

## CHAPTER 5

# THE DONALDSONS' LEGACY

Now let us look at what happened to the main players in the *Donaldson v. Becket* case in the ensuing years.<sup>188</sup> Thurlow, Wedderburn, and Lord Mansfield all ended up patrons of the arts, albeit representing differences in stance. Both Wedderburn and Lord Mansfield were at pains to support writers, and even Thurlow is said to have assisted writers who had yet to establish themselves.<sup>189</sup> The Statute of Anne only protected the booksellers; writers had to rely as always on the support of patrons to get their start. These three men shared a desire to foster the leaders of their culture, and their fates were diverse.

Lord Mansfield's later years were not happy ones, mainly because of his connections to the Catholic Relief Bill (1778). From the time of Elizabeth I, Catholics had been discriminated against in England. They were prohibited from holding masses and barred from holding public office or purchasing land. The 1778 law had finally allowed them to own land and to enter the army.

One of the most virulent opponents of the Catholic Relief Bill was House of Lords member George Gordon (1751–1793). He organized Protestants to oppose the bill and on 2 June 1780 held a mass demonstration at Parliament in Westminster. Some 40,000–60,000 people took part in the demonstration. When Gordon entered the House of Commons to submit his petition, the crowd grew violent, resulting in what is known as the Gordon Riots.

The crowd then moved elsewhere, headed for symbols of Catholic institutions and state power. They attacked and destroyed Newgate Prison, and, joined by the prisoners thus released, turned their fury on Catholic churches and the Bank of England. The rioters moved to Bloomsbury Square, near the British Museum, and then fastened their attention on the home of Lord Mansfield, who had long served on the Court of King's Bench and as chief justice. To them he was a figure of state authority. He had, moreover, tried to influence the justices of the court in releasing a Catholic priest who had held mass in violation of the law. Mansfield's Scotland origins also irritated the crowd, and his past connections with the Jacobite cause only added to their anger. It is said that they carried a rope with them, intending a lynching.

Apparently Lord Mansfield had made the mistake of refusing a protective guard

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188 Skinner 1928; Fifoot 1936; Heward 1979; Eeles 1934; and Gore-Browne 1953.

189 Collins 1973 (1927), pp. 207–208.

for his house, thinking that the sight of soldiers would further inflame the crowd. He was wrong, however, and when the crowd found no guard they quickly attacked the house. Upon seeing the crowd assembled in front, Mansfield and his wife fled out the back, barely escaping with their lives. The house was destroyed along with its massive and priceless collection of books and legal documents and records; the mob burned everything, along with all the household furnishings, in the square.

The rioters then proceeded toward Thurlow's house on Great Ormond Street, for Thurlow had been promoted at this time to lord chancellor. Unlike Mansfield, Thurlow's house was guarded by thirty-one soldiers and therefore escaped destruction.<sup>190</sup>

Boswell's *Life of Johnson* quotes a letter to a certain woman in which Johnson gives a vivid account of the riots, which I quote despite its length:

'On Friday, the good Protestants met in Saint George's-Fields, at the summons of Lord George Gordon, and marching to Westminster, insulted the Lords and Commons, who all bore it with great tameness. At night the outrages began by the demolition of the mass-house<sup>191</sup> by Lincoln's-Inn.'

'An exact journal of a week's defiance of government I cannot give you. On Monday, Mr. Strahan, who had been insulted, spoke to Lord Mansfield, who had I think been insulted too, of the licentiousness of the populace; and his Lordship treated it as a very slight irregularity. . . . On Tuesday evening, leaving Fielding's ruins, they went to Newgate to demand their companions who had been seized demolishing the chapel. The keeper could not release them but by the Mayor's permission, which he went to ask; at his return he found all the prisoners released, and Newgate in a blaze. They then went to Bloomsbury, and fastened upon Lord Mansfield's house, which they pulled down; and as for his goods, they totally burnt them. They have since gone to Caen-wood,<sup>192</sup> but a guard was there before them. They plundered some Papists, I think, and burnt a mass-house in Moorfields the same night.'

'On Wednesday I walked with Dr. Scot to look at Newgate, and found it in ruins, with the fire yet glowing. As I went by, the Protestants were plundering the Sessions-house at the Old-Bailey. They were not, I believe, a hundred; but they did their work at leisure, in full security, without sentinels, without trepidation, as men lawfully employed, in full day. Such is the cowardice of a commercial place. On Wednesday they broke open the Fleet, and the King's-Bench, and the Marshalsea, and Wood-street Compter, and Clerkenwell Bridewell, and released all the prisoners.'

'At night they set fire to the Fleet, and to the King's-Bench, and I know not how many other places; and one might see the glare of conflagration fill the sky

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190 Gore-Browne 1953, pp. 159–60.

191 A Roman Catholic house of worship.

192 Kenwood, where Lord Mansfield's villa stood.

from many parts. The sight was dreadful. Some people were threatened: Mr. Strahan advised me to take care of myself. Such a time of terrour you have been happy in not seeing.<sup>193</sup>

After the ordeal in Bloomsbury Square, Lord Mansfield took up residence in the London suburb of Kenwood in “Kenwood House” on an estate he owned near the upscale residential suburb of Hampstead, now an English Heritage site. The 112-acre gardens and lake on the grounds and the beautiful paintings that decorate the ceiling and walls of his magnificent study transmit something of the atmosphere of his later years.

Mansfield served as chief justice at the Court of King’s Bench until 1788 at the age of eighty-three, and thereafter lived a quiet life in Kenwood. It is said that he never once lodged elsewhere in the last five years of his life. He had no children of his own, but four nieces whom he was supporting resided with him. His health took a turn for the worse on 10 March 1793. After breakfast he lay down, saying he was sleepy, and two days later, saying “let me sleep—let me sleep,” he lost consciousness and died on the 20th of the month.<sup>194</sup> He was eighty-eight. Lord Mansfield was buried in Westminster Abbey, well known as the place where all the royal ceremonies are held. There he is remembered with a monument of him over ten feet tall, seated comfortably in a chair. In his boyhood Mansfield attended Westminster School, next door to the Abbey; the inscription on the monument mentions his wish that he would be buried in Westminster, a place full of memories.

Lord Camden, Mansfield’s rival, had already retired from the position of lord chancellor at the time of the *Donaldson v. Becket* case. In fact, from about two years earlier than that, he had had almost no involvement in public affairs, and thereafter as well, he engaged in little work of special note.<sup>195</sup> He seems to be best known for his opposition during this period to taxing the American colonies. He became increasingly mindful of his health as he grew older and enjoyed relaxing at the famous resort at Bath.<sup>196</sup>

Camden owned land north of London, and in 1788 he obtained permission from Parliament to develop the land. He died six years later on 18 April 1794 at the age of seventy-nine and is buried in a small chapel in the country town of Seal (some eighteen miles southeast of London), in the District of Kent, where he had had a house from the time of his father, in a striking contrast with Mansfield’s burial at Westminster Abbey.

Lord Camden’s lands north of London eventually grew into a town that came to be called “Camden Town,” and is today known as a mecca of punk rock and fashion. The streets are lined with shops selling clothing and metallic accessories, and even—quite

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193 Boswell 1998 (1791), pp. 1053–1054.

194 Heward 1979, p. 169.

195 Eeles 1934, p. 117.

196 Eeles 1934, p. 180.

openly—“magic mushrooms,” and is always crowded with people on the weekends. It is an extremely lively town, where young people stride down the streets in sometimes bizarre fashions that would have made good Lord Camden stare. The liveliness of the town might be thanks to the fact that he was very popular with the masses. Kenwood, the location of Lord Mansfield’s retirement residence, is only 2.5 miles away from Camden Town, and the elegance of the former and colorful bustle of the latter make for an interesting contrast. The different styles of the two men seem to be vying with each other even today.

Lord Apsley, who had been lord chancellor from 1771 to 1778, became embroiled in the political struggles surrounding the American War for Independence, and was forced to resign because of his position on the matter. That was 1778. His successor as lord chancellor was Edward Thurlow, who had served as Donaldson’s lawyer. Thurlow retained this position at the pinnacle of England’s juridical system for fourteen years, only to be pushed out of the position of lord chancellor because of his opposition to the policies of the current prime minister William Pitt the Younger (1759–1806). The man selected to replace Thurlow as lord chancellor was Wedderburn, Lord Apsley’s lifelong rival.

Wedderburn, who had been solicitor general at the time of the *Donaldson v. Becket* case, became attorney general in 1778. Later, after serving as chief justice in the Court of Common Pleas, he became lord chancellor in 1793. Comparing his career with that of Thurlow, who was two years his senior, he seems to have followed roughly the same path. Wedderburn, too, became embroiled in the disagreement between William Pitt the Younger and George III over emancipation of the Catholics in Ireland following the 1800 Act of Union, and resigned as lord chancellor in 1801. He rarely appeared in public after that time.

After leaving the post of lord chancellor, Wedderburn became the first Earl of Rosslyn, taking the name of a place not far from his birthplace in Scotland. It may have been because he held lands in Rosslyn, the place known for the Rosslyn Chapel built in 1446. On 2 January 1805, Wedderburn suffered a sudden attack of abdominal pain and died in his chair at his home in Windsor. George III, though he was suffering mental problems at the time, wryly commented: “He has not left a greater rogue behind in my dominions.” Thurlow, despite his rivalry with Wedderburn, is said to have paid tribute to his life-long rival on this occasion, saying that, “His Majesty is quite sane at present.”<sup>197</sup> A justice who divided his time between Edinburgh and London, Wedderburn is interred in a crypt in the middle of St. Paul’s Cathedral in London.

On 12 September the following year, Edward Thurlow, too, passed away. The anecdote passed down from his death is that as a servant carried him to his deathbed, Thurlow’s foot struck the handrail, and the servant heard him mutter a curse. According

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<sup>197</sup> Gore-Browne 1953, p. 357.

to another person, he blurted out the cryptic words, "I'm shot if I don't think I am dying." Thurlow was a man who fought for "what he believed to be the interests of the people."<sup>198</sup> He seems to have never married, but mistresses bore him a son and two daughters. His son died at the age of twenty-eight, so Thurlow's baronage passed on to his nephew Edward (1781–1829). Thurlow is buried at the Temple Church near the Royal Courts of Justice.

### **The Donaldson Bookshop after the Trial**

Alexander Donaldson remained in London after the decision. He continued to operate his bookshop until around 1788 and returned to Edinburgh a year or so later. About three years before that he had obtained land at Broughton Hall on the northern outskirts of Edinburgh where he would spend the rest of his life. Two years after his wife Anna died in 1792, Alexander also passed away, on 11 March 1794. He is buried in Greyfriars Kirk in the central part of Edinburgh.

Alexander's son James took over the editorship of the *Edinburgh Advertiser* in January 1774 just before the *Donaldson v. Becket* case, and kept it going steadily until 1820. While the American War of Independence was being waged during the 1775–1783 period, people would mass in front of Donaldson's printing shop and vie to obtain copies of the news as it was printed. In 1782, James became a citizen of Edinburgh as a bookseller. He was assiduous in keeping the enterprise and newspaper his father had founded going, taking time off from his work only once. That was for a honeymoon in 1792. He married a woman named Jean Gillespie (1770–1828), the daughter of a doctor. The story goes that after they returned from their honeymoon, James brought his new wife to the office. There she gave some small change to the employees of the shop, saying she hoped they would buy strawberries or some other treat. Jean's gesture was to become a regular custom on Wednesdays during the period of the Leith Races. The summer horse races were among the entertainments Edinburgh citizens most enjoyed, and the people working at the Donaldson bookshop were no exception. The races were also the occasion for feasting the servants and workers. The Donaldsons attended the races every year, and the treats handed out at the time of the Leith Races continued without fail except on one occasion, when there was an accident. In the midst of the festivities a boy in the cavalcade fell off his horse and broke his leg. James was much aggrieved at the accident and made sure that the boy received good care at the Royal Infirmary.

James was an affable person who ably carried out the responsibilities of his job. He looked after the needs of his employees and they worked enthusiastically and hard. People who visited on business or errands were invariably served beer with bread and

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198 Gore-Browne 1953, pp. 360–61.

meat. But James kept regular hours and would always be in his office at the appointed times. He was meticulous and trustworthy. Waking early, he would be in his chair at the office a little after 6 o'clock a.m., waiting for the errand-boy from the post office to bring the mail. He always asked the boy if he had any troubles and gave him some breakfast.

The readers of the *Edinburgh Advertiser* increased again at the time of the French Revolution in 1789. Advertising revenues rose, making James a wealthy man. As he neared the age of seventy, he was increasingly laid up with gout and publication of the newspaper became difficult. His name as publisher appeared in the paper for the last time on 7 March 1820. In addition to his work as a bookseller and newspaper editor, James held various public offices. From 1790 to 1819 he was director of the Chamber of Commerce of Edinburgh. From 1799 through 1818 he served as manager of the Public Dispensary. In 1807 he was chosen as an ordinary director of the Bank of Scotland, and, except for a two-year period, served continuously in that position until 1830.

James and Jean Donaldson had five children, but none of them lived to adulthood. Jean died in 1828 and James passed away on 19 October 1830. He was buried alongside Jean in the cemetery at St. John's Chapel. The Donaldson bookshop on High Street suffered a major fire in 1824 and the original building no longer stands.

### The Legacy of the Case

What did the eighteenth-century litigation over literary property produce? Literary property was often conceived in much the same way as land ownership. And in eighteenth-century England, the handling of land itself was undergoing change by the process of enclosure, the assertion of new property rights by building fences around specific tracts of land.

Members of the nobility were particularly keen on this kind of privatization, asserting new ownership rights to land that had once been held in common. Until the first half of the eighteenth century, land had been enclosed and its private ownership recognized through acts of Parliament in only sporadic cases; between 1719 and 1743, only 87 cases were passed. Then, from 1770 the number sharply increased. In 1770–1794 as many as 1058 cases were passed. As seen from the cases taken up in Parliament in 1773, the year prior to the *Donaldson v. Becket* case, the enclosure of land was progressing actively.<sup>199</sup> According to historian Roy Porter, Parliament passed 64 cases in the 1740s, 87 cases in the 1750s, 304 cases in the 1760s, and 472 cases in the 1770s.<sup>200</sup>

No doubt the mood of the enclosure era influenced litigation over copyright among the big booksellers. The House of Lords decision in the *Donaldson v. Becket* case,

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<sup>199</sup> Matsusono 1999, pp. 112–13.

<sup>200</sup> Porter 1991 (1982), p. 209.

however, was made by a wide margin to stop the movement to “enclose” ownership of book content based on the idea of perpetual copyright. Even the aristocrats of the House of Lords, who were so eager to encourage when it came to the enclosure of land, recognized that the cultural property contained in books could not be possessed in the same economic terms as land. The lords were all landowners themselves and could readily grasp the fundamental distinction between the ownership of land and possession of the content of books.

The members of the House of Lords were all very highly educated people and they were themselves readers of books; often they were authors as well. They were, indeed, the central figures of literary culture. To recognize “perpetual copyright,” they knew full well, might be to the profit of a few large booksellers, but they deemed it would not serve the interests of readers. They were quick to see that the copyrights to books were cultural assets first and economic property only secondarily.

The vast majority of the knowledge or information written in books comes from that which has already been written about before in some way. It consists of recompositions of what has already been said elsewhere. If knowledge is something to which property rights are attached, people would not be able to express anything without using knowledge in the possession of someone either now or in the past. No book—or any other product of culture, for that matter—is made starting entirely from scratch, from completely original content. Culture, by its nature, consists of the rearrangement or adding on of something new to culture that already exists.

Encyclopedias and dictionaries are easily recognizable examples of works created by the cut-and-paste method. Ephraim Chambers' *Cyclopaedia*, introduced in earlier chapters, was compiled by excerpting text and illustrations from all manner of existing books. The compilation of dictionaries takes full advantage of the limits of copyright. The first edition of the *Encyclopedia Britannica*, which was published in Edinburgh in 1768–1771, was made up of a notable number of such excerpts from other works. It may have been no accident that the encyclopedia that came to be the most highly respected in the world was created in Scotland thanks to the relatively scant restrictions on copyright there. Johnson's *Dictionary*, too, was of course a collection of already existing English words, not words he came up with himself. The *Dictionary* contains much that derives from more than just his own admittedly monumental labors. One can perhaps think of the *Dictionary* as Johnson's cultivation of the wild field of the English language that had been opened up and abundantly seeded by generations before him. By the same logic, it was unnatural that a handful of booksellers like Millar should monopolize the right to print the *Dictionary*—or any other work—and go on monopolizing the profits from its sale in perpetuity.

Now let us shift to the perspective of today. We can get a sense of what was achieved from the enclosure of culture by comparing it with the results of enclosing land. For one

thing, one of the results of the enclosure of land was that agriculture became a kind of business. The owners of land began to pursue greater profits by using the labor of farm workers. One other outcome was that as the places that had originally been “commons” were subject to enclosure, the people who had benefited from their use were kept out, resulting in widening disparities between rich and poor. Enclosure also took away the places where people could freely hold festivals and engage in recreation.

Culture that was “enclosed,” too, became subject to commerce. Those who possessed the “land” of copyright, so to speak, acted like big plantation owners. In the case of the large-scale culture enterprises, the owners of the copyrights are not the actual people clearing and tilling the soil of culture through their creative toil; the creators and the rights holders are different people. The rights holders hire the creators, as one might hire farm workers, buying up on contract from them rights that they are inherently entitled to, and using those rights to run their commercial concerns. The rights holders assert that this arrangement serves the advancement of culture, but this may be a point that deserves careful scrutiny.

Over the years, these culture enterprises have worked to influence the government and expanded the scope of copyright protections from literature to the arts, music, photography, film, and computer programs and extended the period of protection. They have engaged in enclosure of the commons of culture. By this means, the powerful culture businesses have grown increasingly large, and creators who had tilled the common fields of culture in hopes of obtaining something from their toil find the scope of their activity increasingly confined. Obsession with the need to assert one’s copyright has become so entrenched that it has caused all cultural activity to shrink in fear of infringing upon someone’s rights.

What one should not do is excessive possession—especially far beyond what is needed to subsist. The monopoly practiced by the big booksellers was clearly not simply in order to make a living but for the excessive expansion and reproduction of individual assets and capital. An even greater problem was that while exploiting the horizons of knowledge cultivated by authors, these booksellers asserted that they held perpetual copyright to the works in the name of the author.

Donaldson’s idea in a sense followed the principles of the market economy. Keeping restrictions imposed by law to a minimum, and allowing books for which the copyright had expired to be handled according to the free enterprise of the marketplace would lead to the best situation for society, as if guided by the “invisible hand” of the market, as Adam Smith had observed. Donaldson was influenced by Smith—or, it may be more accurate to say that in the midst of the intellectual ferment of eighteenth-century Scotland, it was Smith whose theories were influenced by Donaldson-style commercial activity going on around him.

The *Donaldson v. Becket* case led to changes in the publishing world in England.



To begin with, the classics were made freely available. Once books published before the Statute of Anne had been adopted could be freely printed and sold, publishing the classics became a viable business and one that would go on to provide strong underpinnings for the publishing world for a long time. A second change was that publishers began to invest in new writers and new writing. Since rights to a work would only be protected for twenty-eight years, booksellers found they needed to encourage new writers and encourage them to create new works. The heyday of English literature that began at the end of the eighteenth century unfolded on the momentum of that need.<sup>201</sup> As it turned out, limiting access to copyright was what best served the advancement of culture.

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201 Feather 2006, pp. 73–74.

