrust an article of property in another man's hand for a moment, for any purpose whatever, without losing his right to it forever. Yet men habitually intrust their property in each other's keeping, with perfect freedom, without their ownership, or *right of property*, being in the least impaired thereby.

No assertion could be more utterly absurd, in regard to any

corporeal thing, than that a man loses his *right of property* in it, by simply parting with his possession of it; for every day's and every hour's experience, both in business and in law, would give the lie to it. And yet the assertion is equally absurd, when made in respect to *incorporeal* things, as when made in respect to *corporeal* things. There is not so much as an infinitesimal difference between the two cases.

The admission, therefore, that a man owns an idea, as property, while it is in his *exclusive* possession, is an admission that he owns it forever after, in whosesoever possession it may be, until he has *consented* to part, not merely with his exclusive possession, but also with his *right of property* in it.

The only question, then, on this point, is, whether it is to be *presumed*, simply from the fact that a man voluntarily parts with the exclusive *possession* of his idea, that he therefore *consents* to part also with his exclusive *right of property* in it? In other words, whether it is to be presumed that a man *consents* to part with his exclusive right of property in his idea, simply from the fact that he makes that idea *known* to another person?

To answer this question requires a little analysis of the nature of the act, on which the presumption, if it exist at all, is founded.

In the case of a *corporeal commodity*, the act of making it *known*, and the act of giving *possession* of it, are distinct acts — the first not at all implying the last. But in the case of an *idea*, the act of making it *known*, and the act of giving *possession* of it, are necessarily one and the same act; or at least one necessarily involves the other. Yet, although the act of making an idea *known*, and the act of giving *possession* of it, are, in reality, one and the same act, still the act has two distinct *aspects*, in which it may be viewed, viz.: first, that of *simply* making the idea *known* (as in the case of making known a corporeal commodity); and, secondly, that of giving *possession* of it. And the question proposed will be simplified, and more easily and conclusively

answered, by considering the act in each of these aspects separately.

The first question, then, is, whether it is to be presumed that a man *intends* to part with his exclusive right of property in an idea, simply because he makes the idea *known* to another person?

Obviously there is no more ground, in nature, or in reason, for presuming that a man intends to part with his right of property, *in an idea*, simply because he describes it, or makes it known, to another person, than there is for presuming that he intends to part with his right of property, in any corporeal commodity, simply because he describes it, or makes it known, to another person. If a man describe his horse to another person, nobody presumes therefrom that he intends to part with his right of property in his horse. And it is the same of every other corporeal commodity. What more reason is there for presuming that he intends to part with his right of property in an idea, simply from the fact that he describes the idea, or makes it known, to his neighbor? Certainly there is none whatever, if we but regard the act, (as we are now attempting to do,) *simply as making known the idea, and not as giving possession of it.* On any other principle than this, men could not talk about their property to their neighbors, without losing their exclusive right to it.

Nothing, therefore, could be more entirely farcical, than the notion, that a man loses his exclusive right of property, in an idea, simply by making the idea *known* to other persons — provided, always, that the act of making the idea known, be regarded *simply as such, and not as giving possession of it.*

Let us now look at the act of making *known* an idea, in its other aspect, viz.: that of giving *possession* of it.

Here the question is, whether it is to be presumed that a man *intends* to part with his right of property in an idea, simply because he puts the idea into the *possession* of another person?

Here, too, there is manifestly no more ground, in nature, or in reason, for presuming that a man intends to part with his right

of property, in a *valuable* idea — that is, an idea having an important *market* value — simply because he gives it into the *possession* of another person, (without receiving any equivalent, or otherwise indicating any intention to part with his right of property in it,) than there is for presuming that he intends to part with his right of property, in any corporeal commodity, *of the same market value with the idea*, simply because he gives such commodity into the *possession* of another person (without receiving any equivalent, or otherwise indicating any intention to part with his right of property in it). It is just as improbable, in reason, and in nature, that a man would *gratuitously* part with his right of property in an idea, that was worth in the market a hundred, a thousand, or a hundred thousand dollars, as it is that he would gratuitously part with his right of property, in a corporeal commodity, of the same market value.

The legal presumption, therefore, as to whether a man does, or does not, *intend* to part with his right of property in an idea, when he puts that idea into the possession of another person, will depend very much upon the *market value* of the idea. In short, the legal presumption will be governed by precisely the same principles, as in the case of a corporeal commodity.

To illustrate these principles. If one man give to another the possession of a corporeal commodity, of so small value as a nut, an apple, or a cup of water, for example, without saying whether he also gives the right of property in it, the legal presumption clearly is that he *does* intend to give the right of property. Such is the legal presumption, because such is clearly the moral probability, as derived from the general practice of mankind. But if a man were to give to another the possession of a corporeal commodity, of so large value as a horse, a house, or a farm, without receiving any equivalent, and without *specially* making known that he also gave the right of property in it, the legal presumption clearly would be, that he did *not* intend to give the right of property. Such would clearly be the legal presumption, solely because such would clearly be the moral probability, as derived

from the general practice of mankind. But where the value of a corporeal commodity is neither so great, on the one hand, nor so small, on the other, as to furnish any clear rule of probability, as to whether the owner intended to reserve his right of property in it, or not, no *absolute* legal presumption, as to his intentions, can be derived *solely* from the fact of his giving possession of the thing itself; and consequently his intention, as to parting with his right of property, or not, may need to be proved by other evidence.

In the case of intellectual property, the legal presumption would follow the same rules of moral probability, as in the case of material property — that is, it would follow the rule of probability, where the probability, as derived from the general practice of mankind, was *clear*. But where the probability was not clear, the intention of the owner would be a fact to be proved by circumstances. If, for example, one man gave possession to another of an idea, that either had a merely trivial market value, or no market value at all, (like the ideas which men usually give freely to each other in conversation,) without otherwise indicating any intention as to parting with his right of property in it, the legal presumption, like the moral probability, would be, that he *did* intend to part with his exclusive right of property in it. But if, on the other hand, he gave possession of an idea, that had a *large* market value, without otherwise indicating his intention as to parting with his right of property in it, the legal presumption, like the moral probability, would be that he did *not* intend to part with his right of property. But where the value of the idea was neither so small, on the one hand, nor so large, on the other, as to furnish a clear rule of probability as to the owner's intentions, the fact of his intention would be open to be proved by circumstances.

Of course a man could always reserve his right of property, in ideas of the smallest value, or part with his right of property, in ideas of the largest value, by *specially* making known that such were his intentions.

Whether, therefore, the act of making *known* an idea, be regarded *simply as making it known*, (as in the case of making known a corporeal commodity,) or as also giving *possession* of it, it affords no ground for presuming that the owner *intended* to part with his exclusive right of property in it, *provided the idea be a valuable one for the market;* because it is naturally as improbable, that a man would gratuitously part with his right of property, in an *idea*, that would bring him an important sum in the market, as it is that he would gratuitously part with his right of property, in a corporeal commodity, that would bring the same sum in the market.

If it were possible for the law to regard the act of making an idea known, *simply as making it known*, (as in the case of making known a corporeal commodity,) and *not* also as giving *possession* of it, it would clearly be the duty of the law so to regard it, *whenever the idea was one that had an important value in the market.* And *why* should the law so regard it? First, because such would clearly be the intention of the owner of the idea. When he describes his idea to his neighbor, he no more *intends* to convey to him any valuable property right in the idea itself, *beyond a mere knowledge of it*, than he intends to convey a valuable property right in a corporeal commodity, *beyond a mere knowledge of it*, when he describes such commodity to his neighbor. His intention, in either case, is simply to convey a bare knowledge of the idea, or of the corporeal commodity, *and nothing more.* And his intention should be taken for what it really is, *and for nothing else, if that be possible.*

A second reason to the same point is this. The one, to whom the owner communicates an idea, *had no claim to it.* He did not produce it. He pays nothing for it. He had no claim upon the owner to furnish it to him. *The owner did him a kindness, by giving him a simple knowledge of the idea, without any other right.* These are sufficient reasons why, after the idea is made known to him, he should claim no further rights in it, than the owner intended to convey to him. They are also sufficient rea-

sons why the *law* should, *if it be possible*, give such a construction, and only such a construction, to the act making known the idea, as the owner intended.

But since the act of making an idea *known*, necessarily involves the giving *possession* of it, the law *must*, *perhaps*, necessarily regard it *as* giving *possession* of it. If so, the owner, when he makes an idea *known*, must take all the consequences that *necessarily* follow from giving *possession* of it. We have seen what those consequences are, to wit. Where the idea has a merely trivial market value, the presumption clearly is, that the owner *intends* to part with his exclusive right of property in it. Where the idea has a large market value, the presumption clearly is, that he does *not* intend to part with his exclusive right of property in it. But where the market value of the idea is neither very important, nor really unimportant, no very strong presumption either way can arise from the simple fact of giving possession; and the owner's intention will be open to be determined by other circumstances.

But there are very weighty reasons of policy, as well as of justice, why the fact, that a man makes known an idea, or gives possession of it, should, in no case, where his intentions are at all doubtful, be construed unfavorably to his retaining his right of property in it; and why the rule should at least be as stringent, in favor of the owner, in the case of ideas, as in the case of material commodities of the same market value. These reasons are as follows.

First. Because it is manifestly contrary to reason and justice to presume that a man intends any thing, adverse to his own rights and his own interests, where no cause is shown for his doing so. This reason is as strong in the case of an idea, as in the case of a material commodity.

Secondly. Because men will be thereby discouraged from producing valuable ideas; from making them known; from offering them for sale; and from thereby enabling mankind to purchase, and have the benefit of them. The law should as much

encourage men to produce and make known valuable ideas, and offer them for sale, as it does to produce and make known valuable material commodities, and offer them for sale. It should therefore as much protect a man's right of property in a valuable idea, after he has produced it, and made it known to the public, and offered it for sale, as it should his right of property in a valuable material commodity, after he has produced it, and advertised it to the public. It would be no more absurd or atrocious, in policy, or in law, to deprive a man of his right of property in a valuable material commodity, as a penalty for exhibiting or offering that commodity to the public, than it is to deprive a man of his right of property in a valuable idea, as a penalty for bringing that idea to the knowledge of the public. If men cannot be protected in bringing their valuable ideas into the market, they will either not produce them, or will keep them concealed as far as possible, and strive to realize some profit by using them as far as they can, in private. In short, they will do just as men would do with their material commodities, if they were not protected in making them known to the public — that is, either not produce them, or keep them concealed, and use them in private, instead of offering them for sale to those who would purchase and use them, for their own benefit, and the benefit of the public. The law cannot *compel* men to produce valuable ideas, and disclose them to the world; it can only *induce* them to do it. And it can induce them to do it, only by protecting their right of property in them, or by making some other compensation for them.

Thirdly. The law ought not only to encourage mankind to trade with each other, but it ought to encourage them to trade honestly, intelligently, and therefore beneficially; and not knavishly, blindly, or injuriously. It ought, therefore, to encourage them to exhibit their commodities, and make known their true qualities in the fullest manner, to those who propose to become purchasers. If, therefore, a man have an *idea* to sell, he should be encouraged to make its true character and value fully known to the intended purchaser. But this he can do only by putting

the idea into the *possession* of the proposed purchaser. This act, then, which the interests of the proposed purchaser require, and which the owner consents to for the satisfaction, safety, and benefit of the proposed purchaser, certainly ought not to be construed against the rights of the owner; any more than the fact, that the owner of any material commodity gives it into the hands of a proposed purchaser, in order that the latter may inspect it, and judge whether it be for his interest to purchase it, ought to be construed unfavorably to the rights of the owner.

No law could be more absurd in itself, or hardly more fatal to honesty in trade, or even more destructive to trade itself, than a law, that should forbid the owner of a commodity to exhibit it, submit it freely to inspection, or even give it into the *possession* of a proposed purchaser, for examination and trial, except under penalty of thereby forfeiting his right of property in it. Commercial society could not exist a moment under such a principle. In fact, neither civil, social, nor commercial society could exist under it. And the principle is just as absurd, fatal, and destructive, when applied to ideas, as it would be if applied to material commodities.

In the traffic in *material* commodities, the law encourages honesty, confidence, disclosure, examination, inspection, and intelligence, by protecting the rights of the true owner, even though he surrender the commodity into the *exclusive* possession of a man, who proposes to purchase it. This is more than is *ever* necessary in the case of an *idea;* for there the owner *always retains an equal possession,* with the individual to whom he communicates the idea. How absurd and inconsistent, then, is it to say that the owner of the *idea,* loses his right of property in it, by allowing another *simply to participate with himself in its possession,* while the owner of a material commodity retains his right of property, notwithstanding he surrender to another the *exclusive* possession.

If the owner of a house admit a person into his house, either on business, or as a friend, or for inspection as a proposed pur-

chaser, he thereby as much admits such person to an *equal possession with himself of the house*, as the owner of an idea, admits a man to an equal possession of it, when he admits a friend, neighbor, or proposed purchaser, to a knowledge of that idea. And there is as much foundation, in justice, and in reason, for saying that the owner of the house thereby loses his exclusive right of property in his house, as there is for saying that the owner of the idea thereby loses his exclusive right of property in his idea.

So also, if the owner of a farm admit a man upon his farm, in company with himself, *for any purpose whatever*, he as much admits such person to an *equal possession* of it, *for the time being*, as the owner of an idea admits a man to an equal possession with himself, when he admits such person to a knowledge of that idea. And there is as much foundation, in justice, and in reason, for saying that the owner of the farm thereby loses his exclusive right of property in his farm, as there is for saying that the owner of the idea thereby loses his right of property in his idea.

It cannot be said that there is any want of analogy between these cases of the house and the farm, on the one hand, and of the idea on the other, for the reason that, in the cases of the house and the farm, the joint possession is *temporary*, but that, in the case of the idea, the joint possession is necessarily *perpetual* — (inasmuch as a man *cannot* at will be dispossessed, or dispossess himself, of an idea, after he has once become possessed of it). This difference in the cases is wholly immaterial to the principle, for the reason that, if equal possession were to give equal right of property, *it would give it on the first moment of possession;* and the one, who should thus acquire an equal right of property, would have *thenceforth* as much right to *make his possession perpetual*, as would the original owner.

This conclusion is so obvious and inevitable, and would be so fatal to all rights of property, that where one man thus admits another upon his premises, the law does not even consider it a

case of joint possession, *for any legal purpose whatever, except to protect the person admitted from violence during, and on account of, such occupation as he has been voluntarily admitted to. But for any purposes of property, control, use, ownership, or dominion, against the will of the true owner, it is not, in law, a case even of joint possession.* And if this be a sound principle, in the case of the house, or the farm — as it unquestionably is — and one indispensable to the co-existence of social life and the rights of property — it is an equally sound principle, when applied to an idea.

On this principle, then, a person admitted, by its owner, to the knowledge or possession of an idea, without any intention, on the part of the owner, to part with any right of property in it, is not entitled even to be considered a joint possessor of the idea, *for any legal purpose whatever, beyond the intention of the owner, except for the simple purpose of giving him a lawful protection from violence during, and on account of, such a possession as the owner has voluntarily admitted him to.* For any of the purposes of property, control, use, or dominion, *against the will of the true owner*, he is no more in the *legal possession* of the idea, than, in the cases before supposed, the man admitted by the owner into a house, or upon a farm, is in legal possession of such house or farm.

In short, the general principle of law is, that where one man intrusts his property in another man's possession, the latter has no right whatever to *use it, otherwise than as the owner consents that he may use it.* Not being the owner of it, he can exercise no kind of dominion over it, except such as the owner has given him permission to exercise. If he do use it, without the owner's permission, and any inconvenience be occasioned to the owner thereby, or the property come to any harm in consequence, he becomes legally liable to pay the damages. Or if he use the property for purposes of profit, without the owner's permission, the profits belong to the owner of the property, and not to the one having possession of it.

These are the general principles of the law of nature in regard to property intrusted by one man to the keeping of another. And they are as applicable to incorporeal property — ideas, for example — as they are to corporeal property.

The only exception to these principles, that is of sufficient importance to be noticed here, is where the keeping of another's property is attended with expense, as a horse, for example, which must be fed. In such a case, if the owner have made no provision for the support of the horse, the man having possession of him may use him enough to pay for his keep. But the principle of this exception would not apply at all to intellectual property — an idea, for example — which one man had intrusted to another; because the keeping of it would be attended with no expense. The man having it in his possession, therefore, would have no right to use it, without the owner's consent.

The conclusion, therefore, is, that when one man communicates a *valuable* idea to another, without any intention of parting with his exclusive right of property in it, the latter receives a simple knowledge, or naked possession, of the idea, without any right of property, use, control, or dominion whatever, beyond what the true owner intended he should have.

To conclude the argument on this point. There is one monstrous inconsistency, or more properly one monstrous absurdity, in the laws, *as at present administered*, relative to intellectual property. It is this — that *unknown* ideas are legitimate objects of property and sale; but that *known* ideas are not.

Thus the law, as now administered, holds, that if a man can make a contract, for the sale of his ideas, *without first making them known, or enabling the purchaser to judge of their value, or of their adaptation to his use*, they are a sufficient consideration for the contract, and consequently legitimate objects of property and sale; and the contract is binding upon the purchaser; and the seller, upon the delivery of the ideas, can compel the payment of the price agreed upon for them. But if he first make his ideas known, so as to enable the proposed purchaser to see what

he is buying, and judge of their value, and their adaptation to his uses, they are no longer legitimate objects of property or sale; are an insufficient consideration for a contract; and the owner thereby loses his power of making any binding contract for the sale of them; and loses his exclusive property in them altogether.

Thus the principle of the law, *as now administered*, clearly is, that if a man buy ideas, *without any knowledge of them*, he is bound to pay for them. But if he buy them, *after full inspection, and proof of their value*, he is not bound to pay for them. They are then no longer merchandise. In short, the principle acted upon is, that *unknown* ideas are objects of property and sale; but *known* ideas are not.

To illustrate. If a man contract with the publisher of a newspaper, to furnish him a sheet of ideas, daily or weekly, for a year, for a given sum — the ideas themselves being of course unknown at the time of the contract, and their intrinsic value being necessarily taken on trust — *such* ideas are legal objects of property and sale, and a sufficient consideration for the contract; and the contract is therefore binding upon the purchaser, even though the ideas, when they come to be delivered, should prove not to be worth half the price agreed upon. So, too, if a man contract with a lawyer to furnish him legal ideas; or with a preacher to furnish him religious ideas; or with a physician to furnish him medical ideas — the ideas themselves being unknown at the time of the contract, and their value therefore necessarily taken on trust — *such* ideas are a sufficient consideration for a contract; and consequently legitimate objects of property and sale; and must be paid for, on delivery, even though they should prove to be not half so valuable as the purchaser had anticipated they would be. But if a man have a mechanical idea to sell, and for the satisfaction of the proposed purchaser, exhibit it to him, and demonstrate its value, and its adaptation to his purposes, before asking him to purchase it, the law, as now administered, holds that it is no longer the exclusive property of the original

owner; no longer an object of sale between these parties; but has already become the joint property of both, without any consideration for it having passed between them.

Now, it is plain that this principle is as false in policy, as false in ethics, and as false in reason, as would be the same principle, if applied to corporeal commodities — making them lawful objects of property and sale, provided contracts for them be entered into before the purchaser sees them, or knows what they are; but no longer objects of property or sale, after those, who wish to purchase and use them, shall have inspected them, and become satisfied of their value, and adaptation to their purposes.

It cannot be said that there is a difference between the two classes of cases — that in the case of the lawyer, the preacher, and the physician, they sell *not their ideas, but the labor of producing them, and of making them known, or delivering them;* whereas in the case of the inventor, he seeks to sell, *not* the labor of producing, or making known, or delivering his idea, (for that labor has already been performed on his own responsibility,) *but the idea itself.* This cannot consistently be said, because it i really the idea only that is paid for, or for which pay is claimed in either case. The labor, neither of producing, nor of makin known, or delivering ideas, has any intrinsic value, independently of its products — that is, independently of the ideas produced, made known, or delivered, by it. We pay for labor, whether intellectual or physical, only for the sake of its products. We do indeed *call* it paying for *labor*, instead of paying for its *products.* And, in one sense, we do pay for the *labor*, rather than for its *products;* because we pay for the labor, taking our risk whether its products will be of any value. Yet, in reality, it is only the *products* of the labor, that we have in view, when we buy the labor. No one buys labor *for its own sake;* nor for any other reason than that he may thereby become the owner of its products. By buying the labor, one makes himself the owner of its products; and this is the whole object of buying the labor itself. The difference, therefore, between buying labor, and buy-

ing the products of labor, is a difference of *form* merely, and not of substance. The products of labor are all that make labor of any value, and all that are really had in view when the labor is purchased.

This difference in the two cases — that is, between selling ideas themselves, and selling the labor of producing, and making known, or delivering, ideas — is immaterial for still another reason, viz.: that it would be absurd to say that the intellectual labor of producing ideas, or the physical labor of speaking, printing, or otherwise delivering them, was a legitimate object of property or sale, unless the ideas themselves, thus produced and delivered, were also legitimate objects of property and sale. To say this would be as absurd as to say that the labor of producing or delivering corporeal commodities, was a proper object of property and sale; but that those commodities themselves were *not* proper objects of property or sale.

To be consistent, therefore, the law should either hold, that the labor of producing, and making known, or delivering, ideas, is not an object of property and sale; or else it should hold that the ideas themselves are objects of property and sale.

The object of buying *known* ideas, and of buying the labor that produces, and makes known, or delivers *unknown* ideas, is the same, viz.: *to get ideas for use.* And to say that an idea is not as legitimate an object of property and sale, as is the labor of producing or delivering it, is just as absurd as it would be to say that wheat is not itself a legitimate object of property or sale, but that the labor of producing and delivering wheat *is* a legitimate object of property and sale.

All intellectual labor, therefore, that is employed in producing ideas, and all physical labor, (including manuscript writing, and printing, as well as speaking,) that is employed in making known ideas, should be held to be no subjects of property or sale, and no sufficient considerations for a contract; or else all the ideas produced by intellectual labor, or delivered or made known by physical labor, should also be held to be legitimate subjects of

property and sale, and sufficient considerations for contracts. And if they are legitimate subjects of property and sale, and sufficient considerations for contracts, *before* they are made known to a proposed purchaser, and *before* he can see what they are, or judge of their value, or of their adaptation to his use, it is absurd and inconsistent to say that they are not at least equally legitimate subjects of property and sale, and quite as valid considerations for contracts, *after* they have been made known to a proposed purchaser, and he has examined them, seen what they are, and ascertained their value, and their adaptation to his use.

The argument of *possession* is of no force against this view of the case, because, as we have seen, the possession given, is simply the knowledge, *or naked possession*, of the idea, without any *right* of use, property, contract, or dominion, beyond what the true owner *intended* to convey, when he made the idea known.

SECTION III.

Objection Third.

A third objection, that has been urged against a right of property in ideas, any longer than they remain in the exclusive possession of the originator, is, that ideas are of the nature of wild animals, which, being once let loose, fly beyond the control of man; thus interposing an obstacle, *in a law of their own nature*, to the maintenance of any dominion over them, after they have once been liberated.

This objection is utterly fanciful and unfounded. The resemblance between a flying thought, and a flying bird, may be sufficiently striking for purposes of poetry and metaphor, but has none of the elements of a legal analogy. A thought never flies. It goes only as it is carried by man. It never escapes beyond the power of men; but is always wholly under their control; having no existence, nor habitation, except in their minds.

Renouard, in his argument against the right of property in ideas, asks, "Who can doubt that thought, *by its own essence*, escapes exclusive appropriation?"* I answer the question by asking, Who can pretend, for an instant, that thought *does*, "*by its own essence*," *or by any law of its own nature*, escape exclusive appropriation? Nothing is, by its own essence and nature, more perfectly susceptible of exclusive appropriation, than a thought. It originates in the mind of a single individual. It can leave his mind only in obedience to his will. It dies with him, if he so elect. And, as matter of fact, doubtless ninety-nine out of every hundred of every man's thoughts do really die with him, without having ever been in the possession of any other than his single mind.

When a thought does go beyond the mind of its original possessor, it goes only to such minds as he wills to have it go to. And it can then leave their minds only in obedience to their wills; and can go only to such minds as they choose to deposit it with.

A thought, then, *never*, "*by its own essence*," *or by any law of its own nature*, goes out of the exclusive possession of the mind that originated it. It never "*escapes*" from the custody, either of its first owner, or of any subsequent owner or possessor. If it be regarded as a living creature, it is no *wild* animal; but one thoroughly domesticated; neither capable of going, *by its own powers*, nor ever seeking to go, beyond the limits assigned for its habitation.

Is not a thought, then, "by its own essence" and nature, a subject of "exclusive appropriation?" Nothing is more self-evident than that it is. Neither wood nor stone is more susceptible of "exclusive appropriation," than a thought. And if it be susceptible of exclusive appropriation, it is a legitimate subject of property.

* There is a translation of Renouard's Argument in the American Jurist, No. 43, (Oct. 1839,) p. 39.

This conclusion is not impaired at all by the fact, that, if the owner of an idea do but once give it into the possession of another person, it is then liable and likely, *not to go of itself, but to be carried*, to millions of minds. The owner understands all this when he makes his thought known; and in many, perhaps most, cases desires and intends it — knowing that no right of property or use will go with the idea; but that the more extensive the knowledge or possession of it, the more numerous will be those, who will come to him to buy the idea itself, or the right of using it.

But perhaps it will be said that an idea, once disclosed, *though in confidence*, to a single individual, may be given by him, *against the will of the true owner*, into the possession of mankind at large. This is true, but it can only be done *wrongfully;* and then no right of property or use goes with the idea, unless in the case of what the law calls an innocent purchaser for value. And the wrong-doer is responsible for the wrong, if any injury accrue to the owner in consequence of it. The principle is precisely the same as in the case of a corporeal commodity, intrusted by its owner to the keeping of another. If the person thus intrusted, prove false to his trust, and deliver the commodity over to a third person, against the will of the owner, no right of property goes with it, (unless to an innocent purchaser for value,) and the wrong-doer is responsible for his wrong, if the owner of the commodity sustain any loss in consequence. And this principle is just as sound, when applied to an idea, as when applied to a corporeal commodity.

SECTION IV.

Objection Fourth.

It is said that ideas have no ear-marks, by which their ownership may be known. And hence it has been inferred that ideas cannot be subjects of ownership; though it would doubtless

puzzle any one to show any connexion between the premises and the conclusion.

This objection is as frivolous as the others; for neither has corporeal property *usually*, if ever, any ear-marks by which the world *at large* can know *who* is the owner. Nevertheless, when mankind see corporeal wealth, as a horse, a house, or a farm, for example, which bears evidence of human labor, and which has too much market value to justify the idea that the owner would voluntarily abandon it, they *infer* that it *has* an owner, though he may be at the time unknown to them. So it should be with an idea. When a man has communicated to him an idea, or a device, that he never knew before, — as that of a steam engine, for example — or any other that has such market value, that he cannot reasonably suppose the owner would gratuitously part with his right of property in it, he ought, as a rational man, to infer that it *has* an owner, though it have no proprietary mark, by which its owner can be known to a stranger. On the other hand, if the idea be one that has so little market value, that the author would not be likely to make it an article of merchandise, or to set any value upon it as an exclusive property, he may reasonably infer that it is free to any one who chooses to use it.

If it be said that an idea has no mark, by which its own producer or proprietor can know it, the objection is unfounded; since a man *does* know his own ideas, as well as he knows either the faces of his children, the animals he has reared, or the house he has built. In this respect ideas have the advantage over very many kinds of corporeal commodities. For example, a man cannot distinguish his own piece of *coin*, from the hundreds of thousands of others stamped in the same mould. Neither can a man often, if ever, identify his own wheat, oats, or other grain, by a simple inspection of the grain itself. He can identify it only by circumstances. And it is the same with a very great variety of corporeal commodities.

If it be said that, for want of ear-marks, the producer of an idea cannot establish his authorship of it, *to the satisfaction of*

the legal tribunals, the answer is, that, notwithstanding the want of ear-marks, that very thing is now done every day; partly by means of records, where men sometimes register their ideas, and thus *make* the evidence, before making the ideas known to the world; and partly by a great variety of other evidence, which such cases generally admit of.

If, however, either from the nature of ideas, or any other cause, a man fail to identify an idea as his, to the satisfaction of the tribunal that tries the question, he must lose his right of property in it; the same as men must do, when they lack evidence to establish their right to corporeal commodities, which are really theirs. But because a man may *sometimes*, for want of evidence, fail to identify an idea as his, when it really is his, that is no reason why he should not hold his property in all those ideas, which he *can* prove, to the satisfaction of the legal tribunals, to be his. In short, the same rules, on this point, are applicable to ideas, that are applicable to corporeal commodities.

SECTION V.

Objection Fifth.

A fifth objection, that is urged to a man's having a right of property in his inventions, is, that the course of events, and the general progress of knowledge, science, and art, suggest, point to, contribute to, and aid the production of, certain inventions; and that it would therefore be wrong to give to a man an exclusive and perpetual property, in a device, or idea, which is not the unaided production of his own powers; but which so many circumstances, external to himself, have contributed and aided to bring forth.

This objection is as short-sighted as the others. If sound, it would apply as strongly against the right of property in material,

as in intellectual wealth. But has a man no right of property in the gold he finds and gathers in California, because the course of events pointed him thither? and the general progress of knowledge, science, and art supplied railroads and steamboats to carry him there? and tools to work with after he arrived? As well might this be said, as to say that a man should have no property in his idea, because the course of events, and the progress of knowledge, pointed him to it, and enabled him to reach it.

The course of events, and the general progress of knowledge, science, and art, as used in this objection, have no other meaning than this—They mean simply all the various kinds of knowledge that have come down to us from the past—(including in the *past*, not merely the *ancient* time, but all past time up to the present moment).

The sum of this argument, therefore, is, that authors and inventors have the benefit of all the knowledge that has come down to us, to aid them in producing their own writings and discoveries; and therefore they should have no right of property in their writings and discoveries.

If this objection be sound, against the rights of authors and inventors to their *intellectual* productions, then it will follow that other men have no right of property in any of those *corporeal* things, which the knowledge, that has come down to us, has enabled them to produce, or acquire. The argument is clearly as applicable to this case as the other.

It is no doubt true, that the course of events, and the general progress of knowledge, science, and art, *do* suggest, point to, contribute to, and aid the productions of, *many*, possibly *all*, inventions. But it is equally true that the course of events, and the general progress of knowledge, science, and art, suggest, point to, contribute to, and aid the production and acquisition of, all kinds of *corporeal* property. But that is no reason why *corporeal* things should not be the property of those, who have produced or acquired them. Yet the argument is equally strong against the right of property in *corporeal* things, as in intellectual

productions. If, because authors and inventors, in producing their writings and discoveries, had the advantage of the course of events, and the general progress of knowledge, in their favor, they are to be denied the right of property in the fruits of their labors, then every other man, who has the course of events, and the progress of knowledge, science, and art in his favor, (and what man has not?) should, on the same principle, be denied all ownership of the fruits of his labor — whether those fruits be the agricultural wealth he has produced, by the aid of the ploughs, and hoes, and chains, and harrows, and shovels, which had been invented, and the agricultural knowledge which had been acquired, before his time; or whether they be the houses or ships he has built, through the aid of the axes, and saws, and planes, and hammers, which had been devised, and the mechanical knowledge and skill that had been acquired, before he was born.

But has the farmer no right of property in his crops, because in producing them, he availed himself of all the agricultural implements, and agricultural knowledge, which other men had devised, and left for his use? Has a man no right of property in his house, or his ship, because, in building it, he availed himself of all the axes, and wheels, and saws, and planing machines, which other men had invented? Have the manufacturers of cloths no right of property in their fabrics, because, in the manufacture of them, they use all the looms, and spindles, and other machinery, which were invented and furnished to their hands by others? Has the printer no right of property in his books or newspapers, because, in producing them, he had the aid of the arts of paper making, the inventions of letters, of types, and of printing presses? Or because the public demand for books and papers, the course of events, and the progress of knowledge, suggested, pointed to, and enabled him to command capital for, the production of such articles as he manufactures?

The course of events and the progress of knowledge, science, and art — in other words, all the various kinds of knowledge that have come down to us — are mere tools, which the past has put

into the hands of the present, for doing the work that is now to be done. These tools, so far as they are now common property, are free to all; and each one avails himself of such as he finds best adapted to the work he has in hand; whether that work be the growing of agricultural products, the building of houses or ships, the manufacture of clothing, the printing of books, or the invention of steam engines, or electric telegraphs. And no one, of the present day, can be justly denied his right of property in the fruits of his labor, because, in producing them, he used any or all these tools which the past has supplied for the benefit of those who are now alive. The dead have no right of property in either the intellectual or material things they have left to the living; yet *they* only could have the right to object to the use of what once was theirs. The living all stand on the same level, in regard to their right to use these now common tools, for the production of wealth. And their individual rights, to the products of their labor, are not at all effected by their use of these tools.

SECTION VI.

Objection Sixth.

A sixth objection is, that *since* "the course of events, and the general progress of knowledge, science, and art, suggest, point to, contribute to, and aid the production of, certain inventions," as mentioned in the preceding section, it is to be presumed that, if a particular invention were not produced by one mind, it soon would be by another; and that, because one man happens to be the first inventor, is no reason why he should have an exclusive and perpetual property in a device, or idea, which would have been brought forth, before a very long time, by some other mind, if it had not been done by him.

Admitting, for the sake of the argument, that B would have

produced a certain idea, if A had not done it before him, the objection is of no more weight, in the case of intellectual property, than in the case of material property. If A had not taken possession of a certain tract of wild land, and converted it into a farm, some one would have come after him, and done it. But that is no reason why the farm does not now belong to A.

If A had not produced certain commodities for the market — agricultural commodities, for example — the market would have been supplied by some one else. But that plainly is no reason why the commodities produced by the labor of A, should not be held to be his property.

If a man is to be denied any right of property in the fruits of his labor, merely because it is presumed that, if *he* had not performed the labor, some other person would, no man would be entitled to property in the fruits of his labor; for in few cases, if any, could he prove that no other person would ever have performed the labor, if he had left it undone.

The same principle, that applies to material things, in this respect, applies to ideas.

The principle goes to the destruction of all rights of property in the fruits of man's labor, because if A, as first producer, is to be deprived of the fruits of his labor, merely for the reason that B would have produced the same things, if A had not, then B certainly, as second producer, ought to have no property in them, for the reason that, if he had not produced them, C would have done so. Admitting that B would have produced the same things that A has done, he could have no better right to them than A now has. So that the principle goes to the destruction of all rights of property in nearly or quite all material, as well as intellectual, things.

But is it at all true, or at all to be presumed, that if A had not produced a certain invention, B would have done it? It may, in a few cases, seem highly *probable*, though it cannot in the nature of things be certain, that particular inventions would have been made, within a short period, if they had not been made at the

times they were. Nevertheless, these things are, *in general*, matters resting wholly in vague conjecture, and not at all on proof. It may be reasonably certain that, under favorable conditions, mankind at large will progress in the arts and sciences; that many new and valuable inventions will be made *by somebody*. But what those inventions will be, cannot be known beforehand. It surely is not easy, even if it be possible, to determine that any given invention would have been produced in a hundred, or a thousand years, if it had not been produced by the particular individual, who actually produced it. Hundreds and thousands of years have rolled away *without* its being produced; and how can it be known, or even confidently asserted, that hundreds and thousands more might not have rolled away, without its being produced, had it not been for the existence of the single mind that actually brought it into existence? Who can suppose that the poems of Homer, Shakespeare, and Milton, or the orations of Demosthenes, Cicero, and Burke, would ever have seen the light, had not Homer, Shakespeare, Milton, Demosthenes, Cicero and Burke themselves existed? Certainly no one can imagine such things to have been within the range of any rational probability. Each mind produces its own work; and who can say that any other mind would have produced the same work that one mind has produced, if the latter had not preoccupied the field?

The same theory no doubt holds good to a considerable extent, (who can say it does not hold good to all extent?) in all other fields of intellectual labor, as well as in poetry and eloquence? Perhaps it will be said that some devices are so simple, and lie so on the surface of things, that they *must* soon have been discovered by somebody, if the actual discoverer had never existed. But simple ideas, that seemed to have lain on the surface of things, almost within the sight of every one, have been passed by unseen for ages. Who can say that they would not have continued to be passed by for ages more, but for the fortunate, ingenious, or keen-sighted discoverers, who actually first laid their eyes directly upon them? It certainly seems to be the *general*

order of nature, in regard to intellectual productions, that each individual of the human race has his peculiar work allotted to him; not that one is created to do what another has left undone. *

Who can say, or believe, that if Alexander, and Cæsar, and Napoléon had not played the parts they did in human affairs, there was another Alexander, another Cæsar, another Napoléon, standing ready to step into their places, and do their work? Who can believe that the works of Raphael and Angelo could have been performed by other hands than theirs? Who can *affirm* that any one but Franklin would ever have drawn the lightnings from the clouds? Yet who can say that what is true of Alexander, and Cæsar, and Napoléon, and Raphael, and Angelo, and Franklin, is not equally true of Arkwright, and Watt, and Fulton, and Morse? Surely no one.

It is no doubt both easy and truthful to say, that certain events point the way to, and prepare the way for, certain other events — to discoveries, as to all other things. But it is also no doubt equally true that the course of events, and the progress of knowledge have, through all time, pointed the way to, and prepared the way for, countless thousands of other inventions that have never been made; inventions, that have not been made, *simply because the right man was not there to make them; or he had not the proper facilities, or the necessary inducements, to make them.* If ten thousand times as many discoveries had been made, as have been actually made, we should have said, with equal reason, and with equal truth, that the course of events, and the progress of knowledge, had pointed the way to *them*, and prepared the way for *them*, as we now say that the course of events, and the progress of knowledge, pointed the way to, and prepared the way for, the discoveries already made; and that, if they had not been made at the time they were, they would no doubt soon have been

* There are doubtless exceptions to this rule, for two men have been known to invent the same thing, without any aid from each other. But such cases are very rare.

made by others? What, then, is the value of any such objection as this, to the rights of authors and inventors?

But even if a second man would have made a certain invention, if the first had not — what of it? May not the invention as well be the property of the first man, as of the second?

The first man having done the work, the second man has no need to do it; but is left free to perform some other labor, of which he will enjoy the fruits, in the same way that the first enjoys the fruits of *his* labor. Where, then, is the injustice?

SECTION VII.

Objection Seventh.

It is said that two men sometimes make the same invention; and that it would therefore be wrong to give the whole invention to one.

The answer to this objection is, that the fact that two men produce the same invention, is a very good reason why the invention should belong to both; but it is no reason at all why both should be deprived of it.

If two men produce the same invention, each has an equal right to it; because each has an equal right to the fruits of his labor. Neither can deny the right of the other, without denying also his own. The consequence is, that they must either use and sell the invention in competition with each other, or unite their rights, and share the invention between them. These are the only alternatives, which their relations to each other admit of. And it is for the parties themselves, and not for the government, to determine which of these alternatives they will elect. Each holds the whole invention by the same title — that of having produced it by his labor. Neither can say that the title of the other is defective, or in any way imperfect. Neither party has

any right, therefore, to object to the other's using or selling the invention at discretion. And each, therefore, can lawfully and freely use and sell the invention, (and give a good title to the purchaser,) without any liability to answer to the other as an infringer. In short, the parties stand in the relation of *competitors* to each other; each having an equal and perfect right to use and sell the invention, in competition with, and in defiance of, the other. But as such competition would probably not be so profitable to either of the parties, as a union of their competing rights, such a union would doubtless generally be agreed upon by the parties themselves, without any interference from the government.

SECTION VIII.

Objection Eighth.

It may be urged that, however just may be the principle of the right of property in ideas, still the difficulty of determining who is the true author of an invention, or idea, after that invention or idea has become extensively known to mankind, interposes a *practical* obstacle to the maintenance of any individual right of property in any thing so subtle, intangible, and widely diffused, as such an invention, or idea.

This was unquestionably a very weighty and serious objection, in ruder times, when letters were unknown to the mass of the people, and when a thought was carried from mind to mind, unaccompanied by any reliable proof of the first originator. The facilities and inducements thus afforded to fraudulent claims in opposition to those of the true owner, and the difficulty of combatting such frauds, by the production of authentic and satisfactory proofs, *must* have made it nearly or quite impossible to maintain, *in practice*, the principle that a man was the owner of the thoughts he had produced, after he had once divulged them

to the world. And this, doubtless, is the *great* reason, perhaps the only reason, why the right of property in ideas was not established, in whole, or in part, thousands of years ago.

But this obstacle is now removed by the invention of records, whereby a man can have his discovery registered, before he makes it public, and thus establish his proprietorship, and make it known, both to the people, and the judicial tribunals.

SECTION IX.

Objection Ninth.

It is generally, if not universally, conceded that an inventor has a good *moral* claim for compensation for his invention; that he ought to be *suitably*, and even *liberally*, paid for his labor. At the same time, many, who make this concession, will say that to allow him an exclusive and perpetual property in his invention, would be transcending all reason in the way of compensation.

This view of the case, it will be seen, denies to the inventor all exclusive *right of property* in his invention. It asserts that the invention really belongs to the public, and not to himself. And it only advocates the morality and equity of *allowing* him such compensation for his time and labor as is *reasonable*. And it maintains that such compensation should be determined, *in some measure at least*, by the compensation which other men than inventors obtain for their time and labor. And this is the view on which patent laws generally are founded.

The objection to this theory is, that it strikes at all rights of property whatsoever, by denying a man's right to the products of his labor. It asserts that government has the *right, at its own discretion*, to take from any man the fruits of his labor, giving him in return such compensation only, for his labor, as the government deems reasonable.

If this principle be a sound one, it should be carried out towards all other persons, as well as inventors. A man, who has converted wild land into a productive farm, should be allowed to enjoy that farm only until the government thinks he is *reasonably* paid for his labor. Then it should be taken from him. There is no reason why the greatest benefactors of mankind should be made the victims of an arbitrary discretion, destructive of their natural rights to the fruits of their labor, when the rule is applied to no one else. Other men, who have never added one thousandth part so much to the general stock of wealth, are allowed to amass large fortunes, without the liability of having it all taken from them, except so much as the government may chance to think will be a *reasonable compensation* for the labor expended in acquiring it. What right has government to make any such distinction as that?

But what *is* "reasonable compensation" for a man's labor? It is what the labor is really worth, is it not? Most certainly it is. And what is any and all labor worth? *It is worth just what it produces, and no more.* This is the precise value of all labor. Labor that produces nothing, is worth nothing. Labor that produces much, is worth much. The labor, which it costs a man to pick up a pebble, is just worth a pebble, and no more. The labor, which it costs a man to pick up a diamond, is worth the diamond, by the same rule that the other labor was worth the pebble, and only a pebble. Each kind of labor is worth the thing it produces, *because it produces that thing.* There is no other way of determining the value of labor. There is no arbitrary standard of the value of labor; although when labor itself is sold in the market, (instead of the products of labor,) an arbitrary price is fixed upon it, either because the necessities of the laborer compel him to sell his labor at an arbitrary price, or because it is not known beforehand how much his labor will be worth. In such case, the purchaser of the labor takes his risk whether the labor will prove to be worth more or less than the price he pays for it. If it produce more than he pays for it, he

makes a profit. If it produce less, he makes a loss. But this price that he pays has nothing to do in fixing the real value of the labor. The *exact* value of the labor cannot be known until its products are known. Then the true value of the labor is determined and measured by the value of its products.

Labor has no value of itself. If it produced nothing, it would be worth nothing. Of necessity, therefore, every separate act of labor is worth precisely what it produces — be it little or much. A man, therefore, does not receive the full value of his labor, unless he receive the whole of its products.

Those, who talk about the justice of the government's *allowing* an inventor *reasonable compensation* for his labor, talk as if the government had *employed* the inventor to labor for it for wages — the government taking the risk whether he invented any thing of value, or not. In such a case, the government would be entitled to the invention, on paying the inventor his stipulated, or reasonable, wages. But the government does not *employ* an inventor to invent a steamboat, or a telegraph. He invents it while laboring on his own account. If he succeed, therefore, the whole fruits of his labor are rightfully his; if he fail, *he* bears the loss. He never calls upon the government to pay him for his labor that was *unsuccessful;* and the government never yet undertook to pay for the labor of the hundreds and thousands of unfortunate men, who attempted inventions, and failed. With what force, then, can it claim to seize the fruits of their *successful* labor, leaving them only what *it* pleases to call a *reasonable compensation, or reasonable wages,* for their labor? If the government were to do thus towards other men generally than inventors, there would be a revolution instantly. Such a government would be universally regarded as the most audacious and monstrous of tyrannies.

If a man, while laboring for himself, and at his own risk, have produced *much* wealth, with *little* labor, it is *his good fortune,* or the result of his good judgment, and superior powers. No one

but himself has any claim upon the products of his labor; and it is the sheerest robbery to take them from him without his consent.

SECTION X.

Objection Tenth.

Another theory, advocated by some persons, is, that abstractly, and on principles of natural justice, men have the same right of property in their ideas, that they have in any other products of their labor; but that this property requires peculiar and extra ordinary protection; and that the present laws on the subject are in the nature of a compromise between the government and the inventor; the government giving extraordinary protection for a time, and the inventor, in consideration of that protection, giving up his property at the end of that time.

There is plainly no foundation for this theory. In the first place, the government, instead of giving extraordinary protection, does not give even ordinary protection, to intellectual property, during the time for which it pretends to protect it. The only protection, that can be claimed to be extraordinary, is the benefit of records. But this certainly is not extraordinary, for it is enjoyed in common with landed property universally. Besides, the expenses of these records are paid, not by the government, but by those who are to derive a benefit from them. They are therefore no boon, no privilege, no token of extraordinary favor, on the part of the government.

But even if intellectual property were allowed extraordinary protection, that would be no excuse for taking from the owners the property itself, at the end of a limited period. Merchandise in cities is allowed an extraordinary protection, in the shape of a night police. But no one ever conceived that that was any reason why the owners should not have a perpetual property in that

kind of wealth. Merchandise on the ocean also enjoys an extraordinary protection, in the shape of a navy to guard it against pirates and other enemies. But no one ever deemed that to be any reason for making such property free plunder, after the owners had enjoyed it for fourteen years. Yet there would be as much reason and justice in outlawing such property, after a specified time, as there are in outlawing intellectual property.

Various kinds of property, such as cotton and woollen manufactures, coal, iron, sugar, hemp, wool, breadstuffs, &c., &c., have, at different times, enjoyed not only all the ordinary protection against wrong-doers, but also an extraordinary protection against competition, by means of tariffs on imported commodities of like nature; whereby their prices were raised ten, twenty, thirty, and fifty per cent. above what would otherwise have been the regular market rates. The government has thus made it necessary that these advanced prices should be paid, by the people at large, to the holders of these kinds of property. Yet nobody ever proposed that, as a consideration for this extraordinary and unequal protection, the property itself, or a dollar of the capital invested in the production of it, should ever be confiscated to the government or people, at the end of fourteen years, or any other specified time. American merchant ships, in addition to being protected by an armed navy against pirates and other enemies, have been protected against the competition of foreign vessels, by laws designed to give them the monopoly of the coasting trade, and some other branches of navigation. Yet no one ever proposed that, as an offset for this extraordinary protection, all these ships should become public property at the end of fourteen years. Combustible property of all kinds is allowed an extraordinary protection, in the shape of fire companies maintained at the public expense. Yet no one ever suggested that as a consideration for this extraordinary protection, the property should be forfeited at a time fixed by law. All the property, that floats on the ocean, is allowed an extraordinary protection against shipwreck, in the shape of lighthouses and buoys, estab-

lished and maintained at the public expense, also of coast surveys and charts made at the public charge. But no one ever claimed that these were any reasons why the property itself should ever be forfeited by its owners. Yet intellectual property, which never enjoyed, for a moment, the slightest extraordinary protection whatsoever, *is* confiscated to the public, after being enjoyed for only a brief period by its honest owners and producers.

But, in the second place, intellectual property is not allowed even *ordinary* protection, during the time for which the government pretends to protect it. It is not allowed, like other property, the protection of criminal laws, under which the government not only pays the expense of prosecutions, but punishes violators by imprisonment. All property, except intellectual, is allowed the benefit of these criminal laws. But intellectual property is permitted the protection only of civil suits, in which the parties pay their own expenses, and in which, if judgment be obtained, it must often be against irresponsible men, who can make no satisfaction for their wrongs. In this case, the injured party has expended his money, without either obtaining redress against the individual wrong-doer, or procuring the infliction of any punishment to operate as a warning to others.

Intellectual property neither enjoys, nor requires, extraordinary protection. It asks simply to be placed on the same footing with other property, and to be allowed the benefit of any and all those ordinary contrivances for the protection of property, which are adapted to its needs, and calculated to give it security.

SECTION XI.

Objection Eleventh.

It is said that ideas are unlike corporeal commodities in this respect, namely, that a corporeal commodity cannot be completely and fully possessed and used by two persons at once, without

collision between them; and that it must therefore necessarily be recognized as the property of one only, in order that it may be possessed and used in peace; but that an idea may be completely and fully possessed and used by many persons at once, without collision with each other; and therefore no one should be allowed to monopolize it.

This objection lays wholly out of consideration the fact, that the idea has been produced by one man's labor, and not by the labor of all men; as if that were a fact of no legal consequence; whereas it is of decisive consequence; else there can be no exclusive right of property, in any of the productions or acquisitions of human labor. If one commodity, the product of one man's labor, can be made free to all mankind, without his consent, then, by the same rule, every other commodity, the product of individual labor, may be made free to all mankind, without the consent of the producers. And this is equivalent to a denial of all individual property whatsoever, in commodities produced or acquired by human labor.

In truth, the objection plainly denies that any exclusive rights of property whatsoever, can be acquired *by labor or production;* because it says that a man, who produces an idea — (and the same principle would apply equally well to any other commodity) — has no better right of property in it, or of dominion over it, than any and all the rest of mankind. That is, that he has no rights in it at all, *by virtue of having produced it;* but has only *equal* rights in it *with men who did not produce* it. This certainly is equivalent to denying, that any exclusive right of property, *can be acquired by labor or production.* It is equivalent to asserting, that all our rights, to the use of commodities, depend simply upon the fact *that we are men;* because it asserts that *all men* have equal rights to use a particular commodity, *no matter who may have been the producer.*

This doctrine, therefore, goes fully to the extent of denying all rights of property whatsoever, *even in material things* (exterior to one's person); because all rights of property in such

material things, have their *origin* in labor; (that is, either in the labor of production, or the labor of taking possession of the products of nature;) not necessarily in the labor of the present possessor; but either in his labor, or the labor of some one from whom he has, mediately or immediately, derived it, by gift, purchase, or inheritance.

The doctrine of the objection, therefore, by denying that any right of property can originate in labor or production, virtually denies all rights of property whatsoever, not merely in ideas, but in all material things, exterior to one's body; because if no rights of property in such things can be derived from labor or production, there can be no rights of property in them at all.

The ground, on which a man is entitled to the products and acquisitions of his labor, is, that otherwise he would lose the benefit of his own labor. He is therefore entitled to hold these products and acquisitions, in order to hold the labor, or the benefit of the labor, he has expended in producing and acquiring them.

The right of property, therefore, *originates* in the natural right of every man to the benefit of his own labor. If this principle be a sound one, it necessarily follows that every man has a natural right to *all* the productions and acquisitions of his own labor, be they intellectual or material. If the principle be not a sound one, then it follows, necessarily, that there are no rights of property at all in the productions or acquisitions of human labor.

The principle of the objection, therefore, goes fully and plainly to the destruction of all rights of property whatsoever, in the productions or acquisitions of human labor.

The right of property, then, being destroyed, what principle does the objection offer, as a substitute, by which to regulate the conduct of men, in their possession and use of all those commodities, which are now subjects of property? It substitutes only this, viz.: *that men must not come in collision with each other, in the actual possession and use of things.*

Now, since this actual possession and use of things, can be

exercised, only by men's bringing their bodies in immediate contact with the things to be possessed or used, it follows that the principle laid down, of men's avoiding collision in the possession and use of things, amounts to but this, viz.: that men's *bodies* are sacred, and must not be jostled; but nothing else *is* sacred. In other words, men *own* their bodies; but they *own* nothing else. Every thing else belongs, *of right*, as much to one person as to another. And the only way, in which one man can possess or use any thing, in preference to other men, is by keeping his hands constantly upon it, or otherwise interposing his body between it and other men. These are the only grounds, on which he can *hold* any thing. If he take his hands off a commodity, and also withdraw his body from it, so as to interpose no obstacle to the commodity's being taken possession of by others, they have a right to take possession of it, and hold it against him, by the same process, by which he had before held it against them. This is the legitimate and necessary result of the doctrine of the objection.

On this principle a man has a right to take possession of, and freely use, any thing and every thing he sees and desires, which other men may have produced by their labor — provided he can do it without coming in collision with, or committing any violence upon, the persons of other men.

This is the *principle*, and the only *principle*, which the objection offers, as a rule for the government of the conduct of mankind towards each other, in the possession and use of material commodities. And it seriously does offer this principle, as a substitute for the right of individual and exclusive property, in the products and acquisitions of individual labor. The principle, thus offered, is really communism, and nothing else.

If this principle be a sound one, in regard to material commodities, it is undoubtedly equally sound in relation to ideas. But if it be preposterous and monstrous, in reference to material commodities, it is equally preposterous and monstrous in relation to ideas; for, if applied to ideas, it as effectually denies the right

of exclusive property in the products of one's labor, as it would if applied to material commodities.

It is plain that the principle of the objection would apply, just as strongly, against any right of exclusive property in corporeal commodities, as it does against a right of exclusive property in ideas; because, 1st, many corporeal commodities, as roads, canals, railroad cars, bathing places, churches, theatres, &c., can be used by many persons at once, without collision with each other; and, 2d, all those commodities — as axes and hammers, for example — which can be used only by one person at a time without collision, may nevertheless be used by different persons at different times without collision. Now, if it be a true principle, that labor and production give no exclusive right of property, and that every commodity, by whomsoever produced, should, without the consent of the producer, be made to serve as many persons as it can, without bringing them in collision with each other, that principle as clearly requires that a hammer should be free to different persons at different times, and that a road, or canal should be free to as many persons at once, as can use it without collision, as it does that an idea should be free to as many persons at once as choose to use it.

On the other hand, if it be acknowledged that a man *have* an exclusive right of property in the products of his labor, *because they are the products of his labor*, it clearly makes no difference to this right, whether the commodity he has produced be, *in its nature*, capable of being possessed and used by a thousand persons at once, or only by one at a time. *That* is a wholly immaterial matter, so far as *his* right of property is concerned; because *his* right of property *is derived from his labor in producing the commodity; and not from the nature of the commodity when produced.* If there could be any difference in the two cases, his right would be stronger, in the case of a commodity, that could be used by a thousand persons at once, than in the case of a commodity, that could be used only by one person at a time; because a man is entitled to be rewarded for his labor, according to the

intrinsic value of its products; and, other things being equal, a commodity, that can be used by many persons at once, is intrinsically more valuable, than a commodity, that can be used only by one person at a time.

Again. The principle of the objection is, that all things should be free to all men, so far as they can be, without men's coming in collision with each other, in the actual possession and use of them; and, consequently, that no one person can have any rightful control over a thing, any longer than he retains it in his actual possession; that he has no right to forbid others to possess and use it, whenever they can do so without personal collision with himself; and that he has no right to demand any equivalent for such possession and use of it by others. From these propositions it would seem to follow further, that for a man to withhold the possession or use of a thing from others, *for the purpose* of inducing them, or making it necessary for them, to buy it, or rent it, and pay him an equivalent, is an infringement upon their rights.

The principle of property is directly the reverse of this. The principle of property is, that the owner of a thing has absolute dominion over it, *whether he have it in actual possession or not, and whether he himself wish to use it or not;* that no one has a right to take possession of it, or use it, without his consent; and that he has a perfect right to withhold both the possession and use of it from others, from no other motive than to induce them, or make it necessary for them, to buy it, or rent it, and pay him an equivalent for it, or for its use.

Now it is plain that the question, whether a thing be susceptible of being used by one only, or by more persons, at once, without collision, has nothing to do with the principle of property; nor with the owner's right of dominion over it; nor with his right to forbid others to take possession of it, or use it. If he have a right to forbid one man to take possession of, or use, a certain commodity, he has the same right to forbid a thousand, or the whole world. And if he have a right to forbid a man to take

possession of, or use, a commodity, that is susceptible of being possessed and used by one person only at a time, he has the same right to forbid him to take possession of, or use, a commodity, that is susceptible of being possessed and used by a hundred, or a thousand, persons at once. The fact that men would, or would not, come in collision with each other, in their attempts to possess and use a commodity, *if* he were to surrender his dominion over it, and leave all equally free to possess and use it, is clearly a matter which does not at all concern his *present* right of dominion over it; nor in any way affect his *present* right to forbid any and all of them to possess or use it.

It is, therefore, wholly impossible that the circumstance, that one commodity — as a hammer, for example — is in its nature susceptible of being possessed and used by but one person at a time without collision, and that another commodity — as a road, a canal, a railroad car, a ship, a bathing place, a church, a theatre, or an idea — is susceptible of being possessed (*i. e.* occupied), and used by many persons at once without collision, can affect a man's right to have complete dominion over the fruits of his labor. A man's exclusive right of property in — or, in other words, his right of absolute dominion over — any one of these various commodities, depends entirely upon the fact, that such commodity was either a product or acquisition of his own labor, (or of the labor of some one, from whom, either mediately, or immediately, he has derived it, by purchase, gift, or inheritance;) and not at all upon the fact, that such commodity can, or cannot, be possessed and used by more than one person at a time, without collision.

The right of property, or dominion, does not depend, as the objection supposes, upon either the political or moral necessity of men's avoiding collision with each other, in the possession and use of commodities; for if it did, it would be lawful, as has already been shown, for men to seize and use all manner of *corporeal* commodities, whenever it could be done without coming in personal collision with the persons of other men. But the right

of property, or dominion, depends upon the necessity and right of each man's providing for his own subsistence and happiness; and upon the consequent necessity and right of every man's exercising exclusive and absolute dominion over the fruits of his labor.

Now, this right of exercising exclusive and absolute dominion over the fruits of one's labor, is not, *as the objection assumes*, a *mere* right of possessing and using them, in peace, and without collision with other men; but it includes also the right of making them subservient to his happiness *in every other possible way*, (not inconsistent with the equal right of other men, to a like dominion over whatever is theirs,) *as well as by possessing and using them.*

Now a man may make a commodity subservient to his welfare, in a variety of ways, *other* than that of himself possessing and using it—*provided always his absolute dominion over it be first established.* For example, if his absolute dominion over it be first established, so that he can forbid other men to use it, except with his consent, he can then sell it, or rent it, to those who wish to use it, and thus obtain from them, in exchange, other commodities which he desires; or he can confer it, or its use, *as a favor*, upon some one whose happiness he wishes to promote. But unless he be first secured in his absolute dominion over it, so as to be able to forbid other men using it, except with his consent, he is deprived of all power to make it subservient to his happiness, by selling it, or renting it, in exchange for other commodities; because, if other men can use it without his consent, they will have no motive to buy it, or rent it, paying him any thing valuable in exchange. He cannot even give it, *as a favor*, to any one, because it is no favor, on his part to give to another a commodity, which that other already has without his consent.

The right of property, therefore, is a right of absolute dominion over a commodity, whether the owner wish to retain it in his own actual possession and use, or not. *It is a right to forbid others to use it, without his consent.* If it were not so, men could never sell, rent, or give away those commodities, which

they do not themselves wish to keep or use; but would lose their right of property in them — that is, their right of dominion over them — the moment they suspended their personal possession and use of them.

It is because a man has this right of absolute dominion over the fruits of his labor, *and can forbid other men to use them without his consent, whether he himself retain his actual possession and use of them or not*, that nearly all men are engaged in the production of commodities, which they themselves have no use for, and cannot retain any actual possession of, and which they produce solely for purposes of sale, or rent. In fact, there is no article of corporeal property whatever, exterior to one's person, which owners are in the habit of keeping in such actual and constant possession or use, as would be necessary in order to secure it to themselves, if the *right* of property, originally derived from labor, did not remain in the absence of possession.

But further. The question, whether a particular commodity can be used by two or more persons at once, without collision with each other, is obviously wholly immaterial to that right of absolute dominion, which the producer of the commodity has over it by virtue of his having produced it; and to his consequent right to forbid any and all other men to use it, without his consent.

A man's right of property in the fruits of his labor, is an absolute right of controlling them — so far as *the nature of things* will admit of it — so as to make them subservient to his welfare in every possible way that he can do it, without obstructing other men in the equally free and absolute control of every thing that is theirs. Now, the nature of things offers no more obstacles, to a man's exclusive proprietorship and control of a commodity, which is, in its nature, capable of being possessed and used by many at once without collision, than it does to his exclusive proprietorship and control of a commodity, which is, in its nature, *incapable* of being possessed and used by more than one at a time without collision. His right of property, therefore, is

just as good, in the case of one commodity, as in the case of the other.

The absurdity of any other doctrine than this is so nearly apparent, as hardly to deserve to be seriously reasoned against. One man produces a commodity — a hammer, for example — which can be used but by one person at a time without collision; and this commodity is his exclusively, *because he produced it by his labor.* Another man produces another commodity — as a road, a canal, or an idea, for example — which can be used by thousands at once without collision; and this commodity, forsooth, is *not* his exclusively, although he produced it solely by his own labor! Of what possible consequence is this difference, in the nature of the two commodities, that it should affect the producer's exclusive right of property in either one or the other? Manifestly it is not of the least conceivable importance.

As a matter of abstract natural justice, there is no difference whatever, in a man's demanding and receiving pay for a commodity, or the use of a commodity, which can be used by thousands at once without collision, and his demanding and receiving pay for a commodity, or the use of a commodity, which can be used by but one person a time. In the first case, he as much gives an equivalent for what he receives, as he does in the latter; an equivalent too, that is as purely a product of labor, as is the commodity he receives in exchange.

As a matter of abstract natural justice too, a man is as much entitled to be paid for his labor in producing commodities, that can be used by many persons at once without collision, as he is to be paid for producing commodities, that can be used by but one person at a time. For example, one man produces an *idea*, which is worth, *for use*, a dollar to each one of a thousand different men. Another man produces a thousand axes, worth a dollar each for the use of a thousand different men. Is there any difference in the intrinsic merit or value of the labor of these two producers? Or is there any difference, in their abstract right to demand pay of those who use the products of their labor? Is

not the producer of the idea as honestly entitled to demand a thousand dollars for the use of his single idea, as the other is to demand a thousand dollars for his thousand axes? The producer of the idea supplies a thousand different men with as valuable a tool to work with, as does the producer of the axes. Why, then, is he not entitled to demand the same price for his ideas, as the other does for his axes? Does the fact that, in the one case, a thousand different men use the *same* commodity, (the idea,) and that, in the other, a thousand different men use a thousand *different* commodities, (axes,) *all of one kind*, make the least difference in the merits of the respective producers? Other things being equal, is not one single commodity, that can be used by a thousand men at once without collision, just as valuable, for all practical purposes, as a thousand other commodities, that can each be used only by one person at a time? Are not a thousand men as effectually supplied with the commodity they want, in the first case, as in the latter? Certainly they are. Why, then, should they not pay as much for it? And why should not the producer receive as much in the first case, as in the last? No reason whatever, in equity, can be assigned.

If there be no difference in the justice of these two cases, is there any way, in which the producer of the idea can get his thousand dollars for *it*, other than that, by which the producer of the axes gets his thousand dollars for *them*, to wit, by first securing to him his absolute dominion over it, or absolute property in it, and thus enabling him to forbid others to use it except on the condition of their paying him his price for it? If there be no other way, by which he can get pay for his idea, then he is as well entitled to an absolute property in it, and dominion over it, as the producer of the axes is entitled to an absolute property in, or dominion over, them.

Still further. A thousand separate individuals, can as well *afford* to pay a thousand dollars, (one dollar each,) for the use of a *single* commodity, that can be used by them all at once without collision, as they can to pay a thousand dollars, (one

dollar each,) for the use of a thousand different commodities, each of which can be used only by *one* person at a time. A man can just as well afford to pay a dollar for an idea, that is worth a dollar to him, for use, *though it be used also by others*, as he can to pay a dollar for an axe, that is worth but a dollar to him for use, though it be *not* used by others. Its being used by others, or not, makes no difference at all in his capacity to pay for whatever value it is really of to himself.

A thousand different men can also as well afford to pay a dollar each, for the use of a commodity, which they can all use at once without collision, as they can to pay a dollar each for the use of a single commodity, which can be used only by one person at a time, and which can therefore be used by them all, only by their using it singly, successively, and at different times. For example. A thousand men can as well afford to pay a thousand dollars, (one dollar each,) for the use of a vessel, which will carry them all at once, as they can to pay a thousand dollars, (one dollar each,) for the use of a boat so small as to carry but one person at a time, and which must therefore make a thousand different trips to carry them all. How absurd it would be to say that the owner of the large boat had *no* right to charge a dollar each for his thousand passengers, *merely because his vessel was so large that it could carry them all at once, without collision with each other, or with himself;* and yet that the owner of the small boat *had* a right to charge a dollar each, to a thousand successive passengers, *merely because his boat was so small that it could carry but one at a time.*

The same principle clearly applies to an idea. Because it can be used by thousands and millions at a time, without collision, it is none the less the exclusive-property of the producer; and he has none the less right to charge pay for the use of it, than if it could be used by but one person at a time.

There is, therefore, no ground whatever, of justice or reason, on which the producer of the idea can be denied the right to demand pay for *it*, according to its market value, any more than

the producer of any other commodity can be denied the right to demand pay for *it*, according to *its* market value. And the market value of every commodity is that price, which men will pay for it, rather than not have it, when it is forbidden to them by one who has an absolute property in it, and dominion over it.

The objection, now under consideration, is based solely upon the absurd idea, that the producer of a commodity has no right of property in it, nor of dominion over it, beyond the simple right of *using it himself* without molestation; that he has therefore no right to forbid others to use it, whenever they can get possession of and use it, without collision with himself; that he must depend solely upon his own use of it to get compensated for his labor in producing it; that he can never be entitled to demand or receive any compensation whatever *from others*, for the use of it, or for his labor in producing it, however much they may use it, or enrich themselves by so doing; and that he therefore has no right to withhold its use from others, with any view to induce or compel them to buy it, or rent it, or make him any compensation for the labor it cost him to produce it. In short, the principle of the objection is, that when a man has produced a commodity by his own sole labor, he has no right of dominion over it whatever, except the naked right to *use* it; and that all other men have a perfect right to use it, without his consent, and without rendering him any compensation, whenever he is not using it, or whenever the nature of the thing is such as to enable both him and them to use it at the same time, without collision.

The objection clearly goes to this extent, because the whole principle of it consists in this single idea, viz.: that men must avoid collision with each other in the possession and use of commodities.

This principle would not allow the producer so much even as a *preference* over other men, in the possession and use of a commodity, unless he preserved his first actual possession unbroken. To illustrate. If, when he was not using it, he should let go his

hold of it, and thus suffer another to get possession of it, he could not reclaim it, even when he should want it for actual use. To allow him thus to demand it of another, for actual use, on the ground that he was the producer of it, would be acknowledging that labor and production *did* give him at least *some* rights to it over other men. And if it be once conceded, that labor and production do give him *any* rights to it, over other men, then it must be conceded, that they give him all rights to it, over other men; for if he have any rights to it, over other men, then no limit can be fixed to his rights, and they are of necessity absolute. And these absolute rights to it, as against all other men, are what constitute the right of exclusive property and dominion. So that there is no middle ground between the principle, that labor and production give the producer *no* rights at all, over other men, in the commodity he produces; and the principle, that they give him absolute rights over all other men, to wit, the right of exclusive property or dominion. There is, therefore, no middle ground between absolute communism, on the one hand, which holds that a man has a right to lay his hands on any thing, which has no other man's hands upon it, no matter who may have been the producer; and the principle of individual property, on the other hand, which says that each man has an absolute dominion, as against all other men, over the products and acquisitions of his own labor, whether he retain them in his actual possession, or not.

Finally. The objection we have now been considering, seems to have had its origin in some loose notion or other, that the works of man should be, like certain works of nature — as the ocean, the atmosphere, and the light, for example — free to be used by all, so far as they can be used by all without collision.

There is no analogy between the two cases. The ocean, the atmosphere, and the light, so far as they are free to all mankind, are free simply because the author of nature, their maker and owner, is not, like man, dependent upon the products of his labor for his subsistence and happiness; he therefore offers them freely to all mankind; neither asking nor needing any compensation for

the use of them, nor for his labor in creating them. But if the ocean, the atmosphere, and the light had been the productions of *men* — of beings dependent upon their labor for the means of subsistence and happiness — the producers would have had absolute dominion over them, to make them subservient to their happiness; and would have had a right to forbid other men either to use them at all, or use them only on the condition of paying for the use of them. And it would have been no answer to this argument, to say, that mankind at large could use these commodities, without coming in collision with the owners; that there were enough for all; and that therefore they should be free to all. The answer to such an argument would be, that those, who had created these commodities, had the natural right to supreme dominion over them, as products of their labor; that they had a right to make them subservient to their own happiness in every possible way, not inconsistent with the equal right of other men, to a like dominion over whatever was theirs; that they could get no adequate compensation for their labor in creating them, unless they could control them, forbid other men to use them, and thus induce, or make it necessary for, other men to pay for the use of them; that they had created them principally, if not solely, for the purpose of selling or renting them to others, and not merely for their own use; and that to allow others to use them freely, and against the will of the owners, on the simple condition of avoiding personal collision with them, would be virtually robbing the owners of their property, and depriving them of the benefits of their labor, and of their right to get paid for it, by demanding pay of all who used its products for their own benefit. This would have been the legal answer; and it would have been all-sufficient to justify the owners of these commodities, in forbidding other men to use them, except with their consent, and on paying such toll or rent as they saw fit to demand.

The principle is the same in the case of an idea. An idea, produced by one man, is enough for the use of all mankind (for the purposes for which it is to be used). It is as sufficient for

the actual use of all mankind, as for the actual use of the producer. It may be used by all mankind at once, without collision with each other. But all that is no argument against the right of the producer to absolute dominion over an idea, which he has produced by his own labor; nor, consequently, is it any argument against his right to forbid any and all other men to use that idea, except on the condition of first obtaining his consent, by paying him such price for the use of it as he demands.

But for this principle, the builders of roads and canals, which may be passed over by thousands of persons at once, without collision, could maintain no control over them, nor get any pay for their labor in constructing them, otherwise than by simply passing over them themselves. Every other person would be free to pass over them, without the consent of the owners, and without paying any equivalent for the use of them, provided only they did not come in personal collision with the owners, or each other.

Do those, who say that an *idea* should be free to all who can use it, without collision with the producer, say that the builders of roads and canals have no rights of property in them, nor any right of dominion over them, except the simple right of themselves passing over them unmolested? That they have no right to forbid others to pass over them, without first purchasing their (the owners') consent, by the payment of toll, or otherwise? No one, who acknowledges the right of property at all, will say this. Yet, to be consistent, he should say it.

But the analogy, which the objector would draw, between the works of nature and the works of man, in order to prove that the latter should be as free to all mankind as the former, is defective, not only in disregarding the essential difference between the works of man and the works of nature, to wit, that the former are produced by a being who labors for himself, and not for others; and who *needs* the fruits of his labor as a means of subsistence and happiness; while the latter are produced by a Being, who neither needs nor asks any compensation for his labor; but it is defective in still another particular, to wit, that it disregards

the fact, that the works of nature themselves are no longer free to all mankind, after they have once been taken possession of by an individual. It is not necessary that he should *retain* his *actual* possession of them, in order to retain his right of property in them, and his right of dominion over them; but it is sufficient that he has *once* taken possession of them. They are then forever *his* against all the world, unless he *consent* to part, not merely with his possession, but with his *right* of property, or dominion, also. They are his, on the principle, and for the reason, that otherwise he would lose the labor he had expended in *taking possession* of them. Even this labor, however slight it may be, in proportion to the value of the commodity, is sufficient to give him an absolute title to the commodity, against all the world. And he may then part with his *possession* of it at pleasure, without at all impairing his *right* of dominion over it.

If, then, a man's labor, in simply taking *possession* of those works of nature, which no *man* had produced, and which were therefore free to all mankind, be sufficient to give him such an absolute dominion over them, against all the world; who can pretend that his labor, in actually *creating* commodities — as ideas, for example — which before had no existence, does not give him at least an equal, if not a superior, right to an absolute dominion over them?

SECTION XII.

Objection Twelfth.

It is said that a man, by giving his ideas to others, does not thereby part with them himself, nor lose the use of them, as in the case of material property; that he only adds to other men's wealth, without diminishing his own; that his giving knowledge to other men is only lighting their candles by his, thereby giving

them the benefit of light, without any loss of light to himself; and that therefore he should not be allowed any exclusive property in his ideas, nor any right to demand a price for that, which it is no loss to him to give to others.

This objection is really the same as the next preceding one; and is only stated in a different form. The answers given to that objection, will apply with equal force to this.

The fallacy of both objections consist, *primarily*, in this — that they deny the fundamental principle, on which all rights of property are founded, namely, that labor and production give, to the laborer and producer, a right of exclusive property in, and of exclusive and absolute dominion over, the acquisitions and products of his labor.

The fallacy of both objections consists, *secondarily*, in this — that they deny to the laborer the right and power of obtaining any compensation for his labor, other than such as he may chance to obtain, from his own personal possession and use of the commodities, which he produces or acquires by his labor. They assert the right of all other men to use those commodities, without his consent, and without making him any compensation — provided only that they can do it without coming in personal collision with him. They thus deny that he has any right to forbid other men to use the commodities he has produced, or to demand pay of them for such use. They thus virtually deny his right to sell or rent the products of his labor, or to obtain in exchange for them such other commodities as he desires. They assert that, after a man has himself incurred the whole labor and expense of producing a commodity — a commodity that is capable of accommodating others, as well as himself; and that will be of as much, perhaps more, value, *for use*, to others, than to himself — he is bound to give them as free use of it, as he has himself, without requiring them to bear any part of the burden, or compensate him for any portion of the labor and expense, incurred by him in producing it. They thus virtually assert that labor, *once performed*, is no longer entitled to be rewarded, however

beneficial it may be to others than the laborer; that commodities, *once produced*, are no longer entitled to be paid for, by those who use them, (other than the producers,) however valuable they may really be to them; that a man, therefore, has no such right of property in, nor of control over, the products of his labor, as will enable him to forbid other men to use them, or to demand pay of other men, for them, or for the use of them; that all men, consequently, have a perfect right to seize, and appropriate to their own use, the products of each other's labor, without the consent of the producers, and without making any compensation, provided only that they do it without coming in personal collision with the producers; that if a man have produced enough of any particular commodity, (as wheat, for example,) to supply the world, he can rightfully control only so much of it, as he needs for his own consumption, and can maintain his actual possession of; that he can withhold the surplus from no one, with a view to getting an equivalent for it; that every man's surplus, of any particular commodity, is not his property, to be exchanged for the surplus commodities of other men, by voluntary contract, but is rightfully free to be seized, by any one, to the extent of his particular needs for his own consumption; consequently that the exchanges, which take place among men, of their respective surpluses of the different commodities they severally produce, all proceed upon false notions of men's separate rights of property in the products of their separate labor, and upon a false denial of the right of all men to participate equally with each man in the products of his particular labor; that men have no right to produce any thing *for sale, or rent*, but only to *consume;* and that if any one man be so foolish as to produce more, of any specific commodity, than he himself can use — as for example, more food than he himself can eat, more clothes than he himself can wear, more houses than he himself can live in, more books than he himself can read, and so on to the end of the catalogue — such folly is his own, committed with his eyes open, and he has no right to complain if all such surpluses be taken from him, against

his will, and without compensation, by those who *can* consume them; that it is not the labor of *producing* commodities, but the will and power to *consume* them, that gives the right of property in, and dominion over, them; that the right of property, therefore, *depends*, not upon production, but upon men's appetites, desires, wants, and capacities for *consumption;* and consequently that all men have equal rights to every thing they desire for consumption, whoever may have been its producer — provided only they can seize upon it without committing an actual trespass upon the body of such producer.

This is clearly the true meaning of the objections; because the same principle would apply as well to a surplus of food, clothing, or any other commodity, as to a surplus of ideas, or — what is the same thing — to the surplus *capacity* of a single idea, beyond the personal use of the producer — by which I mean the capacity of a single idea to be used by other persons simultaneously with the producer, without collision with him. The capacity of a single idea to supply a large number of persons at once without collision, is, *in principle*, precisely like the capacity of a large quantity of food to supply a large number of persons at once, without collision. In the case of the food, as in the case of the idea, there is more than one can use, and is enough for all; and that is the reason given, why the idea should not be monopolized by the producer, but be made free to all who can use it advantageously for themselves. If this argument be good, in the case of the idea, it is equally good in the case of the food; for there is more of *that* than the producer can consume, and therefore the surplus should be free to others. The argument is the same, in one case as in the other; and if it be good in one case, it is good also in the other.

The capacity of an idea to be used by many persons at once, is also the same, *in principle*, as the capacity of a road, a canal, a steamboat, a theatre, or a church, to be used by many persons at once. And the producer or proprietor of the idea, has as clear a right to demand pay from all who use his idea, simulta-

neously with himself and with each other, as the producer or proprietor of a road, a canal, a steamboat, a theatre, or a church, has, to demand pay of all who use one of those commodities, simultaneously with himself and with each other. How absurd it would be to deny the right of the proprietors of these last named commodities, to demand pay of the thousand users of them, on the grounds that they all used them simultaneously! that there was room for all! that the users did not come in collision with each other! that the commodities were susceptible of being used by a thousand or more at a time! and that the use of them, by others, did not prevent the proprietors from using them also at the same time!

Is a passage on a steamboat of no value to a man, if there be other men on board? Is it not just as legitimate a subject for compensation, when he enjoys it simultaneously with others, as when he enjoys it alone? Are not the performances in a theatre, a church, or a concert room, just as legitimate subjects for compensation, by each person who enjoys them, though they be enjoyed simultaneously by a thousand others beside himself, as they would be if enjoyed by himself alone? Certainly they are. And on the same principle, the use of an idea, which may be used by the whole world at once, without collision with each other, is just as legitimate a subject for compensation to the producer, as though the idea were capable of being used by but one person at a time.

But further. Why is it *claimed* that a man is bound, in the case of an idea, any more than in any other case, to give a product of his labor to others, without requiring them either to compensate him for his labor in producing it, or pay him any equivalent for *its value to them?* He has produced, at his own cost, a commodity, which can be used by others, as well as by himself; and the use of which, by others, will bring as much wealth to them, as his own use of it will bring to himself. Why has he no right, in this case, as in all others, to say to other men, you shall not use, for *your* profit, a commodity produced by my labor,

unless you will pay me my price for it, or — what is the same thing — for my labor in producing it? Can any rational answer be given to such a question as that? What claim have *they* upon a product of his labor, that they should seize it without paying for it? Is it theirs? If so, by what right, when they did not produce it? and have never bought it? and the producer has never freely given it to them? Self-evidently it can be theirs by no right whatever.

On the principle of these objections, Fulton could get no compensation for his labor and expense, in inventing the steam-~~engine~~, other than such as he might derive from actually operating one of his own ~~engines~~ in competition with all other persons, who might choose also to operate them. If he did not choose himself to ~~operate an engine~~ for a living, the world would get the whole benefit of his invention for nothing, and he go wholly unrewarded for his labor in producing it. On the same principle, Morse could get no pay for the labor and expense incurred by him in inventing the telegraph, other than such as he could obtain by himself operating a telegraph, in competition with all other persons who should choose to do the like. If he did not choose to operate a telegraph for a living, or could not make a living by so doing, the world would get the whole benefit of his invention for nothing, and he go wholly unrewarded for his labor in producing it. On the same principle, a man, who should build, at his own cost, a road, or a canal, would have no right to forbid others to pass over it, nor to demand pay of them for passing over it; and could consequently get no pay for his labor in constructing it, other than such as he could obtain by simply passing over it himself. If he did not wish to pass over it, he would wholly lose his labor in constructing it; and the world would get the whole benefit of it for nothing. On the same principle too, if a man should build and run, at his own charge, a steamboat, large enough to carry a thousand passengers beside himself, he could neither forbid the thousand to come on board, nor demand pay of them for their passage. He could get no pay

for his outlay, in building and running the boat, otherwise than by simply taking a passage on board of it himself. If this should not be an adequate compensation, he would have to submit to the loss, while the other thousand passengers would enjoy a *free* passage, on *his* boat, at *his* cost, and without *his* consent, *simply because the boat was large enough to carry him and them too, and because their passage on it did not prevent him from taking passage on it also, simultaneously with themselves!*

But it is said that giving knowledge to a man, is simply lighting his candle by ours; whereby we give him the benefit of light, without any loss of light to ourselves. And because we are not in the *habit* of demanding pay, for so momentary a labor, or so trivial a service, as that of simply lighting a man's candle, it is inferred that we have no *right* to demand pay of a man, for our *intellectual* light, to be used as an instrumentality in labor, though it be such, that he will derive great pecuniary profit from it.

Admitting, for the sake of the argument, that the cases are analogous, the illustration wholly fails to prove what is designed to be proved by it; because, *legally speaking*, we have as perfect a right to the absolute control of our candles, as of any other property whatever, and as perfect a right to refuse to light another man's candle, as to refuse to feed or clothe his body. We have also as perfect a right to forbid *him* to light his candle by ours, or in any way to *use* our light, as we have to forbid him to use our horse, or our house. And the *only* reason we do not, *in practice*, demand a price for lighting a man's candle, is, that the lighting of a *single* candle is so slight a labor, and is so easily done by any body, and every body, that it will command no price in the market; since every man would sooner light his own candle, than pay even the smallest sum to another for doing it. But whenever the number of candles to be lighted is so large, as to enable the service to command a price in the market, men as habitually demand pay for lighting candles, as for any other service of the same market value. For example, those who light

the lamps, in the streets of cities, in churches, theatres, and other large buildings, as uniformly demand pay for so doing, as for any other service done by one man for another. And no lawyer was ever yet astute enough to discover that such lamplighters were entitled to no pay, either for the reason that they parted with none of their own light, or for the reason that they enjoyed, in common with others, the light given forth by the candles they lighted.

We do not *now* demand pay for lighting a *single* candle, simply because the service is too trivial to command a price worth demanding. But if the production of a light, in the first instance, were — like the invention of a valuable idea — a work of great labor and difficulty, such as few persons could accomplish, and those few only by a great expenditure of money, time, and study, the producers of a light would then demand pay for lighting even a *single* candle by it, the same as they now do for the use of an idea by a single individual. And it would be no argument against their right to do so, to say, that they part with no light themselves; that they have as much light left as they had before, or as they can use in their own business, &c., &c. The answer would be, that the light was the product of their labor, and as such was rightfully their exclusive property, and subject to their exclusive control; that therefore no one had a right to use it without their consent; that they had as good right to produce a light, with a view to sell it to others, or to light other men's candles by it for pay, as to produce it for their own use in labor; that if they were to give the benefits of their light to others gratuitously, or if others could avail themselves of it, without making compensation, the producers would get no adequate compensation for the labor of producing it; that the light was valuable to others, as well as to the producers, and therefore others, if they wished to use the light, could afford, and should be required, to bear a part of the cost of producing it; and that if they refused to bear any part of the cost of the light, they ought not to participate in the benefits of it.

But the case of lighting another man's *candle* by ours, is not *strictly* analogous to the case of our furnishing him a valuable *idea*, for his permanent use and profit. There is indeed a sort of analogy, between giving a man light for his eyes, and light for his mind; especially if he use both kinds of light in his labor. But the important difference between lighting a candle, and furnishing an idea, is this. When we simply light a man's candle for him, we do *not* supply him, *at our own cost*, with a *permanent* light for use. We only ignite certain combustible materials *of his own;* and from *them* alone he derives the *permanent* light, which he uses in labor. It is therefore only from the combustion *of his own property*, that he obtains that *permanent* light, which alone will suffice for his uses. All the service, therefore, which *we* render him, is the exceedingly trivial one of simply *igniting* those materials by a momentary contact with our flame. We supply *none* of the materials themselves, from the combustion of which his permanent and useful light is derived. But in the case of the *idea*, we *do* furnish him with the *permanent* light itself, by the aid of which alone he performs his labor. We do not, as in the other case, simply ignite *his* combustible materials. We furnish the *permanent* light, and the whole light, at our own sole cost.

Now the simple ignition of his combustible materials, as in the case of the candle, is too trivial a service to be worth demanding pay for it; and too trivial also to command a price, if it were demanded. But the furnishing him a perpetual light, as in the case of the idea, *is* a service sufficiently important to be worth demanding a price for it; and also sufficiently important to command a price in the market. And this is the difference, or at least one of the differences, between the two cases.

To make the case of the material light analogous to that of the intellectual light, it would be necessary that we produce, *at our own cost*, a *permanent* material light, such as will be of practical utility in labor. Having done this, a stranger, who had no share in the production of the light, claims the right *to come into our*

light, and to use it for the purposes of *his* labor, without *our* consent, against *our* will, and without making us any compensation. We deny his right to do so; we tell him the light is our property, the product of our labor; that, as such, we have a right to control it, and its use; that we produced it with a view to sell so much of it as we did not wish to use; and that we will permit him to use it only on his paying us such a price as we see fit to demand. But he replies, that within the sphere of our light, there is room, which we do not occupy, and where the light goes to waste; that his occupying this vacant space, and using this waste light, will not interfere with the light we are using; that the light will be just as strong, *where we are at work*, as it was before; that he denies our right to demand pay for the use of our surplus light; and that therefore he *will* use it, and pay us nothing for it.

Which party here has the law on his side, the producers of the light, or the intruder? Certainly there can be no doubt that the light is the property of the producers, and that no one can claim the right to use it, for the purposes of his labor, without their consent. And the principle is the same in the case of the intellectual light.

To make the analogy still closer, between the cases of the material and the intellectual light, and especially to make the wrong of the intruder more palpable, we must suppose that we have produced a *peculiar material* light; and that this peculiar light is *indispensable* for the manufacture of a *peculiar* commodity, that is of value in the market. We, being the sole producers and possessors of this peculiar light, enjoy a monopoly of the manufacture and sale of the peculiar commodities manufactured by the aid of it. The intruder now claims the right, without our consent, to come into our light, and use it for the manufacture of the same kind of commodities, which we are manufacturing, and which can be manufactured only by our light; and then to offer those commodities in the market in competition with ours. He thus claims, not only to use our light, against our

will, and without making us any compensation, but also to use it for a purpose which is prejudicial to us, by reducing the market value of the commodities, which we ourselves manufacture by it. He thus does us a double wrong; for he not only uses, without our consent, and without making us any compensation, the light which we alone have produced; but he also reduces the practical value of the light *to us*, *for our own uses*, by selling, in competition with ours, the commodities he manufactures by its aid.

Is there no injustice, no intrusion, no usurpation, in such conduct as this? Most clearly there is. If, I being an innholder, a stranger were to come into my house, seize upon my stores of provisions, cook them by my fire, and then sell them to my customers, in competition with those which I have provided for them, the intrusion, usurpation, injustice, and robbery would be no more flagrant than in the case supposed. Yet neither of these cases is any more than a parallel to that of a man, who, without my consent, uses my invention, my intellectual light, and manufactures commodities by it, which he otherwise could not manufacture, and then sells them in competition with mine.

Finally. If the doctrine be true, that a man should have no pay for imparting knowledge to others, because he retains the same knowledge himself, then a lawyer should have no pay for the knowledge he imparts to his client, to a jury, or to a judge; a physician should have no pay for the knowledge he imparts to his patient, or to his patient's nurse; a preacher should have no pay for the knowledge he imparts to his congregation; a lecturer should have no pay for the knowledge he imparts to his audience; a teacher should have no pay for the knowledge he imparts to his scholars; a master should have no pay for the knowledge he imparts to his apprentice; a legislator should have no pay for the knowledge he imparts to his fellow legislators, or to the country, by his speeches; a judge should have no pay for the knowledge he imparts by his judicial opinions or decisions; authors and editors should have no pay for the knowledge they impart by their writings; and so on indefinitely.

By the same principle too, a musician should charge nothing for his music, because he loses none of it himself. He hears it all, and enjoys it all, the same as if no one else were hearing it, or enjoying it. A painter should have no pay for a view of his picture, because he does not thereby lose the view of it himself. A sculptor should have no pay for exhibiting a statue, because he does not thereby lose the sight of it himself. A soldier should have no pay for achieving the liberties of his country, because he enjoys all those liberties himself, and none the less because his fellow countrymen, who stayed at home while he was fighting, enjoy them too. Such are some of the absurdities to which the doctrine leads.

The argument on this point might be extended still farther. But I apprehend it has already been extended farther than was really necessary. The objections have no soundness in them; yet they have probably as much plausibility as any of the objections that were ever brought against one's right of property in his ideas. And this is the reason I have felt it excusable to expend so many words upon them.

SECTION XIII.

Objection Thirteenth.

It is said that *society* have *rights* in ideas, that have been once made known to them; that a perpetual monopoly in the producer, destroys the rights of society; and that society have a right to perpetuate ideas once made known.

Hence it is inferred that society have a right to confiscate ideas, and make them free to all, *in order to prevent the producer's withholding them from the public, and thus causing them to perish unused.*

The primary assumption here is, "that society have *rights* in

ideas once made known to them." From this assumption, the other assumptions and the inference naturally follow. They depend solely upon it, and are nothing without it. If, then, the first assumption be baseless, the others and the inference are equally so.

What rights society have, in ideas, which they did not produce, and have never purchased, it would probably be very difficult to define; and equally difficult to explain *how* society became possessed of those rights. It certainly requires something more than assertion, to prove that by simply coming to a knowledge of certain ideas — the products of individual labor — society acquires any valid title to them, or, consequently, any *rights* in them.

There would clearly be just as much reason in saying that society have rights in *material* commodities — the products of individual labor — because their existence had become known to the public, as there is in saying that they have rights in ideas — the products of individual labor — simply because their existence had become known to the public. There would, for example, be just as much reason in saying, that society have rights in a thousand, or a hundred thousand, bushels of wheat — the product of individual labor — on the ground that the existence of this wheat had become known to them, as there is in saying that they have rights in a mechanical invention — the product of individual labor — on the ground that its existence has become known to them. And there would be just as much reason in saying, that society have a right to confiscate this wheat, and distribute it gratuitously among the people, *in order to prevent the producer's withholding it from market, and suffering it to rot*, as there is in saying that society have a right to confiscate a mechanical invention, and make it free to the public, *in order to prevent the inventor's withholding it from market, and suffering it to be lost.*

If, however, this doctrine be true, in favor of society, it must be equally true in favor of single individuals; for society is only a number of individuals, who have no rights except as individuals.

The consequence of the doctrine, therefore, would be, that every private individual would have *rights* in every commodity, *the existence of which should come to his knowledge!* He would also, of course, have the right, (now claimed for society,) of preserving such commodities from loss and decay. And this right would involve the still further right, (now claimed for society,) of taking such commodities out of the hands of the producers, and appropriating them to his own use, *in order to prevent the producer's withholding them from him, and suffering them to perish unused by him!* This is the legitimate result of the principle contended for.

This doctrine, that society have rights in all commodities, in consequence of the commodities becoming known to them; and that they have a right to confiscate them, and apply them to the public use, in order to prevent the producer's withholding them from market, and suffering them to perish unused, would certainly afford a very convenient and efficacious mode of destroying all private property, and throwing every thing into common stock. But what other purpose it could serve, it is not easy to see. If the doctrine be a sound one, in regard to material commodities, it is undoubtedly sound also in regard to intellectual commodities. But if it be the height of absurdity and tyranny, in regard to material commodities, it is equally absurd and tyrannical in regard to ideas.

The doctrine is also as unsound in policy, as it is in law; since it would cause a thousand commodities to perish unused, or prevent their ever being produced, as often as it would save one from thus perishing. If a man be allowed an absolute property in the products of his labor, and can forbid others to use them, except with his consent, he then has a motive to preserve them, and bring them to market; because, if they are valuable, they will command a price. Hence he will suffer few or none of them to be lost. But if the products of his labor are to be confiscated, he is, in the first place, dissuaded from producing nearly as many as he otherwise would; and, secondly, such as he does produce,

he will keep concealed as far as possible, in order to save them from confiscation; and the consequence will be that very many of them will perish unused.

SECTION XIV.

Objection Fourteenth.

Another objection is, that after the author of an idea has once made it known to others, it is impossible for him ever to recover the *exclusive* possession of it.

This objection is of no validity — and why? Because it is wholly unnecessary that he should have the *exclusive possession* of his idea, in order to *practically exercise* his right to the *exclusive use* of it.

The objection assumes that it is practically impossible for a man to *exercise* his right to the "exclusive *use*" of an idea, unless he also have the *exclusive possession* of it.

The objection rests *solely* on that assumption. Yet such an assumption is a self-evident absurdity; for the *exclusive possession* of an idea is not, *in practice*, at all necessary to the *exclusive use* of it. An idea, *unlike a corporeal commodity*, can be as fully and completely *used*, by a single individual, when it is possessed by all the world, in common with himself, as when it is possessed by himself alone. Their possession of it, jointly with himself, offers no natural impediment whatever to his exclusive use of it. The practical exercise of his right of exclusive use, is, therefore, in no manner whatever, naturally contingent or dependent upon his exclusive possession. And this fact alone is self-evidently an ample and unanswerable reason why, *in law*, it is wholly unnecessary that he should retain his exclusive possession, in order to retain the right of exclusive use.

Here, no doubt, the argument, on this point, might be safely

left. But, perhaps, some further illustration of it may be allowable.

The law never makes any requirements, that are *practically* unnecessary to the exercise of one's rights. The only reason, why a man's right to the exclusive use of a *corporeal* commodity, is *ever*, in law, dependent upon his right to the exclusive possession of it, is, that the *practical exercise* of his exclusive right of use, is *naturally and necessarily* dependent on his exclusive possession of the commodity. It is naturally impossible that he *can* use it — that is, the *whole* of it, fully and completely — unless he have exclusive possession of it. But it is wholly otherwise in the case of an idea, which, from its immateriality, can be as fully and completely used, by a single individual, when it is possessed by all other men, in common with himself, as when possessed by himself alone.

Whenever the *practical exercise* of the exclusive right of use, is, *naturally and necessarily*, dependent on the exclusive possession, there a man must have an exclusive right of possession, in order to have an exclusive right of use. But whenever the *practical exercise* of an exclusive right of use, is naturally possible, *without* the exclusive possession, there the two may be separated, and a man may have an exclusive right of use, with only a *common* right of possession.

For the law to require an exclusive possession, to sustain the right of exclusive use, when a *common* possession is just as good for the *practical exercise* of that right, would be interposing an unnecessary obstacle to the enjoyment of one's rights.

When a man parts with the *exclusive possession* of an idea, he parts with what it is *naturally impossible* he should ever recover. And if the practical exercise of his exclusive right of use, were, *naturally and necessarily*, dependent upon his exclusive possession, his right of exclusive use would be forever lost, *with* his right of exclusive possession. But since the practical exercise of his exclusive right of use, is not in any way dependent upon his *exclusive* possession, the question of exclusive possession has

legally nothing to do with his right to the exclusive use; and the owner of an idea may, consequently, give to all mankind, a perpetual and irrevocable *possession* of it, in common with himself, without his own right to the exclusive *use* of it, being at all impaired thereby.

The case of the owner of an idea, after he has given to others a knowledge or possession of it, in common with himself, is nearly or quite similar to that of a man, who should grant to others the perpetual, but naked, right, *to come personally upon his farm, and enjoy the prospect, doing no damage, and offering no impediment to his labor; but without any right themselves to cultivate the farm, or to take the crops.* In this case, the individuals, so admitted upon the farm, would hold *possession* of it, in common with the owner, *to the precise extent, and for the specific purpose*, to which, and for which, he had granted it to them; *and they would hold it to no greater extent, and for no other purpose.* Now, it certainly could never be said, in such a case, that the owner had lost his *exclusive right to cultivate his farm, and take the crops*, because he could never recover the *exclusive possession* of it.

The principle is the same in the case of the idea. The owner admits other men to a simple knowledge of the idea — that is, to a naked *possession* of it — in common with himself; but without any right to *use* it, for any industrial or pecuniary purpose. They receive the possession of it, *subject to these limitations.* Here plainly the owner's right to the *exclusive use* of it, for industrial and pecuniary purposes, is no more impaired, than in the case of the farm.

Since, then, the owner of the idea has never parted with his own possession of it, nor with his original right to the exclusive *use* of it, he has no *need* to recover the *exclusive* possession of it; because the possession of it by others, in common with himself, offers no practical impediment to his exclusive *use* of it. The exclusive possession of the idea, being *practically* unnecessary to his exclusive use of it, it is *legally* unnecessary. Consequently

the fact, that he can never recover it, is a fact of no legal importance whatever, as affecting his right to the exclusive use of it.

SECTION XV.

Objection Fifteenth.

Another objection is, that ideas cannot be seized, on any legal process.

Admitting, for the sake of the argument, what is probably true, that no way can be devised, by which a man's property, in ideas, can be taken on legal process, that fact interposes no obstacle whatever to their being treated, by the law, as property. There are many kinds of property, which the law protects, but which, nevertheless, the law cannot seize. For example. Reputation is property, and is protected by the law; yet it cannot be seized and sold, to pay a fine, or satisfy a debt. A man's health, strength, and beauty are property; and the law punishes an injury done to them; yet they cannot be seized and sold, on legal process. All a man's intellectual faculties and powers, are property; yet they cannot be taken for a debt, or confiscated for crime. Music is property; and a single hour's melody will often bring thousands of dollars in the market. Yet it cannot be taken in execution for a debt. Labor, of all kinds, is property; but no kind of labor whatever can be seized by the law.

This objection, like all the others, is therefore without foundation.

I have thus answered, or attempted to answer, every objection, worthy of an answer, (except two — one to be noticed in the next, and the other in the succeeding, chapter,) that I remember ever to have read or heard, against the right of a man, on principles of natural law, to an absolute and perpetual property in his ideas.

CHAPTER III.

PERPETUITY AND DESCENT OF INTELLECTUAL PROPERTY.

SECTION I.

Perpetuity of Intellectual Property.

If men have a natural right of property, in their intellectual productions, it follows, of necessity, that that right continues *at least during life.* Nature has certainly fixed no limit *short of life*, to the right of property. Limitation to a less period, would be contrary to the very nature of the right of property, which, as has been before repeatedly mentioned, is an *absolute* right of dominion; a right of having a thing *entirely* subject to one's will. If a man's right to exercise this dominion, were limited in duration, it would not be absolute. If, therefore, his *will* to exercise it, continue through his life, his *right* to exercise it, continues for the same length of time — for his will and his right go hand in hand. The property is, therefore, necessarily his, *during his life*, unless he *consent* to part with it.

SECTION II.

Descent of Intellectual Property.

There is the same reason, and as strong reason, why a man's intellectual property should descend to his relatives, as there is why his material property should do so.

What is the ground, on which the law allows any man's property to go, at his death, to his wife, children, or other relatives? This, and nothing else, viz.: the law presumes that he acquired it for them, *and intended it for their benefit.* In short, it presumes that it was his *will* that it should go to *them*, rather than to mankind at large. And this is a reasonable presumption, (in the absence of express evidence to the contrary,) because, during life, men *usually* labor for, and devote their property to the support and welfare of, their immediate families and relatives, in preference to strangers. And it is natural that, at death, they should wish their property still to be devoted to the same ends, for which they produced and employed it while living. This presumption is so natural and reasonable, so well grounded in the nature and experience of mankind at large, and withal so consistent with a man's moral duties, that nothing is suffered to overcome it, in law, except undoubted evidence that a man expressed a different will, while living, and in the possession of his reason.

Although men sometimes will that, at their death, their property shall go to others than their nearest relatives, it is nevertheless nearly or quite an unheard of event, that a man should wish his property to go to mankind at large, in preference to his immediate friends. There is, therefore, no ground, in law, for such a presumption, in the absence of express evidence. And there is no more reason why a man's intellectual property should go to the public, at his death, than there is why his material property should go to them.

It has been said, that, admitting a man to have an absolute property in his ideas, *during life*, it is a wrong to society to allow the transmission of this right by inheritance, for this reason, viz.: It is said that the right of property *naturally* terminates with the life of the proprietor; that, in the case of *material* property, society *allow* the right to be transmitted to relatives, for the reason that, otherwise, the property, being left without an owner, would become the property of those who should first seize upon

it; that it would thus give rise to violent scrambles among those who should be attempting to seize upon it; that, *to prevent this violence*, society decrees that the property shall go to the immediate family of the deceased; but that, as there could be no scramble or violence to get possession of an *idea*, at the death of the proprietor, there is no necessity, and therefore no justification, for allowing the principle of inheritance to apply to intellectual property; and that, consequently, such property should become free to all.

This objection is entirely fallacious; and the reason assigned, why *material* property is allowed to go to the relatives of the deceased, is not the true one. Society do *not* establish the principle of inheritance *arbitrarily*, as the objection supposes, to avoid occasions for violent scrambles for the property of the dead; for such scrambles could as well be averted by decreeing that the property should escheat to the government, as by decreeing that it should go to the relatives of the deceased. And if the property have no rightful owner, it perhaps ought to go to the public, and to the government as the representative of, and trustee for, the public. But the principle of inheritance is a principle of *natural law*, founded on the presumption that, where a deceased person has left no evidence to the contrary, it was his *will*, (so long as he had his reason, and therefore so long as his will was of any legal importance,) that in that moment, (whenever it might arrive,) in which his property could no longer be useful to, nor be controlled by, himself, all his rights in it should vest in his family. And such a will, or consent, is, *in its nature*, as valid and sufficient, and the law justly holds it to be as effectual, to convey the right of property, as any consent which a man gives, when in full health, to the conveyance of his right of property for a pecuniary consideration.

The universal nature of mankind, and their nearly or quite universal conduct, throughout life, and in their latest moments of reason, furnish so strong evidence that such is the will of all men, in regard to their property, that governments *dare not* dis-

regard it — *dare not* confiscate the property of a deceased person, who left relatives living within any reasonable limit of consanguinity. And mankind in general would as soon rebel against a government, which they knew would confiscate their property at their death, and thus plunder their families of the provision they had made for them, as they would against one that should confiscate it while they were living. There is no species of robbery, which the general sense of mankind would consider more atrocious, on the part of government, than that of confiscating the property of the dead.

"The property of the dead." That is not an accurate expression. It is not the property of the dead, but of the living; for the right of property passed to the living at or before the moment of the death of the original proprietor.

If, then, the principle of inheritance be a principle of natural law, it is as applicable to intellectual, as to material, property.

CHAPTER IV.

THE SALE OF IDEAS.

There remain to be considered some important questions, in regard to the sale of ideas, in connexion with books, machines, statues, pictures, &c. We will first speak of the sale of them in connexion with *books;* and of the other cases afterward.

When an author sells a copy of his book, does that sale carry with it the right to reprint the book? Or does he reserve that right *exclusively* to himself?

If he reserve that right exclusively to himself, how does that reservation *legally appear*, when no express stipulation of the kind is shown?

If the purchaser of a book do *not* buy with it the right to reprint it, what right of property or *use* does he buy, in the *ideas* which the book communicates? And how are legal tribunals to know *what right of property*, in the ideas, which the book communicates, is conveyed by the sale of the book itself?

Questions of this kind have been proposed, by those who deny that any exclusive right of multiplying copies, can remain with the author, after he has sold copies of his book unreservedly in the market. These persons say that, by selling his book unreservedly, the author *necessarily* sells the right to make any and all possible uses of the ideas communicated by the book; that the reprinting of the book is only one of the *uses*, to which the copy sold is capable of being applied; and that the right to use the copy for this purpose, is as much implied in the sale of the book, as is any other use of it whatever.

These questions and arguments were forcibly presented by Justice Yates, and by Lord Chief Justice De Grey, as follows.

Justice Yates said, "Every purchaser of a book is the owner of it; and, as such, he has a right to make what use of it he pleases.

"Property, according to the definition given of it by the defendant's counsel, is '*jus utendi, et fruendi*' [the right of using and enjoying]. And the author, by empowering the bookseller to sell, empowers him to convey this general property; and the purchaser makes no stipulations about the manner of using it.

"The publisher himself, who claims this property, sold these books, without making any contract whatever. What color has he to retrench his own contract? or impose such a prohibition?" [a prohibition upon reprinting the book.]

"If the buyer of a book may not make what use of it he pleases, what line can be drawn, that will not tend to supersede all his dominion over it? He may not lend it, if he is not to print it; because it will intrench upon the author's profits. So that an objection might be made even to his lending the book to his friends; for he may prevent those friends from buying the book; and so the profits of such sale of it will not accrue to the author. I do not see that he would have a right to copy the book he has purchased, if he may not make a print of it; for printing is only a method of transcribing.

"With regard to books, the very matter and contents of the books are, by the author's publication of them, irrevocably given to the public; they become common; all the sentiments contained therein, rendered universally common; and when the sentiments are made common by the author's own act, every use of those sentiments must be equally common.

"To talk of restraining this gift, by any mental reservation of the author, or any bargain he may make with his bookseller, seems to me quite chimerical.

"It is by legal actions that other men must judge and direct their conduct; and if such actions plainly import the work being made common; much more, if it be a necessary consequence of the act, 'that the work is actually thrown open by it;' no private transaction, or secretly reserved claim of the author, can ever control that necessary consequence. Individuals have no power, (whatever they may wish or intend,) to alter the fixed constitution of things; a man cannot retain what he parts with. If the author will voluntarily let the bird fly, his property is gone; and it will be in vain for him to say 'he *meant* to retain' what is absolutely flown and gone." *

* Millar *vs.* Taylor, 4 Burrows 2364—5.

Lord Chief Justice De Grey said:

"But it is said, that the sale of a printed copy is a qualified or conditional sale, and that the purchaser may make all the uses he pleases of his book, except that one of reprinting it. But where is the evidence of this extraordinary bargain? or where the analogy of law to support the supposition? In all other cases of purchase, payment transfers the whole and absolute property to the buyer; there is no instance where a legal right is otherwise transferred by sale; an example of such a speculative right remaining in the seller. It is a new and metaphysical refinement upon the law; and the laws, like some manufactures, may be drawn so fine as at last to lose their strength with their solidity." *

These questions and arguments are of vital importance to the principle of intellectual property. They are worthy of being answered. They *must* be answered, before the principle of exclusive copyright can be maintained, as a part of the law of nature. Yet, I apprehend, they have never been adequately answered.

The common, and I believe the only, answers, that have ever been made to these arguments, have been, 1st. That it is only by the multiplication of copies, that an author can expect to get paid for the labor of producing his book; and therefore it would be *unreasonable* to suppose that he intends to part with his exclusive right to multiply copies, for so trivial a price as the profit made upon a single book. 2d. That if an author were to part with his exclusive right to multiply copies, his ideas might be misrepresented, mutilated, and attributed to other persons than himself; and thus his reputation suffer, without his having any means of redress; and that it is therefore unreasonable to suppose he intends to subject himself to the liability of such injustice, for so small a consideration as the profit on a single copy of his book.

These are no doubt weighty considerations; but they do not fully meet the question. A man, who gratuitously gives away his ideas in conversation, loses all chance of reaping any pecuniary profit from them. He is also liable to have his views misrepresented, mutilated, and attributed to others than himself. But the law does not, for these reasons, *uniformly* imply that he

* Donaldson *vs.* Becket, 17 Parliamentary Hist. 991.

reserved any exclusive right of property in, or control over, them. And if it will not imply this, in the case of a man, who gives his ideas gratuitously to the public, why should it do it for a man who has sold, and received a price for, his ideas?

The argument of inadequacy of price is an insufficient one, for various reasons, as follows.

1. Inadequacy of price is, *of itself*, no objection to the validity of a sale, where no fraud is alleged.

2. Inadequacy of price is oftentimes, in practice, a very difficult thing to be proved; and would be especially so in the case of the copyrights of books. Men's opinions differ so much as to the intrinsic merits of particular books; and the *market* value of a copyright often depends so little upon the book's intrinsic merits, that inadequacy of price could seldom or never be proved. Milton, assuming that he had a perpetual copyright in his Paradise Lost, sold it for five pounds. Yet this was a legal sale, and its validity could not be impeached for inadequacy of price.

3. The difference in price between a book, of which the copyright is reserved, and one of which the copyright is not reserved, is too slight to afford any sufficient evidence, *of itself*, to a judicial tribunal, whether the copyright was, or was not, reserved.

4. If, as the opponents of an exclusive copyright contend, *every* purchaser of a book purchases with it the right of reprinting it, no one purchaser could afford to pay but a trivial price above the value of the book, independently of that right; because he would buy no *exclusive* right; but only a right to be held in common with all other purchasers of copies. He could therefore secure no monopoly in the publication of the book; but could only print it in competition with all others, who should choose to print it. For *such* a right he could, of course, afford to pay but a merely trivial price, independently of the value of the book for other uses. How then could it *ever* be proved that he had paid an inadequate price *for such a right as he has purchased?*

5. If the author, by selling each copy of his book unreservedly, sells with it the right of multiplying copies, then the

presumption would be, that he received a price at least *somewhat* higher, *for each copy*, than he could have sold it for, if he had expressly stipulated that it should *not* be used for multiplying copies; and from this presumption it would follow, as a legitimate inference, that he had chosen to adopt this mode of getting paid for his copyright — that is, by a slightly additional price on each copy sold — rather than by the sale of the exclusive copyright to any one individual.

The original question, then, necessarily returns, viz.: *What right has the purchaser of the book obtained?* Has he purchased the right to multiply copies? Or only the right to use, *in other ways*, the particular copy that he has purchased? And, especially, how can *legal tribunals know* what right has been bought and sold?

It evidently will not do for an author, after he has sold a book unreservedly, to say, *arbitrarily*, that he did not *intend* to part with his exclusive copyright; since it is clear that, in law, every man must be held to have intended every thing that is *necessarily* implied in his voluntary act.

The whole question, then, resolves itself into this, viz.: What, on legal principles, is *necessarily* implied in the sale of a book, by an author, when no *express* stipulation is entered into, as to the use that is to be made of it? In other words, What rights, in the *ideas* communicated by the book, does the author *necessarily* convey, when the sale of the book itself is qualified by no *express* restriction upon its use?

I shall offer an answer to this question, by attempting to prove, what seems almost too nearly self-evident to need to be proved, viz.: That a book, and the ideas it describes, are, *in fact, and in law, distinct commodities;* and that an unqualified sale of the book does not, therefore, *of itself alone*, imply *any sale whatever* of the ideas it describes, nor the conveyance of any right whatever to the *use* of those ideas.

By this I mean that the sale of the book conveys, *of itself*, no right of property or use in the ideas, *beyond that merely mental*

possession and mental enjoyment of them, which are indeed a species of property and use; and necessarily, or at least naturally, follow from reading the book; but which, for the sake of brevity and clearness in this discussion, I shall leave out of consideration. *

It will therefore be understood, when, *in the remainder of this chapter*, I speak of "*property*" in, and "*use*" of, ideas, that I mean a property and use *beyond*, or *additional to*, this merely *mental* possession and enjoyment of them.

To state more precisely the point to be proved. Suppose the author of a valuable mechanical invention were to write, and sell unreservedly in the market, a book describing his machine so fully that a reader would be able, from the description given, to construct and operate a similar machine. The purchaser of the book would, in this case, acquire a right to the mental possession, and mental enjoyment, of all the knowledge communicated by the book; but he would acquire, *simply by virtue of his purchase of the book*, no right whatever to *use* that knowledge in constructing or operating a machine like the one described. And the same principle applies to all other ideas described in books. *This is the point to be proved.*

If the first of the foregoing propositions be true, viz.: "That a book, and the ideas it communicates, are, in fact, and in law, distinct commodities," the truth of the succeeding proposition, viz.: "That an unqualified sale of the book does not, *of itself alone*, imply any sale whatever of the ideas it describes, nor the conveyance of any right whatever to the *use* of those ideas," would seem to follow of course; because the sale of one thing

* When it is said, in chapter first, page 19, that "an author sells his ideas in his volumes," that "an editor sells his in his sheets," &c., it is not meant that they *necessarily* sold an *entire and unqualified* right of property in their ideas; but only a partial or qualified right, viz.: a right to the *mental* possession and *mental* enjoyment of them. Whether the purchaser acquires any *further* right of property than this, *in the ideas* described in the volumes and papers, will depend on the principles laid down in this chapter.

can, perhaps, *never, of itself*, imply the sale of another thing, that has a separate and distinct existence.

That a book, and the ideas it communicates, are, in fact and in law, separate and distinct commodities, is apparent from the following considerations, viz.

1. What is an *idea?* It is a production of the *mind.* It is wholly *immaterial.* It has no existence, except in the mind. It *can* exist only in the mind. It no more exists in a *book*, than it does in a stone, or a tree. It *can* no more exist in a book, than in a stone, or a tree.

2. What is a *book?* It is mere paper and ink. It is entirely *material.* In its nature, it differs as much from an *idea*, as a stone or a tree differs from an idea. There is no more *natural* affinity between a book and an idea, than there is between a stone, or a tree, and an idea. That is, an idea will no more inhere in, or adhere to, a book, than it will inhere in, or adhere to, a stone or a tree.

When, therefore, a man buys a book, he does not buy any ideas; because ideas themselves are no part of the book; nor are they in any way *attached* to the book. They exist only in the mind.

A book, therefore, does not, as, in common parlance, is habitually asserted, *contain*, any ideas. The most that can be said, is, that it represents, describes, or perhaps more properly still, *suggests*, or brings to mind, ideas. And how does it do this? In this way only. The book consists of paper, with certain characters, in ink, stamped upon it. These characters were devised to be used as arbitrary signs, or representatives, of certain sounds uttered by the human voice. And by common consent among those, who are acquainted with these arbitrary significations, that have been attached to them, they *are* used to represent those sounds. The vocal sounds, which these characters arbitrarily represent, are, by common consent, used by mankind, as the *names* of certain ideas. These *names* of the ideas are not the ideas themselves, any more than the name of a man is the

man himself. But when we hear the names of these ideas, the ideas themselves are brought to our minds; just as, when we hear the name of a man, the man himself is brought to mind. In this way the characters printed, in ink, in a book, are used as the signs, representatives, or names, *at second hand*, of men's ideas; that is, they represent certain sounds, which sounds stand for, represent, and thus call to mind, the ideas. This is all the resemblance a book has to the ideas, which it is employed to communicate.

The most, therefore, that can be said of a book, is, that it consists of, or contains, certain *material* things, to wit, characters in ink, stamped on paper, which, by common consent among mankind, are used to represent, *describe*, *suggest*, or carry to one's mind, certain *immaterial* things, to wit, ideas.

It is, therefore, only by a figure of speech, that we say that a book *contains ideas*. We mean only that it contains, or consists of, certain *material* things, which suggest ideas. It contains only such *material* signs, symbols, or arbitrary representatives of ideas, as one mind employs in order to suggest or convey its ideas to other minds.

Now, unless the sale of a *material* symbol, or representative, be legally and *necessarily* identical with the sale of the *immaterial* idea, which that symbol represents, or suggests, it is clear that the sale of a book is not, legally or necessarily, identical with the sale of the ideas, which that book may suggest to the reader.

The ideas themselves are not *contained* in the book; they constitute no part of the book; they have their whole existence entirely separate from the book — that is, in the mind; the whole object, design, and effect of the book are, to suggest certain ideas to the mind of the reader, and thereby act as a *vehicle*, or instrumentality, for conveying the ideas from one mind to another.

What ground is there, then, for saying that the sale of the book is necessarily or legally identical with the sale of the ideas, which it communicates, describes, or suggests? None whatever.

Suppose a man make a book, containing such drawings, pictures, and written descriptions, of his house, his farm, his horses, and his cattle, as are sufficient to bring those commodities to the mind of the reader. And suppose he then sell that book unreservedly in the market. Does the purchaser of the book acquire, *by virtue of that purchase*, any right of property or use in the commodities described in the book? Certainly not. And why not? Simply because the book, and the things it describes, are, in fact, and in law, separate and distinct commodities; and the sale of the one does not, therefore, at all imply the sale of the other.

The same principle applies to a book, that describes *ideas*, instead of houses and lands. The book, and the *ideas* it describes, are as much separate and distinct commodities, in the one case, as are the book, and the houses and lands it describes, in the other. And the sale of the book, that describes the *ideas*, no more implies the sale of the ideas, than the sale of the book, that describes the houses and lands, implies the sale of the houses and lands.

The only difference between the two cases, is this wholly immaterial one, viz.: that the written descriptions, of the *ideas*, are sufficient to put the reader in actual *possession* of the ideas described — that is, in *mental* possession of them, which is the only possession, of which they are susceptible; whereas the written descriptions, of the houses and lands, are not sufficient to put the reader in actual possession of those commodities; since the *possession* of houses and lands must be a *physical*, instead of a mental one. But this difference, in the two cases, is wholly immaterial to the right of property *for use;* because simple *possession* of the ideas, (and this is all the book gives,) is of no importance, in law, without the right of property *for use* — as has been already explained in chapter 2d, section 2. *

*It is perhaps worthy of notice, in this connexion, that a man can acquire, from a written description, the same *mental* possession of *houses* and *lands*, that he can of *ideas*. That is, he can acquire the same *knowledge* of houses and lands,

The conclusion, therefore, that the sale of a book, describing *ideas*, gives no right of property in the ideas, *for use*, is just as valid and inevitable, as is the conclusion, that the sale of a book, describing houses and lands, gives no right of property in the houses and lands, *for use*.

An author, in selling a book, sells nothing but the book itself; the right to *use* the book itself; and the right to all the benefits, which necessarily or naturally result to the reader from the use of the book *alone*. He sells nothing that the book describes; nor the right to *use* any thing that the book describes.

The question arises, then, what is necessarily, naturally, or legally involved in the *use* of the *book alone*? The answer is this.

The whole object and effect of the *book itself*, as a representative of ideas, are accomplished, when it has suggested to its readers all the ideas which it can suggest. Every possible *use* and power of the book itself, in relation to the ideas it describes, are exhausted in the execution of that single function. After that function is performed, *the book itself is thrown aside*, and has no part nor lot whatever in any of the *uses*, to which the ideas, it has suggested, may be applied. How, then, can it be said that the *use* of the book involves the *use* of the ideas it communicates, when the *use* of the ideas is a wholly separate act from the *use* of the book itself; and the *use* of the book itself is a wholly separate act from the *use* of the ideas? There would be just as much reason in saying that the *use* of a book, that described a farm, involved the *use* of the farm, as there is in saying that the *use* of a book, describing ideas, involves the *use* of those ideas.

Plainly, then, an author, by describing his ideas in a book, and then selling the *book for use*, gives no more right to the *use*

that he can of ideas; and this *knowledge* of ideas is all the *possession* of them that he can, *in any way*, acquire. It would seem, therefore, that if this merely *mental* possession of things, which is acquired by reading about them, were of any importance, in law, it ought to have the same importance and effect, in the case of houses and lands, as in the case of ideas.

of his *ideas*, than a man, who describes his farm in a book, and then sells the book *for use*, gives a right to the use of his farm.

Certainly, too, every purchaser of a book, that describes ideas, is as much bound to know, that the book and the ideas are separate and distinct commodities, as the purchaser of a book, that describes a farm, is bound to know that the book and the farm are separate and distinct commodities. And the purchaser of a book is also bound to know, that he no more acquires a right to *use* the ideas, by simply buying a description of them, than he acquires a right to use a farm, by simply buying a description of it.

But perhaps it will be said that the whole object, in buying a book, is to get possession of the ideas it describes; and that the whole object, in getting possession of the ideas it describes, is to *use* them for our benefit, as in the case of any *material* commodities, which we seek to get possession of; that the author knows all this when he sells the book; and that the law will consequently imply that he consented to it; inasmuch as otherwise it would impute to him the fraud of making a sale, *in form*, without intending that the real benefits of the sale should be enjoyed by the purchaser.

But there is no such analogy, between material and immaterial things, as is here assumed. The possession of *material* things, without the right of *use*, is a burden, because it imposes labor, without profit. Men therefore do not desire the possession of *material* things, unless they have also the right of *using* them. But it is wholly different with ideas. The simple *possession* of them is necessarily a good. They are no burden. They impose no profitless labor upon the possessor. They furnish food and enjoyment for his mind, and promote its health, strength, growth, and happiness, even though he be *not* permitted to *use* them, in competition with their owner, as a means of procuring subsistence for his body.

A very large proportion of all the books, that are purchased, are purchased *solely* for the mental enjoyment and instruction to

be obtained by reading them; and *not* for the purpose of reprinting them, nor of *using* the ideas for any pecuniary end.

There is, therefore, no ground for saying that the whole object of buying books, is to get the ideas, to be *used* for pecuniary purposes; and that, unless they can be so *used*, the author has practised a fraud on the purchaser. The mental enjoyment and instruction, which the reading of books affords, are sufficient motives for the purchase of books, even though the right to *use* the ideas described in them, for pecuniary ends, be no part of the purchase.

Taking it for granted that it has now been established, that a book itself *contains* no ideas; that a book, and the ideas it describes, are, in fact, and in law, distinct commodities; and that the sale of the book legally implies no sale of the ideas *for use* (beyond the simple mental possession and enjoyment of them); I stop to anticipate an objection, viz.: It will be asked how one man can trespass upon another man's right of property, in *ideas*, by simply printing and selling a book, *that contains no ideas?*

The answer to this question is, that a book cannot be printed without *using* the author's ideas; *inasmuch as those ideas are an indispensable guide to the work of printing a book that shall describe them. They are an indispensable guide to the work of setting the type that are to represent those ideas.* It is impossible, therefore, that a book can be printed, without *using* the ideas which the book is to describe. This *use*, therefore, of an author's ideas, unless with his consent, expressed or implied, is a trespass upon his right of property in them. The use of his ideas, without his consent, in making a valuable book, is as much a trespass upon his right of property in those ideas, as the use of a man's printing press, without his consent, in printing the book, would be a trespass upon the owner's right of property in the printing press.

But not merely the printing of a book, without the author's consent, is a trespass upon his right of property in his ideas, but the sale, and even the reading, of a book thus printed, is also a

trespass upon the same right of property — and why? Because the right of property is a right of absolute dominion. The owner of ideas, therefore, has a right to inhibit — and, where he reserves his copyright, he does inhibit — the communication of his ideas, from one mind to another, through the instrumentality of any books whatever, *except such as he himself prints, or licenses to be printed.* Any body, therefore, who either sells or reads a book, not printed by the author, nor licensed by him to be printed, is an accomplice and agent in taking the author's ideas out of his control, and in communicating them through a channel or instrumentality, which he has inhibited to be used in the communication of his ideas.

So absolute is an author's right of dominion over his ideas, that he may forbid their being communicated even by the human voice, if he so please. And such prohibition would be as perfectly legal, as any other act of dominion over them.

An author may, if he please, *by express contract*, restrict the communication of his ideas, beyond the *first* purchasers of the books, which he himself prints, or licenses to be printed; and thus make it necessary for every man to buy a book, and pay tribute on it to the author, in order to become acquainted with the ideas. And there may, perhaps often, arise cases where it would be for the interest of an author to do so. But without such an *express* contract, the presumption of law would be, that the purchaser of a book had the consent of the author to sell it, lend it, or dispose of it, at his pleasure, as he would any other *material* property; and that every one, into whose hands it should thus lawfully come, might read it.

But here another question will be raised, viz.

If a book, and the ideas it describes, are distinct commodities; and if the sale of the book do not imply the sale of any right of property in the ideas described in it, (beyond the mere possession and mental enjoyment of them;) how is it that men can *ever* have a right to *use any* of the ideas described in books, without making a special purchase of them, *separately from the book?*

It is important that this question be answered; because, although the productions of every man's mind are theoretically his property, yet we see that, in practice, *not all, but nearly all*, the ideas, that are described in books, are *freely* used by mankind at large, in any and every way in which they please to use them — (except the single one of reprinting the author's descriptions of them) — without making any special purchase of them from the author, separately from the purchase of the books describing them. It may seem, at first view, that this practice must be illegal. But I shall attempt to show that mankind have a *legal right* to use, in this way, *not all, but nearly all*, the ideas that are described in books. And the question now is, *how can they have this right, consistently with the principles hitherto laid down in this essay?*

The answer to this question is to be obtained by applying, to each case, these general rules, viz.

When an author sells a book, describing his ideas, the law presumes that he intends to retain *all such* of his original *exclusive* rights of property in them, *as may be practically valuable to him;* and that he intends to *abandon* — not to *sell*, but to *abandon* — *all such* of his original *exclusive* rights of property in them, *as would not be of any value to him, if retained.*

The law raises these presumptions, on his part, because they are abstractly reasonable, and conformable to the principles of action, that generally govern mankind — that is, mankind generally *wish* to preserve *all* their rights of property, that will be practically valuable to them; and they generally wish *not* to look after, watch over, or consequently to preserve, *any* rights of property, that are too insignificant to be of any practical value to them.

These rules also, when applied to ideas, are only the synonyms or equivalents of the general principles, on which the administration of justice proceeds in all cases, viz.: that the government is established and maintained for practical, and not for merely theoretical, purposes; and that it will therefore protect a man in the

possession of every thing that is his, *and that is of any real appreciable value to him;* but that it will incur neither the trouble nor expense of protecting him in that, which, though it may be theoretically his, *is of no real appreciable value to him.*

This, too, is, practically speaking, *all* the protection, which the law *can* give to a man's rights of property, *in any case;* whether the property be material or immaterial; because the law can award no damages for the invasion of rights, unless the injury suffered be large enough to be capable of being measured by at least *some* legal standard of value, as a cent, a farthing, a penny, or some measure of that kind.

These principles are usually expressed by the legal maxim, *de minimis non curat lex* [the law takes no care of trifles;] (which maxim, by the way, implies that the law *does* take care of every thing that is of any real appreciable value).

The result of these principles, then, when applied to ideas, is simply this, viz.: wherever an author's *exclusive* rights of property in them, can be of any real appreciable value to him, the law will protect him in them; inasmuch as it will presume that he desires to retain them. But wherever his *exclusive* rights of property in them, can be of *no* real appreciable value to him, the law will not protect them; but will presume that he *voluntarily* abandons them.

In other words, wherever an *exclusive* right *of use* would be more profitable to the author, than a right *in common with the rest of mankind*, there his *exclusive* right is presumed to be retained. But wherever a right of use, *in common with the rest of mankind*, would be just as profitable to the author, as an *exclusive* right, there his *exclusive* right is presumed to be abandoned, and only a *common* right retained.

Now, in order to determine *what exclusive* rights of property, in his ideas, can be made more valuable to the author, than a *common* right, we must determine, *in the case of each idea, or collection of ideas*, what *profitable use* he could make of an *exclusive* right, over a *common* right; or, on the other hand, what

profits he would *lose*, by suffering his *exclusive* right to become common to all. And this question is one, which, in practice, could *generally* be very easily settled.

In the case of the most important labor-saving inventions, for example, the *exclusive* right of using them, is evidently more valuable than a right in common with the rest of mankind; because an *exclusive* right will sell for a price in the market; whereas a common right will not. An exclusive right will also be more profitable for the inventor, " he wish to use it himself, than a common right; because it will enable him to avoid competition, and thus obtain a higher price for his labor. For these reasons the law will presume, in the case of such inventions — however fully they may be described in books, and however unreservedly such books may be sold in the market — that the authors choose to retain their *exclusive* right in them, *for purposes of labor.* At the same time, perhaps, the law will *not* presume that the inventors retain the *exclusive* right to their inventions, *for literary purposes* — that is, for the purpose of writing books describing them — because the profits, on the sale of such books, may be insignificant; and because also it may be for the interest of the inventors to have their inventions described by others than themselves, and thus more widely advertised *for sale.*

Nevertheless, in the case of *most* of the ideas described in books, the only *exclusive* right, that *can* be of any profit to the author, over a *common* right, is the right of using them *for literary purposes.* This, therefore, is the only *exclusive* right, which the law will *ordinarily* presume that the author wishes to retain.

The ideas, described in print, may be classed — with reference to the rights retained, and the rights abandoned, by the authors — under three heads.

In the first class may be reckoned those labor-saving, and other valuable, inventions, of which the authors retain the exclusive use, *for the particular purposes for which the inventions are specially designed;* but of which the authors do *not*, ordinarily,

retain the exclusive use, *for literary purposes* — that is, for the purpose of writing descriptions of them.

In the second class may be reckoned those ideas, of which the authors retain the exclusive use, *for literary purposes*, but not for any other purpose.

In the third class may be reckoned those ideas, of which the authors retain no exclusive use whatever.

But let us explain, a little more particularly, the principles of law applicable to each of these classes of ideas.

1. As an example of the first class of ideas, take the invention of the steam engine. The invention itself is of immense value, *for purposes of labor;* but a book, describing it, would probably yield little or no profit, *as a merely literary enterprise.* If, therefore, the inventor of the steam engine were to write a book, making the invention fully known to the public, the law would nevertheless presume that he reserved his *exclusive* right to the invention, *for use as a motive power;* but, at the same time, it would probably presume that he *abandoned* his *exclusive* right to it, *for literary purposes;* and that he was willing it should be freely written about, by all who might choose to write about it. And even if other men should reprint his own description of it, without his consent, very likely the law would not say that any wrong had been done him; but rather a benefit, inasmuch as his invention would thus be more widely advertised, *for sale*, than it otherwise would be.

But if any other man, than the inventor, were to write a book describing the steam engine, the law would most likely presume that he wrote it solely as a literary enterprise; and that he therefore wished to retain his exclusive right of property in it.

2. In the second class of ideas — those, in which the authors retain an *exclusive* right, *for literary purposes*, but *not* for any other use — may be reckoned an infinite number of ideas, that are really useful to mankind, as guides for their conduct, under various circumstances in life; but which, nevertheless, have *singly* no appreciable *market* value, *for use*. Take, for example,

the ideas, that the earth is a globe; that it turns on its axis; that it revolves round the sun; that honesty is the best policy; that industry and economy are the roads to wealth; that certain kinds of labor are injurious to the health; that certain kinds of food are more nutritious than others; that certain diseases are contagious, and others not; that certain animals are untamable and dangerous; that other animals are harmless, susceptible of being domesticated, and made subservient to the uses of man; that certain systems of philosophy and religion have more truth in them than others; and an infinite number of other ideas, which are valuable to mankind *for use;* but which, nevertheless, if offered for sale *singly* in the market, would not bring a farthing apiece, from one man in a thousand.

The only way, then, in which any *exclusive* property, in ideas of this kind, can be made valuable to the authors, is by using them for literary purposes, instead of attempting to sell the ideas themselves singly *for use.*

Since, then, this right to *use* one's ideas, of this kind, *for literary purposes*, is the only *exclusive* right of property, that can be of any practical value to the author, it is the only *exclusive* right that the law will presume that he intends, or desires, to retain, when he sells a book describing them.

This exclusive right of using ideas for literary purposes, is what we call the copyright. And this is the only *exclusive* right of property, which authors *usually* retain, or wish to retain, in the ideas they describe in their books.

But, because a man has the *exclusive* right of using his own *original* ideas, for literary purposes, it must not be inferred that authors have any *exclusive* right of property of this kind, except in those *particular* ideas, which they themselves originate. Now it is only a *very few* of the *leading, primary, and most important* ideas, described in books, that are original with the authors of the books; inasmuch as the *elementary* truths, in nearly all departments of knowledge, have been long known to mankind. An author's *originality* is, therefore, generally confined to *secondary*

and *subsidiary ideas*, such as the combination, arrangement, and application of the leading or elementary ideas, and the style of the composition describing them. And it is only in these *original ideas of his own*, that the law gives him a copyright, or any exclusive property.

3. Among the examples of the third class of ideas — in which no *exclusive* right whatever is retained — may be reckoned a large proportion of the ideas, which appear in newspapers; especially the accounts of passing events, and comments thereon; which ideas have an interest to-day, but will be stale to-morrow; and an *exclusive* right in them will never be of any appreciable value to the author, either for the purpose of being reprinted, or for any other use. In this case the law presumes that the author retains no *exclusive* right of property in them; simply because such *exclusive* right would be of no practical value to him.

If, however, these ideas have any particular *intellectual* merit, which would add to the author's reputation, the law will presume that he wishes to retain his *exclusive* right of property in them, *so far as is necessary to secure to himself the reputation of authorship*, even though no *direct pecuniary* advantage is to be derived from them. The law, therefore, will require that those, who reprint such ideas, should ascribe them to the true author, instead of printing them as their own. Of course this requirement applies only to such ideas, as have such an essential and important merit, as the authors may *reasonably* desire the credit of. It would not apply to ideas too trivial to be worthy of a reasonable man's consideration. To such, the principle, that the law does not take care of trifles, would apply.

I shall now take it for granted, that it has been sufficiently shown, that a book, and the ideas described in it, are, in fact, and in law, distinct commodities; that the sale of the former implies no sale of any right of property in the latter, beyond the mere possession and mental enjoyment of them; that, with these exceptions, the law presumes that an author desires to retain his *exclusive* right in all his *original* ideas, for all purposes whatso-

ever, for which such *exclusive* right will have an appreciable value, pecuniarily or otherwise, over a right in common with the rest of mankind.

This presumption of law, in favor of the author, arises, *without any special notice being given, in the book*, that he wishes to retain his copyright, or any other *exclusive* right, in the ideas described. It arises, in the case of ideas, on the same principles, and for the same reasons, as in the case of material property, viz.: that the ideas are the products of labor; that they are *naturally* the property of the producer; and that it is as unreasonable to presume that he would gratuitously part with any *valuable* rights in them, as it is that he would gratuitously part with any equally valuable rights in his material property.

It is not *legally necessary*, therefore, that an author should give notice, *in his book*, that he retains his copyright, or any other right in the ideas described. Indeed it might, *in some cases*, be dangerous to give the notice "*copyright reserved;*" that is, in cases where still other rights, than the copyright, were intended to be reserved; because such notice, unaccompanied by any other special reservation, might imply that no other rights, than the copyright, were reserved.

But although it might be dangerous to give notice, *simply* of a reservation of "*copyright*," where still other rights were intended to be reserved — as in the case of books describing valuable mechanical inventions, and also in the case of dramatic and musical compositions, where the right of *performing* the pieces was intended to be reserved — it might, nevertheless, be highly judicious, to give notice of the reservation, *both of the copyright, and of all other rights intended to be reserved*, in order to guard against any presumption of abandonment, in doubtful cases, against the will of the author.

Taking it for granted that the question, Whether the sale of a book unreservedly, implies a sale, *for use*, of the ideas described in it? has now been sufficiently answered, I proceed to answer another question, very similar in character and importance, to

wit: Whether if an inventor make an unreserved sale of a machine, constructed in accordance with his invention, such sale will include the sale of a right to construct other similar machines? or only a right to use the particular machine sold?

It will be seen at once that much of the same reasoning, that is applicable to books, and the ideas described in them, is applicable also to machines, and the ideas, after which they are constructed. For example, the machine, and the idea, after which it is constructed, are, in fact and in law, separate and distinct commodities; as much so as are a book, and the ideas described in it. The machine does not *literally contain* the idea, after which it was constructed; although we are in the habit of speaking of machines in this manner. The idea does not exist *in the machine;* it exists only in the mind. The machine consists only of wood, iron, and other corporeal substances. The forms and shapes, given to those substances, are only *effects*, produced upon them by a combination of causes, to wit, the idea of the inventor, and the physical labor of the machinist; just as the order, arrangement, and collocation of the printed letters in a book, are *effects* produced by a combination of causes, to wit, the ideas of the author, and the physical labor of the printer. In both cases — that of a machine, and that of a book — we can *ascertain* the nature of the causes, (that is, the ideas, and the physical labor,) by an examination of their *effects*. But the *causes* and their *effects* are not, therefore identical. They are, in fact and in law, distinct entities; as much so as are any other causes and their effects. The machine, too, *as a whole* — that is, the wood, iron, or other corporeal substances, with the effects produced upon them, or the shapes given to them, by the idea of the inventor and the labor of the machinist — is clearly, in fact and in law, a distinct entity from the idea of the inventor, which can exist only in the mind. And the sale of the machine, therefore, implies no sale of the inventor's idea, any farther or otherwise than this, to wit. The sale of the machine implies a right to use *it;* and the right to use *it*, implies a right to use the idea of the

inventor, so far as it may be necessary to use it, in order to use the machine; but no farther.

The same question, in substance, may now be asked, in regard to a machine, that was before suggested in regard to a book, viz.: If a machine, and the inventor's idea, after which it was constructed, be, in fact, and in law, distinct commodities; and if the machine do not literally *contain* the inventor's idea; how can his rights of property, *in that idea*, be trespassed upon, by another person, in constructing or using a similar machine — that is, a machine which does not *contain* any idea whatever?

The answer is the same as in the case of the book, viz.: that, although the machine do not literally *contain* the inventor's idea, yet the machine cannot be constructed without *using* his idea. That idea is an *indispensable guide* to the construction of the machine. And this *use* of the inventor's idea, without his consent, is a violation of his rights of property in it.

So, also, in *operating* a machine, the operator *uses* the inventor's idea; for he designs and *endeavors* to produce the same results, as those intended by the inventor, and by the same process, as that devised by the inventor. This, therefore, is a *use* of the inventor's idea, and is consequently a trespass upon his rights.

The same principles apply to sculpture, painting, drawing, &c. A statue, and the design after which it was sculptured, are distinct commodities; and the sale of the statue does not convey any right to use the sculptor's design, for the purpose of making a copy. The same is true of paintings and drawings, the designs of which can be made of sufficient practical value to the authors, to be entitled to be recognized, by law, as objects of private property.

It is not *legally necessary* to give notice, *on a machine*, that the invention is reserved; because, if the invention be such, as that the exclusive use of it will be of any really appreciable value to the author, every body is bound to presume that it is reserved. But where the fact of value is at all doubtful, it may be of utility to give the notice, in order to guard against the doubt.

CHAPTER V.

THE POLICY OF PERPETUITY IN INTELLECTUAL PROPERTY.

As a matter of public policy, the expediency of allowing a man a perpetual property in his ideas, is as clear as is that of allowing him a perpetual property in material things.

What is the argument of policy *against* a perpetual property in ideas? Principally this — that the world will get ideas cheaper, if they get them for nothing, than if they pay for them.

This argument would be just as good in favor of abolishing the right of property in the material products of men's labor, as it is for abolishing it in intellectual ones. Take wheat, for example. If the right of property in wheat were abolished, the world would get the stock of wheat, *that is now on hand*, for nothing. But the next crop of wheat would be a small one; and people would then learn, that in the long run, the cheapest mode, and the only mode, of procuring a constant and ample supply of wheat, is to acknowledge that wheat is the property of the producers, and then to buy it of them by voluntary contract. Under the system of a right of property in wheat, there will be a perpetual supply of wheat; because men have a sufficient motive to produce it; and a man can always procure enough for his uses, by giving a reasonable proportion of the products of his own labor in exchange. But under the system of no right of property in wheat, he would be able to get wheat at no price whatever, after the present stock should be consumed; simply because men would have no sufficient motive to produce wheat, unless their right of property in it were acknowledged.

The principle is the same in regard to valuable ideas. We can get the free use of the *present stock* of ideas, by destroying the

rights of the producers to their property in them. But if we do, the next crop of ideas will be a small one, as in the case of the wheat.

If we want no new ideas, but only wish to get the use of the present stock for nothing, without regard to justice, the true way undoubtedly is, to abolish all rights of property in them. But if we wish to induce men of inventive minds to go on producing new ideas, the true way certainly, if not the only way, is to respect their rights of property in those they have already produced.

But governments have the idea that intellectual men — especially authors and inventors — can be induced to work, if they can but be permitted to enjoy a *partial* or *temporary* property in the products of their labor; while it is conceded that all the rest of mankind should enjoy a full and perpetual property, in the products of theirs. But there are the same reasons of policy, for allowing men a *perpetual* property in their ideas, that there are for allowing them a perpetual property in the material products of their labor.

What are the great incentives to enterprise and industry in the production of *material* wealth? Plainly these — the thoughts that whatever a man acquires, will be his during life, or during pleasure, and that, at his death, whatever he leaves, will go to those whom he wishes to provide for. These are the all-powerful springs, and almost the only springs, that keep all physical industry in motion, and supply the world with wealth.

The policy of nature, for supplying mankind with subsistence, is, that each man shall labor, first and principally, for himself, and those most dear to him; and only secondarily and discretionally, for mankind in general; unless, indeed, his labors for mankind at large, can be made productive of support to himself, and those naturally dependent on him. In this way, each man laboring for, and supplying, those nearest to him, all are labored for, and supplied. This policy is dictated and impelled by the natural strength of the human affections, which are uncontrollable by

human statutes; and no adverse policy, devised or dictated by lawgivers, such as that of requiring a man to work for mankind at large, instead of working for himself and his friends, can either stifle these natural motives, or supply others of any thing like equal power over the energies of men.

But how would these motives be weakened, and nearly deadened, by the knowledge that, at the end of a brief period, the products of a man's labor would be taken from him, against his will, and given to men, whom he never knew, or knowing, does not love? And how would the general production of wealth be checked, and nearly paralyzed, by the establishment of such a principle, as a universal law? How many fruitful farms, for example, would ever have been reclaimed from their wilderness state, if those, who felled the trees, and subdued the soil, had known that, after a period of fourteen years, the fruits of their labors would be taken from them and their families, and be made the common property of the world? How many substantial, comfortable, and elegant dwellings would ever have been erected, if those, who built them, had known that, after occupying them, with their families, for fourteen years, they would be required to admit the world at large to an equal occupancy with themselves? The universal, and the universally known, nature of man answers these questions; and tells us that, with such a prospect before them, mankind, as a general rule, would labor only for the production of such things, as they and theirs could actually *consume* within the time they were allowed to possess them; *that they would not labor for the benefit of robbers, intruders, or strangers;* that they would therefore attempt none of those accumulations for the future, which each man and each generation of men now attempt, under the inducements furnished by the principle of perpetual property, in one's self and his descendants.

The consequence, therefore, of such a principle would be universal poverty. Men would produce only as they consumed. And this state of poverty would continue so long as the right of individual and permanent property was denied. But let the right

of individual and perpetual property, in the products of one's labor, be acknowledged, and the whole face of things changes at once. Each man, secured in his right to what he produces, commences to accumulate for the benefit of himself, and those whom he desires to protect. He controls and enjoys his accumulations during life, and at death leaves an important portion of them to his children, to aid them in making still greater accumulations, which they, in turn, leave to their children. And this process continues, until the world arrives at that state of wealth, in which we now find it; the whole world enriched by the wealth of individual proprietors; instead of the whole world being impoverished, as in the other case, through the impoverishment of the individual producers of wealth.

Such being the law of man's nature, imperatively controlling his motives and energies, there is no reason why the true policy indicated by it — that is, the policy of perpetual property — should not be applied as well to the producers of intellectual, as of material, wealth. There is no reason why the principle of individual and perpetual property, in ideas, will not prove as beneficent towards the whole human family, by stimulating the production of valuable ideas, as does the same principle when applied to corporeal things. Men produce valuable ideas just in proportion as they are furnished with the necessary facilities, and stimulated by adequate motives. This they do under the influence of the same law, which stimulates them to the production of material wealth. And the increase of intellectual wealth would be as much accelerated, by the adoption of the principle of perpetuity, in reference to intellectual property, as is the increase of material wealth, by the adoption of the same principle, in reference to material property. On the other hand, the production of intellectual wealth is as much checked, and discouraged, by the systematic plunder of the producers, as the production of material wealth would be, by the systematic plunder of its producers. The production of intellectual and of material wealth obeys the same laws in these particulars. And these laws are utterly

irrevocable by human enactments. Government cannot *compel* the Arkwrights, and Fultons, and Morses to invent their great ideas, and give them to mankind. It can only *induce* and *enable* them to do it. And *this* the government must do, or mankind must lose the benefits of the ideas themselves.

Such, then, being the inevitable conditions, on which alone these valuable ideas can be obtained, the questions for society to settle are, simply, whether government shall encourage the production of these ideas, by protecting them as property to their producers? And whether, when the public want them, they shall be necessitated to buy them, and pay for them, as for other property? Or whether the production of them shall be discouraged and suppressed, by the systematic and legalized robbery of the producers?

At present, the United States, England, and some other nations say, by their laws, "we will give this property a *partial* protection — that is, the protection of civil, but not of criminal, laws; and even that protection it shall have *only for a brief period;* after which, it shall be a subject for free plunder by all."

What effect this system has upon the production of valuable ideas, may be judged of, by the effect, which a similar system confessedly *would have*, upon the production of wealth, by the physical industry of men. If such a system would discourage all physical industry, it now discourages all intellectual effort, *in a corresponding degree.* And, consequently, we now have a correspondingly less number of valuable inventions, than we otherwise should have. Under a system of *full* protection — that is, the protection of both civil and criminal laws — and of perpetual property in the producers, we should doubtless have five, ten, twenty, or more times as many valuable inventions, as we now have. This may be safely predicated, both from the general principles governing the production of all valuable commodities, namely, that they are produced in quantities corresponding to the protection afforded them, and the prices paid for them; and also from an observation of the present condition of inventors gener-

ally, and of the difficulties they encounter in bringing out their ideas. What is that condition? And what are those difficulties? In the first place, the *general* condition, of both authors and inventors, is that of poverty. Doing incomparably more to enlighten and enrich mankind, than any other persons, they are probably, as a class, poorer than any other *industrious* class in the community. This is all owing, especially in the case of inventors, to the miserable protection afforded to their property, and the consequently small price they obtain for their labor. In the second place, the difficulties they experience in bringing out their ideas, arise solely from their poverty, and their inability to obtain the necessary capital with which to make their experiments, and upon which to live while making them. This inability to obtain capital, results wholly from the want of protection given to such property; whereby the value of each inventor's *prospective* property, in his inventions, is rendered so precarious as to be a wholly inadequate security for investments. The *natural risks* of an inventor's failure to *make* an invention, interpose such an obstacle to the procuring of capital, as can be overcome only by the prospect of large profits in case of success. But when this prospect of large profits, in case of success, is cut off by the inadequate protection afforded to the property to be produced, and the brief period for which even that protection is afforded, there is *no* adequate security left, as a basis for investments. And nearly all capitalists view the matter in this light. Inventors, therefore, as a general rule, are unable to procure capital. The consequence of this want of capital is the same, in the case of inventors, that it is in the case of any of the other industrial classes; for an inventor can no more produce ideas, *without a money capital*, than other men can produce houses, ships, or railroads, without a similar capital. The result is, that a large portion of the inventions, that otherwise would be made, are never brought out; and the world loses the benefit of them. The operation of these causes, in crippling the powers of inventors, is so general, so nearly universal, and so severe, as to have

become a matter of the most public notoriety. Yet the true remedy, and what must, in the nature of things, be the only true and practicable remedy, is seldom proposed, and has never been adopted.

If the property of inventors were fully protected, and made perpetual, they would find no more difficulty in obtaining the capital necessary for their purposes, than other men do in finding it for theirs; because, although there may be more risk as to the success of a *single* experiment of theirs, than there is of the success of the ordinary operations of business, yet, *in the long run*, their labors would be much more lucrative, than the business of other men; and this prospect of superior profit, would enable them easily to command the necessary capital. Invention would become a regular business, a distinct profession, on the part of large numbers of men who have a talent for it, instead of being, as now, little more than the merely occasional occupation of here and there an individual. The number of inventors would thus, not only be greatly increased, but individual inventors would produce many more inventions than they now do. The number of persons, who have a natural capacity for invention, is probably as great as the number of those, who have a natural capacity for poetry, painting, sculpture, or oratory. And doubtless as many have been disabled and dissuaded, by want of means and inducements, from becoming inventors, as have been disabled and dissuaded, by the same causes, from becoming poets, painters, sculptors, or orators. But under a system of full protection, and perpetual property in their inventions, these naturally born inventors would nearly all devote themselves to invention, as their most congenial and lucrative pursuit. And the result doubtless would be, that we should have ten, twenty, and most probably fifty, or one hundred times as many, valuable inventions, as we now have.

Mankind do not perceive their true interests on this subject; and they are paying the penalty for their blindness, in the heavy toil, and the lack of wealth, which so large a portion of them

endure. They have not yet fully learned that their brains, and not their hands, were designed for the performance of all heavy and rapid labor — that is, through the medium of labor-performing inventions. Yet such is the truth, as witness the water wheels, the steam engines, the electric telegraphs, the power looms, the spinning machines, the cotton gins, the carding machines, the sewing machines, the planing machines, the printing presses, the railroads, the vessels propelled by wind and steam, and the thousands of other inventions, (very many of which are so old, and in such common use, that we are apt to forget that they *are* inventions,) by means of which the power and speed of labor are so wonderfully, and almost miraculously, increased. Compare the speed, and the amount of the labor, performed by these instrumentalities, with the speed, and the amount of the labor, performed by men, without the use of these or other inventions; in other words, compare the labors of civilized men, accomplished through the instrumentality of labor-performing inventions, with the labor of savages, accomplished with the hands, unaided by such inventions; and we shall see at once the difference between men's brains and their hands, as instruments of labor. If, now, the products of men's brain labor, were as fully secured to the producers, as are the products of their hand labor, we should see such a development of brain labor, (in the shape of labor-performing inventions,) and of consequent wealth, as the wildest dreams of men have doubtless never conceived of.

Another consideration, that specially commends these inventions to the protection of the law, is, that the wealth, that results from them, cannot be monopolized by the owners of the inventions; but is generally distributed, with great impartiality, among all classes of society, from the richest to the poorest. How is this done? In this way. If the inventor becomes the manufacturer of the thing invented, he, like all other men, finds it for his interest to make quick sales, at small profits, rather than slow and small sales, at large profits; because he will thereby derive the greatest aggregate income from his invention. If, on the

other hand, he chooses to license others to manufacture the thing he has invented, the same principle operates; and he finds it for his interest to license a large number of manufacturers, at low prices, rather than a small number, at high prices. He thereby insures such a competition between them, as will compel *them* to make quick and large sales, at small profits, rather than slow and small sales, at large profits.

If the thing invented be of much importance, and one for which there is a large demand in the community, the inventor generally finds it for his interest to license others to manufacture it, rather than become the manufacturer himself; because he thereby derives a greater profit from his invention, and also finds leisure and means for the more agreeable and lucrative employment of making still other inventions, the use of which he will sell or rent in like manner.

Thus, in all cases, the necessary operation of the laws of trade, or the principles of self-interest, on the part of the inventor, is to induce him, (either directly, as his own manufacturer, or indirectly, through those whom he licenses,) to insure a supply of the commodity to the whole community, at moderate prices. And this depression of prices is, in most cases, still further enforced by rival inventions, which accomplish the same results by different processes. In this way, the wealth produced by an invention, is spread abroad amongst the people at large, at such low rates of compensation, that the inventor secures but a very small portion of that wealth to himself, to wit: that portion only, which is paid him for the privilege of manufacturing and using the thing he has invented. *And that portion, I presume, is certainly, on an average, not more than one per centum of the wealth actually created by his invention.* *

* I shall assume in this chapter, for purposes of argument, that not more than one per centum of the wealth produced by labor-performing inventions, goes into the pockets of the inventors; or would go into their pockets, under a system of perpetual property, on their part, in their inventions. How near the truth this estimate may be, others can judge as well as myself. It is obviously sufficiently near the truth for the purposes of fair illustration.

Thus, in effect, an inventor really gives, outright to society, ninety-nine one-hundredths of all the wealth, which his invention produces. Yet society are so unwise, impolitic, ungenerous, and unjust, as to wish to deprive him even of the one per centum, which he wishes to retain, of the products of his labor. And after a period of fourteen years, they do deprive him of it.

Other producers, in their exchanges with their fellow men, give only dollar for dollar; and yet the government, by both civil and criminal laws, protects the products of their labor to them in perpetuity — that is, to them and their heirs and assigns forever. But inventors, who produce incomparably more than other men, and who, in their exchanges with their fellow men, are habitually accustomed to give one hundred for one, are systematically discouraged, disabled, and even deterred from producing inventions, by being denied all but an imperfect protection, and allowed even that only for a brief period; after which their property is made free plunder for all.

To ask if this be *justice*, would be an insult to the reason of all. The question now is, whether it be *good policy for the public themselves*, to discourage and suppress, by this systematic and wholesale robbery, those producers, who, if protected like other men, will give them an hundred for one? Whether the people at large can afford thus to impoverish themselves, by discouraging and suppressing the production of those inventions, which do nothing but enrich them? Can they afford to deprive themselves of the benefits of those inventions, which they otherwise might have, by refusing to inventors even *one per centum* of the wealth they produce? Can they, in other words, afford to lose the ninety-nine per centum themselves, to avoid paying the one per centum to the producers? These inventions cannot, and will not, be produced in adequate numbers, unless adequately paid for. *That* is a fixed principle in the natural law of production. How much clear gain, then, (for that is the true question to be solved by them,) will mankind realize, *in the long run*, from refusing to trade with, or encourage, a class of producers, who offer them, in

exchange, a hundred for one? The world has long ago decided, that it is the wisest policy to protect the property of, and thereby encourage, those merely ordinary producers of material wealth, who, in their exchanges with their fellow men, demand dollar for dollar. Yet, strange to say, the world has not yet learned, that it is an unwise policy, to systematically plunder, and thereby systematically discourage, those extraordinary producers, (the inventors,) who, in their exchanges with their fellow men, ask but one dollar in exchange for a hundred! The fabled folly of starving the hen, that laid the golden eggs, is fully realized in the conduct of society in plundering and starving their inventors. These labor-saving and labor-performing inventions are the great fountains of wealth, without which mankind, (if the race could subsist at all,) would be only a few wretched savages, scarcely elevated, either in mental development, or physical comfort, above the condition of wild beasts. Yet they pretend to regard it as an act of both policy and justice, to outlaw, plunder, and treat as an enemy, every man who dares to open one of these fountains for their benefit—as if it were a moral duty, and would be a pecuniary profit, to deter and prevent him, and all others like him, from ever doing for them again a deed of such transcendent beneficence! To be consistent in this policy, they should make it a capital offence, for any man to supply the wants, relieve the toil, multiply the comforts, promote the health, prolong the life, enlighten the minds, or increase the happiness, of his fellow men.

The impolicy and inconsistency of governments, on this subject, are as palpable and enormous as their injustice. Take, for example, the governments of England and the United States. The so called statesmen of England have heretofore attempted to improve the *agriculture* of their country. And how did they proceed? Did they encourage chemists to prosecute their researches, and make experiments, to discover new processes or substances, by which the soil might be cheaply fertilized, and made more productive? Did they encourage ingenious men to invent new implements, by the use of which men and animals

might perform more agricultural labor than they could before? Did they encourage either of these classes of inventors, by securing to them, by adequate laws, their just and perpetual property in their inventions? Such laws as would enable them to secure to themselves even *one per centum* of the wealth their inventions would create? No. They did nothing of this. On the contrary, they nearly outlawed their property, by giving it only the partial protection of civil laws, and that for a period of but fourteen years. This is all the encouragement they gave, to those extraordinary wealth producers, the inventors, who were willing and ready to give to the people of England an hundred pounds worth of agricultural products, in exchange for one pound in money. But, in place of thus giving any further or better encouragement to inventors, they proceeded to improve the agriculture of the nation, by laying duties of, say, fifty per centum, on an average, upon all breadstuffs imported from foreign countries; the effect of which was to enable the domestic agriculturalist to demand and obtain, of his fellow men, for all his agricultural productions, fifty per centum more than their just market value. In other words, the government virtually levied, upon the people at large, a tax equal to fifty per centum upon the true value of all the agricultural commodities produced and sold in the kingdom, and gave that enormous amount of money annually, as a gratuity, to those merely ordinary agriculturalists, whose industry was no more meritorious or productive, than the industry of those other people, who were thus taxed, or rather robbed, for their benefit. In still other words, the government, under pretence of promoting and improving the agriculture of the nation, virtually compelled the people at large to pay, to the merely ordinary agriculturalists of England, a pound and a half in money, for every pound's worth of food produced and sold in the kingdom; while, at the same time, it discouraged, outlawed, plundered, *and thus in a great measure drove out of market*, those *extraordinary* agricultural producers, the chemists and inventors, who were anxious and ready to furnish food to the people of

England, at the rate of a hundred pounds worth of food, in exchange for one pound in money.

It is quite easy to see how this system of wholesale robbery was adapted to fill the pockets of the merely ordinary agriculturalists, at the expense of men, whose industry was equally deserving and laborious with their own. But it is not so easy to see what extraordinary adaptation it had, to advance either the art, or the science, of agriculture itself. Yet this was the mode, in which the so called statesmen of England attempted to improve the agriculture of their country. And they persisted in the attempt until the fear of civil war compelled them to abandon the system. But there is still equal, and indeed vastly more, need of a civil war, (if the object cannot be otherwise attained,) to compel the government to protect the property of, and thereby encourage, those extraordinary agriculturalists, the inventors, (including chemists,) who virtually offer to feed the people of England for one per centum of the existing prices.*

The statesmen of the United States of America attempted to promote the manufacturing arts in their country, by a system of legislation, similar to that adopted in England for the promotion of agriculture. They, in a great measure, outlawed the property of, and thereby discouraged, those inventive men, who would have devised new processes in the mechanic arts, whereby great wealth could be produced by a small amount of human labor; and who, as a compensation for their inventions, would have demanded but one per centum of the wealth those inventions would create. Having done this, they levied such duties on imported manufactures, as would make it necessary for the people at large to purchase their manufactured commodities, of the domestic manufacturer, (a mere ordinary producer, whose industry was no more meritorious than that of other men generally,) at the rate of,

* I say the inventors, *as a class*, virtually offer to feed the people of England at one per centum upon existing prices, because I assume that each individual inventor asks, for his invention, not more than one per centum of the agricultural wealth it produces.

say, fifty per centum above their true market value. In other words, they compelled the people of the country, to buy their manufactured commodities of the mere ordinary producers, and pay them one dollar and a half in money, for every dollar's worth of goods; and at the same time outlawed, plundered, and thus discouraged, and in a great measure drove out of market, those extraordinary manufacturers, the inventors, who would have supplied the people with the same commodities, at the rate of *one per centum* on existing prices.* And they persisted in this policy until, as in England, the imminent danger of civil war compelled them, not to abandon the system, (for the system is not yet abandoned,) but to mitigate its severity. But a civil war is needed still more now, than then, (if the object cannot otherwise be secured,) to compel the government to protect the property of, and thereby encourage, those extraordinary manufacturers, the inventors, who in their exchanges with their fellow men, virtually give a hundred dollars worth of manufactured commodities, for one dollar in money.

The system of policy thus enforced upon the people, in England and the United States, is an example of that pretended wisdom, by which the affairs of nations are managed; and which, it is claimed, *is far superior to the wisdom of justice!* When will mankind learn — and compel their governments to conform to the knowledge — that justice is better policy than any scheme of robbery, that was ever devised? And that the true way of stimulating equally, justly, and to the utmost, both the physical and mental industry of all men, in the production of wealth, is simply to protect each and every man equally, in the exclusive and perpetual right to the products of his labor — whether those products be ideas, or material things?

If one tenth, (doubtless I might say one hundredth,) of those

* I say the inventors offer to supply the people with manufactured commodities, at the rate of one per centum on existing prices, because I assume, as before, that inventors would sell the use of their inventions, for one per centum of the wealth, which those inventions would create.

immense sums, which government has robbed from the people of England, and given, as a gratuity, to those ordinary agriculturalists, whose industry had no merit above that of other men, had been paid to chemists, who should have discovered new processes and substances for cheaply fertilizing the soil, and making it more productive; and to those mechanical inventors, who should have devised superior implements and instrumentalities for agricultural labor; who can rationally doubt, that the agriculture of England, both as a science and an art, would have been immeasurably in advance of what it is now? Or if one tenth, (I think I might say one hundredth,) of those many hundreds of millions of money, which in the United States, the government has plundered from the people, and given, as a gratuity, to those ordinary manufacturers, whose industry had no merit above that of other men, had been paid to those inventors, who should have devised new processes of manufacture, new machinery, new motive forces, and other instrumentalities for performing manufacturing labor, new articles to be manufactured, and new materials susceptible of manufacture; what rational man can doubt, that the manufacturing arts would, at this day, have been immeasurably in advance of what they now are?

But, with a considerable portion of mankind, robbery has been the favorite mode of acquiring wealth in all ages. All men desire exemption from severe toil; and the strong have usually sought to obtain it by robbing the weak. Thus strong nations have always been in the habit of making war upon weak nations, really from motives of plunder, though other motives may have been assigned. So also the rich and strong classes in a nation, have always been in the habit of combining, for the purpose of plundering the weaker classes of the same nation, by unequal and rapacious modes of taxation, and numerous other devices. In both cases the robbers seem not to have been aware, and probably have not been aware, that if all mankind were permitted to live in peace, and each individual to enjoy the fruits of his own labor, (including ideas, as well as material property,) the wealth of the

world would increase at a rate that would enrich substantially *all* its inhabitants, incomparably faster even, than the strong can now enrich themselves, by the robbery of the weak. Take, for example, the cost, to the conquerors, of any war, ancient or modern, that has been carried on for purposes of plunder. Suppose *one tenth* of that cost, instead of being expended in war, had been paid to inventors; does any one doubt that, for that sum, inventions could have been produced, that would have added more to the wealth of the nation, than was gained by the conquest? And these inventions would not only have enriched the nation that produced them, but would have been also communicated to other nations. Thus many nations would have been enriched, at one tenth of the cost, at which one nation enriched itself, by the subjection and robbery of another.

At the present day, this policy of robbery is still predominant in the world; so much so, that nearly all the civilized nations of the world, keep immense armies, or navies, or both, for the double purpose of robbing other nations, and of protecting themselves against similar robbery. If one tithe of the money, that is annually paid for these purposes, by the several nations of Europe, were paid to inventors, these several nations might not only live in peace with each other, but each and all would very speedily attain to a wealth, greater than conquest ever aimed at, or conquerors ever conceived of.

To sustain the literal truth of this calculation, let us consider the wealth acquired by conquest, compared with that created by mechanical inventions. Of course, neither can be estimated with any thing like precision; but I apprehend it would be entirely within the limits of truth to say, that all the wars of Europe and America, in the last thousand years, have not brought as much net wealth to the conquerors, as has been created by the steam engine, and its subsidiary inventions, in the last ten, or even five, years. I apprehend also that all the British conquests in India, within the last hundred years, and all the oppressions practised, within that time, upon 100,000,000 of people, have not succeeded

in extracting so much net wealth from that country, as has been created by the spindles and looms of England, in the last ten, or perhaps even five, years.

If these conjectures be true, or any thing like the truth, they ought to do something towards opening men's eyes to the comparative policy of encouraging inventors, and supporting soldiers. And when it is considered that all these wars have been carried on, at the instigation and dictation of so called statesmen, we have an opportunity to judge, whether statesmen and soldiers, or inventors, are the real benefactors of mankind, and deserving of their support.

I imagine that few people stop to consider how large a proportion of the wealth, now existing in the world, is the product of labor-performing inventions. I recently saw it estimated, by a most respectable authority, that the steam engine had quadrupled the wealth of the United States. How near the truth this estimate may be, I do not venture to assert. But it is probably sufficiently near the truth for the purposes of this discussion. Now it is hardly fifty years, since the steam engine was brought to such perfection, and put into such extensive operation, in the United States, as to contribute very materially to the wealth of the country. Yet it is now said that it has quadrupled that wealth!

And how much have the people of this country ever paid to the inventors of the steam engine, in return for the immense wealth, which it has created? How much! It can hardly be said that they have paid any thing. If they have paid any thing, the amount has been so utterly contemptible, as that no one, who has any sense of shame, or any sentiment of justice, could hardly wish to see the amount put in print. But has such meanness and injustice been a wise policy for the people themselves? No. If they had paid to the inventors of the steam engine but one per centum annually of the wealth that invention was creating, they would thereby have given such a stimulus to invention, that we should doubtless, long before now, have had in

use other motive forces far cheaper, safer, and better than steam. And what would have been good policy towards the inventors of the steam engine, would be good policy towards all other inventors. The amounts, that would be paid them, under a system of perpetual property, and full protection, would be, as we have before supposed, but one per centum of the wealth created by them. This one per centum is certainly but a trifle, a mere bagatelle, for the people to pay, out of the wealth created for them, and given to them, by the inventors. Yet this trifle, paid by the people, would be fortunes to those receiving it; and would give such encouragement to inventors generally, that inventions would be multiplied with a rapidity, of which we have now little conception. And the people would have the benefit of them. But so long as they refuse to pay even one per centum of the wealth produced, for the inventions they now have, it is reasonable to conclude they will have the benefit of but few new ones, compared with the number they otherwise might have.*

* A day or two before handing this chapter to the printer, my eye fell upon the following article, in the *New York Tribune*, of Sept. 15, 1854, which fairly illustrates the wretched economy of the imperfect protection afforded to inventors. It would appear, from this article, that if the rights of inventors had been justly protected in 1824, the world would have had the benefit of an improved reaping machine, some twenty years before it did have it. If any man can tell how many thousands of millions of dollars worth of human labor would have been saved, taking the civilized world together, during those twenty years, by the use of such a machine, he will perhaps be able to form some tolerable estimate of the *net profit*, which the world has realized, from its ignorance, meanness, and dishonesty, in practically denying that Mr. May had any right of property in his invention. And when the calculator shall have ascertained how much clear gain the world has thus made, by keeping back, for twenty years, the use of the reaping machine, he will perhaps be able to make some conjectural computation, (if he can find figures in which to write it,) of the aggregate loss it has suffered from keeping back, in like manner, the use of, and perhaps forever suppressing, thousands, and tens of thousands, of other important inventions, which it might have had the use of during the same period, and for ages before, if its legislation had but adopted the principles of common honesty, instead of open knavery, towards inventors.

The editor of the *Tribune* has acquired a high reputation as a political econo-

Let us now consider the reasons of policy, other than cheapness, *against* giving, to the property of inventors, that full and perpetual protection, which is given to the property of other men.

1. It is objected that the property of inventors ought not to have the protection of the *criminal* laws.

What foundation there is for this objection, I have never heard. And I apprehend that no reason whatever, worthy of a moment's consideration, can be offered, why the property of inventors should

mist, by his unwearied advocacy of restrictions on trade, as the grand instrumentality for stimulating production. Is there no sarcasm on the political economy of the age, in the fact, that such a man should draw no more important inferences, from the incident he relates, than the merely personal one, that the Messrs. May, father and son, lost the chance of "an ample independence for them both;" and the additional one, that somebody ought to "write that most interesting and instructive of all unwritten books — the Romance and Reality of Invention," "not only as a deserved memento of world-acknowledged merit, due as well to living as to dead, but as a stimulant to the hearts and labors of a class existing every where around us?" Strange indeed is it, that it should never occur to him that there could be any more fitting "memento of acknowledged merit," nor any more proper or necessary "stimulant to the hearts and labors" of inventors, than a book, descriptive of their struggles and adversities. Yet, ludicrous, if not heartless and insulting, as are these inferences of the editor of the *Tribune*, it should be mentioned, that he is probably in advance of most public men, both in his sympathies and principles, in behalf of inventors. I submit, however, that it is not in entirely good taste for one, whose own ideas are no farther advanced on this subject, to talk quite so contemptuously of those "boorish minds," who "refused to be convinced" by "demonstration," and who, in its infancy, could even "nickname" a valuable invention as "Harvey's Folly," and "Harvey's Great Amazement."

"THE VICISSITUDES OF INVENTORS.

"The private history of many inventions, if fully written out, would form a volume of abundant dimensions. Its chapters would unfold a world of practical romance; the struggles of ingenious poverty, which no discouragement could paralyze; the undying perseverance of minds conscious of colossal strength; the hopes, the fears, the bitter disappointments of commanding genius; the triumphs that have sometimes crowned the labors of these patient toilers in their solitary work-shops; the brilliant recompense of mere luck or accident; the villany of confidential friends — in fact a measureless catalogue of contingencies, which seem peculiar to inventors as a class. Authors — of books only — have had *their*

not have the protection of these laws, as fully as any other property. The wilful invasion of another man's property, from motives either of malice or gain, *is a crime;* and if crimes against property are to be punished at all, crimes against the property of inventors should be punished as well as others. What security would there be for *material* property, if the owner had no remedy for trespasses against it, except the privilege of bringing a civil suit for damages, at his own expense? Every one can see that,

calamities collected and amplified with a touching pathos. The Pursuit of Knowledge under Difficulties, gathered up into a volume too small to embody more than a meagre fraction of its heart-depressing experiences, has fixed the attention and touched the sympathies of kindred minds, wherever its collected records have become known. Some careful hand should also gather up the Vicissitudes of Inventors, not only as a deserved memento of world-acknowledged merit, due as well to living as to dead, but as a stimulant to the hearts and labors of a class existing everywhere around us, and enlarging as the circle of the arts and sciences extends.

"Let us take a solitary instance, unknown to fame, but illustrative of the common difficulties which obstruct the path of poor and ingenious men. The whole world has become familiar with the great American Reaper, which the London Exhibition first introduced to European observation. Yet as long ago as 1824, a young boy in Washington County, New York — Harvey May, by name — conceived the idea of a machine for similar purposes. He tried his first experiment with shears, the blades of which were so curved as to present nearly the same angles of edge, from heel to point, while cutting. The following year he tried again, using a reel and sickle edge, but returned to the vibrating edges. Continuing these trials, amid a world of difficulties and opposition, the sneers and ridicule of a community of boorish minds, he at last succeeded completely. His crudely-built machine — for no one awarded him the cheap aid of sympathetic encouragement, much less practical mechanical help — extended into the grain to the right, and was mounted on the hind wheels of his father's lumber-waggon. With large wheels and simple geering, a single horse drew the inventor and his brother on the machine, and it actually cut heavy rye at the rate of an acre an hour. Those who looked on and witnessed its marvellous performance, refused to be convinced. The science of demonstration was unknown to their vocabulary. His neighbors did condescend to grant that the whole affair was quite original, but complimented him by calling it 'Harvey's Folly.' Further trials, however, only rendered the machine even more perfect, whereupon it received the further nickname of 'Harvey's Great Amazement.' Mr. May, in writing recently of this promising germ of what has since unfolded into a great industrial improvement, says, with touching simplicity, that he intended taking out a

in that case, property would be overrun with trespassers, who were irresponsible in damages, and who would commit their trespasses with the intent of getting what they could by them, and consuming it, so as to have nothing left, with which to answer the judgments, that might be obtained against them. It would therefore be an utter farce to pretend to protect property at all, without the aid of criminal laws. It would be equivalent to granting a free license to all irresponsible trespassers. Men might as well surrender their property at once, as to think of protecting it by civil suits merely; for they would consume their property in expenses, and would get protection, only when they had no property left to be protected. Yet this is the kind of protection, and substantially all the protection, which our laws, as at present administered, give to the property of inventors. And the consequence generally is, that the expenditure of time and money, required to protect an inventor in his rights, is such as to impoverish him, and make it impossible for him to protect himself to any considerable degree, even during the brief period, for which the government professes to protect him.

Cannot the public see that such things are a discouragement to invention and inventors? And can they not see that, if they wish to encourage inventors, and have the benefit of their inventions, it is plainly for their interest to give, to the property of

patent, but 'My father refused to help me in this; for he said the patent laws were only calculated to draw men into ruinous lawsuits. I tried to get help from others, but all refused to help me when they learned my father's views on the patent laws.' Thus, with the evidence of success before him, this youthful genius was compelled to see his great invention perish. Other inventors in the same prolific field, have gathered in abundant harvests of gold from the profits of *their* reapers. Had the over-cautious father stimulated, with judicious sympathy and advice, the genius of his promising son, the product would in all probability have been an ample independence for them both.

"We might illustrate the same course of thought by a thousand other instances equally touching, but the suggestion is sufficient. Who will write that most interesting and instructive of all unwritten books — the Romance and Reality of Invention?"

inventors, the same protection of the criminal laws, which is accorded to material property?

2. It is objected that inventions, if secured to their authors, become monopolies, and therefore ought not to be perpetual.

The answer to this objection is, that all property is a monopoly. The very foundation and principle of the right of property are, that each man has a right to monopolize what he produces, and what is his own. The right of all men to their property, rests on this foundation alone. Monopolies are unjust and impolitic, only when they give to one what belongs of right to others. And it is only to *such* monopolies that the word *monopoly* is usually applied. It is an abuse of the term to apply it to a man's legitimate and rightful property. If an invention do not rightfully belong to him alone, who produced it, he of course should not be allowed to monopolize it. But if it do rightfully belong to him alone, then he has a right to monopolize it; and other men have no more right or reason to complain that he is allowed to monopolize it, than *he* has to complain that *they* are allowed to monopolize whatever is their own.

There is no more reason or justice, in applying the word *monopoly, in an odious sense*, to an invention, which one man has produced, and therefore rightfully owns, than there would be in applying the same term to any other wealth whatever, which one man has produced, and therefore rightfully owns. There is no resemblance at all between such monopolies, and those monopolies, which are arbitrarily created by legislatures; whereby they give to one man, or to a few men, an exclusive privilege to exercise a right, or practice an employment, which other men have naturally and justly the same right to exercise and practice. All such monopolies are plain violations of natural justice; because they take from one man a right that belongs to him, and give it to another. But an invention is the product of individual labor, and of right belongs to him who produces it; and therefore there is no injustice in saying that he alone shall have a right to it — the same right that he has to any other property he has produced

— that is, the right to exercise absolute dominion over it, and to do with it as he pleases, whether it be to keep it, sell it, or give it away.

This objection of *monopoly*, when applied to inventions, is mere sound without meaning. It has neither reason nor justice to sustain it. It is simply an odious name, wrongfully applied to a just and natural right, by those who want a pretext for taking a man's property from him, and applying it to their own use.

3. A third objection is, that if inventors were allowed a perpetual property in their inventions, *they would become too rich.*

This objection, if good against any inventors, can be good only against a very few, in comparison with the whole number; for but a few, if any, could ever acquire *inordinate* wealth by their inventions. It is certainly unjust to deprive the whole of their rights, simply to guard against extravagant fortunes on the part of a few. But our laws make no distinctions of this kind. On the contrary, they condemn nearly all to indiscriminate poverty, under pretence of preventing *any* from accumulating immoderate wealth.

If any are to be deprived of their right to a perpetual property in their inventions, clearly it should be those few, *and only those few*, whose wealth would otherwise become enormous. And even those few, it would be unjust to deprive of their property, the products of their honest labor, *until their fortunes had actually reached the utmost limit, to which society sees fit to allow private fortunes to go.* To deprive them of their property, *before their fortunes have attained the legal limit*, simply through fear that they may *sometime* go beyond it, would be a very absurd and premature robbery.

But what right has society to set limits to the fortunes, that individuals shall acquire? Certainly it has no such right; and it attempts to exercise no such power, except in the case of inventors. To all other persons it says, go on accumulating to the extent of your ability, subject only to this restriction, *that you use only honest means in acquiring.* Why should any other

restriction be imposed upon the accumulations of inventors, than is imposed upon the accumulations of other men? Who has such a right to be rich as an inventor? Who gives such wealth to mankind as he? Certainly, if a man, who not only produces wealth as honestly as any other man, but who produces incalculably more than other men, and who virtually gives ninety-nine per centum of it, as a gratuity, to the public, cannot be allowed to become rich, who are the men who are entitled to that privilege? Other men, who produce hardly any thing, compared with an inventor, and who, if they can avoid it, give never a dollar of their earnings to mankind, without receiving a full dollar in return, are nevertheless allowed to acquire their millions, and indeed to accumulate without restriction, so long as they accumulate honestly. But an inventor, who creates immeasurably more wealth than any other man, and who reserves but one per centum of it to himself, giving the rest to the public, must be limited by law in his acquisitions, and deprived even of that one per centum of his own earnings, *lest he become too rich!*

Every valuable invention ought to give certain wealth to the inventor; the more valuable the invention, the more wealth should it bring to him. The most valuable inventions, should bring *great* wealth to the inventors. It is not only just to the inventors, *but it is for the interest of society at large*, that it should be so; because the production of inventions is stimulated, substantially in the ratio of the wealth of the inventors.

But is there really any danger that, if inventors were allowed a perpetual property in their ideas, any very enormous or immoderate wealth would accumulate in their hands? There are many, and probably insuperable, obstacles to such a result. Let us look at the subject somewhat closely.

In the first place, wealth, in the aspect in which we are now considering it, is *relative*. A man is rich, or poor, in proportion as he has more or less than an average share of the wealth of the world. A man, who, in England, would have been very rich, relatively with his neighbors, five hundred years ago, would now,

with property of the same nominal value, as then, be very poor, relatively with his neighbors; because his neighbors have now increased so much in wealth. In judging, therefore, whether inventors would become immoderately rich, under a system of perpetual property in their inventions, we must consider what would be the general state of wealth around them, under the same system.

We are to consider, then, that under that system, (of perpetual property in inventions,) the number of inventions would be very greatly augmented, and consequently the general wealth of society astonishingly increased. And it would consequently require vastly more actual wealth, to make a man *relatively* rich, than it does now. This single consideration will probably be sufficient, with most minds, to reduce the bugbear of enormous wealth, (on the part of inventors,) to about half its original dimensions.

In the second place, few inventions are very long lived. By this I mean that few inventions are in practical use a very long time, before they are superseded by other inventions, that accomplish the same purposes better. A very large portion of inventions live but a few years, say, five, ten, or twenty years. I doubt if one invention in five, (of sufficient importance to be patented,) lives fifty years. And I think it doubtful if five in a hundred live a hundred years.*

Under a system of perpetuity in intellectual property, inventions would be still shorter lived than at present; because, owing to the activity given to men's inventive faculties, one invention would be earlier superseded by another.

I think these considerations alone ought to diminish the bugbear again to one half its already reduced dimensions — that is, to one fourth its original size.

In the third place, the danger of overgrown fortunes is obviated by still another consideration, to wit, that few or no *impor-*

* I have no *special* knowledge on the point mentioned in the text, and only give my opinion as a matter of conjecture.

tant inventions are brought to perfection by a single mind. One man brings out an invention in an imperfect state; another improves upon it; another improves upon the improvement, and so on, until the thing is perfected only by the labor of two, three, five, or ten different minds. The complete invention thus becomes the joint property of several different persons, who share in the income from it in such proportions respectively as they can agree upon. The obvious presumption is, that no single individual will ever derive a sufficient income from it, to give him a fortune immoderately, or grossly, disproportioned to the wealth of others.

I think it must be safe now to say, that the bugbear, that was at first so frightful, is no longer a thing to be seriously dreaded.

But a fourth consideration, which must absolutely annihilate the phantom, is this — that if any particular invention should be found to be a source of immoderate wealth to its possessors, that fact would be sufficient, *of itself*, to turn the minds of inventors, in the direction of that invention; and the result would soon be the production of one or more competing inventions, that would accomplish the same end by a different process; and either supersede the first invention altogether, or at least divide with it the profits of the business, to which it was applied.

I now take it for granted that the objection of inordinate wealth, on the part of inventors, has been fairly disposed of.

4. A fourth objection is, that if inventors were allowed a perpetual property in their inventions, their power would become dangerous to the liberties of the people at large.

This idea, although one that might naturally enough occur to an objector, will yet, on reflection, be seen to be wholly without foundation in reason. Political power depends principally upon the command of wealth; and therefore the considerations, that have just been stated, in answer to the objection of enormous wealth, on the part of inventors, are sufficient to show, that it would be the farthest thing from possibility, for an individual to

monopolize enough of any one or more inventions, to give him any dangerous political power.

Another consideration, sufficient of itself to dissipate this danger, is, that the number of inventors would be great, and if any one of them should prove ambitious of a dangerous political supremacy, the power of the others would be sufficient to hold him in check.

Still another consideration is, that, in the nature of things, *the people*, who receive ninety-nine per centum of all the wealth created by inventions, can be in no danger from the power of inventors, who retain but one per centum of it. Every inventor, therefore, puts into the hands of the people, ninety-nine times more power than he retains in his own hands. How long a time would be requisite for him, to acquire absolute power over the people, by such a process?

A last reflection, worthy of notice, on this head, is, that inventors are not constitutionally ambitious of political power. Such a thing as a *great* inventor, ambitious of political power, was probably never known. Their ambition is of a far less depraved and vulgar kind. The triumphs, of which they are ambitious, are triumphs over nature, for the benefit of mankind; not over mankind, for the benefit of themselves.

Inventions, instead of tending to the enslavement of mankind, tend to their liberation, by putting wealth and power into the hands of all, and thus liberating each from his dependence upon others.

5. The fifth objection to the principle of perpetuity in intellectual property, is the objection of inconvenience.

It is no doubt an inconvenience, for a man to be under the necessity to buy an idea, when he wants it. But on the other hand, it is a great convenience to the producer of the idea, that he can command pay for it, from those who wish to use it. The inconvenience and the convenience to these parties respectively, are precisely the same, and no other, than they are to the buyer and seller of any other property. And the argument from

inconvenience is just as strong, against allowing any right of property in *material* commodities, as it is against allowing any right of property in intellectual commodities.

But because a man has a natural right of property in every idea he originates, it is not therefore to be inferred, that every man would *wish* to retain his exclusive right to every idea, however unimportant, that he might originate, and demand pay of every one who wished to use it. It is only a few ideas, that have sufficient market value, to make it worth a man's while to make them articles of merchandise. It is only a few ideas, that would find *any* purchasers, if a price were set on them by the owner. If a man were to set a price on merely trivial ideas, he would find no purchasers. The result would be, that a man would retain his exclusive property, only in those ideas, that would sell in the market for such prices, as would make it worth his while to sell them. And for such ideas men can as well afford to pay, as for material things of the same market value.

A few words as to the effects of the principle of perpetuity upon *literature.*

Literary labor is controlled by the same law as other intellectual labor — that is, the nature of the market determines, in a great measure, the character of the supply. If the law allow an author but a brief property in his works, literature will be mostly of a superficial, frivolous, and ephemeral character; such as ministers to the appetite of the hour, and finds a rapid, but temporary sale — as, for example, romances and other works, which naturally have a short life, and which it requires but little thought or labor to produce. The prevailing literature will be of this kind, for the reason that this is the only kind which can be *afforded.* If, on the other hand, a perpetual property be allowed, encouragement is given to the production of a widely different class of works, namely, those profound, scientific, and philosophical works, which are written, not merely for the present, but for the future; and which, instead of pandering to the frivolities, fancies, appetites, or errors of the hour, seek to supplant and correct

them, by creating and supplying a demand for more valuable knowledge. These works find fewer readers at first, than the others; and the prospect of a more lasting demand for them, is the only chance their authors have of remuneration for the greater labor required for their production. Under the present system, few such works are produced at all; and those generally at great sacrifices to their authors. But if a perpetual property in them were allowed, men, competent to produce them, *could afford* to produce them; for the reason that their copyrights, if sold, would bring a higher present price, or, if retained, would be good estates for them to leave to their children.

These profound works, which it requires great powers, great patience, and great labor, to produce, are the only works that really do much for the progress of the race, or the advancement of knowledge among men. They are indispensable to the rapid intellectual growth of mankind. Yet, like other things, the products of human labor, they can, as a general rule, be had only for money. The greatest minds inhabit bodies, that must be fed and clothed, like the bodies of other men. The wisest men, too, as well as the less wise, have families whose wants must be supplied. If these wants cannot be supplied by authorship, there is no alternative for these men, but to engage in some of the ordinary avocations of society. The consequence is, that many of the greatest minds, those, who ought to do, and who, under the principle of perpetuity in intellectual property, would do, much for the permanent enlightenment, and the lasting intellectual advancement of mankind, are now, from necessity, occupied in pursuits, for which smaller minds are amply competent — such as the common routine of professional and political life — in which pursuits, they passively adopt, act upon, and thereby promulgate, at best, only such common knowledge, and with it such common ignorance, as the public demand calls for in those labors. This they do, simply because the laws deprive them of the natural and just rewards of those higher labors, for which their capacities and their aspirations naturally qualify them. And they conse-

quently pass through the world, doing little or nothing for its permanent welfare; and really living upon, and assisting to perpetuate, the ignorance, follies, crimes, and sufferings of mankind, solely because the laws virtually forbid them to live by removing them.

It would be easy to follow out this idea, and show more in detail what effect the perpetuity of intellectual property would have upon the progress of knowledge; but the principle is so self-evident, that it can hardly need any further illustration.

No objection can be made to the perpetuity of literary property, on the ground that authors would become extravagantly rich. The great competition among themselves; the short life, which most works would have; and the slow sale of those having a longer life, would all conspire to make it impossible for authors to acquire great wealth. In this respect they would differ from inventors.

Enough has probably now been said, to show that authors will enlighten, and inventors enrich, mankind, if they can but be paid for it, *and not otherwise.*

Manifestly it cannot be for the interest of mankind, to starve and discourage authors and inventors, if science and art, like all other marketable commodities, are really produced just in proportion to the demand for them, and the prices they bear in the market. Mankind have abundant need of all the knowledge, and all the wealth, which authors and inventors can furnish them. And they can certainly afford to pay for them, at the low prices, at which knowledge is offered by authors, and wealth by inventors; for there are no other means by which such knowledge and such wealth can be obtained so cheaply. Why, then, do not mankind purchase and pay for them at these prices, instead of striving to live upon such a supply only, as they can obtain by niggardly purchases, and dishonest plunder? There is certainly as little sound economy, as sound morality, in the course they pursue on this subject. Why, then, do they continue in it? My own opinion is this.

It is not that mankind at large are so wilfully dishonest, as to

wish to deprive authors and inventors, any more than other men, of the fruits of their labors. It is contrary to nature, that mankind at large should be, either so unjust, or so ungenerous, to their greatest benefactors. Neither is it because they are *wilfully* ignorant of their own true interests in the matter; for it is contrary to nature that any man, honest, or dishonest, should be *wilfully* ignorant of his own true interests. But it is because they are deceived, both as to their own interests, and as to the just rights of authors and inventors, by those who are interested to deceive them.

Who, then, are the parties, who are interested to deceive the people at large, as to the true interests of the latter, and as to the just rights of authors and inventors? There are at least three classes. First, the whole class of pirates, who have a direct and powerful pecuniary interest, in plundering authors and inventors; because they thereby put into their own pockets some portion, at least, of that wealth, which would otherwise go to the authors and inventors themselves. Secondly, men ambitious of the reputation and influence of wealth, who fear that their wealth may be eclipsed by the wealth of inventors. Thirdly, political men, ambitious of intellectual reputations, who fear that their own would be eclipsed, as they really would be, by the reputations of both authors and inventors. The services rendered to mankind by great authors, and great inventors, are so incomparably superior, in brilliancy, permanency, and value, to any that *can* be performed by political men, (with possibly here and there a rare exception,) that it is not to be expected that the latter, with whom ambition is a ruling passion, should look with favor on such rivals as the former.

There are, then, three classes of men, who have a special and selfish interest to decry the rights of authors and inventors; and to deceive the people at large in regard to them. And they do it by such bugbears and sophistry, as have been exposed in the preceding pages. The influence of the two latter classes is especially powerful; for they have a direct, and nearly absolute, control

over legislation. And it is probably owing to the jealousy of these two classes, more than to all other causes, that the rights of authors and inventors have not been already acknowledged. The nobility of England, for example, whose wealth and power are hereditary, and founded on no personal merit or service, compose one branch of the legislative power of England, and have great influence in the election and control of the other; and they doubtless have sagacity enough to see, that the principle of perpetuity in intellectual property, would soon raise up a generation of authors and inventors, the latter of whom would rival them in wealth, and both of whom would wholly eclipse them in deeds commanding public admiration and gratitude; and both of whom also would contribute powerfully, and probably irresistibly, to prostrate their usurped and iniquitous political power. It is not therefore to be expected that the House of Lords, or those whom they can control in the House of Commons, will ever legislate for the principle of perpetuity in intellectual property. And the principle may perhaps triumph, in England, only on the ruins of existing political institutions. On the continent of Europe, there are obstacles to be overcome, in the jealousies of wealth, and of hereditary and tyrannical rulers, of a similar nature to those in England. In the United States, the obstacles are not so palpable, and probably not so great. But they are nevertheless such as are not to be despised. In all countries, they are doubtless such, as can be overcome, only by disseminating widely among the people the true principles of law, and the true principles of political economy, applicable to the question.

PART II

CHAPTER VI.

THE COMMON LAW OF ENGLAND RELATIVE TO INTELLECTUAL PROPERTY.

SECTION I.

What is the Common Law of England?

In order to determine whether the Common Law of England sustains the right of authors and inventors to an absolute and perpetual property in their ideas, it is only necessary to determine what the Common Law of England really is.

To many unprofessional readers, the term *Common Law* will convey no very certain or precise idea; and as I am anxious that they should fully understand this discussion, at every step, I shall define the term more at length than would otherwise be necessary.

The Common Law of England, then, *with a few exceptions, which are wholly immaterial to the question of intellectual property*, consists of, and is identical with, *the simple principles of natural justice.* In ancient times, it was often called "*right*," "*common right*," and sometimes "*common justice.*" Magna Charta calls it "*justice and right.*" It is what unprofessional men have in mind when they speak of their "*rights;*" of "*justice;*" of men's "natural rights," &c. It is the principle, or rule, which rightfully determines what is one man's property, and what is another's. It is often called the science of *mine* and *thine;* meaning thereby the science, by which we ascertain what is rightfully one man's, and what is rightfully another's. It is the principle, which an honest man appeals to, when he says, this

thing is *mine*, and such are my "*rights*." It is that rule of judgment and decision, which impartial men usually, naturally, and intuitively perceive to be *just*, for the settlement of controversies between individuals in regard to their *rights*. It is the same principle, which writers on law usually call the *law of nature*, and the *universal law*. It is that natural law of justice, which Cicero says is the same at Rome and at Athens, the same to-day and to-morrow, and which neither the senate nor the people can abrogate. It is that natural and universal law of justice, which, over all the world, among civilized and savage men alike, is acknowledged as the obligatory rule of adjudication, in all legal controversies whatsoever, *except those few, in regard to which some special or peculiar institution or enactment has been arbitrarily established to the contrary, by particular governments or people.*. It is the law, of which Sir William Jones speaks, when he says, "It is pleasing to remark the similarity, or rather the identity, of those conclusions, which pure unbiassed reason, in all ages and nations, seldom fails to draw, in such juridical inquiries as are not fettered and manacled by positive institutions."* Kent says of it, "The Common Law includes those principles, usages, and rules of action, applicable to the government and security of person and property, which do not rest for their authority upon any express and positive declaration of the will of the legislature. A great proportion of the rules and maxims, which constitute the immense code of the Common Law, grew into use by gradual adoption, and received the sanction of the courts of justice, *without any legislative act or interference. It was the application of the dictates of natural justice and cultivated reason to particular cases.*" †

The Common Law, or the law of nature, is often called "the perfection of reason;" meaning thereby the conclusions, to which the highest reason has arrived, in its searches after the true principles of justice.

* *Jones on Bailments* 133. † 1 *Kent* 522. 7th edition.

It will be seen from what has been stated, that, *with the exceptions before alluded to,** the Common Law, or, what is the same thing, the law of nature, is a *science*, as much so as any of the other sciences. *It is the science of justice*, as mathematics is the science of numbers and quantities. As a science, it is applicable to all the infinity of relations, in which men can stand to each other, and to each other's properties; and determines what are their respective *rights*, or what, in justice, belongs to one, and what to another. Like mathematics, it consists of certain elementary principles, the truth and justice of which are so nearly self-evident as to be readily perceived by nearly all persons of common understandings. And all the difficulty of settling new questions at Common Law, arises from the fact that every new law question depends upon a new state of facts, which call for new combinations, or applications, of these elementary principles; just as the solution of every new mathematical problem requires new combinations of the elementary principles of mathematics.

In the progress of the human race from savageism to civilization, and from brutish ignorance to the present state of enlightenment, this *science of justice*, which in England is called the Common Law, has of necessity made great progress; and this progress has been made from the same causes, by which the science of numbers and quantities has made progress — that is, from the fact that the circumstances and necessities of mankind have continually *compelled* them to such inquiries; and thus knowledge has been ever accumulating, in one science, as in the other. In the darkest periods of the human mind, doubtless men

* Among the exceptions referred to, are these — that a women, on marriage, shall lose the control of her property, her natural right of making contracts, &c.; that a child, born out of wedlock, shall not inherit the father's estate; and some others not necessary to be named. These exceptions to the principles of natural law, are of such antiquity, that the time and mode of their establishment are now unknown. And no laws whatever, contrary to the law of nature, are parts of the Common Law, *unless they have been in force from time immemorial.* It will be shown hereafter that no immemorial law has existed in England, adverse to the rights of authors and inventors to a perpetual property in their ideas.

hardly knew that two and two were equal to four; or that two halves were equal to one whole. Now they can measure the size of planets, and the distances of stars. So in matters of justice — there was doubtless a time, when men were so nearly on a level with the brutes, as hardly to know that one man had not a right to kill his fellow man at pleasure. Now men have learned that they have separate, individual, and sacred rights of property in, and dominion over, things invisible by the eye, intangible by the hand, and perceptible only by the mind. And they have also learned at least the elementary principles, by which men's separate rights to these invisible and intangible commodities can be determined.

The Common Law of England is often called *the unwritten law;* by which is meant that it was never enacted, in the form of statutes, by parliaments, or any other legislative body whatever. And for the most part it necessarily must have been so, since no legislative body could ever foresee the infinite relations of men to each other, so as to be able to enact a law beforehand for each case that might arise. The Common Law, therefore, does not depend at all, for its authority, upon the will of any legislative assembly. It depends, for its authority, solely upon its own *intrinsic* obligation — that is, *the obligation of natural justice.* And it ought always to have been held to be of superior authority to any legislative enactments opposed to it; because it is intrinsically of infinitely higher obligation than any legislative enactments, contrary to it, can be. In fact, legislative enactments are *intrinsically* of no obligation at all, when in conflict with it; because governments are as much bound by the principles of justice as are private individuals. Nevertheless, kings and parliaments have long assumed the prerogative of setting aside the Common Law, and setting up their own will in its stead, whenever their discretion or selfishness has prompted them to do so. And having judges and soldiers at their service, they have succeeded in having their arbitrary enactments declared to be law, in place of the Common Law, and carried into effect as such,

against the natural rights of men. All this, however, has been done in violation of the English constitution, as well as of natural right.

Having thus shown, perhaps sufficiently, what the Common Law of England is, *in theory*, let us look, for a moment, at what it has been *in practice*. And this, it is evident, must have depended wholly upon the degree of civilization, and the nature of the legal questions arising from adjudication; and also upon the degree of enlightenment, on the part of the tribunals appointed to administer it.

In the earlier times of the Common Law — say six hundred to one thousand years ago — the state of society in England was very rude and simple, such as we should now call barbarous. Agriculture, carried on in a very ignorant and clumsy manner, was the principal employment of the people. Wealth, knowledge, and the arts had made very little progress; and the legal questions arising were correspondingly few and simple, being such as related to the little properties, the common rights, and every day concerns of the common people; and such also as the common people would generally understand, almost instinctively, or rather intuitively, without the aid of any elaborate processes of reasoning.

The tribunals for deciding these questions were of a correspondingly simple and unsophisticated character. They consisted of twelve men, taken from the common people, almost or entirely at random. These juries sat alone, and were the real judges in every cause, civil and criminal. It was seldom that any other judge, learned, or supposed to be learned, in the law, sat with them. And when such was the case, he had no authority over them, and could dictate nothing to them, either of law or evidence. He could only offer them his opinion, which they adopted or rejected, as they thought proper.

Very few laws were enacted in those days. There was no such body in existence as the modern parliament, nor any other legislative assembly. What few laws were enacted, were enacted by the king alone. But none of them could be enforced against

the people, without the consent of the juries; and the juries were under no legal obligation to enforce them, and did not enforce them, unless they considered them *just. The jurors were never sworn to try causes according to law, but only according to justice, or according to their consciences.* Indeed, they could try them by no other law than their own notions of natural justice; for they could not read the king's laws, since few or none of the common people could at that time read. Besides, printing being then unknown, very few copies of the laws were made. The laws, passed by the king, were generally made known, only by being proclaimed or read to such of the people, as might chance to be assembled on public occasions. Both theoretically and practically, they were simply *recommendations*, on the part of the king to the people, promulgated in the *hope* that the latter, as jurors, would enforce them.

Juries fixed the sentence in all criminal cases; and rendered the judgment in all civil cases; and no judgments could be given, except such as the twelve jurors unanimously concurred in as being just.

The decision of every jury was not *necessarily* enforced. An appeal was allowable to the king's court, consisting of the king and certain of the nobility, who were assisted in their adjudications, by the king's judges, or legal advisers. But this king's court could *enforce* no decisions of its own, adversely to those given by the juries. It could only invalidate the judgment of a jury, and refer the cause to a new jury for a new trial. So that no judgment could be enforced against the person, property, or civil rights of any one, except such as had been unanimously agreed to by twelve of the common people, acting independently, according to their own ideas of justice.

The consequence of this state of things was, that while the Common Law, (with the exceptions which have before been alluded to,) was, *in theory, a science*, applicable, from its nature and intrinsic obligation, to the settlement of every possible question of justice, that could ever arise among men, in the most

advanced and enlightened state of which humanity is capable, it was, *in practice*, confined to the determination of such few and simple questions, as a very rude and uncultivated state of society gave rise to, *and such also as tribunals, composed of twelve simple and unlearned men, could all understand, and would all concur in.*

Why this law of nature, or natural justice, thus administered, was called, in England, the "*Common Law*," is a matter of some dispute; although the probability altogether is, that it was called the Common Law, because it was the law of the *common people*, as distinguished from the nobility, or military class of society.

This military class had both rights and duties different, in some particulars, from those of the common people. The law applicable to them was therefore somewhat different from the law of the common people. And individuals of each class were entitled to be tried by their "peers," or equals — that is, individuals of the military class were to be tried by tribunals of their own order, and the common people by tribunals (juries) of their own order. The Common Law, then, was the law which the *common people* administered to *each other*, as distinguished from the law, which the military class administered to each other; and there is little doubt that this is the true origin of the name. The ancient coronation oath strongly corroborates this idea, for one part of that oath was, that "the just laws and customs, *which the common people have chosen*, shall be preserved." By "the just laws and customs, which the common people have chosen," were meant those principles, which juries of the "common people," acting independently, and on their own consciences, were in the habit of enforcing as law — for the "common people," had no other *legal* mode of making their wishes, on matters of law, authoritatively known.

It was this Common Law, and the right of the "common people" to be judged by it, and to have their rights determined by it, in all civil and criminal cases, in the manner that has now been described — that is, by juries acting according to their own

notions of justice, and independently of all legislative authority on the part of the government — that constituted the ancient boasted liberties of Englishmen, and the very essence and life of the English Constitution. *

The reader will now be able to judge for himself whether the Common Law of England does, or does not, *in theory*, sustain the right of authors and inventors to a perpetual property in their ideas. In order to settle this question, he has only to decide whether it be *just*, and according to those principles of natural law, by which mankind hold their rights of property in all the other products of their labor, that they should also have the same rights of property in their ideas. If it were *just*, that men should have a right of property in their ideas, then the Common Law authorized it, and it was the duty of all Common Law tribunals to maintain that principle in practice.

Taking it for granted that the reader will have no doubt that the right of property in ideas came within the *theory*, and was embraced in the *principles*, of the Common Law, I shall now proceed to show why this right has not been hitherto more fully acknowledged.

SECTION II.

Why the Common Law Right of Property in Ideas has not been more fully Acknowledged.

It will, I think, be hereafter rationally shown, that the non-establishment, in England, of the right of property in ideas, is to be attributed *solely* to the overthrow of the ancient, constitutional, Common Law government, and to the establishment of

* For the historical proofs that the Common Law and the English Constitution were such as have here been described, I refer the reader to my "Essay on the Trial by Jury."

arbitrary power in its stead. But to understand how such a cause has been productive of such an effect, we must attend somewhat to events and dates.

The Great Charter — which was at once the embodiment and guarantee of the Common Law form of government, and which, within about two hundred years from the grant of it in 1215, was confirmed more than thirty times, was confirmed for the last time in 1415. It had been much encroached upon before; but from this time the government degenerated rapidly into absolutism. And such has now been its character for some four hundred years.

In saying this, I do not mean that absolute power has been vested in the hands of the king alone; although at times his power has, in practice, very nearly approximated to absolutism. But I mean that there has existed in England a self-constituted, and *unconstitutional legislative power*, which has arbitrarily assumed the prerogative of setting aside the Common Law, or law of nature, and setting up its own will in its stead.

This legislative power, which was wholly unknown to the English Constitution, and which had its origin solely in a conspiracy between the king, the nobility, and the wealth of the kingdom, to rule and plunder the mass of the people, has consisted of the king and the parliament united; the parliament consisting of the higher orders of nobility, as one branch, and of a few representatives of the cities, boroughs, and wealthy freeholders, as a second branch, called the House of Commons.

The relative influence of the king, the nobility, and the House of Commons, in controlling legislation, has greatly fluctuated. Each House of Parliament has at times been the tool or confederate of the king against the other. At other times the king would call a parliament only at long intervals; exercising nearly absolute power meanwhile. But since 1688, the power of the crown has been effectually broken. Nevertheless the government has hardly been less arbitrary or tyrannical, *as against the mass of the people*, than it was before. The nobility, of course, have

represented only their own interests. The House of Commons, (falsely so called,) has, in its best estate, represented, at most, only the *wealth* of the kingdom, instead of the *people*. In its worst estate, it has been made up of tools of the king, tools of the nobility, and the representatives and tools of wealth. The suffrage has been so limited, and otherwise arranged, as designedly to secure these results.

One of the first acts of parliament, on obtaining its ascendancy, in 1688, was to impose upon the king an oath, "To govern the people of this kingdom of England, and the dominions thereto belonging, *according to the statutes in Parliament agreed on*, and the laws and customs of the same;" in the place of the ancient and constitutional oath, that "the just laws and customs, *which the common people* [acting as jurors] *had chosen*, should be preserved;" thus formally abolishing the authority of the Common Law, as compared with the will of parliament.

To give more certain effect to the arbitrary legislation of the king, and of the king and the parliament, the Common Law juries have been abolished, for some five hundred years last past, by laws fixing such property qualifications for jurors as would exclude a large, probably much the largest, portion of the people, and include generally only such as were represented in the House of Commons; and also by laws authorizing the king's sheriffs and other officers to select the jurors; thus enabling them to secure those favorable to the government.

The judges too have always been appointed by the king; and until 1688, were removable by him at pleasure. But for five hundred years they have also been liable to impeachment and punishment by parliament. The consequence has been that they have always been mere tools of the king, or of parliament, or of both; so much so that, notwithstanding since 1344, (without any exception, so far as I know,) they have been sworn to maintain the Common Law, and deny it to no man for any cause, they have for a long period unanimously adopted and acted upon the doctrine, that parliament is omnipotent, and its statutes obligatory

in all cases whatsoever, the Common Law to the contrary notwithstanding. And they have also been the instruments of the government for imposing this doctrine upon juries. When the truth all the while was, that, by the English Constitution, both Houses of Parliament, as legislative bodies, were purely usurpers, and never had the slightest particle of authority to legislate for, or bind the people.

In addition to all these usurpations, for the overthrow of the Common Law, the king, for the two or three hundred years ending in 1640, maintained an extraordinary and unconstitutional court, of the most arbitrary character, called the Star-chamber court, composed wholly of his ministers and instruments, who exercised the power of summoning before them, and punishing at discretion, any one who had been guilty of any thing, which they chose to consider a contempt of the royal authority. Members of parliament were not exempt from this usurped jurisdiction. Jurors were often brought before it, and reprimanded or punished for the verdicts they had rendered. Private citizens, who had violated the king's authority in any way, were brought before it, summarily tried, and punished at discretion. Under some reigns the audacity and tyranny of this court were such as to make it the terror of the kingdom.

Such, in general terms, has been the absolute and unconstitutional character of the English government for some four hundred years. And the consequence has been, that there has been no Common Law in force in England, during that time, except such as this arbitrary legislative power has seen fit to spare.

But we are now to show how this state of things has operated to prevent the acknowledgment of the Common Law right of property in ideas.

It is within four hundred years that the art of printing was introduced into England. But it was then in so rude a state, and the people in a condition of such ignorance, that little printing was done for many years. Consequently few persons were engaged in it. And very few persons wrote books. Under such

circumstances, no questions of copyright would be likely to arise. At length the art attracted the attention of the government, from its being foreseen that it might prove dangerous both to the church and the state. And from this time the government assumed unlimited authority over the press, prohibiting the publication of every thing heretical in politics or religion, and enforcing its restrictions by means of the Star-chamber court and otherwise, in the most summary and tyrannical manner. These restrictions continued, with no important interruptions, down to 1694; and were effectual in confining the liberty of printing to such books as the government approved. One mode of restriction, which prevailed for about one hundred years, was that of requiring *each book* to be specially *licensed by the government*, before it could be printed. When a book was allowed to be printed at all, the permission was without limitation as to time; and was usually, if not universally, confined to authors and their assigns. *These restrictions upon the press, therefore, necessarily operated as a perpetual copyright upon the books allowed to be published;* and so long as they were continued, no question of copyright at Common Law would be likely to arise in the courts. If any unlicensed person published a book, he was punished, not for infringing the author's copyright, but for printing without the king's permission; which answered the same purpose for the author.

At the expiration of these restrictions, still another circumstance tended to keep the law question out of the courts. The great body of the publishers were members of an ancient association, called the Stationers' company. And when they found that their copyrights were no longer protected by the licensing act of the government, they adopted an ordinance among themselves, imposing penalties upon any of their own number, who should infringe another's copyright.

Furthermore, in the year 1710, an act of parliament went into effect, securing to the proprietors of books *already printed*, a copyright for twenty-one years from the date of the operation of

the act, and to the authors of books thereafter to be printed, a copyright for fourteen years, with a right of renewal at the end of that time, for another fourteen years, if the authors should then be living. This act kept the question of copyright, at Common Law, out of the courts for still another period.

After the expiration of the terms granted by this act, some injunctions were granted against infringements, apparently upon the ground that a right existed at Common Law. These injunctions, however, were acquiesced in, and the question was not tried at law.

And the question never came before the King's Bench until the case of *Tonson vs. Collins*,* in 1760, and 1761, when the arguments were heard, but the court refused to give any decision, from a discovery of collusion between the parties. And it was not until the case of *Millar vs. Taylor*, in 1769, that the opinion of the King's Bench was obtained; when three of the justices decided in favor of the right, and one opposed it.

Although, therefore, from various causes, the question never came to a clear decision, until some three hundred years after the introduction of printing, yet it is a well known historical fact, that for some hundred and fifty or two hundred years prior to that decision, (if not from the first introduction of printing,) it was a prevailing opinion among authors, publishers, and in the government itself, that the Common Law gave to authors a perpetual property in their works. John Milton, as early as 1644, speaking in behalf of the right of authors to print their thoughts freely without getting a license for each book, alluded to the subject of copyright, and said, "That part [of an order of parliament for licensing books] which preserves justly every man's copy [right], or provides for the poor, I touch not" [do not object to]. Also, "The just retaining of each man his several copy [right], God forbid should be gainsaid."

My argument now is, that if the Common Law, and the ancient

*1 *Wm. Blackstone* 301 and 321.

constitutional, or Common Law form of government, had been preserved, this question would have been brought to the same decision long before three hundred years from the introduction of printing should have elapsed. And why would it have been thus brought to this decision? For various reasons, as follows.

The question would, in the first instance, have come before juries; and those juries would have been free from all legislative authority, *and sworn simply to do justice.* And it is hardly probable they would ever have puzzled themselves, for a moment, with any of the abstruse objections which lawyers have raised. They would have promptly followed both their instincts and their reason, in saying that authors, like other men, should control the products of their labor. If the question had then been carried to the king's court, it would still have to be decided on natural principles, unembarrassed by any legislative interference. And it would very likely have been decided rightly from the first. But even if the judgments of the juries had at first been reversed, and the cases sent back to new juries for new trials, the new juries would most likely have repeated the original judgments, inasmuch as the opinions of the king's court was of no legal authority over them. And thus by repeated judgments in the same cases, and by new judgments in new cases, the juries would have forced upon the king's court the conclusion, that the sense of the nation was in favor of the right; and the law would consequently have been so recognized.

If, however, it shall be thought by any one, that the question could not have been so easily settled, and that juries would have been incompetent and unfavorable tribunals for adjudicating on such a matter, he will perhaps change that opinion when he reflects, that, if Common Law principles in general, and the Common Law form of government, had been preserved, the common people, living under the protection of equal laws, and in the enjoyment of such freedom as the Common Law form of government secured, would have rapidly advanced in wealth and intelligence, instead of being condemned to such poverty, ignorance,

and degradation, as the tyrannical character of the government has subjected them to. *Printing, too, would always have been free, from its first introduction;* for it is not to be supposed that juries could ever have been influenced by such motives for restraining the freedom of the press, as have influenced religious and political tyrants, who feared its effects on their power. The press being free, and the people being both free and prosperous, literature would have flourished; and the rapid enlightenment of the whole nation, the common people no less than others, would have been the result. Under these circumstances, authors would have brought the question of their rights both before the public, and into the courts, at an early period after the introduction of printing. And the question, after being once brought before the public, and the courts, could never have been laid to rest, until the rights of authors were acknowledged. And that this would have been done long before 1769, (three hundred years after the introduction of printing,) I think it would be unreasonable to doubt; because, before that time, the people would not only have sufficiently comprehended the question, as one of natural justice, but they would also have learned that it was for their own true interests to encourage literature, by protecting the property of authors in their works.

If the right of property of authors in their works had been once established, under the Common Law form of government, the right would have been perpetual of course; because juries would never have thought of so absurd an idea, as that of acknowledging the property, and yet limiting the right in point of time; and there was no other legislative power competent to establish such a monstrosity.

Such, then, we may conclude, would have been the result, as regards the rights of *authors*.

The next question is, what would have been the fate of the rights of *inventors*, had the Common Law system of government been preserved?

But, before answering this question, let us see what their fate *has actually been*, under the arbitrary system that has prevailed.

Patents for new inventions have, in England, always been classed under the head of "*monopolies*" *arbitrarily granted by the crown.*

Now the granting of monopolies — by which I mean the granting exclusively to one what is the right of all — was plainly incompatible with the Common Law. It must also have been impossible for the king, in cases where his grants were clearly unjust and unreasonable, to maintain their inviolability, so long as the ancient constitutional form of government was preserved; because he could punish infringements upon his grants, only by the consent of juries, who would judge of the matter on its merits, independently of his authority. Nevertheless, we are told that, from a very ancient date, the kings have been in the habit of granting to individuals the exclusive right to practice new arts and manufactures, introduced by them into the kingdom. It was immaterial whether those, who introduced them, were also the inventors of them, or had learned them in foreign countries. It was enough that they were the first to introduce them into England.

How far these grants were effectual, *in the early times*, for the purposes intended by them — that is, how far they were sustained by the judgments of *juries* — I do not know. To my mind, it is not at all probable that they were *universally* sustained. Yet I think we may reasonably conclude that *some* of them were sustained; otherwise the practice of granting them would hardly have been continued. If, then, any considerable portion of them were sustained, that fact indicates that even in that rude and ignorant age, the unlearned common people — of whom the juries were composed — had some natural and just, though imperfect, appreciation, either of a man's right of property in his invention, or of their moral indebtedness to one who gave a new and valuable art to the public. And this fact tends also to show that, with the progress of knowledge, and the increased experience of the utility of new inventions, the principle of a man's right of property in his ideas, would have made its way, as a principle of

natural law, into the minds of the people, and long ere this have been acted upon, as such, by the juries, had the Common Law institutions been preserved.

English judges, as far back at least as 1366, have held that grants by the king to individuals of the exclusive privilege of practising for a time a new art or manufacture introduced by them into the kingdom, *were consistent with the Common Law.* The reason given, in a case of that date, was "that arts and sciences, which are for the public good, are greatly favored in law, and the king, as chief guardian of the common weal, has power and authority, by his prerogative, to grant many privileges, for the sake of the public good, although *primâ facie* they appear to be clearly against common right."

Coke says, "The reason wherefore such a privilege is good in law, [that is, at the Common Law,] is because the inventor bringeth to and for the commonwealth a new manufacture by his invention, costs, and charges, and therefore it is reason that he should have a privilege for his reward, (and the encouragement of others in the like,) for a convenient time." *

Now, I do not cite these opinions of judges as *any proof at all,* that the Common Law recognizes a man's right of property in his inventions. No such proof is needed, for the nature of the Common Law itself establishes that point. Besides, the opinions themselves are altogether too loose and crude to be worth any thing for that purpose; for they apply as well to persons who bring inventions from other countries, as to inventors themselves; and they also absurdly assign reasons of expediency to the public, instead of reasons of right to the inventor, as the grounds on which the Common Law allows of such grants. The opinions were also given by judges, who were either the creatures of the crown alone, or of the crown and parliament, and who doubtless

* For these and various other authorities, showing the opinions of English judges, that patents for new inventions were good at Common Law, see *Hindmarch on Patents*, ch. 1 and 2. Also Coke's chapter on Monopolies, 3 *Inst.* 181.

were in the habit of sanctioning every thing which the king and the parliament desired them to sanction. But I cite them as evidence that, for at least five centuries, there have prevailed, in England, a general sense of *obligation*, or indebtedness, on the part of the public, towards one who introduces a new art, and an idea that he ought in some way to be paid. And my argument is, that if arbitrary power had never interfered to check the progress of knowledge, and to exercise absolute authority over the rights of inventors, as well as of others, this public sense of obligation, and this vague idea that an inventor should be paid, would long ago have found body and form in a well digested system of natural law, based on the principle of a man's absolute right of property in the productions of his mind.

The tendency towards this result has been greatly obstructed by the arbitrary character of the English government, for the last four or five centuries. For example, in those periods, when the power of the king was at its height, he was in the habit of granting a great variety of monopolies, *without any pretence of new inventions*, but only as a means of rewarding favorites, or of raising revenue. And these monopolies were maintained through the instrumentality of the Star-chamber court, which summarily punished infringers. These monopolies were so numerous, unjust, and oppressive, that parliament, in 1623, interfered to suppress them; and an act was passed for that purpose, *specially on the ground that they were contrary to the Common Law.* Yet, in this act, which was intended to be effectual for the suppression of all monopolies, except such as were either consistent with the Common Law, or supposed to be beneficial to the public, patents for new inventions, and licenses for printing, *were specially excepted from the general prohibition;* thus again partially recognizing the right of property in ideas, by indicating it to be the sense of the nation, that both justice and policy required that authors and inventors should receive some reward for their labors; and that the most reasonable and expedient mode of securing this end, was, by giving to authors an unlimited monopoly of their

works, and to inventors a monopoly of their inventions for a limited time.

But from all this it must not be inferred that correct scientific views of the law of nature on this subject, had made any great progress; nor could they do so, for scientific views of the law of nature, relative to any subject, make little progress in the midst of despotism and ignorance. But my argument is, that, but for the despotism, no *general* ignorance would have prevailed; *the press would have been free;* the people would have become enlightened; would have been free in the choice of their pursuits; inventions would have multiplied; their importance would have come to be more justly appreciated; the law relative to them, being left to rest, as it would have done, upon natural principles, would necessarily have become an important subject of investigation, (in connexion with the rights of authors,) and from the necessity of the case, *it would have made progress.** And is it in the least extravagant — is it not indeed entirely within the limits of probability, to suppose that an inventor's property in his invention would long ago have been recognized as a *right*, founded in nature, instead of being regarded as that contemptible and detestable thing, which the English government persists in regarding it, to wit, *not a right, but a privilege, granted to an inventor by the crown, as a mere matter of royal grace, favor, and discretion?* †

* One reason why no more progress has been made in other branches of natural law, has been, that natural law has been superseded by arbitrary legislation; and all the legal mind of England and America, has been engrossed, for centuries, in interpreting and enforcing this legislation, instead of pursuing the study of natural law as a science. Another reason is, that the progress of natural law, *in any direction*, is dangerous to arbitrary institutions; and therefore courts, sitting under the authority of arbitrary governments, systematically ignore all discoveries in natural law, until they have first been sanctioned by the legislative power. And this last event generally happens only when the government finds that a revolution, dangerous to its existence, is impending.

† An English patent is granted in these supercilious and insolent terms. After reciting that the applicant has "*humbly petitioned*" the crown for a patent, it adds, "And we, [the queen,] being willing to give encouragement to all arts and

But I wish now to show why the rights of inventors, to a *perpetual* property in their inventions, has never come distinctly before the English courts, as a question of Common Law.

Prior to the introduction of printing, and for a considerable time after, there could have been but very few inventions, of any considerable importance, made in England.* The English were not naturally an inventive people. The Italians and Germans were much in advance of them in that respect. The English were an agricultural and military, and not a mechanical,

inventions, which may be for the public good, *are graciously pleased to condescend to the petitioner's request.* Know ye, therefore, that we, *of our especial grace*, certain knowledge, *and mere motion, have given and granted*, and by these presents, for us, our heirs, and successors, do give and grant unto the said A. B., his executors, &c., *our especial license*, full power, sole privilege, and authority, that he the said A. B., his executors, &c., shall and lawfully may make, use, exercise, and vend his said invention," &c.

Is it not nearly an infinite insult, that such men as Arkwright and Watt, who were of ten thousand times more value to mankind than all the kings and queens that time has ever produced, or ever will produce, should be necessitated to hold their natural rights to the products of their own labor, on such terms as these? If a greater insult can be conceived, it would seem to be, that authors, and such authors as John Milton, should be compelled to ask "license" of a king to print their own thoughts. This insult to authors is no longer practised; because the authors, with truth on their side, proved themselves stronger than the king. When inventors assert their rights in like manner, they will no longer be necessitated to accept them as *grants*, or *favors*, "*graciously*" bestowed on them by the government.

The Common Law never required that a freeborn Englishman should "*humbly petition*" the crown for the enjoyment of his natural rights of property; nor that he should ever accept those rights as a *grant* originating in the "*gracious pleasure and condescension*" of the king. And if the constitutional system of government had been preserved, such degradation, on the part of inventors, would not, at this day certainly, have been witnessed.

*During the first twenty years of the *present* century there were but one hundred and three patents a year, on an average, granted for both foreign and domestic inventions. (See Pritchard's list of Patents.) From this fact one can judge somewhat how few inventions could have been made in former times, when the population was comparatively small, and the arts had made so little comparative progress.

people. Most of their inventions were brought from the continent, and even those doubtless were not numerous. The art of printing, after some lapse of time, began to increase the mental activity of the people. Yet this activity, for a long time, took the directions of literature, politics, religion, colonization, commerce, and war, rather than of invention, or progress in the arts. Indeed it is only within the last hundred years, or thereabouts, that many important inventions have been made in England.

Under these circumstances, it was natural that the rights of inventors, as a question of Common Law in the courts, should lag behind those of authors; and for various reasons, as follows.

1. One's authorship of a book could much more easily be *proved*, to the satisfaction of a jury, than one's authorship of an invention. That proof could also be much more easily perpetuated, than in the case of an invention; because a book, once published, generally carried the author's name with it, whereby the latter became at once notorious, and false claims to the authorship became forever after impossible to be established. Whereas, in the case of an invention, unless the proof of authorship were made at once, *to the satisfaction of the king, and a patent obtained*, the evidence would soon either be entirely lost, or become so uncertain as to be insufficient to establish one's right.

2. The number of printers were so few, and those few so well known, that the infringement of an author's copyright was much more sure of being detected, than an infringement of one's invention. The latter could easily be concealed, if perpetrated at some distance from the locality of the inventor; because there was so little travel and intercourse in those days, among the common people, that an invention could be easily practised a long time so privately as not to become known to a person at a distance.

3. Copyrights were perpetual; whereas patents for new inventions were temporary. The former too were obtained without any important cost or trouble; whereas it was doubtless a very serious and expensive undertaking to prove, to the satisfaction of

the crown, one's authorship of an invention, and get a patent for it. There were also doubtless many more books written, than there were important inventions made. For these reasons, the copyrights of books were doubtless much more numerous than the patents for inventions. These copyrights, too, very many of them, went into the hands of printers, who were able to defend them in the courts; whereas it is likely the inventors were generally too poor to go to law for their rights.

4. Since 1623, (until 1835,) patents have been granted but for fourteen years; and (before the English became so eminently a manufacturing nation) a new manufacture could be introduced but so slowly, that unless the invention were of great importance, a patent for so short a period, would be of too little value to be worth the cost of procuring.

5. The fact, that the government made no distinction between those who imported inventions, and those who made them, tended to confuse men's notions as to the rights of real inventors. And the further fact, in this connexion, that patents granted to mere *importers* of inventions, would *justly* be regarded with odium, if prolonged for any considerable time, tended to reconcile men to the practice of protecting *original* inventors for a short period also; and this made their rights of too little value to be worth protecting by expensive litigation.

6. A mechanical invention is much more difficult to be defined, or described, to the satisfaction of a jury, than the contents of a book; and therefore it would be much more difficult to prove, to the satisfaction of a jury, the infringement of a patent, than of a copyright.

7. A claim for copyright would meet with fewer obstacles from the prejudices of a jury, than a claim for an invention; *because a book interfered with no man's interests;* whereas labor-saving inventions were often very odious, on account of their turning large numbers of people out of employment. We, of this day, who have become accustomed to look upon a new labor-saving invention as one of the greatest blessings, can hardly fail

to be astonished at the ancient prejudices against such as superseded other labor. As an illustration of these prejudices, it may be stated, that it is less than two hundred years, since a saw-mill in England was pulled down by a mob, on account of its interfering with the employment of the splitters and hewers of timber. *Coke* also gives a curious illustration, not merely of the popular prejudice, but also of the government's prejudice, against a new invention, if it were one that would deprive many persons of their employment. He says,

"There was a new invention found out heretofore that bonnets and caps might be thickened in a fulling mill, by which means more might be thickened and fulled in one day, than by the labors of fourscore men who got their living by it. It was ordained that bonnets and caps should be thickened and fulled by the strength of men, and not in a fulling mill, for it was holden inconvenient to turn so many laboring men to idleness." *

8. Inventors not being literary men, and perhaps often wholly illiterate men, could not advocate their own rights, as the authors could theirs. They had no John Miltons among them to speak for them. They could only let their deeds speak for themselves. Besides, they were doubtless too much engrossed in their inventions, (as most inventors are even at this day,) to give much thought to their legal rights. They naturally accepted such protection as the government offered them, without raising any further question about it.

For all these reasons, and perhaps for others, it was natural that the *perpetual* right of *inventors* should be behind the perpetual right of *authors*, in coming into the courts, as a question of *Common Law*. And such was the fact. Not only so, but, unfortunately for the *inventors*, when the rights of *authors* did finally come before the King's Bench, as a Common Law question, in 1769, *that court, while it sustained the rights of authors, gratuitously prejudged and condemned the rights of inventors without a hearing*, as we shall hereafter see. The House of Lords virtually did the same in 1774.

* *Coke's* 3 *Inst.* 184.

Beyond and above all this, the act of parliament of 1623, expressly forbade patents to be granted for a longer period than fourteen years. And this prohibition remained in force until the act of 1835, which allowed an extension of seven years in certain cases. So that the Common Law rights of inventors could be set up, in court, only on one or both of these two grounds, viz.: 1. That the act of parliament, limiting the duration of the patent, was constitutionally void — a ground, which is true in itself, but which no court in England would think of sustaining. 2. That the rights of inventors were not derived from, and did not depend on, their patents — a ground, which is also true in itself, but which patentees could not be expected to understand, or at least to have confidence in, as a ground of successful litigation, considering that the uniform practice of the courts had been to hold the contrary.

Besides, the task of inventors to secure to themselves even such rights as the acts of parliament intended they should enjoy, has always been too hard a one, to leave them any confidence for advancing new claims, (however just in themselves,) in manifest opposition to the intention of parliament, and the practices of courts. For the courts, persisting in the idea that a patent was, in some sort at least, an arbitrary grant of an unjust monopoly, have, until quite recently, been in the habit of exerting their ingenuity to invalidate even such patents as were granted. For example. If a specification claimed a particle too much, or was a particle deficient in the description of the art, the courts, instead of holding the patent good for whatever was good, as they were bound to do, would take advantage of the error to invalidate the patent altogether. Thus, as late as 1829, "in the case of *Felton vs. Greaves*, the title of the plaintiff's patent described the invention to be a machine for giving a fine edge to knives, razors, scissors, and other cutting instruments; but it appeared that the invention, as described in the specification, was inapplicable for the sharpening of scissors; and Lord Tenterden, Chief Justice, therefore held the patent to be void, and nonsuited the plain-

tiff." * And in 1816, "in the case of *Cochrane vs. Smethurst*, it appeared that the plaintiff's patent was for an improved method of lighting cities, towns, and villages; but his invention really was an improved street lamp; and it was held by Mr. Justice Le Blanc that the title was too general in its terms, and the patent void."†

These cases are given merely as illustrations of the absurdities and atrocities, which the courts have habitually practised, up to a very recent date, when adjudicating upon the rights of inventors. It seems never to have entered their heads, that it was any part of the object of a patent, to secure to an inventor the quiet possession of what was exclusively his own. On the contrary, they have treated a patent as a bargain, between the public and the inventor, of this kind, to wit. They considered that the art, instead of being an honest product of the inventor's labor, and therefore his own, was one, which rightfully belonged to the public, and which had merely *happened* to become known only to the inventor; and that he, like the dog in the manger, would neither use it, nor let others use it, unless he could get something for his secret. They of course held that he really ought to give the secret *freely* to the public; and that any attempt, on his part, to get a price for it, was merely an attempt at levying black mail, and should be defeated if possible. They then considered that the public, finding themselves in this unfortunate predicament, their rights locked up in the breast of a scoundrel, acting under the force of an unjust necessity, made a contract with him, (through their representative, the king,) by which they agreed to give him a monopoly of the art for fourteen years, provided he would give the art freely to the public forever afterwards. To secure the benefits of this bargain to the public, the king required the villain to put on the king's records such an accurate description of the art, as that other men, by reading the description,

* *Hindmarch* 46. 3 *Car. and Payne* 611.

† *Hindmarch* 46. 1 *Starkie's R.* 205.

might be able to understand and practise the art. If, now, this specification have described the invention as being a particle more than it really was, the courts have said that the inventor had practised a fraud, and obtained a patent, without giving for it the full price agreed upon; and that therefore the patent was void: If, on the other hand, the specification have not so fully described the invention, as that it may be entirely known by other persons on reading the description, then the courts have said that the inventor was a cheat, because he had not made known the invention, which he agreed to make known, as the price of his patent; that he has therefore obtained his patent on false pretences, and that it is consequently void. Thus, if the courts, by splitting a hair 'twixt north and north-west side, could so construe a specification as to make the patentee to have defrauded the public, to the amount of a farthing, in the price agreed to be paid by him for his patent, they have held that the patent was void; as if the patentee were a swindler, getting unjust monopolies out of the public by false representations, instead of being, as he no doubt usually has been, a simple honest man, who wished to secure to himself the products of his honest labor, but who was not sufficiently skilled in letters, law, and the arts, to know whether or not his invention were described with the greatest possible accuracy, of which the case admitted.

This is the spirit in which English courts, up to a very recent date, if not indeed up to the present date, have adjudicated upon the rights of inventors. Whereas, if the Common Law rights of inventors were acknowledged, it would be the duty of courts to recognize the sufficiency of a specification, if it described the invention with such general accuracy, as to put second persons *reasonably* on their guard against infringing it.

When we consider for how long a period inventors have been compelled to deal with such pettifoggers, sharpers, and asses, as these courts have thus shown themselves to be, it is perhaps not to be wondered at, that they have never seen fit to ask any thing more at their hands than was given them by acts of parliament — the

only law the judges have acknowledged on this question. They have accordingly turned their attention to getting improvements in acts of parliament, rather than to asserting their Common Law rights.

Looking back, now, over the ground, for five hundred years, we see, on the one hand, the advantages, which the Common Law rights of inventors have enjoyed; and, on the other, the disadvantages under which they have labored.

Under the head of *advantages*, we may reckon, that during all that time, (five hundred years,) it has been held, by kings, courts, and parliaments, to be *consistent with the Common Law*, for the king to grant, both to actual inventors, and to the mere importers of new inventions, a temporary monopoly of the use of their inventions; and that for more than two hundred years, (since 1623,) the sentiment on this point has been so strong, and so strong also the conviction of the good-policy of encouraging the arts in this way, that these monopolies have, by a special act of parliament, stood excepted out of the prohibition laid upon monopolies in general.

Under the head of *disadvantages*, we may reckon, that the English were not originally an inventive people; that it is only within a hundred years, or thereabouts, that their minds have been particularly turned in the direction of inventions; that from the first, the grant of a patent for a new invention, has been held, by the government, to be an act of grace, favor, and discretion, on the part of the crown, and not any thing which a subject could claim as a right; that the rights of a real inventor have always been placed on the same footing with the impertinent and groundless claims of a mere importer of an invention, and have, therefore, necessarily been discredited by the association; that patents for new inventions, from being always classed among arbitrary monopolies, have always had to bear, by association, more or less of the odium which *justly* attaches to those violations of common right; and, finally, that for more than two hundred years, (that is, since 1623,) there has been an imperative act of

parliament, (which judges, in violation of their oath, and their duty, always bow to, in preference to the Common Law,) prohibiting the grant of a patent for any more than a limited period.

Now, the whole object of the argument in this section, is simply this. *First*, to prove, reasonably, that if the ancient Common Law system of government had been preserved, and arbitrary power, neither that of the king, nor that of the king and parliament, had ever interfered with the question of intellectual property, the rights of *authors*, to a perpetual property in their ideas, would have been first established; and that, too, long before the decision in their favor by the King's Bench in 1769. And, *secondly*, that the establishment of the rights of actual inventors, (not of importers of inventions,) to a perpetual property in their ideas, would also have speedily followed the establishment of the rights of *authors*. *And that both these events would have occurred long before now.*

Considering, then, on the one hand, that the claims of inventors, as being founded in the Common Law, were *at least partially* recognized so long ago as five hundred years; and considering also, that the rights of authors were also, at least partially, recognized, nearly as soon after the invention of printing as there were any authors having rights to be protected; and then considering also, on the other hand, the arbitrary character of the government during all this time, the restrictions on the press, the oppression, and consequent poverty and ignorance of the people; and also the arbitrary limitations, imposed by acts of parliament, for the last two hundred and thirty years, upon the rights of inventors, and for the last one hundred and forty years, upon the rights of authors; considering all these things, I think the conclusion is certainly a reasonable one, that if the ancient constitutional Common Law form of government had been preserved, and knowledge and wealth had been, (as under such circumstances they would have been,) not only immensely increased, but more equally diffused among the people, the Common Law, as a science, would have made such progress, and literature and the arts would

have so commended themselves to the approbation and protection of the people, that the rights of both authors and inventors, to a perpetual property in their ideas, would have been long since established.

And the true method of proceeding, at this day, in order to establish the rights of authors and inventors, is to re-establish the constitutional authority of the Common Law over acts of parliament.

SECTION III.

Review of the Case of Millar vs. Taylor.

The question of an author's copyright at Common Law, first came to a decision by the court of King's Bench in 1769, in the case of Millar *vs.* Taylor.* Three of the Justices, Willes, Aston, and Lord Mansfield, decided in favor of the right; one, Justice Yates, opposed it.

Each of the judges gave a written argument on the question. The want of unanimity in the court, and the inconsistency and deficiency of the arguments of the three Justices in favor of the right, have prevented their decision from being received as a settlement of the question; and there has probably been nearly or quite as much doubt on the point, among lawyers, since that decision as before.

The Justices argued the question, both on precedent, and as an abstract one of natural, or common law. The precedents were from the court of chancery; and the most of them were encumbered with so many collateral questions, that, although they indicated very strongly, and perhaps quite clearly, that the chancellors had, in some instances at least, *assumed* that there was a Common Law copyright, still, as the decrees had never been

* 4 *Burrows* 2303.

rendered on a discussion of that point, they could not be held as decisive of the abstract question.

The objections of Yates, on abstract grounds, so far as they were worthy of notice, have been noticed, and replied to, in "*Part First*," of this Essay.

The arguments of the three Justices, *who favored the right*, were erroneous and deficient to such a degree, that it can hardly be said that they threw any light upon the points where the real difficulties lay. This is perhaps not to be wondered at. The question was essentially a new one, so far as any critical investigation of it was concerned. Being a new one, an abstruse one, and liable to objections, which could not all be answered without much reflection, it is perhaps not surprising that, in the hurried and superficial examination, which alone judges can give to new questions, their views should be, as they were, crude, inconsistent, superficial, and unsatisfactory; and that, instead of settling the questions involved, they did little or nothing more than bring to light the real questions to be settled.

Some of the most important of the errors and deficiencies of their arguments were the following.

1. While asserting that *authors* had a Common Law right of property in their works, they conceded and asserted that *inventors* had *no* Common Law right of property in their inventions; that *their* rights depended wholly on the patents granted them by the king.

So glaring an inconsistency as this was of course wholly indefensible; and it was turned against them, in the following terms, by Yates, who opposed the right. He said:

"The inventor of the air pump had certainly a property in the *machine* which he formed; but did he thereby gain a property in the *air*, which is common to all? Or did he gain the sole property in the *abstract principles* upon which he constructed his machine? And yet these may be called the inventor's ideas, and as much his sole property as the ideas of an author." 4 *Burrows* 2357.

Also, "Examples might be mentioned, of as great an exertion of natural faculties, and of as meritorious labor, in the mechanical

inventions, as in the case of authors. We have a recent instance in Mr. Harrison's time-piece; which is said to have cost him twenty years application. And might he not insist upon the same arguments, the same chain of reasoning, the same foundation of moral right, for property in *his* invention, as an author can for *his?*

"If the public should rival him in his invention, as soon as it comes out, might not he as well exclaim as an author, 'that they have robbed him of his production, and have iniquitously reaped where they have not sown?' And yet we all know, whenever a machine is published, (be it ever so useful and ingenious,) the inventor has no right to it, but only by patent; which can only give him a temporary privilege." *Same, p.* 2360.

And again, "The whole claim that an author can really make, is on the public benevolence, by way of encouragement; but not as an absolute coercive right. His case is exactly similar to that of an inventor of a new mechanical machine; it is the right of every purchaser of the instrument to make what use of it he pleases. It is, indeed, in the power of the Crown to grant him a provision for a limited time; but if the inventor has no patent for it, every one may make it, and sell it.

"Let us consider, a little, the case of mechanical inventions.

"Both original inventions stand upon the same footing, in point of property; whether the case be mechanical, or literary; whether it be an epic poem, or an orrery. The inventor of the one, as well as the author of the other, has a right to determine 'whether the world shall see it or not;' and if the inventor of the machine choose to make a property of it, by selling the invention to an instrument maker, the invention will procure him benefit. But when the invention is once made known to the world, it is laid open; it is become a gift to the public; every purchaser has a right to make what use of it he pleases. If the inventor has no patent, any person whatever may copy the invention, and sell it. Yet every reason that can be urged for the invention of an author, may be urged with equal strength and force, for the inventor of a machine. The very same arguments 'of having a right to his own productions,' and all others, will hold equally, in both cases; and the immorality of pirating another man's invention is full as great, as that of purloining his ideas. And the purchaser of a book and of a mechanical invention has exactly the same mode of acquisition; and therefore the *jus fruendi* [the right of enjoyment] ought to be exactly the same.

"Mr. Harrison (whom I mentioned before) employed at least as much time and labor and study upon his time-keeper, as Mr.

Thompson could do in writing his Seasons; for, in planning that machine, all the faculties of the mind must be fully exerted. And as far as value is a mark of property, Mr. Harrison's timepiece is surely as valuable in itself, as Mr. Thompson's Seasons.

"So the other arguments will equally apply. The inventors of the mechanism may as plausibly insist, 'that in publishing their invention, they gave nothing more to the public than merely the *use* of their machines;' 'that the inventor has the sole right of selling the machines he invented;' 'and that the purchaser has no right to multiply or sell any copies.' He may argue, 'that though he is not able to bring back the *principles* to his own sole possession, yet the property of *selling* the machines justly belongs to the original inventor.'

"Yet with all these arguments, it is well known, no such property can exist, after the invention is published.

"From hence it is plain, that the mere labor and study of the inventor, how intense and ingenious soever it may be, will establish no property in the invention; will establish no right to exclude others from making the same instrument, when once the inventor shall have published it.

"On what ground then can an *author* claim this right? How comes *his* right to be superior to that of the ingenious inventor of a new and useful mechanical instrument? Especially when we consider this island as the seat of commerce, and not much addicted to literature in ancient days; and therefore can hardly suppose that our laws give a higher right, or more permanent property, to the author of a book, than to the inventor of a new and useful machine." *Same, p.* 2386–7.

To these arguments the three Justices offered only these replies.

Willes said, "But the defendant's insist, 'that by the author's *sale* of printed books, the copy [right] necessarily becomes open; in like manner as by the inventor's communicating a trade, manufacture, or mechanical instrument, the art becomes free to all who have learnt, from such communication, to exercise it.'

"The resemblance holds only in this — As by the communication of an invention in trade, manufacture, or machines, men are taught the art or science, they have a right to use it; so all the knowledge, which can be acquired from the contents of a book, is free for every man's use; if it teaches mathematics, physic, husbandry; if it teaches to write in verse or prose; if, by reading an epic poem, a man learns to make an epic poem of his own; he is at liberty.

"But printing is a trade or manufacture. The types and press are the mechanical instruments; the literary composition is as

the material, which is always property. The book conveys knowledge, instruction, or entertainment; but multiplying copies in print is quite a distinct thing from all the book communicates. And there is no incongruity, to reserve that right, and yet convey the free use of all the book teaches." 4 *Burrows* 2331.

This argument is utterly absurd, inasmuch as it *assumes* — what is not true — that if an inventor employ a mechanic, to construct a machine, in accordance with his invention, and thereby learn him how to construct similar machines, the mechanic thereby acquires a right to construct such machines in future, without the consent of the inventor! It is true such an idea once prevailed in England, and was acted upon by courts. But there would be just as much sense in saying that, if an author employ a printer to print his book, and thereby learn him how to print similar books, the printer thereby acquires a right to print similar books, (that is, the same literary composition,) without the author's consent.

The argument is just as strong in favor of the right of the printer to print the book, as it is in favor of the right of the mechanic to construct the machine. Or, rather, the argument is just as weak, instead of strong, in one case as in the other.

Aston said, "That the comparison made betwixt a literary work and a mechanical production; and that the right to publish the one, is as free and fair, as to imitate the other; carries no conviction of the truth of that position, to my judgment. They appear to me very different in their nature. And the difference consists in this, that the property of the maker of a mechanical engine is confined to that individual thing which he has made; that the machine made in imitation or resemblance of it, is a different work in substance, materials, labor, and expense, in which the maker of the original machine cannot claim any property; for it is not his, but only a resemblance of his; whereas the reprinted book is the very same substance; because its doctrine and sentiments and its essential and substantial part are. The printing of it is a mere mechanical act; and the method only of publishing and promulgating the contents of the book.

"The composition therefore is the substance; the paper, ink, type, only the incidents or vehicle.

"The value proves it. And though the defendant may say 'those materials are mine,' yet they cannot give him a right to

the substance, [the literary composition,] and to the multiplying of the copies of it; which (on whose paper or parchment soever it is impressed) must ever be invariably the same. Nay, his *mixing*, if I may so call it, his such like materials with the author's property, does not (as in common cases) render the author's property less distinguishable than it was before; for the identical work or composition will still appear, beyond a possibility of mistake.

"The imitated machine, therefore, is a new and different work; the literary composition, printed on another man's paper, is still the same.

"This is so evident to my own comprehension, that the utmost labor I can use in expressions, cannot strengthen it in my own idea." 4 *Burrows* 2348.

This argument of Aston is equally absurd with that of Willes; because two books, of the same kind, are just as much two different things, (and *not* "the same," as Aston asserts,) as are two machines, of the same kind. The ideas also, described in a book, are just as much distinct entities from the book itself, as the idea, after which a machine is constructed, is a distinct entity from the machine itself. The ideas, described in a book, no more compose the "*substance*" of the book, and are no more "*mixed*" with the "*materials*" of the book, as Aston asserts, than the idea, after which a machine is constructed, composes the "*substance*" of the machine, or is "*mixed*" with the "*materials*" of the machine. But this point has been sufficiently explained in a previous chapter.*

The *objects* of a book and a machine are somewhat different. The object of a book is simply to communicate ideas. A machine communicates ideas equally as well as a book (to those who understand the language of mechanics); but it also has another object, which a book has not, viz.: the performance of labor. This is the most noticeable difference between them; a difference of no legal importance whatever, unless it be to prove that the mechanical idea is the more valuable of the two, and therefore the more worthy of protection as property.

* *Chapter* IV, *pages* 119–120–133.

Lord Mansfield made no argument of his own, as to the resemblance, or difference, between mechanical inventions and literary compositions; but he must be considered to have indorsed the arguments of Willes and Aston, on this point, as well as on all others; for he said he had read them (throughout), and "fully adopted them." *p.* 2395 – 6.

There can certainly, I think, be no necessity for any additional remarks on this subject. The identity of principle, in the two cases, is so perfect, and so palpable, that any theory, that excludes an inventor's ideas from the category of property, must equally exclude those of authors. And any theory, that includes the ideas of authors in the category of property, must equally include those of inventors. Aston himself, five years afterwards, in the case of Donaldson *vs.* Becket, had changed his mind so far as to say, that "He thought it would be more liberal to conclude, that previous to the monopoly statute, there existed a common law right, equally to an inventor of a machine, and an author of a work." *

We, of this day, may well feel amazed that three out of four, of the judges, occupying so high a seat as that of the King's Bench, could fall into an error so absurd in itself, and so evidently fatal to the cause they were advocating. The fact, that they did so, is one of the numberless instances, that show how the minds of judicial tribunals are fettered by the authority, or their consciences swerved by the influence, of the government, whose servants they are; and consequently how little reliance is to be placed upon the correctness of judicial decisions.

Many persons, no doubt, will think that in this case, the consciences of the judges were swerved, rather than that their judgments were fettered; that inasmuch as the granting of patents had, for hundreds of years, been held to be a branch of the royal prerogative; and in some reigns, if not in all, a somewhat lucrative branch; the judges had not the courage to strike such a

* *Parliamentary History, Vol.* 17, *p.* 981.

palpable blow at the authority, dignity, and revenues of the king, as they would do by declaring that inventors could hold their property independently of his "gracious pleasure and condescension."

Other persons may perhaps imagine, that an unwillingness, on the part of the judges, to impeach their own infallibility, and that of their court, by acknowledging the error of all their former decisions, in regard to inventions, was at the bottom of the absurd distinction, which they attempted to set up, between the rights of authors and inventors, to a property in their respective ideas.

Still other persons, however, of a more charitable disposition, especially if they are familiar with the unreasoning stupidity, with which courts are habituated to acquiesce in every thing, however absurd in itself, that has the odor of authority or precedent, will perhaps give these judges credit for honestly imagining, that there *must* be some difference between the rights of authors and inventors, notwithstanding they themselves (the judges) were unable to make that difference appear.

But whatever may have been the cause of so patent an inconsistency on their part, the inconsistency itself was sufficient to deprive their decision of all weight as an authority.

2. The arguments of the three Justices, in favor of the right, were imperfect for another reason, to wit: that they failed to answer the following argument of Yates against the right, viz.: That it was a supposable case that two men might produce the same ideas, independently of each other; and that, in such a case, it would be unjust to give, to the one who first produced them, an exclusive property in them.

The three judges made no reply to this argument.

I have attempted to answer this objection, in a former chapter,* and need not repeat what is there said.

3. A third error, or deficiency, in the arguments of the three Justices, in favor of the Common Law copyright, arose in this way.

* *Page* 68.

It is not now, and I suppose never has been, the custom in England, to make any entry — such as "*copyright reserved,*" or other equivalent expression — on the title page, or other part of a book itself, to give notice to purchasers that the copyright is retained by the author.

The act of parliament required no such entry to be made in the books themselves. It only protected the copyright of those books, whose title should be entered in the register book of the Company of Stationers. But as this was a merely arbitrary provision, the entry or non-entry of the title there, could have nothing to do with the question of copyright at Common Law.

Hence the important question arose, How is a purchaser of a book *to know how much he purchases?* That is, How is he to know whether, in buying a book, he also buys the right to reprint it, or only the right to read it? On what *legal* grounds can it be said, that there is any *implied* contract between the author and the purchaser, by which the former reserves the exclusive right to multiply copies?

These were important questions, which the three Justices, who favored the common law copyright, were bound to answer. But they did not answer them satisfactorily or fully. I have attempted to answer them in a former chapter.*

4. A fourth error, in the argument, of the three Justices, who favored the right, was this.

Willes said, (and it was apparently concurred in by both Aston and Mansfield,) that "All the knowledge, which can be acquired from the contents of a book, *is free for every man's use.* * * * The book conveys knowledge, instruction, or entertainment; *but multiplying copies in print is quite a distinct thing from all the book communicates. And there is no incongruity, to reserve that right, and yet convey the free use of all the book teaches.*" *p.* 2331.

This is error throughout. It is, of course, *generally* true, that "All the knowledge that can be acquired from the contents of a

* *Chapter* IV, *page* 113.

book, is free for every man's use," *in every way except that of reprinting descriptions of it;* but it is, by no means, a *necessary* consequence of the publication of a book, that all the knowledge it conveys, is, *even thus far*, free for the use of every body, or even for the use of the purchaser of the book. Suppose a book describe a steam engine so fully, that a mechanic, from the knowledge thus conveyed, would be able to construct and operate a steam engine; does it follow, because he has obtained that knowledge from a book, (even though the book were written and sold by the inventor of the engine,) that it is therefore free for his use? Not at all. The book may have been, and most likely was, written by the inventor, simply for the purpose of conveying, to the reader, such a knowledge of the steam engine, as would induce him to *purchase* the right to construct, or use one.

If special notice be given, in the book, that the copyright is reserved, that notice *may* — and, in the absence of any ground of presumption to the contrary, perhaps *would* — imply that the author reserves *nothing else than the right of multiplying copies;* and that the knowledge conveyed by the book, is therefore free for all *other* uses. But, in England, where no notice is given, *in the book*, that the copyright is reserved, no implication can be drawn, *from the simple fact of publication alone*, that the knowledge conveyed is designed to be free. The law must infer, from the nature of the knowledge conveyed, and from other circumstances, whether the author designs the knowledge to be free, or not. In a large proportion of the books printed, the knowledge is of such trivial *market* value, that, in any other form than in a book, it would bring nothing worth bargaining for. In such cases, it would be reasonable for the law to infer that the knowledge was designed to be free for all uses, *except that of being reprinted.* But wherever the knowledge had an *important market value, independently of the book*, it would be reasonable to infer, that the object of the book was, to advertise the knowledge, with a view to its sale for use, rather than that the price of the book, was the price also for the free use of the knowledge.

This matter, however, has perhaps been sufficiently discussed in a former chapter.*

Willes says, "There is no incongruity, to reserve that right, [the right of multiplying copies,] and yet convey the *free* [unlimited] use of all the book teaches." Yes, there is a plain incongruity; because the "multiplying copies in print," *is itself one of the "uses,"* which is made of what the book teaches. We cannot multiply copies of the book, *without using the ideas it communicates;* for these ideas are an indispensable guide to the work of setting the type for the new copies. The use of the ideas, *for this purpose*, is generally the *only "use,"* from which the author derives his pecuniary profit. And it is because *this "use"* of them *is lucrative*, that he reserves it *exclusively* to himself. To say, therefore, that an author reserves to himself the copyright — that is, the exclusive right of using the ideas to multiply copies of the book — and yet that he conveys to others the *free* [unlimited] use of the same ideas, is a contradiction; because the unlimited use of the ideas, would include the use of them for multiplying copies of the book. He may, therefore, reserve the right of multiplying copies, and yet convey a right to use, *in every other way, than that of multiplying copies*, "all that the book teaches;" but he cannot reserve the copyright, "and yet convey the *free* [unlimited] use of all the book teaches."

In reprinting the book, *the ideas*, which the book teaches, or communicates, *are necessarily used as a guide to the work of printing;* and the sole right of using them, *for that purpose*, is the copyright, or right of property, which the author has reserved to himself.

But Willes says that "multiplying copies in print is quite a distinct thing from all the book communicates."

He obviously means, by this remark, that *the right* of "multiplying copies [of the book] in print," is quite a distinct thing from "*the right of property in the ideas*," "that the book com-

* *Chapter* IV.

municates." But in this, he is in a great error; for it is the *right of property alone, in the ideas,* "that the book communicates," that gives him the *exclusive* right to *use* them for the purpose of "multiplying copies [of the book] in print."

Before the book was printed, all the ideas it describes, (or so many of them as were original with him,) were the sole property of the writer. By printing the book, and selling it, with a reservation of copyright, he conveyed a *partial* property in the ideas, to his readers. That is, he conveyed to them a right of *possession,* in common with himself, of all the ideas "the book communicated;" and (in most cases) he abandons (as being worthless to himself) his *exclusive* right to the "use" of them, for every purpose, *except that of reprinting descriptions of them.* The sole right of using them, for the purpose of reprinting descriptions of them, *is a part of his original exclusive right of property, or dominion, in the ideas themselves.* It is *the* part, of that original exclusive right of property, or dominion, which he has reserved to himself. The rest of his original right of property in them, he has (in most cases) conveyed, or abandoned, to be enjoyed by others, in common with himself. The copyright, therefore, is a *remnant, remainder, or reserved portion,* of his original *exclusive right of property in the ideas* "that the book communicates," or describes; *and it is nothing else.*

This attempt, on the part of the three Justices, (or certainly on the part of Willes,) to make it appear, that the right of multiplying copies of a book, was "*quite a distinct thing*" *from all right of property in, or dominion over, the ideas,* "*that the book communicates,*" confused and destroyed their whole argument; for it was an attempt to prove a legal impossibility, viz.: the existence of a legal right, *which attached to no legal entity.*

The idea, that an author could retain an *exclusive* right of multiplying copies of a book, after he had parted with every *vestige* of *exclusive* property in "all that the book communicated," is a perfect absurdity.

The copyright, or the right of multiplying copies, therefore,

although it is not necessarily *a sole and absolute right of property, in the ideas themselves, for all uses and purposes whatsoever*, is, nevertheless, a sole and absolute right of property, *in the ideas themselves, for a particular use and purpose*, to wit: that of printing books describing them. It is not, therefore, as these Justices assumed, a mere shadow, or phantom of a right, existing independently of all exclusive right of *property* whatever, in the ideas themselves. It is a substantial *property* right, *in the ideas themselves*, which the book describes, and which are necessarily used in reprinting the book.

If, as these Justices held, the *exclusive* right of multiplying copies of the book, were a right existing independently of all *exclusive right of property, in the ideas described in the book*, these questions would arise, viz.: Where did this anomalous right come from? How did it originate? What legal entity does it attach to? And how came it in the possession of the author of the book, in preference to any body else? And these questions, I apprehend, would be wholly unanswerable.

5. The argument of the three Justices — or rather of two of the Justices, Willes and Mansfield — in favor of the right, were imperfect for still another reason, viz.: that their definitions of Common Law were inaccurate, and indefinite.

Thus Justice Willes said, that "*private justice, moral fitness, and public convenience*, when applied to a new subject, make common law without a precedent; much more, when received and approved by usage." *p.* 2312.

Lord Mansfield said, "I allow them sufficient to show 'it is agreeable to the principle of right and wrong, the fitness of things, convenience, and policy, and therefore to the common law, to protect the copy [right] before publication.' "

If they had said simply that *natural justice* was common law (in all cases whatsoever, new and old, except perhaps those very few, which have before been alluded to, where some positive institution to the contrary has been in practical efficient operation from time immemorial) — their definition would have been correct. It would also have been definite, precise, and certain, inasmuch

as natural justice is a matter of science. But when they add that "moral fitness, and public convenience," and "the fitness of things, convenience, and *policy*," *must conspire with* "private justice," and "the principles of right and wrong," in order to make Common Law, they introduce confusion and uncertainty into their definition; inasmuch as "moral fitness and public convenience," "the fitness of things, convenience, and policy," if considered as any thing separate from natural justice, are terms that convey no precise meaning, and open the door to an endless diversity of opinion. No stronger proof of this last assertion need be offered than the great diversity of opinion that exists as to the policy, expediency, and moral fitness, of the principle of property in ideas.

These terms are also improper and unnecessary ones to be introduced into a legal definition, for the reason that, in matters of government and law, natural justice itself has the very highest degree of "moral fitness;" it subserves, in the very highest degree, the "public convenience;" and its principles are the soundest of all principles of "public policy." The simple definition, *natural justice*, is therefore complete and sufficient of itself; and needs no additions or qualifications.

Aston's definition of Common Law was better, for he held that "Right reason and natural principles [were] the only grounds of Common Law, originally applicable to this question;" that "the principles of reason, justice, and truth," were the principles of the Common Law; that "the Common Law, now so called, is founded on the law of nature and reason;" that it is "equally comprehensive of, and co-extensive with, these principles and grounds from which it is derived;" that "the Common Law, so founded and named, is *universally comprehensive*, commanding what is honest, and prohibiting the contrary;" that "its precepts are, in respect to mankind, to live honestly, to hurt no one, and to give to every one his own." *p.* 2337—8, 2343—4.

Justice Yates, who opposed the copyright, held nearly the same views of the Common Law, with Aston. He said:

"It was contended 'that the claim of authors to a perpetual copyright in their works, is maintainable upon the general prin-

ciples of property.' And this, I apprehend, was a necessary ground for the plaintiff to maintain; for, however peculiar the laws of this and every other country may be, with respect to *territorial* property, I will take upon me to say, that the law of England, with respect to all *personal* property, *had its grand foundation in natural law.*" *p.* 2355.

SECTION IV.

Review of the Case of Donaldson and another, vs. Becket and another.

This case came before the House of Lords, in 1774,* on an appeal from an injunction against publishing a book, whose statutory term of copyright had expired.

The Lords directed the judges to give their opinions to the House on the following questions, viz.:

1. "Whether at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale; and might bring an action against any person who printed, published and sold the same without his consent?"
2. "If the author had such a right originally, did the law take it away, upon his printing and publishing such book or literary composition; and might any person afterward reprint and sell, for his own benefit, such book or literary composition, against the will of the author?"
3. "If such action would have lain at common law, is it taken away by the statute of 8th Anne? And is an author, by the said statute, precluded from every remedy, except on the foundation of the said statute, and on the terms and conditions prescribed thereby?"
4. "Whether the author of any literary composition and his assigns, had the sole right of printing and publishing the same in perpetuity, by the common law?"
5. "Whether this right is restrained, impeached, or taken away by the statute 8th Anne?"

* *Parliamentary History*, Vol. 17, *p.* 953.

On these questions eleven of the judges delivered their opinions. Lord Mansfield, from motives of delicacy, declined giving his opinion, although it was well known that he adhered to that he had given in the case of Millar *vs.* Taylor.

On the *first* of these questions, *ten* of the judges answered in the affirmative, and *one* in the negative.

Two of the ten, however, qualified their opinion, by saying that the author of a book "could not bring an action against any person who printed, published, and sold the same, unless such person obtained the copy by fraud or violence."

On the *second* question, *four* of the judges answered in the affirmative, and *seven* in the negative.

On the *third* question, *six* of the judges answered in the affirmative, and *five* in the negative.

On the *fourth* question, *seven* answered in the affirmative, and *four* in the negative.

On the *fifth* question, *six* answered in the affirmative, and *five* in the negative.

The result, therefore, stated in brief, was as follows:

1. *Eight* of the judges (including Lord Mansfield) were of the opinion that "The author of any literary composition, and his assigns, *had* the sole right of printing and publishing the same in perpetuity, *by the common law;*" and *four* were of a contrary opinion.

2. *Six* of the judges (including Lord Mansfield) were of the opinion that this common law right was *not* taken away by the statute 8th Anne; and *six* were of a contrary opinion.

After the judges had delivered their opinions, the lords reversed the decree appealed from, by a vote of twenty-two to eleven. And this decision has since stood as the law of England.

How many of those lords, who voted for the reversal, did so in the belief that there was no copyright at common law; and how many did so in the belief that the common law copyright had been taken away by the statute, does not appear. The decision, therefore, does not stand as a decision that an author had *not* a

perpetual copyright *at common law;* but only as a decision that, *if* he had such a right at common law, that right had been taken away by the statute.

The diversity of opinion, both among the judges and the lords, deprive this decision of all weight as an authority. The only things really worthy of consideration are the arguments urged on the one side and the other. These arguments were very similar to those in the case of Millar *vs.* Taylor; and the rights of authors were lost from substantially the same errors, inconsistencies, and deficiencies, in the arguments of their advocates, that have been pointed out in that case.

To show the views that prevailed, on both sides, regarding the most prominent points in the case, I give the following extracts.

1. On the point of similarity between a mechanical invention, and a literary composition, I give the *whole* of the arguments, on both sides, so far as they are reported, as follows.

Wedderburn, counsel, speaking *for* the copyright, made the fatal concession that the author of a mechanical invention had, at common law, no property in his invention, but only in the machines he made; and for such absurd reasons as these. He said:

"It had been contended that the inventor of an orrery was in the same predicament as an author, when he published. Such an allusion came not to the point. The first sheet of an edition, as soon as it was given impression, in a manner loaded an author with the expenses of a whole edition; and if that edition was five thousand [in] number, the author was not repaid for his labor and hazard, till the last of the five thousand was sold. The maker of an orrery was at no other trouble and charge, than the time, ingenuity, and expense, spent in making one orrery; *and when he had sold that one, he was amply paid.* [!!] Orrery making was an invention, and the inventor reaped the profit accruing from it. Writing a book was an invention, and some profit must accrue after publication; who should reap the benefit of it? Authors, he contended, both from principles of natural justice, and the interest of society, had the best right to the profits accruing from a publication of their ideas." *p.* 965.

Thurlow, counsel, in reply, *against* the copyright, said:

"With regard to the observation, that the inventor of an orrery was not at all to be compared to the inventor of a book, because he was paid for his labor when he had sold one orrery; there was not a more fallacious doctrine in the power of words. The maker of a time-piece, or an orrery, stood in the same, if not in a worse predicament, than an author. The bare invention of their machines might cost them twenty of the most laborious years in their whole life; and the expense to the first inventors in procuring, preparing, and portioning the metals, and other component parts of their machines, was too infinite to bear even for a moment the supposition that the sale of the first orrery recompensed it. And yet no man would deny that after an orrery was sold, every mechanist had a right to make another after its model." *p.* 969.

Baron Eyre, giving his opinion *against* the copyright, "considered a book precisely upon the same footing with any other mechanical invention. In the case of mechanic inventions, ideas were in a manner embodied, so as to render them tangible and visible; a book was no more than a transcript of ideas; and whether ideas were rendered cognizable to any of the senses, by means of this or that art, of this or that contrivance, was altogether immaterial. Yet every mechanical invention was common, whilst a book was contended to be the object of exclusive property! So that Mr. Harrison, after constructing a time-piece, at the expense of forty years labor, had no method of securing an exclusive property in that invention, unless by a grant from the state. Yet if he was in a few hours to write a pamphlet, describing the properties, the utility, and construction of his time-piece, in such a pamphlet he would have a right secured by common law; though the pamphlet contained exactly the same ideas on paper, that the time-piece did in clock-work machinery. The clothing is dissimilar; the essences clothed were identically the same.

"The baron urged the exactitude of the resemblance between a book and any other mechanical invention, from various instances of agreement. On the whole, the baron contended, that a mechanic invention and a literary composition exactly agreed in point of similarity; the one therefore was no more entitled to be the object of common law property than the other; and as the common law was entirely silent with respect to what is called literary property, as ancient usage was against the supposition of such a property, and as no exclusive right of appropriating those other operations of the mind, which pass under the denomination of mechanical inventions, was vested in the inventor by the common law, the baron, for these reasons, declared himself against

the principle of admitting the author of a book, any more than the inventor of a piece of mechanism, to have a right at common law to the exclusive appropriation and sale of the same." *p.* 974.

Justice Ashurst, giving his opinion *in favor of* the copyright, said:

"Since the statute of monopolies, no questions could exist about mechanical inventions. Manufactures were at a very low ebb till queen Elizabeth's time. In the reign of James the First, the statute of monopolies was passed. Since that act no inventor could maintain an action without a patent. It is the policy of kingdoms, and preservation of trade, to exclude them." *p.* 977.

Justice Aston, giving his opinion *in favor of* the copyright, said:

"With regard to mechanical instruments, because the act against monopolies had rendered it necessary for the inventors of them to seek security under a patent, it could be no argument why in literary property there should be no common law copyright. He thought it would be more liberal to conclude, that previous to the monopoly statute, there existed a common law right, equally to an inventor of a machine, and an author of a book." *p.* 981.

Baron Perrott, speaking *against* the copyright, said:

"An inventor of a machine or mechanical instrument, like an author, gave his ideas to the public. Previous to publication, he possessed the *jus utendi, fruendi, et disponendi,* [the right of using, enjoying, and disposing of,] in as full extent as the writer of a book; and yet it never was heard that an inventor, when he sold one of his machines, or instruments, thought the purchaser, if he choose it, had not a right to make another after its model. The right of exclusively making any mechanical invention was taken away from the author or inventor by the act against monopolies of the 21st of James the First. Which act saved prerogative copyrights, and which would have mentioned what was now termed literary property, had an idea existed that there was a common law right for an author or his assigns exclusively to multiply copies." *p.* 982.

Lord Chief Baron Smythe, speaking *for* the copyright, said:

"As to mechanical inventions, he did not know that, previous to the act of 21st James the First, [the statute against monopolies,]

an action would not lie against the person who pirated an invention. An orrery none but an astronomer could make; and he might fashion a second, as soon as he had seen a first; it was then, in a degree, an original work; whereas, in multiplying an author's copy, his name, as well as his ideas, were stolen, and it was passed upon the world as the work of the original author, although he could not possibly amend any errors which might have escaped in his first edition, nor cancel any part which, subsequent to the first publication, appeared to be improper." *p.* 987.

Lord Chief Justice De Grey, speaking *against* the copyright, said:

"Abridgments of books, translations, notes, as effectually deprive the original author of the fruit of his labors, as direct particular copies; yet they are allowable. The composers of music, the engravers of copper-plates, *the inventors of machines*, are all excluded from the privilege now contended for; but why, if an equitable and moral right is to be the sole foundation of it? Their genius, their study, their labor, their originality, is as great as an author's; their inventions are as much prejudiced by copyists, and their claim, in my opinion, stands exactly on the same footing. A nice and subtle investigation may, perhaps, find out some little logical or mechanical differences, but no solid distinction in the rule of property that applies to them, can be found." *p.* 990.

Lord Camden, speaking *against* the copyright, said:

"With respect to inventors, I can see no real and capital difference between them and authors. Their merit is equal; they are equally beneficial to society; or perhaps the inventor of some of those masterpieces of art, which have been mentioned, have there the advantage. All the judges, who have been of a different opinion, conscious of the force of the objection from the similarity of the claim, have told your lordships they did not know but that an action would lie for the exclusive property in a machine at common law, and chose to resort to the patents. It is, indeed, extraordinary that they should think so; that a right that never was heard of, could be supported by an action that never was brought. If there be such a right at common law, the crown is an usurper. But there is no such right at common law, which declares it a monopoly. No such action lies. Resort must be had to the crown [that is, to the king's patent] in all such cases." *p.* 999.

The foregoing extracts contain *all* that was said in the case, or at least all that is reported, relative to the similarity between the rights of authors and inventors, to a common law right of property, in their ideas. If the advocates of the rights of authors had had the courage to advocate also the rights of inventors, as stoutly as those, who resisted the rights of authors, insisted upon the similarity of rights in the two cases, a different decision of the cause might possibly have been effected. At any rate, such an impulse would have been given to inquiry in the true direction, as would very likely have resulted ere this in the full establishment of the rights of both authors and inventors.

The only argument, given *against* the copyright, that had any intrinsic weight or merit, was that of Lord Chief Justice De Grey, which has already been commented upon in a former chapter;* and need not be further noticed here.

Some of Lord Camden's arguments are worthy of notice; not however for their intrinsic weight, but because of the high judicial rank of their author; and because also they seem to have had great influence with the lords, in inducing them to vote against the copyright.

1. He held that the want of *precedent* to sustain the right, was fatal to it. Thus he said:

"That excellent judge, Lord Chief Justice Lee, used always to ask the counsel, after his argument was over, 'Have you any case?' [precedent.] I hope judges will always copy the example, and never pretend to decide upon a claim of property, without attending to the old black letter of our law; without founding their judgment upon some solid written authority, preserved in their books, or in judicial records. In this case I know there is none such to be produced." *p.* 998.

And again, alluding to the idea, thrown out by Aston and Smythe, that but for the statute against monopolies, an action at common law might be sustained against one who should pirate a mechanical invention, he said:

* *Chapter* IV, *page* 115.

"It is, indeed, extraordinary that they should think so; that a right, that never was heard of, could be supported by an action that never was brought." *p.* 999.

I repeat his words so far as to say, "it is, indeed, extraordinary" that an ex-Lord Chancellor should utter such opinions as these. If, as he pretends, "*a case*," a precedent, is necessary to *make* Common Law, we are bound at once to renounce the whole body of the *acknowledged* Common Law as illegitimate, and declare the impossibility of there being any such thing as Common Law at all; because there was a time when a common law "case" had never been decided; when indeed a common law right had "never been heard of;" when a common law action "had never been brought;" and when, of course, according to Lord Camden's argument, no common law court had any just authority "to decide upon a claim of property." All common law decisions hitherto, have, therefore, on his theory, been mere usurpations, and of course can be no authority now; and all our common law rights of property, of every name and nature, of necessity fall to the ground. This is the legitimate conclusion of his argument.

This argument of the want of precedent is utterly worthless, where the case is a clear one on principle. New questions in common law — or, what, on this point is the same thing, in natural law — have been continually arising ever since mankind first had controversies with each other about their respective rights; and old ideas have given place to new ones, as knowledge has progressed. And such will continue to be the course of things as long as man is a progressive being, and has rights to be adjudicated upon. And the fact, that such or such a particular question has never arisen before, or that legal science has never heretofore been sufficiently advanced to decide it correctly, is no reason at all why the principles of justice and reason are not now the true and imperative rules for its decision. Neither the ignorance, nor the injustice of the past, has any innate authority over the present, or the future. They have not altered the nature of

men's rights, nor the nature of truth, nor abolished the obligations of justice. If mankind have not a right to the benefit of all *new* discoveries in law, as in the other sciences, as fast as they are made, they have no right to any *old* discoveries of the same kind; for the latter were as illegitimate in their origin as the former; and on this principle, the law of nature would stand shorn of her authority to control either the decisions of courts, or the conduct of men.

This pretence of the necessity of a precedent, is the pretence of a pettifogger, and not the argument of a lawyer. Lord Camden himself, in another part of his speech, virtually acknowledges its unsoundness; for he says, "Our law [the common law] argues from *principles*, cases, and *analogy*." (*p.* 995.) Yes, from "principles" and "analogy," no less than from "cases." And he should have said, "from principles and analogy," *in preference* to "cases;" for wherever previous "cases" have been decided contrary to the general "principles and analogies" of the common law, courts are bound to overrule them, in all subsequent decisions.

Lord Camden's great predecessor in the chancellorship, Lord Bacon, inculcated no such narrow and absurd ideas, as to the necessity of precedents, or their authority to deprive mankind of the benefits of whatever knowledge they might afterwards acquire. Speaking "*Of Cases Omitted in Law*," he says:

"The narrow compass of man's wisdom cannot foresee all the cases which time may produce; and therefore cases omitted and new do often arise." He then gives rules for judging of these cases; among which rules is this. "*Let reason be a fruitful, and custom a barren thing.*" *

It requires no words to prove which was the greater philosopher of the two — Lord Bacon, when he said that mankind did not know every thing from the beginning, and that, in judging of new questions, reason should be allowed to be a fruitful, and custom

* *Advancement of Learning*, B. 8, *Aphorisms* 10 and 11.

but a barren, source of authority; or Lord Camden, when he held it indispensable that we should have a precedent for every thing — or, what is virtually the same thing, that mankind have now a right to use only that knowledge, which was possessed at the origin of the race; and, in truth, not even that.

But, leaving these considerations of an abstract nature — sufficient reasons have already been given in this chapter, why inventors have never brought their common law rights before the *English* courts for adjudication, without supposing it to have been owing to any want of solidity in the rights themselves. And when the judges of England, for hundreds of years, have been the servile tools, and nothing but the servile tools, either of kings or parliaments, or both; and, as such, have habitually withheld all the constitutional and common law rights of the people, at the slightest bidding of arbitrary power; it ill becomes one of these judges now to offer, as an argument against the existence of one of these proscribed common law rights, the fact that the right has never been brought before themselves for adjudication, with the certainty that it would be spurned and trampled under foot by them; and with the further certainty that such a precedent, once created, would be cited, by themselves and their successors, for an indefinite period thereafter, as a sufficient warrant for similar outrages in all subsequent cases.

When English judges shall have shown sufficient reverence for that Common Law, which they have been sworn to support, to maintain it against the authority of unconstitutional legislatures and legislation, it will be quite as soon as they can, with any decency even, offer such an objection as this of Lord Camden's. And it would be but a poor compliment to their understandings, to suppose that, even then, they would seriously entertain it; inasmuch as the question of the Common Law rights of inventors, is one, which, in the nature of things, would be likely to acquire prominence, only in such an advanced state of both civilization and freedom, (especially the latter,) as can hardly be said to

have ever existed in England; certainly not until within a comparatively recent period.

2. Another of Lord Camden's arguments was this, viz.: "*If there be such a right at common law, the crown is an usurper.*" That is, if inventors have a common law right of property in their inventions, the crown is an usurper in granting them patents, on the assumption that they have no such *rights*, but can only enjoy such *privileges* as he, in his "gracious pleasure and condescension," may see fit to grant them.

This argument, that "*the crown is an usurper*," can hardly need an answer, *in America*. It certainly is not one that need frighten an *American* court out of its senses, or even out of its integrity; although it is one that would be very likely to frighten an *English* court out of both. And especially would it be quite certain to produce these effects upon such a body as the lords, who themselves, both in their legislative and judicial capacities, are, constitutionally, nothing but usurpers. They, of course, would not dare to gibbet the king, for acting as their own accomplice in usurpation. And hence the weight, which, we may reasonably presume, this argument had, in the decision of the question before them.*

But Lord Camden need not have been alarmed at the apprehension, that if inventors were allowed their common law rights,

* I say, in the text, that "the lords, both in their legislative and judicial capacities, are, constitutionally, nothing but usurpers."

By the English constitution, an order of nobility could exist only on the foundation of the feudal system. When that system was abolished, all distinctions of political rank, inferior to that of the king, were, *constitutionally speaking*, abolished with it. And all the legislative and judicial power, since exercised by the lords, as a body, has been a sheer usurpation. This usurpation was originally accomplished by them, by means of their wealth, and by conspiring with the king, the knights, and the "*forty shilling freeholders*," so called (originally represented in the House of Commons); a class, whom Mackintosh designates as "a *few* freeholders then accounted wealthy." (*Mackintosh's Hist. of Eng., Ch.* 3.) The same kind of influences, which originally enabled them to accomplish this usurpation, have enabled them hitherto to sustain it. It never had the least authority in the constitution of the kingdom.

the crown would, by consequence, have been proved an usurper. The granting of patents was not, *originally* — whatever it be now — an act of usurpation on the part of the king. It was a legitimate act of legislation, at a time when the legislative power was practically, as it always was constitutionally, vested solely in himself. And it was also such an exercise of that power, as showed quite as much regard for justice, and for the constitutional and common law rights of the people, as could reasonably be expected of him, in the dark and barbarous age, in which the granting of patents originated. It was, in short, an *honest* attempt to do equity — according to the degree of knowledge then existing on the subject — towards acknowledged public benefactors; and, at the same time, to promote the interests of the people, by encouraging new inventions. *The patent was simply an authenticated copy of a statute, passed by the king,* enacting that the inventor, or the introducer of an invention, should have an exclusive privilege to use the invention for a specific term, as a just reward for his labors, and for the benefits he had conferred upon the nation. This patent, or copy of the statute, authenticated by the king's seal, was given to the patentee, that he might produce it in courts or elsewhere, in proof of the existence of the statute itself; the statutes not being generally published in those days, except by proclamation. And this statute, so authenticated, was then entitled to respect and observance, by the judges and juries throughout the kingdom, *so far as they should think it consistent with the common law, and no further.* Such was the *original, constitutional* nature of a patent, for a mechanical invention.

The statutes, or patents, therefore, which secured to inventors the exclusive use of their inventions, were perfectly consistent with the common law, *for the term for which they were in force;* and they were inconsistent with the common law only in this, that they limited the rights of the inventors to a fixed term, instead of securing them in perpetuity.

The most important — if not the only important — "usurpa-

tions" there have been in the matter, have been of a more modern date, as follows. 1. The usurpations of an unconstitutional legislature — the Houses of Lords and Commons — in prohibiting the king from granting patents to inventors for any more than a limited time. 2. The usurpations of the judiciary, in holding that patents, though granted only for a brief term, were inconsistent with the common law, and therefore to be defeated, if possible, by principles of construction, which had no just application to them, and by groundless imputations of fraud, on the part of the patentee, in cases of the slightest variation from accuracy in the specification.

So far, therefore, from the king's "usurpation" being proved, by proving the common law right of inventors, to an exclusive property in their ideas, the only way of *disproving* his usurpation, in granting such patents *at this day, is by asserting, instead of denying, that right;* and also by asserting that the patent is granted to make the right *more secure than it would otherwise be.*

The prerogative of granting such patents, is a mere *relic* of the ancient sole legislative power of the king. As such, it is perfectly constitutional. While the right, which it is used to protect, is also a perfectly constitutional one, inasmuch as it has its immutable foundations in the principles of that common, or natural law, which alone, with very few exceptions, it was the design of the English constitution to maintain.

3. Coming to the question of "policy," Lord Camden said:

"If there be no foundation of right for this perpetuity, by the positive laws of the land, it will, I believe, find as little claim to encouragement upon public principles of sound policy, or good sense. If there be any thing in the world common to all mankind, science and learning are in their nature *publici juris*, [subjects of common right,] and they ought to be free and general as air or water. They forget their Creator, as well as their fellow creatures, who wish to monopolize his noblest gifts and greatest benefits. Why did we enter into society at all, but to enlighten one another's minds, and improve our faculties, for the common welfare of the species? Those great men, those favored mortals, those sublime spirits, who share that ray of divinity which we

call genius, are intrusted by Providence with the delegated power of imparting to their fellow creatures that instruction which heaven meant for universal benefit; they must not be niggards to the world, or hoard up for themselves the common stock. We know what was the punishment of him who hid his talent, and Providence has taken care that there shall not be wanting the noblest motives and incentives for men of genius to communicate to the world those truths and discoveries, which are nothing if uncommunicated. Knowledge has no value or use for the solitary owner; to be enjoyed it must be communicated. '*Scire tuum nihil est, nisi te scire hoc sciat alter.*' [Your own knowledge is nothing, unless another know that you possess it.] Glory is the reward of science, and those who deserve it, scorn all meaner views. I speak not of the scribblers for bread, who tease the press with their wretched productions; fourteen years is too long a privilege for their perishable trash. It was not for gain, that Bacon, Newton, Milton, Locke, instructed and delighted the world; it would be unworthy such men to traffic with a dirty bookseller for so much a sheet of a letter press. When the bookseller offered Milton five pound for his Paradise Lost, he did not reject it, and commit his poem to the flames; nor did he accept the miserable pittance as the reward of his labor; he knew that the real price of his work was immortality, and that posterity would pay it. Some authors are as careless about profit as others are rapacious of it; and what a situation would the public be in with regard to literature, if there were no means of compelling a second impression of a useful work to be put forth, or wait till a wife or children are to be provided for by the sale of an edition? All our learning will be locked up in the hands of the Tonsons and Lintons of the age, who will set what price upon it their avarice chooses to demand, till the public become as much their slaves, as their own hackney compilers are." 17 *Parl. Hist.* 999–1000.

I doubt if such poor fustian and sophistry as this can deserve an answer, even when coming from an ex-Lord Chancellor. Yet it may not be unworthy of attention, as an index to the motives which finally controlled the decision of the Lords; for it is fair to presume that Lord Camden had at least a tolerable understanding of the intellectual and moral attributes of the body he was addressing, and of the influences most likely to determine their adjudication.

If, then, he meant to lay it down as a *rule*, that "*public prin-*

ciples of sound policy and good sense" require that *all* "those great men, those favored mortals, those sublime spirits, who share that ray of divinity, which we call genius," should be placed without the pale of the common principles of justice, and deprived of *all* their natural or common law rights of property, we can have no difficulty in appreciating his ideas of "public principles of sound policy and good sense." But if he do not contemplate this general destruction of *all* their common law rights of property, it is not so easy to see on what "*principle*" it is, that he selects their intellectual productions, as special objects of confiscation.

If there really were any "men" so "great," any "mortals" so "favored," any "spirits" so "sublime," that their bodies could live on the "glory" and "immortality," which "*posterity* will pay," there might be — what there is not now — some little reason why society, while being enriched and enlightened by them, should be excused for robbing them of all other means of subsistence. But since the greatest of men, the most favored of mortals, and the sublimest of spirits, will just as soon die without eating, as any of the rest of mankind, it is quite indispensable, in order that they may live, and give the world the benefit of their labors, that, while laboring, they have some nutriment more substantial than prospective "glory" and "immortality."

But Lord Camden assumes — as men more ignorant, and therefore more excusable, than himself, have often done — that valuable ideas cost their authors neither time nor labor; that the production of them interrupts none of those common pursuits, by which other men procure their subsistence; and hence he brands them as "niggards," and "rapacious," if they demand any price for the invaluable commodities they offer to mankind. Yet he well knew the injustice and falsehood of such an idea. He knew that the greatest geniuses have usually been among the greatest laborers in the world. So rarely indeed has genius produced any thing valuable without effort, that it has been a very common

opinion among men, that genius itself was only labor in its highest intensity.

More shameless meanness, injustice, or falsehood has seldom been seen, than in this attempt of Lord Camden to deprive the most useful and meritorious, as well as the most self-sacrificing individuals, of the benefit of the common principles of justice, in their efforts to live by performing for society the most valuable labors.

Perhaps, however — not to do him injustice — it may be thought that a clue to his reasons for this apparently arbitrary exception of intellectual property from the protection of the law, is to be found in his remark, that,

"If there be any thing in the world common to all mankind, science and learning are in their nature *publici juris*, [subjects of common right,] and they ought to be as free and general as air or water."

The answer is, that there *is not* "any thing in the world" — not even "air or water" — that is, "*in its nature*," "common to all mankind," or "free or general," in any such sense as he assumes it to be — that is, in any sense that forbids its being made private property to any possible extent, to which it is practicable for individuals to take exclusive possession of it.

"Air" and "water" are free and common to all mankind, only in the same sense in which land, and trees, and gold, and iron, and diamonds, and all other material things, are free and common to them. And that sense is this. Land, trees, gold, iron, and diamonds, in the state in which they originally exist in nature, to wit, *unappropriated*, are free and common to all mankind — that is, they are "free" *to be appropriated*, or made private property, by individuals; and all mankind have equal rights, and equal freedom, to appropriate them, or make them their private property. In this sense, those commodities are "free and common to all mankind," *and in no other*. So soon as they are thus *appropriated*, they are no longer free or common to all mankind, but have become the private property of the individ-

uals so appropriating them; who thenceforth have a right of absolute and exclusive dominion over them against the world. It is precisely the same with "air and water." In their natural condition — that is, *unappropriated* — they are free and common to all mankind — that is, *free to be appropriated*, or made private property. And all mankind have equal rights and equal freedom to appropriate, or make them their private property. In this sense, air and water are free and common to all mankind, *and in no other legal sense.* So soon as they are thus appropriated, they are no longer free or common to all mankind; but have become the private property of the individuals so appropriating them; who thenceforth have a right of absolute and exclusive dominion over them, against the world, until they either consent to part with the right, or until they are deprived of it by the operation of some *physical* law of nature which they cannot resist.

There is nothing, therefore, "*in their nature*," as Lord Camden assumes, that forbids "air or water" to be made private property; and, as a matter of fact, there are perhaps no material substances in the world, that are more frequently appropriated, or made private property, than air and water. At every breath we make private property of so much air as we inhale. When we exhale it, we abandon our right of property in it. We abandon our right of property in the air we exhale, for two reasons, namely, choice, and necessity; from choice, because it is not worth preserving — air being so abundant that we have no necessity to retain any portion of it for a second use; from necessity, because we exhale it into the surrounding air, where we can no longer identify it, as that which has been ours.

We make private property of air also, when we inclose it in our dwellings, and warm it to adapt it to our comfort. We abandon our right of property in it, when we open our doors and windows to let out the air that has become impure, and to let in that which is pure.

This air, which we thus inclose in our dwellings, and, by warming or otherwise, fit for our use, is as much private prop-

erty, *while it is thus inclosed*, as the gold or the diamonds we have digged from the earth; and no man has any more right to inhale it, without our consent, or to open our doors and let it escape, than he has to steal our gold or our diamonds.

Men do not often buy and sell air, *solely* because it is so abundant, and so easy of acquisition by all, that it will seldom bring any price in the market; and *not* because, as Lord Camden assumes, there is any thing "*in its nature*," that legally forbids our making merchandise of such quantities as we can take possession of.

The same is true of water as of air. Hardly any thing, *except air*, is more frequently made private property than *water*. Every time a man dips water from a spring or a stream, he makes it his private property. It at once becomes his, against the whole world besides. And no man has a right to object to its being made private property, on the ground that it is "*in its nature*," free and common to all mankind. In its natural condition it is free and common to all mankind, only in the sense of being *unappropriated* — the property of no one — and therefore free *to be appropriated* by whomsoever pleases to take possession of it, and make it his property. It is only by being thus appropriated, and made private property, that it can be made useful to mankind.

The water in the ocean is free and common to all mankind, only in the sense that it is unappropriated — the property of no one — and therefore free to be appropriated by any one at his pleasure or discretion. And it is only by appropriating it, and making it private property, that it is made of any use to mankind. Thus that portion of the ocean, which a man, at any particular moment, occupies with his body, his vessel, his anchor, or his hook, is, *for that moment*, his private property against the world. When he removes his body, vessel, anchor, or hook, he abandons his private property in the water he once possessed. He makes this abandonment, both from choice, and from necessity; from choice, because he no longer needs that particular water for use;

and from necessity, because he can no longer identify it as that which had been his.

Water is not only a legitimate object of private property, and continually converted into private property, but it is, to a very considerable extent, made an article of merchandise. For example, large quantities of water are brought, in aqueducts, into cities for sale. Single individuals sometimes bring it in, in small quantities, for the same purpose. In its congealed state, it is sent, in large quantities, to distant parts of the world as merchandise. Yet nobody, not even Lord Camden, was ever foolish enough to object to the legitimacy of this commerce, on the ground that water was, "*in its nature*," free and common to all mankind, in the sense of being incapable of legal appropriation.

The idea, that "air and water" — meaning thereby the *great body* of air and water — are the common *property* of all mankind — using the term *property* in its *legal* sense — is a very common, but a very erroneous one; and it is one from which many fallacious arguments are drawn, that this, that, and the other species of property ought also to be free and common to all mankind. Whereas the truth is that the great body of air and water are not *property* at all. They are neither the "common property of all mankind," nor the private property of individuals. They simply exist *unappropriated; free to be made property;* but when appropriated by one, they are no longer free to be appropriated by another.

The remark, therefore, that air and water are "free and common to all mankind," can never be used, *with truth*, to signify that one man has any more legal right to interfere with, or lay any claim to, such quantities of air or water as another man has taken possession of or appropriated, than he has to interfere with, or lay claim to, such quantities of land, gold, iron, or diamonds, as another man has appropriated.

If, therefore, when Lord Camden speaks of air and water as being, "in their nature," free and common to all mankind, he mean that they cannot lawfully or rightfully be appropriated, or

made private property, he manifests a degree of ignorance, thoughtlessness, or mendacity, that is entirely disgraceful to him; since there is no legal proposition whatever, that is more entirely clear, or more universally acted upon, than that every individual has a natural right to make private property of air and water, to any possible extent that he can take possession of them, without interfering with others in the exercise of the same right. Air and water would be of no use to mankind, unless they could be made private property.

But if he only mean that air and water, *unappropriated*, are free and common *to be appropriated*, and made private property, by all mankind, then his assertion that "science and learning" ought to be *equally free* — that is, equally free *to be appropriated*, and made private property — only makes *against* the very point he was trying to establish, viz.: that science and learning ought *not* to be made private property. And there is consequently no sense whatever in his argument. It is mere idiocy.

If he mean that science and learning ought to be as free *to be appropriated*, or made private property, as air or water, neither authors nor inventors can object to the principle; for that is the very principle they themselves are contending for. They admit that the boundless fields of knowledge, like the boundless fields of air and water, are open and free to all mankind alike; and all they claim is, that each individual shall have an exclusive property in all the knowledge that he himself, by the exercise of his own powers, and without obstructing others in the exercise of theirs, can take *exclusive* possession of; that they have the same natural right to an exclusive property in their exclusive acquisitions of knowledge, which they and all other men have in their exclusive acquisitions of air, of water, of land, of iron, of gold, or of any other material commodities, which, so long as they remained *unappropriated*, were free and open to all mankind — that is, free and open *to be appropriated;* but which, when appropriated, are no longer free and open to all mankind, but are the private property of the individuals who have appropriated them. Can

Lord Camden, or any one else, deny that the principle is as sound, or as applicable, in the one case, as in the other?

But perhaps it may be said that Lord Camden's remark is to be taken in still another, and an *economical* sense, viz.: that "science and learning" ought to be as *abundant, as easy of acquisition*, and therefore as *cheap*, as "air or water." If this be what he means, all that need be said in reply is, that the Author of Nature happened to differ from him in opinion. If He had been of Lord Camden's mind, as to what was best for mankind in this respect, He would undoubtedly have made *all* the knowledge, which men ordinarily need or desire, as abundant, as easy of acquisition by all, and consequently as cheap, as are their requisite supplies of air and water. But He has not done so. On the contrary, while He has made many kinds of knowledge very easy of acquisition, and therefore very cheap, and even valueless, as articles of merchandise, He has made other kinds attainable, in the first instance, only by great toil and effort. These being of great value to mankind, and produced only by great labor, are capable of commanding a price in the market; because it is cheaper for men to buy them than to produce them for themselves. And this price, by the laws of trade, which are but the laws of nature, will be governed — like the prices of all other commodities — by the cost of production, and the demand for use. And there is no more reason why the producers of these rare, costly, and valuable ideas, should give them to the world, and receive no compensation for the labor of producing them, than there is why the producers of any other valuable commodities should give them to the world, and receive no compensation for their labor in producing them.

But Lord Camden's principle is, that when one man has digged deep, and toiled hard, to acquire knowledge, another man should, *by law*, be free to share it with him, without his consent, and without making him any compensation. Was *he* ever willing to apply that principle to "*water?*" When *he* had digged deep, or toiled hard, to obtain *water*, was he willing that another, who

had pursued his own pleasure or interests meanwhile, should, *by law*, have equal rights in it with himself, without asking his permission, or making him any compensation for his labor? Any thing but that! His principle, in regard to "water," and to *all material* commodities, was — as he himself expressed it in regard to *land*, which is, "*in its nature*, as free and common to all mankind as air or water" — that "No man can set his foot upon my ground, without my license." *

But he says, "They forget their Creator, as well as their fellow creatures, who wish to monopolize his noblest gifts and greatest benefits."

This affectation of piety means that the producers of ideas are morally bound to give the products of their labor as freely to all mankind, as the Creator does the products of nature — that is, without money and without price. If men were like their Creator, not dependent upon their labor for subsistence, there would be some reason in such fantastical morality as this. But while the producers of ideas have bodies to be fed and clothed, it is as ridiculous to talk of their being under a moral obligation to give the products of their labor freely to all mankind, as it would be to talk of the moral obligation of the producers of food or clothing to give the products of their industry freely to all mankind. In reality, many of the producers of ideas are the greatest practical producers of food and clothing; for they supply that knowledge, which is the most efficient instrument in producing food and clothing.

Did Lord Camden, as judge or chancellor, ever act upon the principle that it was his duty to give his ideas freely to all mankind? Not he. He demanded titles, and salaries, and pensions, in exchange for his ideas; salaries and pensions too, not granted to him by voluntary contract on the part of the people who paid them — as are the prices paid to authors and inventors — but

* *Campbell's Lives of the Lord Chancellors, Vol. 5, p. 215. Entick vs. Carrington, 19 State Trials* 1066.

extorted from them by that arbitrary government, which he ought to have resisted, and, if possible, overthrown; but of which he choose rather to make himself the instrument. It was quite consonant with his ideas of law and morality, to assist this tyrannical power in actually plundering the people of their money, that it might be paid over to himself for his own false and worthless ideas; but it was, in his view, immoral and illegal for authors and inventors to sell their ideas for what they would bring, on voluntary contract, in free and open market.

Only two days after receiving his office as Lord Chancellor, this superlative moralist and judge wrote to the minister, to have his salary, pension, and equipage money, secured to himself, and a lucrative office for his son.* And the opinion he gave, in this case of Donaldson *vs.* Becket, vindicating the crown against the charge of usurpation, in denying the rights of inventors, and exhorting his own fellow usurpers, the Lords, to deny and destroy the rights of authors, is a specimen of the ideas he intended to furnish the government in return. To sell himself and all his false and tyrannical political ideas *to the government*, was, in his opinion, a perfectly legitimate commerce; but the sale of useful knowledge *to the people*, was an act interdicted by law and morality. There have been many such judges and moralists as he.

But he says that men of genius "are intrusted by Providence with the delegated power of imparting to their fellow creatures that instruction, which Heaven meant for universal benefit."

Yes, men of genius are undoubtedly designed by Providence to labor intellectually for the benefit of mankind. Yet it was

* The following is a copy of his note.

"The favors I am to request from your Grace's despatch, are as follows.

1. My patent for the salary.

2. Patent for £1500 a year upon the Irish establishment, in case my office should determine before the tellership drops.

3. Patent for tellership for my son.

4. The equipage money; Lord Worthington tells me it is £2000. This I believe is ordered by a warrant from the Treasury to the Exchequer."

Campbell's Lives of the Lord Chancellors, Vol. v, *p.* 221.

left for his lordship to announce the discovery of a special revelation, to the effect that it was also the design of Providence that they should live without eating; or, what is the same thing, that they should receive nothing in exchange for the products of their labor. This important revelation he thinks he has found in the parable of the slothful servant. "We know," says he, "what was the punishment of him who hid his talent." Selling ideas in the market, this sagacious lord holds to be equivalent to hiding them in the earth. They can be of no use to mankind, unless given to them "freely!"

Up to this time, the world had never, I believe, conceived this parable to be a rebuke for not giving away one's talent; but only for not trading with it, or using it, in a way to bring an income. But taken in this last sense, it would not have greatly benefitted his lordship's argument.

This new reading of the scripture, however, was quite *apropos* to the question before them, for the reason that English lords have, of course, been unable wholly to escape the taint of the common humanity, the common justice, and the common sense, of the common people; and there is no knowing how far their weaknesses, in those respects, might have carried them, in the adjudication of this question of intellectual property, if the conscientious and religious scruples, which their order have for ages entertained, against allowing mankind to enjoy the fruits of their labor, had not been appealed to, and fortified, by the authority of scripture.

Had this new interpretation of the parable, fallen from one of those dignitaries of the church, who occupy seats in the House of Lords, apparently to lend the light, as well as the sanction, of religion to the action of that body, we might have thought that it accorded perfectly, both with his profession, and his practice. But coming from a lay lord, and addressed to other lay lords, in their capacity of common law judges, and taken in connexion with the decision which followed, it is perhaps to be regarded only as an illustration of the *sense*, in which they hold Christianity to be a part of the Common Law.

But Lord Camden says further, that the producers of ideas "must not be niggards, and hoard up for themselves the common stock."

This, we are to suppose, is but another specimen of the reasonings, by which men's rights are determined in the House of Lords.

There would plainly be as much sense in saying that those who produce *wheat*, and bring it to market, and ask a price for it, are therefore "niggards to the world, and hoard up for themselves the common stock," as there is in saying it of the producers of ideas. The producer of ideas, like the producer of wheat, brings the products of his labor to market *to-day*, that he may exchange them for the means of subsistence, and thus live and be able to produce other ideas *to-morrow*; which other ideas he will bring to market in like manner. He sells his ideas, too, or at least many of them, for one per centum of their actual value for economical purposes. If this is being a "niggard to the world, and hoarding up for himself the common stock," it is unfortunate for the world that there have been so few such niggards in it; for it is only the want of a sufficient number of them, that has kept mankind in ignorance and poverty, and rendered them the easy dupes of such hypocrites as Camden, and the easy prey of such robbers as those to whom he was addressing his arguments.

But he says again, "What a situation would the public be in with regard to literature, if there were no means of *compelling* a second impression of a useful work to be put forth, or wait till a wife or children are to be provided for by the sale of an edition? All our learning will be locked up in the hands of the Tonsons and Lintons of the age, who will set what price upon it their avarice chooses to demand."

This appalling interrogatory can perhaps be best answered by presenting another, which is at least equally alarming, and equally rational, viz.: What a situation would the public be in with regard to *wheat*, if there were no means of *compelling* the producers to bring it to market, until their wives or children were to be provided for by the sale of it? All the wheat will be locked up in the hands of the owners, who will set what price upon it their avarice chooses to demand.

The only remedy for this frightful state of things, would be, according to Lord Camden's notions of "sound policy and good sense," to declare that wheat ought to be as free and common to all mankind as air or water; that men forget their Creator, as well as their fellow creatures, when they claim to own the wheat they have produced by their labor; that they must not be niggards to the world, and hoard up for themselves the common stock; that they should bear in mind the punishment of him who hid his talent; that the man who freely gives away his wheat — especially if he do it in sufficient quantities to astonish, as well as to supply, the world, will be sufficiently rewarded by the sublunary "glory" and "immortality" which "posterity will pay;" and therefore it ought to be adjudged, by a nest of usurpers and tyrants, calling themselves the House of Lords, that those who produce wheat, have no exclusive right of property in it.

All this would be carrying out Lord Camden's theory to the letter, and nothing more.

But his lordship's resources, on this question, are not yet exhausted. He has one argument left, which perhaps overtops in dignity, as much as it overbalances in weight, all that have preceded it. It is this.

"It would be unworthy such men [as Bacon, Newton, Milton, and Locke], to traffic with a dirty bookseller!"

If these great men had been living at the time, they could not have felt otherwise than grateful for the anxiety which Lord Camden manifested for the preservation of their dignity; although they might, perhaps, have thought it was carrying the point a little too far, for him to think of taking the care of it out of their own hands. So excessive a guardianship as that, they might possibly have felt constrained to decline.

It is nevertheless true, that booksellers are — at least many of them — very "dirty" fellows. Yet, even here, there may be a question, as to *who* are the dirty, and who the respectable, ones. And on this point, I apprehend the world are likely to differ from his lordship, as widely perhaps as on the true interpretation of

scripture, or the true "principles of sound policy and good sense." *He* evidently esteemed those booksellers dirty, who pay authors for their works; while the world may possibly think those the respectable, and the others the dirty ones. It will be a difficult question to settle, if it shall be found that two such authorities, as the world and his lordship, differ in regard to it.

Lord Camden doubtless thought it would be much more consistent with the true dignity of a man of genius, to live, as so many men of genius have lived, in humiliating dependence upon some lord, who should condescend to patronize him, or to become a pensioner and flatterer of the crown, than to live by selling his works to the booksellers, and through them to the people. And he attempts to screen Milton from the disgrace, which he assumes would have attached to him, if he had accepted the five pounds for his Paradise Lost, out of any regard to the worldly value of that sum. He evidently imagines that Milton must have accepted it in some poetic or figurative sense, rather than from any such vulgar motive as a consideration of how much bread or meat it would buy. But in this he is unquestionably mistaken. It is morally certain that the price of the immortal poem went to pay butchers and bakers, the same as it would have done, if it had been the earnings of a cobbler; and that he accepted the five pounds, solely because the poem would bring no more, and because the utility of even such a sum as that, was something which he could not afford to disregard.

We can imagine some very tolerable reasons why lords should not "patronize" Milton, nor kings grant him pensions; such reasons, for example, as that, notwithstanding he was a poet, he had a somewhat inveterate habit of expressing the homely opinion, that, when kings did not behave themselves well, the people ought to cut their heads off. Nothing is more natural than that this vulgar turn of mind should have injured his prospects with the great, and consequently made it necessary for him to live by his own labor, independently of their bounty. Perhaps if he had been a contemporary of Lord Camden, the latter might have taken pity on him, appreciated him, and offered to instruct

him in the art of living in a manner more consistent with the dignity of a gentleman. It would be interesting to know the particular way, in which his refined lordship would have introduced the subject of a royal pension, or some nobleman's "patronage," to the poor, but proud old Roundhead. Doubtless a prudent regard for his own dignity would have suggested to him, that such a proposition could be made with safety, only at a respectful distance from the poet's boots.

If the scholars and poets of England, since Milton's time, had inherited a tithe of his spirit, with but a tithe of his genius, no such body of usurpers as the House of Lords would have ever taken it upon themselves to adjudge, either that authors had no right of property in the products of their labor, or even that, if they had such rights by nature, parliament had authority to destroy them. In fact, there would, in 1774, have been no such judicial or political body as the Lords in existence.

If men ever deserved the political oppressions, to which they were subjected, there is perhaps no class of persons, who have more richly deserved to have their rights stricken down by the hand of usurpation, than those scholars of England, who have lacked the spirit and the principle to defend the constitution and liberties of their country, against the tyranny of such usurpers as the Houses of Lords and Commons.

I have now bestowed, perhaps more attention than they deserved, upon Lord Camden's arguments in favor of what he calls those "public principles of sound policy and good sense," which forbid that authors should be acknowledged to have any common law right of property in their ideas. Perhaps nothing could illustrate more forcibly the degradation of literature, and of literary men, than the fact that such false, frivolous, absurd, and shameless reasons could be gravely urged by an ex-Lord Chancellor, before the highest judicial tribunal of the kingdom, as arguments against the rights of intellectual men, and should apparently have produced the effects he designed by them, without bringing either upon himself or the tribunal, one effective retributory blow. It may reasonably be doubted whether, in five

hundred years, the House of Lords, or indeed any other judicial tribunal, have struck down a principle, that was more important, or even equally important, to the progress of mankind in wealth, civilization, and freedom. And yet the immediate victims — men too, whose attainments and habits ought to fit them peculiarly for the defence of their own and the public rights — tamely acquiesce in the wrong for four-fifths of a century.

The injustice was done, too, under circumstances of unusual insult and oppression — that is, it was done on the most palpably frivolous, false, heartless, and ridiculous pretexts — (admitting that Lord Camden's reasons of policy produced any effect;) and by a grossly and manifestly unconstitutional tribunal, sitting in a country boasting of its freedom. Still the men, who should have been aroused, by the act, to vindicate their own rights, and the rights of their nation, have ever since chosen, neither to resent the insult, nor retaliate the injury; but rather to forego their self-respect, as well as their rights, and to flatter and fawn upon those who thus trample them and their fellow men, the learned and the ignorant, the genius and the clown, indiscriminately under foot — sparing only such men as Charles Pratt, (afterwards made Lord Camden,) who could be bribed by offices, titles, salaries, and pensions, to become their tools in the work.

If the literary men of England do not hereafter set themselves to the work of writing this unconstitutional and tyrannical court out of existence, they will deserve little sympathy in any wrongs they may suffer at its hands.

By way of offset to Lord Camden's "public principles of sound policy and good sense," on this subject, I here offer a single suggestion.

It has hitherto proved as bad in policy, as it is in morals, for mankind to think of getting the use of men's ideas by robbery, instead of compensation. Men, who have ideas to impart to others, are very apt also to have ideas for their own use; and no amount of hypocritical preaching, or judicial decisions, whether they come from a Lord Chancellor, or from such a body of vampires as the English House of Lords, or from any other quarter

whatever, will be likely ever to persuade them, in any great numbers, to act upon the notion that it is their religious duty to die of starvation, in order that they may give their knowledge "*freely* to all mankind." Their consciences are rarely so tender as to be in any danger on such a point as that. They know that they have as fair a right to acquire, by their labor, the necessaries, comforts, and even luxuries of life, as other men; and — reprehensible and lamentable as it may be. and is — experience abundantly proves, that if their fellow men at large will seize the products of their intellectual toil, without making them compensation, very many of their number will sell their ideas to those who *will* pay — to kings, and lords, and tyrants — to aid in plundering, oppressing, and degrading their fellow men, instead of enlightening, enriching, and elevating them. And Lord Camden himself is by no means a very bad or remarkable example of this choice of alternatives, on the part of an intellectual man. He has generally been esteemed a good, rather than a bad man. Was a liberal man in his politics. His natural instincts, I think, would have much more strongly induced him to labor *for* mankind, than *against* them, if the labor could have been equally profitable to himself. And similar examples are every where thick around us. In fact, they constitute the *rule*, rather than the *exception*, in the case of intellectual men as a class.

It is poor economy, therefore, on the part of the common people, to attempt, by stealing their knowledge, instead of buying it, to defraud intellect of its wages. If they refuse to pay intellect for defending, enlightening, enriching, and elevating them, they will no doubt continue to find, as they ever hitherto have found, that intellect, by serving their oppressors, will compel them to pay for their own degradation and destruction.