

## CHAPTER I.

### LITERARY PROPERTY.

PUBLISHING is the process by which an author brings his work before the public, for whom it has been written, and from whom he expects to reap a return in money, fame, or both.

A man's literary work is, though the fact is too often forgotten, his personal property, which he may use absolutely as he chooses,\* over which he alone has control, to sell, to lease, to lend, or to give away. Among the various methods of publishing, there may be included any process that can be devised for treating such property with a view to obtaining by publicity, a return in money, or in repute, for the labour expended. In fact the schoolboy who stated that "Esau wrote some fables and sold the copyright for a bottle of potash," although hazy as to facts, was merely quoting an agreement, which, by comparison with the actual remuneration frequently received by a modern author, shows that Æsop made by no means a bad bargain.

There are customary methods for dealing with houses or with land, and there are customary methods for dealing with Literary Property. Here the similarity in method ends. Houses and land are placed by their owner at the public disposal according to methods approved by law, and founded upon long custom and experience; moreover, such disposal is usually, almost invariably,

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\* "Your petitioner may burn or publish his manuscript at his own option, and enjoy a right in and control over his own productions which no press, now or hereafter, can justly press out of him."—Tom Hood, "A Petition to Parliament."

10 THE METHODS OF PUBLISHING.

undertaken with legal formality if not under legal advice. Literary Property is dealt with by methods approved neither by equity nor by good sense, founded neither upon custom, nor experience, and protested against from time immemorial by authors. Moreover, these methods have hitherto often been accepted without that legal advice which has been found necessary in all other matters of business. Nay, so far have the customary formalities observed in other affairs been neglected by the author, that even a written agreement has been very often dispensed with.

How is this marked difference of treatment to be accounted for ?

The explanation is as follows :—

Firstly, while Literary Property has as real an existence as any other property, and an author's rights over his work are as undeniable as those over his watch, certain old prejudices or sentimentalisms regarding the author's position towards his public have obscured the rights and damaged the property.

Secondly, the difficulty of estimating the value of particular pieces of Literary Property has given rise to an idea that business methods are out of place in dealing with a property so vague.

Firstly, then, it was at one time considered beneath the dignity of the man of letters to write for money. It was said, and perhaps thought, that genius could never sully its fingers with money, or bargain for remuneration. Genius certainly no longer cherishes this idea. Even in the very days when it prevailed, all the best authors were actually writing for pecuniary reward. Still the assumption that genius and business could not be associated formerly passed unchallenged, and from this sentimentalism has sprung, in part, the fact that the methods of publication now in vogue are calculated to preclude their association for ever.

Again, it has been urged that Literature is, or should be, wholly occupied with the advancement of mankind. The producer, therefore, it has been said, should be only

eager to give to the world, that by which the world would be benefited. If it be for the public good that a book should be placed within reach of the public grasp, what right has the producer to dictate terms, to the enrichment of his private purse? This fanciful view of the author's position towards his public has been stated in print,\* and though no author could possibly endorse it in its entirety as sensible, many have undoubtedly been actuated by some such sentiment, when agreeing to terms whose iniquity would have been patent to them, if any other form of property had been in question.†

Concerning the proposition, (for this is what it amounts to,) that legislation securing to the author rights in the work of his brain is illogical and improper, because such a monopoly is to the detriment of the public! There is nothing illogical in the author's wish to benefit by his work, however lofty the aim of that work may be. The deviser of anything for the public good has always been held to deserve reward from his fellow citizens—this civilised states have very generally recognised—therefore, the author of a book whose publication is for the public good, and who yet wishes to reap money by it as well as fame, is reasonable in his desire.

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\* "Letters on Copyright."—Henry C. Carey.

† One instance has been offered as a precedent for this view: it is the rule of the Royal College of Physicians against secret remedies. No man can remain a member of the Royal College of Physicians who sells a remedy whose formula is known only to himself. If his science has placed at his disposal knowledge that would enable his fellow physicians to cope more ably with disease, and so to be of more general use to the public, he is bound to make that knowledge the common property of the College, though by so doing he may be surrendering a princely fortune.

But in the doctor's case, scientific men, experts of the same profession, become possessors of certain knowledge, and are thereby enriched as a body both in purse and in repute; moreover, it was the corporate wealth and learning of the College which placed the discoverer in a position to appreciate his discovery, so that the wealth, thence accruing, rightly returns to the College as a body. In the author's case, even if *he* takes no money, the wealth goes to the publisher, who contributes nothing to the author's task.

Again, it is absurd in the present day to speak of the ordinary *littérateur* as living and working only for the good of the world. He works primarily and properly to get his own living and to advance his own interests.

Lastly, the sacrifice by the author of his rights does not benefit the public at large, but the publisher. If the author of a work for the advancement of his fellow men should for conscience sake prefer to receive no reward in money, it is clearly unreasonable that his agent should expect to "take somewhat"\* of the public.

Certain real differences between Literary Property and all other kinds of personal property must count as the second cause for the different treatment which Literary Property receives. These are (1) the legal restriction with regard to its sale, and (2) the difficulty of estimating its value. The second of these, as has been already stated, is the only important one.

(1.) *The Copyright Regulations*.—These form the legal recognition that an author has rights in the published work of his brain. If it had not occurred to the beneficent to give authors as a privilege some temporary rights in their work, it would probably have been universally assumed that what a man produced by his brain was by Common Law his own for ever.

It is not within the scope of this work to discuss the present condition of the Copyright Law ;— its influence upon the treatment of Literary Property will merely be alluded to. The report of the Royal Copyright Commission in 1878 says, "The Law consists partly of the provisions of fourteen Acts of Parliament, which relate in whole or in part to different branches of the subject, and partly of Common Law principles, nowhere stated in any definite or authoritative way, but implied in a considerable number of reported cases scattered over the law reports."

This condition of the Law affects writers as a body, for their property, which requires peculiar and intelligent

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\* 2 Kings, ch. v., 20, *et seq.*

care for its protection, is thus peculiarly open to depredation.

No particular book, however, is injured in value by the fact that in forty-two years or more it becomes public property. The number of books that remain standard works and in demand after more than forty years of publication is very small indeed, while it is always open to the possessor of the copyright to place such a large issue on the market just before the legal term expires as to exhaust the value of the book for some years yet to come.

But if the author is not particularly injured by the fact that his book becomes public property after a certain term of years, he is injured by the fact that during that term his rights are ill-defined, and difficult to ascertain.

(2.) *The alleged uncertainty as to the value of Literary Property.*—In many cases this uncertainty actually exists. A work may often be thought well of by one, and condemned by another. A book, again, which experts admire, the public may, perhaps, refuse to read, while every year sees the production of one, at least, whose pecuniary success is as marked as it was unexpected. Some books are essentially ephemeral; some few mellow with time; some, but very few, are for all time. It is not always possible to guess to which class a new work belongs. A certain value is ensured to one book by its style, to another by its matter, and to a third by its author's name. Any work on certain subjects will sell; an admirable work on other subjects can never sell. Successful advertising may start a bad book, incompetent or dishonest publishing has often restrained a good one. Briefly, it is obvious that the money value of any particular work may always be dependent upon a dozen different reasons.

This variety of the causes tending to influence the value of Literary Property certainly has much to do with the author's loose and careless way of conducting his business. So much, it would seem, has to be taken into consideration, precaution has to be observed in so many directions, his property's value is dependent on so many and such different factors, that finally he decides that no

one can estimate its worth. Therefore, he becomes apathetic towards it.

In this spirit he enters into any contract that is submitted to him, careless of its real meaning, careless of its inevitable result. This, by making it eminently possible for any publisher to cheat an author, makes it eminently probable that some publisher will cheat him. Yet surely this very uncertainty of issue, instead of leading the author to idly despise his work, should embolden him to hope that there may be some one of these many influences acting in his case to make his book a valuable one. So far from considering the likelihood of success to be based upon so many off-chances that it is useless to calculate upon them, surely he should remember that the chances of success are as varied as the chances of failure, and should therefore be prepared to take his due share of the profits, if success should come in his way. There is only one way in which this can be done. The author must have a written agreement with the publishers, the clauses of which he himself understands, securing to himself his rights and his legitimate share of the profits which may accrue, and guarding himself against unjust and fraudulent charges, and unfair deductions from the gross returns. This contract must be entered upon with as much gravity and as much forethought as would be necessarily employed in the disposal of other property. Expert advice is as necessary; business formality as essential.

*The uncertainty as to the value of Literary Property, while largely accounting for its loose and careless management, is the strongest argument in favour of placing all transactions or dealings in this property on a sound business basis.*

The existence of an author's rights in his work is not generally denied. But, on the other hand, it seems that there is difficulty in understanding and believing in them; nor are they regarded with the sanctity that his rights in other property would be.

The law of the land recognising his rights is chaotic

The results of ancient prejudices still remain to the author's detriment, while the prejudices themselves have long become obsolete.

Lastly, the only important difference between Literary Property and all other property—a difference in no way affecting its reality, but only its saleability—is the alleged uncertainty of its value. This, while considered by author and publisher alike to be an excuse for loose dealing in Literary Property, on the contrary calls especially for formal legal care in its disposition.

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## CHAPTER II.

THE VALUE OF THE DIFFERENT FORMS OF  
LITERARY PROPERTY.

MUCH, then, of the apathy displayed by authors towards their work is caused by their ignorance of the value of that work. Hence this question :—

*Is it impossible to predict the value of a book?*

Not quite impossible. Certainly it is very rare that the value can be estimated with accuracy, even where the work is from the pen of a well-known author. But there are many considerations which—if they ever were considered—would go far to clear up the total uncertainty as to value, on which so much stress has always been, and still is, laid. These considerations it is proposed to briefly mention.

Speaking a little roughly, all books will fall under one or other of the eight divisions that follow. To each division belong certain characteristics affecting the estimate of its value.

1. BOOKS OF THEOLOGY : *Religious Instruction, Commentary and Controversy.*
2. BOOKS OF EDUCATION : *Technical Works, Science, and Philosophy.*
3. FICTION.
4. BOOKS OF TRAVEL.
5. MEMOIRS.
6. HISTORY AND BIOGRAPHY.
7. BELLES LETTRES : *Essays and Criticism.*
8. POETRY.



## I. BOOKS OF THEOLOGY.

These may be divided into sermons, controversial and doctrinal books, historical, biographical, and story-books.

Sermons have, as a rule, no pecuniary value, unless the position of the author is one that ensures a sale. Those of a divine noted for his eloquence, or of a schoolmaster for his influence, will sell, and sell widely: the most eloquent homilies of the unknown, when put forward in the shape of homilies, secure no sale.

Books controversial and doctrinal, are much fewer than of old, because the controversies have for the most part gone into new ground, where the old reasoner cannot follow them. Scholars and divines no longer wrangle much over the interpretation of a passage or the maintenance of a doctrine, being now more concerned with the upholding of the very foundations on which all religion rests. On the other hand, the introduction into fiction of controversy upon any and all subjects may revive in a new form this kind of religious or irreligious discussion.

As to books which treat of religious subjects from the historical, biographical or geographical point of view, their name is legion, and their success is in some cases enormous. One would like to know, for instance, how many copies of Dr. Smith's "Dictionary of the Bible" have been sold. Every year brings out new books on Bible characters and Bible lands, and they are sold by thousands. Here is a great field for an aspiring author, especially for one who is fitted for his task by some knowledge of the East, of Hebrew, Latin, and Greek, and who has command of the "religious language."

As to religious story books, for these there is an endless demand, and of them an equally endless supply. They are chiefly published by the Society for the Promotion of Christian Knowledge, the Religious Tract Society, and two or three firms which have made this kind of book their speciality, and have done on the whole remarkably well with them. The S. P. C. K. makes £6,000 a year

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profit, and the other Society £18,000 a year on their publishing business!

This kind of book is generally bought right out by the publisher for sums of money ranging from £5 upwards. Amongst the writers women are in the majority. One religious writer who is prudent enough to keep his work in his own hands is reported to make over £2,000 a-year, but of course this is a very unusual and exceptional case. It serves, however, to show that, not only solid works of theology, but religious fiction, may, under favourable circumstances, become a most valuable property, and to illustrate the necessity of retaining possession of such property, and the folly of parting with it for totally inadequate sums.

## II. BOOKS OF EDUCATION.

Under this head are included all *Scientific*, *Professional*, *Technical*, and *Scholastic* books.

Some professional and technical works naturally have but a very small sale. These are nearly always produced either at the expense of the author—as are, for instance, most medical treatises—or at the expense of some learned Society.

On the other hand, there is an immense market for school books. The spread of national education is also enormously improving this class of property. Not only has the number of learners increased, but the foundation of a system of standards common to all schools necessitates the use of common class books; therefore, a good class book may, if it proves successful, have a very large, an enormous sale, up to the day when a better book on the same subject takes the field. The Americans have so far recognised this that they say of the author, whose text book has been adopted by a State for use in the schools, that he has “captured the State.” There is no better property than a good school book adopted in the best public schools, and therefore widely used in all schools.

Books of religion and books of instruction have this in common. Not only is the demand for them regular, but