

## A Note on Literary Property (ER, 21 August 2007)

This is a story about property rights in ideas about property rights. The decision of the (British) House of Lords in February 1774, in the case known as "The Question of Literary Property," was considered at the time, as it has been considered by many recent scholars, to be an event of momentous importance in the history of bookselling, publishing, copyright, intellectual property, and ideas of authorship. The case, which was an appeal by two booksellers, Alexander and John Donaldson, against a decision by a lower court in a case involving another bookseller, Thomas Becket, ended perpetual copyright, and established a limited copyright of fourteen years. The debates in the House of Lords, and subsequent debates in the House of Commons (on a "Booksellers' Copy-Right Bill") were among the great set-pieces of eighteenth-century legal, political and literary oratory. "Every man has a right to his ideas. Most certainly, every man who thinks has a right to his thoughts," Lord Camden said in support of the appellants; "but what if he speaks, and lets them fly out in private or public discourse? Will he claim the breath, the air, the words in which his thoughts are clothed? Where does this fanciful property begin, or end, or continue?"<sup>1</sup>

The only reasonably complete report of the 1774 debates was published in 1813, in the volume for 1771-1774 of the Parliamentary History of England, printed by T.C.Hansard.<sup>2</sup> The debates in the House of Lords of February 4,7,8,9,15 and 22 1774, and the debates in the House of Commons of February 28, April 22, and May 10,13,16 and 26, are at cols. 953-1003 and 1077-1110 of volume 17 of the Parliamentary History. The Parliamentary History is fairly widely available in libraries, and a complete set of the 36 volumes of the first series (which cover the years 1066 to 1803) is available on microfilm, as part of the Goldsmiths'-Kress Library of Economic Literature, the microfilms of volumes in the Goldsmiths' Library of the University of London and the Kress Collection of the Harvard Business School, which were published in 1972 (see <http://www.library.hbs.edu/hc/collections/kress/gk.shtml>, accessed on 21 August 2007.) The Parliamentary History was not however available online until 2006, when Thomson Gale Publishing published the database "The Making of the Modern Economy," later known as "The Making of the Modern World" (accessed through the Harvard University Library on 21 August 2007, <http://galenet.galegroup.com.ezp1.harvard.edu/servlet/MOME?locID=camb55135>), which is a searchable, digitized version of the Goldsmiths'-Kress collection.<sup>3</sup> The publication of MOME was thus of great interest for historical scholarship about the 1774 decision on literary property, and also for teaching about the history of books, copyright, intellectual property, and the eighteenth-century enlightenment. But MOME proved to be a disappointment in this one respect, in that volume 17 of the Parliamentary History was incomplete. The reader who turns (or clicks) from the image of col. 368 to the image of col. 369, encounters, instead, the extremely dispiriting image of the following notice: "Columns 369-1446 (the end of the volume) have been wrongly inserted from vol. 13 (1743-46) and have therefore not been filmed again." The missing columns, 369-1446, include all the debates about booksellers, literary property, and flying or floating ideas.<sup>4</sup> So an error by a bookbinder, or by a publisher's clerk who sent sheets for binding, was reproduced by the librarian (in the Goldsmiths' Library, for it is their copy of the Parliamentary History which was microfilmed) who sent volume 17 for microfilming, and reproduced in turn

by the publisher's clerk who sent the reel of microfilm for digitization. A very tiny and easily understandable sequence of slips, in the successive technologies of publishing to which Lord Camden looked forward in 1774 -- "this perpetuity now contended for is as odious and as selfish as any other, it deserves as much reprobation, and will become as intolerable. Knowledge and science are not things to be bound in such cobweb chains; when once the bird is out of the cage -- volat irrevocabile..." -- has created a black hole in digitized history.<sup>5</sup> It is a hole even in the regions of digitized history which are accessible to the most opulent universities; a hole which includes Lord Camden's oratory, and the parliamentary debates of which it was part.

This is the story which the Digitization of History group talked about in the Rylands Room, and which inspired LD and RW to their adventure in "digitization from below." The black hole is a very minor one, and the Parliamentary History is exactly the sort of important work of reference, in English, which is likely to be available, very soon, in other, more complete (and more widely accessible) online collections. It is out of copyright (although the Cambridge University Library has property rights in the volume which LD and RW copied, and the Goldsmiths' Library has property rights in the volume which was microfilmed, and the Goldsmiths'-Kress Library has (or had) property rights in the microfilm, and Gale-Thomson has property rights in the image of the microfilm, including the image of the notice about the columns which were wrongly inserted...) But there are other dark or silent regions to be explored, now the bird of digitized history is out of captivity:

"Deep into that darkness peering, long I stood there wondering, fearing,  
Doubting, dreaming dreams no mortal ever dared to dream before  
But the silence was unbroken, and the darkness gave no token,  
And the only word there spoken was the whispered word, 'Lenore!' ..."<sup>6</sup>

Postscript (11 October 2007)

Volume 17 of the Parliamentary History is now available on Google Books, as a digitized version of a copy in the Stanford University Library. The full text is searchable. A number of passages, especially those in the left hand columns of right hand (or recto) pages -- they include the passage in Lord Camden's speech quoted above, about fanciful property -- proved difficult to edit, for the reasons discussed in LD's and RW's note "From Page to Screen."

[http://books.google.com/books?id=TGQxAAAIAAJ&pg=PT8&dq=editions:0OPe8S\\_ZntbDBvi3LbscbsB](http://books.google.com/books?id=TGQxAAAIAAJ&pg=PT8&dq=editions:0OPe8S_ZntbDBvi3LbscbsB)

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1. Speech of Lord Camden of February 22 1774, The Parliamentary History of England, from the Earliest Period to the Year 1803. from which last-mentioned Epoch it is continued downwards in the Work entitled, "The Parliamentary Debates", vol. 17 (London, 1813), col. 997.

2. The debates were widely reported in newspapers, magazines and pamphlets of the time, and shorter reports appeared in the Journals of the House of Lords and the House of Commons, and in the law reports later collected in the English Reports. On the history of the reporting of the debates, which was complicated by the circumstance that in 1774 "it was technically a crime to print an account of a case on appeal in the House of Lords," see Mark Rose, Authors and Owners: The Invention of Copyright (Cambridge, MA, 1993), pp. 108-109.

3. The less complete reports of the 1774 debates in the Journals of the House of Lords and the House of Commons are available on the BOPCRIS database, <http://www.parl18c.soton.ac.uk/parl18c/digbib/home>, accessed through the Cambridge University Library on 21 August 2007.

4. Volume 17 is apparently the only one of the 36 volumes which is incomplete in the MOME version. It is a relatively small text, of 201 pages, while the other 35 volumes vary in length from 650 to 876 pages.

5. Speech of Lord Camden of February 22 1774, Parliamentary History, vol. 17, cols. 1000-1001.

<sup>6</sup> Edgar Allen Poe, "The Raven" (1845).