

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.

THE

LAW OF INTELLECTUAL PROPERTY.

CHAPTER 1.

THE LAW OF NATURE IN REGARD TO INTELLECTUAL
PROPERTY.

SECTION 1.

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?[*10]
5. How is the right of Property Acquired?
5. 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 [*11] 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, [*12] 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. [*13]

The design, after which a picture is drawn, is as clearly wealth, as is the canvas on which it is drawn, or tile 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 subtle; 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 estimate and paid for, like other [*14] wealth. Thus a machine is valuable in the market, according to the idea, after which it is fashioned. The plan, after which the 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 man'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. [*15]

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, of an infinitesimal part ever becomes property. And 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 amid upon the land, is property. Of the forests, the mines, the fruits, the animals, the atmosphere, a small part only has ever become 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. [*16]

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 [*17] 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 Timings 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 the, by another person, is right fully 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 the by another, is right fully 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 [*18] 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 propriety 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 mans

body out of the control of his mind. In other words. no man can own another man's body.

All a mans enjoyments, all his feelings. nil 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 might. 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 hma1 mpiness. They cannot, therefore, right fully 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, :is 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 duo se to give them to him gratuitously, they must buy them of himself as they would buy my other articles of property whatever. They must pay him his price for them, or hot have them. They have no more right to force him to give his ideas to them, than they in, trying 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 natural or general principle, he was the [*19] 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 right fully 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 engraved on stone, and in the picture he has painted on canvas. In practical life, these ideas are all as much articles of merchandise, as are houses, and land and bread, and meat, and clothing, and fuel. Men cannot live, 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 member of society earns theirs. He who produces food for men's minds, guides for their hands in [*20] 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 any price worth demanding – though it be given in one's private ear, as legal or medical advice, for example – a pecuniary compensation is demanded, with nearly the same uniformity its for a material commodity.

[*21]

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 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 [*22] 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 [*23] 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 corner 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 consumer, 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 [*24] 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 corner 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 corner cannot complain of the portion taken by the first.

There are still two other reasons why the first corner 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 corner 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 corner, 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 [*25] thus make it his property, before he can raise a crop from it, or fit it for his residence. If the first corner have no right to take possession of the earth, or its fruits, for the supply of his wants, the second corner certainly can have no such right . The doctrine, therefore, that the first corner 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 right ful 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 right ful 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 right ful 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- [*26] 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 right ful proprietor; on the same principle that he, who first takes possession of any material production of nature, thereby makes himself its right ful 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 right fully, 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 right ful 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 [*27] produces wealth, that wealth is as right fully 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 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 [*28] 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 some 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 [*29] 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 right fully tell him that these commodities are not his, but theirs, and can right fully 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, [*30] assuming a dominion over wealth, the right ful dominion over which belongs solely to the owner.

These mire 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 material 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. [*31]

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. [*32]

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 aim idea. In short, these new forms and new beauties, which [*33] 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 forums, 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 forums, 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. [*34]

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 perceived 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 [*36] 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 [*37] 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 the 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 the, 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 portion of their ideas, and so few of their ideas are of sufficient [*38] 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 [*39] 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. This 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? [*40]

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 owners/tip – 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 owners/tip; 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 [*41] 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, [*42] 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 in trust 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 [*43] 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 whosoever 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 [*44] 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 [*45] 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, ,r 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 [*46] 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. [*47]

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, when ever 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 reasons 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 flow 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 [*49] 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, mind 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 ~1 mat 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 riot 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 time can do only by putting [*50] 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 surrenders to another the exclusive possession.

If the owner of a house admits a person into his house, either on business, or as a friend, or for inspection as a proposed purchaser, 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 admits 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 [*52] 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. [*53]

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 ideas 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 object of property and sale; but that known ideas are not.

Thus the law, as now administered, holds, that if a man can makes 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 [*54] 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 [*55] 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 is really the idea only that is paid for, or for which pay is claimed in either case. The labor, neither of producing, nor of making 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. 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 buying 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 [*57] 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. [*58]

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. [*59]

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 best inferred that ideas cannot be subjects of ownership; though it would doubtless [*60] 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 [*61] 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 Rowers; 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, [*62] 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 the, but all past the 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 [*63] 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 [*64] 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 affected 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 blind, 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 [*65] 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 right 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 [*66] 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 keensighted discoverers, who actually first laid their eyes directly upon them? It certainly seems to be the general [*67] 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 Caesar, and Napoleon had not played the parts they did in human affairs, there was another Alexander, another Caesar, another Napoleon, 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 Caesar, and Napoleon, 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 the, 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 [*68] 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 [*69] 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 combating 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 [*70] 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. [*71]

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 man 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 produced more than lie pays for it, he [*72] 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 the 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 wan, therefore, does not receive (lie full value of his labor, unless lie 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 right fully 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 tile government were to do thus towards other men generally than inventors, there would he a revolution instantly. Such a government would be universally regarded as the most audacious and monstrous of tyrannics.

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 prowess, and superior powers. No one [*73] 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 the, and the inventor, in consideration of that protection, giving up his property at the end of that the.

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 [*74] kind of wealth. Merchandise on the ocean also enjoys an extra-. ordinary 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 the, as there are in outlawing intellectual property.

Various kinds of property, such as cotton and woollen manufactures, coal, iron, sugar, hemp, wool, breadstuff, &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, established 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 wrongdoer, 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 [*76] 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 [*77] 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.

lie 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 [*78] 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 [*79] 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, 2nd, all those commodities – as axes and

hammers, for example – which can be used only by one person at a the ‘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 the. 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 the; because man is entitled to be rewarded for his labor, according to the [*80] intrinsic value of its products; and, other things being equal, a commodity, that call be used by many persons at once, is intrinsically more valuable, than a commodity, that can be used only by one person at a the.

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 [*81] 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 [*82] 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 [*83] 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, capable of being possessed and used by more than one at a time without collision. his right of property, therefore, is [*84] 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 at 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 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 [*85] 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 the? 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 [*86] dollar each,) for the use of a thousand different commodities, each of which can be used only by one person at a the. 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 [*87] 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.

Tim's 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 [*88] 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 [*89] 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 [*90] 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 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 [*91] 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 [*92] 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 [*93] 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 right fully 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 right fully 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 [*94] 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, simultaneously 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, [*96] 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 steamboat other than such as he might derive from actually operating one of his own boats in competition with all other persons, might choose also to operate them. If he did not choose himself own a steamboat 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 mail, 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 [*97] 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 [*98] 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, the, 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 right fully 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. [*99]

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

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 to discover ; 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 of only 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. 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 is 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. Return

"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. Return

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

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

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. Return