THE LAW OF COPYRIGHT.

THE

LAW OF COPYRIGHT,

IN WORKS OF LITERATURE AND ART:

INCLUDING THAT OF THE

DRAMA, MUSIC, ENGRAVING, SCULPTURE, PAINTING, PHOTOGRAPHY AND ORNAMENTAL AND USEFUL DESIGNS;

TOGETHER WITH

INTERNATIONAL AND FOREIGN COPYRIGHT,

WITH THE STATUTES RELATING THERETO,

AND

REFERENCES TO THE ENGLISH AND AMERICAN DECISIONS.

BY

WALTER ARTHUR COPINGER, Esq.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

"Non equidem hoc studeo, bullatis ut mihi nugis
Pagina turgescat, dare pondus idonea fumo."—Pers.

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PREFACE.

THE decisions of our Courts of Law and Equity on the subject of Copyright during the last few years have been numerous; and so severely has been experienced the want of a work embodying these decisions, and presenting an exposition of the principles on which they have been determined, that little apology will be deemed necessary for introducing to the profession a digest of the Copyright Laws.

If I have, by the classification adopted, in any way facilitated the lawyer in his search for the principles of law as applicable to particular circumstances, and have proved of assistance to the literary man or the artist in the acquirement of that peculiar knowledge of the law which, for the due protection of his production is so requisite, I shall have attained an object at once gratifying to myself, and sufficiently compensative for my labour.

WALTER COPINGER.

Middle Temple.
Oct. 1870.

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THE LAW OF COPYRIGHT.

CHAPTER I.

HISTORICAL VIEW OF THE COPYRIGHT LAWS.

Definition and nature of copyright.

COPYRIGHT may be defined as the sole and exclusive liberty of multiplying copies of an original work or composition (*a*).

The right of an author to the productions of his mental exertions may be classed among the species of property acquired by occupancy; being founded on labour and invention (*b*).

A literary composition, so long as it lies dormant in the author's mind, is absolutely in his own possession. Ideas drawn from external objects may be communicated by external signs, but words demonstrate the genuine operations of the intellect. The former are so identical with himself, that when by the author resolved into the latter, they lose not their original characteristic; and whether or not they be regarded as of pecuniary value in the

(*a*) 14 M. & W. 316. The term "copyright" may be understood in two different senses. The author of a literary composition, which he commits to paper belonging to himself, has an undoubted right at common law to the piece of paper on which his composition is written, and to the copies which he chooses to make of it for himself, or for others. If he lends a copy to another his right is not gone; if he sends it to another under an implied undertaking that he is not to part with it, or publish it, he has a right to enforce that undertaking. The other sense of that word is, the exclusive right of multiplying copies; the right of preventing all others from copying, by printing or otherwise, a literary work which the author has published. This must be carefully distinguished from the other sense of the word. (*Per* Baron Parke, in *Jefferys* v. *Boosey*, 4 H. L. C. 920.)

(*b*) Hoffman's 'Legal Outlines,' sect. iii.; Locke on Gov. pt. 2, c. 5.

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way of recital or sale, he ought to be the sole arbiter to authorize or to prohibit their publication, and have full control over them, before they are actually submitted to public inspection. In ancient times orations, plays, poems, and even philosophical discourses, were usually orally communicated, and all ages have allotted to the composers the profits which arose from this mode of publication. They were rewarded by the contributions of the audience or by the patronage of those illustrious persons in whose houses they recited their works. A recompense of some sort was regarded as a natural right, and anyone contravening it, was esteemed little better than a robber. Terence sold his 'Eunuchus' to the ædiles, and was afterwards charged with stealing his fable from Nævius and Plautus. "*Exclamat furem, non poetam, fabulam dedisse*" (*a*). He sold his 'Hecyra' to Roscius, the player. Statius would have starved had he not sold his tragedy of 'Agave' to Paris, another player:

"*Esurit, intactam Paridi nisi vendat Agaven*" (*b*).

These sales were founded upon natural justice. No man could possibly have a right to make a profit by the publication of the works of another, without the author's consent. It would be converting to one's own emolument the fruits of another's labour.

In later times the method of publication was usually by writing, or describing in characters those words in which an author had clothed his ideas. Characters are but the signs of words, and words are the vehicle of sentiments. Here the value which distinguishes the writing arises merely from the matter it conveys. The sentiment is, therefore, the thing of value from which the profit must

(*a*) *Prologus ad 'Eunuchum'*:

"Exclamat, furem, non poetam, fabulam
Dedisse, et nihil dedisse verborum tamen;
Colacem esse Nævi, et Plauti veterem fabulam,
Parasiti personam inde ablatam et militis."

(*b*) Juvenal, *Sat.* vii. 87.

arise. No man has a right to give an author's thoughts to the world, or to propagate their publication beyond the point to which he has given consent. His reputation is concerned and he has a right to defend it. This is natural justice, and dictated by reason; consequently, as *Lex est ratio summa. quæ jubet quæ sunt utilia et necessaria, et contraria prohibet* (*a*), we may obviously assume that though copyright, as *a species of property*, was in a strictly accurate sense unknown to, or at least was not by precedent established at common law, yet "the novelty of the question did not bar it of the common law remedy and protection" (*b*).

Distinct properties were not adjusted at the same time and by one single Act, but by successive degrees, according as either the condition of things or the number and genius of men seemed to require. When once established, the same law which pointed out and settled the line of demarcation commands the observance of everything that may be conducive to the end for which these various boundaries were erected. "*Nequaquam autem omnes res,*" says Puffendorf (*c*), "*statim ab initio humani generis, aut ubique locorum ex definito aliquo præcepto juris naturalis debuerunt proprietatem subire; sed hæc est introducta, prout pax mortalium id requirere visa fuit.*"

Property in literary compositions.

The necessary consequence of being a distinguishable property was its having a determinate owner. As property must precede the violation of property, so the rights must be instituted before the remedies for their violation; and the seeking for the law of the right of property in the law of procedure relating to the remedies is a mistake similar to supposing that the mark on the ear of an animal is the cause, instead of the consequence, of property therein. If the essential principle for one source of property be production, the mode of production is unimportant; the

(*a*) Co. Lit. 319, b. Jenk. Cent. 117.

(*b*) 4 Burr. 2345. *Nihil quod est contra rationem est licitum:* Co. Lit. 97, b. *Son le ley done chose, la ceo done remedie a venir a ceo:* 2 Roll. R. 17. *In novo casu, novum remedium apponendum est:* 2 Inst. 3.

(*c*) *De Jure, Nat. et gen.* lib. iv. c. iv. s. 14. *Vide ibid.* s. 6.

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essential principle is applicable alike to the steam and gas appropriated in the nineteenth century, and the printing introduced in the fifteenth, and the farmers' produce of the earlier ages. The importance of the interest dependent on words advances with the advance of civilisation. If the growth of the law be traced with respect to the words that make and unmake a simple contract, and with respect to the words that are actionable or justifiable as defamation, and with respect to the words that are indictable as seditious or blasphemous, it will be thought reasonable that there should be the same growth of the law in respect of the interest connected with the investment of capital in words. In the other matters the law has been adapted to the progress of society according to justice and convenience, and by analogy it should be the same for literary works, and they would become property with all its incidents, on the most elementary principles of securing to industry its fruits and to capital its profits (*a*).

In the vast complications of human affairs, requiring new applications of old principles continually to be made; in the measureless range of human thought, bringing new doctrines out of the mass of new and old events; in the immense fields of human exploration, luminous with the light of every species of science, over which the race of man is always travelling; in the unlimited expansibility of human society, developing new aspects, new relations, new wants; in the fact that, although the reported decisions of the courts are numerically great, they embrace but comparatively few even of the questions which have arisen heretofore; in the known fact, also, that evermore the surges of time are driving the shores of human capability further towards the infinite,—we read the truth, pervading every system of jurisprudence, that whenever a matter comes before the courts, it is really a call for a new enunciation of legal doctrines, and that from the past we only gather a few rules to guide us in the future. We learn that both the olden and the new light point to the

(*a*) *Per* Mr. Justice Erle in *Jefferys* v. *Boosey*, 4 H. L. C. 870.

way of principle for the settlement of all new cases, when particular precedents fail (*a*).

What property could be more emphatically a man's own than his literary works? Is the property in any article or substance accruing to him by reason of his own mechanical labour denied him? Is the labour of his mind less arduous, less worthy of the protection of the law? When the right could not be combatted on the ground of common sense or simple reason, the lawyers were forced to fly to what Lord Coke styles "*summa ratio*," or the legal reason, and they contended that from the very nature of literary productions no property in them could exist. For, said they, to claim a property in anything it is necessary that it should have certain qualities; it should be of a *corporeal substance*, be capable of occupancy or possession, it should have distinguishable proprietary marks, and be a subject of sole and exclusive enjoyment. Now, none of these indispensable characteristics were possessed by a literary production.

To this it was replied, that such definition of property was too narrow and confined; (for the rules attending property must ever keep pace with its increase and expansibility, and must be adapted to every particular condition;) that a distinguishable existence in the thing claimed as property, and an actual value in such thing to the true owner, are its essentials; and that the best rule of reason and justice seemed to be, to assign to everything capable of possession a legal and determinate owner.

No copyright in mere ideas.

Ideas, being neither capable of a visible possession nor of sustaining any one of the qualities or incidents of property, inasmuch as they have no bounds whatever, cannot be the subject of property. Their whole existence is in the mind alone; incapable of any other mode of acquisition or enjoyment than by mental possession or apprehension, safe and invulnerable from their own immateriality, no trespass can reach, no tort affect, no fraud or

(*a*) Bishop's 'Criminal Law.'

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violence diminish or damage them (*a*). They are of a nature too unsubstantial, too evanescent, to be the subject of proprietary rights.

Copyright however in the material that has embodied the ideas.

When, however, any material has embodied those ideas, then the ideas, through that corporiety, can be recognised as a species of property by the common law. The claim is not to ideas, but to the order of words, and this order has a marked identity and a permanent endurance. The order of each man's words is as singular as his countenance, and although, if two authors composed originally with the same order of words, each would have a property therein, still the probability of such an occurrence is less than that there should be two countenances that could not be discriminated. The permanent endurance of words is obvious by comparing the words of ancient authors with other works of their day; the vigour of the words is unabated, though other works have mostly perished. It is true that property in the order of words is a mental abstraction, but so also are many other kinds of property; for instance, the property in a stream of water, which is not in any of the atoms of the water, but only in the flow of the stream. The right to the stream is not the less a right of property, either because it generally belongs to the riparian proprietor, or because the remedy for a violation of the right is by action on the case, instead of detinue or trover (*b*)

Author's right to the first publication of his own manuscript.

"Ideas" says Mr. Justice Yates, "are free. But while the author confines them to his study, they are like birds in a cage, which none but he can have a right to let fly; for, till he thinks proper to emancipate them, they are under his own dominion. It is certain every man has a right to keep his own sentiments, if he pleases; he has certainly a right to judge whether he will make them public, or commit them only to the sight of his friends. In that state, the manuscript is, in every sense, his peculiar pro-

(*a*) Yates, in *Millar* v. *Taylor*, 4 Burr. 2362; *Abernethy* v. *Hutchinson*, 1 Hall & Tw. 28; S. C. in 3 L. J. (Ch.) 209, 213, 219; and see Sir G. Turner, V.C., in *Morison* v. *Moat*, 9 Hare, 257.

(*b*) Mr. Justice Erle, in *Jefferys* v. *Boosey*, 4 H. L. C. 869.

perty; and no man can take it from him or make any use of it which he has not authorized, without being guilty of a violation of his property. And as every author or proprietor of a manuscript has a right to determine whether he will publish it or not, he has a right to the first publication; and whoever deprives him of that priority is guilty of a manifest wrong, and the court have a right to stop it" (*a*).

Thus we see that every man has the right at common law to the first publication of his own manuscript (*b*). Suppose, therefore, that a man, with or without leave to peruse a manuscript work, transcribes and publishes it, it would not be within the Copyright Acts; it would not be larceny, nor trespass, nor a crime indictable (the physical property of the author, the original manuscript, remains), but it would be a gross violation of a valuable right. Again, suppose the original or a transcript be given or lent to a man to read, and he were to publish it, such publication would be a violation of the author's common law right to the copy.

In the case of the *Duke of Queensberry* v. *Shebbeare*, before Lord Hardwicke, an injunction was granted against printing the second part of Lord Clarendon's 'History.' Lord Clarendon lent to a person of the name of Gwynne a copy of his 'History;' his son and representatives insisted that he had a right to print and publish this 'History,' but the court were of opinion that Gwynne might make every use of it except the profit of multiplying in print. The presumption was that Lord Clarendon never intended that when he gave him the copy. The injunction was acquiesced

(*a*) Yates, J., in *Millar* v. *Taylor*, 4 Burr. 2378; 1 Mac. & Gor. 36; *Forrester* v. *Walker*, cited 2 Bro. P. C. 138; *Webb* v. *Rose*, 4 Burr. 2330; *Southey* v. *Sherwood*, 2 Mer. 435; *Wheaton* v. *Peters*, 8 Peters, S. C. R. (Amer.) 591; Eden on Injunc. 285; 2 Story, Eq. Jur. s. 943; Curtis on Copy. 84, 150, 159; *Woolsey* v. *Judd*, 4 Duer (Amer.) 385.

(*b*) See *Little* v. *Hall*, 18 How. (Amer.) 170; *Bartlette* v. *Crittenden*, 4 McLean (Amer.) 300; S. C. 5 *ibid.* 32; *Webb* v. *Rose*, 4 Burr. 2330; 2 Bro. P. C. 138; *Pope* v. *Curl*, 2 Atk. 342; *Manley* v. *Owen*, cited 4 Burr. 2329; *Macklin* v. *Richardson*, Amb. 694; *Donaldson* v. *Becket*, 4 Burr. 2408; *Wheaton* v. *Peters*, 8 Peters, S. C. R. (Amer.) 591. See *Dudley* v. *Mayhew*, 3 Coms. (Amer.) 12; *Clayton* v. *Stone*, 2 Paine, (Amer.) 383; and *Jones* v. *Thorne*, 1 N. Y. Leg. Obs. 409.

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under (*a*); and Dr. Shebbeare recovered, before Lord Mansfield, a large sum against Gwynne for representing "that he had a right to print."

In the cases of Webb and Forrester (*b*), the Court of Chancery again interposed by injunction. It appears that the plaintiff in the former case had his 'Precedents of Conveyancing' stolen out of his chambers and printed; and in the latter he had his notes copied by a clerk to a gentleman to whom he had lent them, and printed. In *Macklin* v. *Richardson* (*c*) the defendant had employed a short-hand writer to take down the farce of 'Love à la Mode,' upon its performance at the theatre, and inserted one act in a magazine, giving notice that the second act would be published in a magazine of the following month. Upon an application to Lord Camden for an injunction, he directed the case to stand over until that of *Millar* v. *Taylor*, which was then pending, should be determined; and after the decision had been given in that case the injunction was granted by the Lords Commissioners Smythe and Bathurst. The former, referring to the play, saying, "it has been argued to be a publication by being acted, and therefore the printing is no injury to the plaintiff; but that is a mistake; for, besides the advantage of the performance, the author has another source of profit from the printing and publishing, and there is as much reason that he should be protected in that right as any other." Bathurst adding, "The printing it before the author is doing him a great injury."

This was the opinion also of Lord Cottenham in Prince Albert's case (*d*). "The property," said he, "in an author or composer of any work, whether of literature, art, or science, such work being unpublished and kept for his private use or pleasure, cannot be disputed after the many

(*a*) 2 Eden, 329; *Knaplock* v. *Curle*, 4 Vin. Abr. 278.
(*b*) Cited Ambl. 695.
(*c*) *Ibid.*
(*d*) *Prince Albert* v. *Strange*, 18 L. J. (N. S.) Ch. 120; 1 Hall & Tw. 1; 1 Mac. & Gor. 25; *Turner* v. *Robinson*, 10 Ir. Ch. Rep. 121, 510; *Southey* v. *Sherwood*, 2 Mer. 435; *Gee* v. *Pritchard*, 2 Swans. 402.

decisions upon which that proposition has been affirmed or assumed. I say 'assumed,' because in most cases which have been decided, the question was not as to the original right of the author, but whether what had taken place did not amount to a waiver of such right; as, in the case of letters how far the sending of the letter, in the case of dramatic composition how far the permitting performance, and in the case of Mr. Abernethy's lectures how far the oral delivery of the lecture, had deprived the author of any part of his original right and property;—a question which could not have arisen if there had not been such original right or property."

What amounts to publication sufficient to defeat the common law right is a question of some nicety. The publication of a work for private purposes and private circulation is not such a publication (*a*). Accordingly, it has been determined that a copyright in a piece of music is not lost, although it had been published in manuscript a year before being printed. The words "printed and published," used in the statutes, have reference only to the time at which the author's exercise of the right is to be dated; and therefore, the circumstance of an author having previously published in manuscript any composition which is afterwards printed, only varies the period of time from which the term of protection is to be calculated. The delivery of a lecture to an audience of persons admitted on payment of a fee, is not deemed a publication (*b*); neither is the exhibition of a picture at a public exhibition or gallery, where copying is expressly or impliedly forbidden, nor the exhibition of a picture for the purpose of obtaining subscribers to an engraving (*c*).

What amounts to publication at common law.

At one time it was contended that by publication the author or proprietor lost any right he might have had at

The effect of publication.

(*a*) *White* v. *Geroch*, 2 B. & Ald 298; *Prince Albert* v. *Strange*, 2 De G. & Sm. 686; 1 Mac. & Gor. 42; 1 Hall & Tw. 1; *Jefferys* v. *Boosey*, 4 H. L. C. 816.

(*b*) *Abernethy* v. *Hutchinson*, 3 L. J. (Ch.) 209.

(*c*) *Turner* v. *Robinson*, 10 Ir. Ch. 510. But see *Dalglish* v. *Jarvie*, 2 Mac. & Gor. 231, cited Kerr on Injunc. 184, and 25 & 26 Vict. c. 68.

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common law to the property in the work published. But it would have been hard indeed if publication, the only and necessary act to make the work useful and profitable, were construed to be destructive at once of the author's confessed original property against his expressed will. For the right of the author to the property while in manuscript, is freely admitted. But he is ready to admit his contemporaries and posterity into a participation in the result of his labours. Without publication the work would be useless to the author, because without profit; and property, without the power of use and disposal, is an empty sound. Publication, therefore, is the necessary act and only method of rendering this avowed property serviceable to mankind and profitable to the owner; in this they are jointly concerned.

On publication, no more passes to the public than an unlimited use of every advantage that the purchaser can reap from the doctrine and sentiments which the work contains. The property in the composition does not pass; for those things which only peculiarly and appropriately are his, must remain his till he agrees or consents to part with them by compact or donation; "because no man can deprive him of them without his approbation; but the depriver must use them as his when they are not his, in contradiction to truth." For "to have the property" of any thing, and "to have the sole right of using and disposing of it," is the same thing. They are equipollent expressions (*a*).

Primary recognition of copyright.

It was only since the introduction of printing that any question of the extent and duration of copyright could be expected to occur in a court of justice. For the period of about a century from the time of this discovery we have no evidence of the recognition in any public form of the copyright of authors, or of the remedies by which its infraction might be redressed (*b*). The earliest evidence which occurs is to be found in the charter of the Stationers' Company and the decrees of the Star Chamber.

(*a*) Author of 'The Religion of Nature Delineated,' p. 136.
(*b*) Maugham, Lit. Prop.

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The original charter of the Stationers' Company.

The original charter of the Stationers' Company was granted by Philip and Mary. It was the declared object of the Crown at that time to prevent the propagation of the reformed religion, and it seems to have been thought that this could most effectually be brought about by imposing the severest restrictions on the press. About this period there are several decrees and ordinances of the Star Chamber regulating the manner of printing, the number of presses throughout the kingdom, and prohibiting all printing against the force and meaning of any of the statutes or laws of the realm. Until the year 1640 the Crown, through the instrumentality of the Star Chamber, exercised this restrictive jurisdiction without limit, enforcing by the summary powers of search, confiscation, and imprisonment, its decrees, without the least obstruction from Westminster Hall or the Parliament in any instance.

On abolition of Star Chamber all restraints on printing deemed illegal.

In 1640, however, the Star Chamber was abolished; the king's authority was set at nought; all the regulations of the press, and restraints previously imposed against unlicensed printers by proclamations, decrees of the Star Chamber, and charter powers given to the Stationers' Company, were deemed and certainly were illegal. The licentiousness of libels induced the Parliament to make an ordinance which prohibited printing unless the book was first licensed. The ordinance prohibited printing without the consent of the owner, or importing (if printed abroad), upon pain of forfeiting the same to the owner or owners of the *copies* of the said books, &c. This provision necessarily presupposed the property to exist; it would have been nugatory if there had been no admitted owner. An owner could not at that time have existed otherwise than by common law. In 1649 the Long Parliament made another ordinance; and in 1662 was passed the Licensing Act (13 & 14 Car. 2, c. 33), which interdicted the printing of any book unless first licensed and entered in the registry of the Stationers' Company. This Act further prohibited the printing of any work without the consent of the owner, upon pain of forfeiture, &c. The

The Licensing Act of Car. 2.

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sole property of the owner is here acknowledged in express terms as a common law right; and the legislature which passed that Act could never have entertained the most distant idea "that the productions of the brain were not a subject-matter of property." To support an action on this statute ownership had to be proved or the plaintiff could not have recovered, because the action was to be brought by the owner, who was to have a moiety of the penalty. The various provisions of this Act effectually prevented piracies, without actions at law or bills in equity. But cases arose of disputed property. Some of them were between different patentees of the Crown; some, whether the property "belonged to the author, from his invention and labour, or the king, from the subject-matter."

The Licensing Act of Car. 2 was continued by several Acts of Parliament, but expired May, 1679; soon after which there is a case in Lilly's 'Entries of Hilary Term,' 31 Car. 2, B. R. (*a*). In this case an action was brought for printing 4000 copies of the 'Pilgrim's Progress,' of which the plaintiff was the true proprietor, whereby he lost the profit and benefit of his copy. There is no account, however, of the case having been proceeded with.

Ordinance of the Stationers' Company in 1681.

In 1681, all legislative protection having ceased, the Stationers' Company adopted an ordinance or bylaw, which recited that several members of the company had *great part of their estates in copies*, that by ancient usage of the company, when any book or copy was duly entered in their register to any member, such person had always been reputed and taken to be the proprietor of such book or copy, and ought to have the sole printing thereof. The ordinance further recited that this privilege and interest had of late been often violated and abused; and it then provides a penalty against such violation by any member or members of the company, where the copy had been duly entered in their register. The true view of this ordinance would seem to be, that the members of the

(*a*) *Ponder* v. *Bradyl*, Lilly's 'Entries,' 67; see Carter, 89; 4 Burr. 2317; Skinner, 234; 1 Mod. 257.

Stationers' Company, finding their estates in copies, which belonged to them by the common law, no longer under the protection of the Licensing Act (the repeal of which had incidentally withdrawn the protection that had always been inserted in it, though it had necessarily no connection with the system of licensing), undertook to provide for the failure of legislation, as far as they could, by an ordinance applicable of course to their own members only. The ordinance is not to be cited as any other proof of what the common law right was than that it shows, in connection with other historical proof, what it was then supposed to be. It was much the same as if an association of persons were to agree that any one of their number should pay a penalty for violating the acknowledged rights of property of any other person in the association, provided such rights were duly entered in their common records. It would not be an attempt to create the right, but it would justly be regarded as an acknowledgment of the existence of such a right (*a*).

A bylaw of the Stationers' Company in 1694.

In another bylaw, passed in 1694 (*b*), it was stated that copies were constantly bargained and sold amongst the members of the company as their property, and devised to their children and others for legacies and to their widows for maintenance; and it was ordained, that if any member should, without the consent of the member by whom the entry was made, print or sell the same, he should forfeit for every copy twelve-pence.

For many years successively attempts were made to obtain a new Licensing Act. Such a bill once passed the upper house, but the attempt miscarried upon constitutional objections to a licence. Proprietors of copyright had so long been protected by summary measures, that they regarded an action at law as an inadequate remedy. A bill in equity was never even thought of; no hope of its success appears at that time to have been entertained.

(*a*) Curtis on Copy. p. 38.

(*b*) In this year expired finally the Licensing Act of 13 & 14 Car. 2 which had been revived by 1 Jac. c. 7, and continued by 4 W. & M. c 24.

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A petition presented to Parliament in 1709 for protection of copyright.

In one of the petitions presented to the House in support of applications to Parliament in 1709, for a bill to protect copyright, the last clause or paragraph was as follows: "The liberty now set on foot of breaking through this ancient and reasonable usage is no way to be effectually restrained but by an Act of Parliament. For by common law, a bookseller can recover no more costs than he can prove damage; but it is impossible for him to prove the tenth, nay, perhaps, the hundredth part of the damage he suffers; because a thousand counterfeit copies may be dispersed into as many hands all over the kingdom, and he not be able to prove the sale of them. Besides, the defendant is always a pauper, and so the plaintiff must lose his costs of suit. (No man of substance has been known to offend in this particular, nor will any ever appear in it.) Therefore, the only remedy by the common law is to confine a beggar to the rules of the King's Bench or Fleet, and there he will continue the evil practice with impunity. We therefore pray that confiscation of counterfeit copies be one of the penalties to be inflicted on offenders" (*a*).

The first Copyright Act, 8 Anne, c. 19.

In response to these applications the Act 8 Anne, c. 19, was passed. It recites that printers, booksellers, and other persons had of late frequently taken the liberty of printing, reprinting, and publishing books and other writings without the consent of the authors or proprietors, to their very great detriment, and too often to the ruin of them and their families. For preventing, therefore, such practices for the future, and for the encouragement of learned men to compose and write useful books, it was enacted, that the authors of books already printed who had not transferred their rights, and the booksellers or other persons who had purchased or acquired the copy of any books in order to print or reprint the same, should have the sole right and liberty of printing them for a term of twenty-one years from the 10th of April, 1710, and no longer; and that authors of books not then printed, should have the sole right of printing for fourteen years, and no longer. It

(*a*) 4 Burr. 2318.

also provided that copies of books should be entered before publication in the register book of the Stationers' Company, which book should be free for inspection at any time without fee; and that nine copies of each book should be delivered to the warehouse-keeper of the said company for the use of university libraries, inflicting a penalty in default of such delivery, besides the value of the said printed copies, of the sum of £5 for every copy not so delivered (*a*). And lastly it provided, that after the expiration of the said term of fourteen years the sole right of printing or disposing of copies should return to the authors thereof, if they were then living, for another term of fourteen years.

The common law right to old copies.

The general question upon the common law right to old copies of works could not arise until the expiration of the full term conferred by the Act of Anne, that is, until twenty-one years from the 10th of April, 1710. Shortly after the expiration of this period, in 1735, in the case of *Eyre* v. *Walker* (*b*), Sir Joseph Jekyll granted an injunction to restrain the defendant from printing the 'Whole Duty of Man,' the first assignment of which had been made in December, 1657; and this was acquiesced under.

Injunctions issued in support of this right.

In the same year, in the case of *Motte* v. *Falkner* (*c*), an injunction was granted for printing Pope's and Swift's 'Miscellanies.' Many of the pieces had been published in 1701, 1702, and 1703, and the counsel strongly pressed the objection as to these pieces. Lord Talbot, however, continued the injunction as to the whole, and it was acquiesced under.

In the following year, in the case of *Walthoe* v. *Walker*, an injunction was granted for printing Nelson's 'Festivals and Feasts,' though the bill set forth that the original work was printed in the lifetime of Robert Nelson, the author, and that he died in 1714. This also was acquiesced under.

In 1739 Lord Hardwicke granted a fourth injunction to

(*a*) The number was extended to eleven copies by 41 Geo. 3, c. 107, s. 6; amended by 54 Geo. 3, c. 156, s. 2, and the number was limited to five by the 6 & 7 Will. 4, c. 110.

(*b*) Cited 4 Burr. 2325; 3 Swans. 673; 1 W. Bl. 331; see 2 Eden, 328.

(*c*) Cited in *Millar* v. *Taylor*, 4 Burr. 2325; *Tonson* v. *Walker*, 3 Swans. 672.

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restrain the defendant from printing Milton's 'Paradise Lost.' The plaintiffs derived their title under an assignment of the copy from the author in 1667. This injunction was also acquiesced under (*a*). In 1751 Milton's poem again came before Lord Hardwicke, in the form of an application for an injunction to restrain the defendants printing the same with the notes of Dr. Newton and other commentators, all of which belonged to the plaintiff. The bill, as in the former application, derived a title to the poem from the author's assignment in 1667, and a title to the life by Fenton, published in 1727, to Bentley's notes, published in 1732, and to Dr. Newton's notes, published in 1749. The defendants put in an answer, and set up notes of their own, of which it appeared there were twenty-eight, while the notes of the other commentators, belonging to the plaintiffs, and included in the defendants' edition, numbered 1500. Lord Hardwicke gave judgment in 1752, and held that the plaintiffs' notes were within the protection of the statute; and as to the poem, although he said that the general question had never been determined, and there was a doubt, yet he granted the injunction until the hearing (*a*).

Principle on which the injunctions were issued.

All these injunctions were issued and acquiesced in under the presumption that the perpetual common law right, unaffected by the statute of Anne, was in the respective plaintiffs; had there been a reasonable doubt in the minds of the judges the injunctions would have been improper (*b*), for no reparation could be afforded to the defendants for the damage sustained thereby, in the case of their being innocent of the piracies attributed to them.

The celebrated cases of *Millar* v. *Taylor* and

The common law right was at length disputed and fully discussed in the celebrated case of *Millar* v. *Taylor* (*c*),

(*a*) *Tonson* v. *Walker*, 3 Swans. 672; 4 Burr. 2325, 2327, 2379, 2380; 1 W. Bl. 345; 2 Eden, 328; 1 Cox. 285.

(*b*) *Hill* v. *The University of Oxford*, 1 Vern. 275; *Grierson* v. *Jackson*, Ir. Term R. 304; *Univs. of Oxf. and Cam.* v. *Richardson*, 6 Ves. 689; *Bruce* v. *Bruce*, cited 13 Ves. 505; *Harmer* v. *Plane*, 14 Ves. 130; *Hogg* v. *Kirby*, 8 Ves. 224. And see Lord Erskine in *Gurney* v. *Longman*, 13 Ves. 505; *The Assignees of Robinson* v. *Wilkins*, cited 8 Ves. 224.

(*c*) 4 Burr. 2303.

when judgment was given for the plaintiff on the ground that the common law right to copyright was unaffected by the statute of Anne. However, in a case (*a*) determined on the authority of the last mentioned, the defendant appealed to the House of Lords, on which occasion the following questions were propounded to the judges:

1st. Whether, at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale, and might bring an action against any person who printed, published, and sold the same without his consent?

2nd. If the author had such right originally, did the law take it away upon his printing and publishing such book or literary composition? And might any person afterwards reprint and sell, for his own benefit, such book or literary composition, against the will of the author?

3rd. If such action would have lain at common law, is it taken away by the statute, 8 Anne? And is an author, by the said statute, precluded from every remedy except on the foundation of the said statute and on the terms and conditions prescribed thereby?

Eleven judges delivered their opinions *seriatim*; eight to three for the affirmative on the first question, four to seven on the second, and six to five on the third; so that it was declared that, although an author had by common law an exclusive right to print his works, and does not lose it by the mere act of publication, yet the statute of Anne had completely deprived him of the right. It was notorious that Lord Mansfield concurred with the eight

(*a*) *Donaldson* v. *Becket*, 4 Burr. 2408; 2 Bro. Parl. Cas. 129. Lord Kenyon expressed a decided opinion that no such right existed: *Beckford* v. *Hood*, 7 T. R. 620. Lord Ellenborough inclined to the same view: *Cambridge Univ.* v. *Bryer*, 16 East, 317; and a majority of the judges in *Wheaton* v. *Peters*, 8 Peters (Amer.) 591, arrived at the same conclusion. See *Jefferys* v. *Boosey*, 1 H. L. C. 815.

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upon the first question, with the seven upon the second, and with the five upon the third; but it being very unusual (from reasons of delicacy) for a peer to support his own judgment upon an appeal to the House of Lords, he did not speak (*a*).

The universities obtain an Act for the protection of their copyrights.

The universities, alarmed at the consequence of this decision, applied for and obtained an Act of Parliament (15 Geo. 3, c. 53) establishing in perpetuity their right to all the copies given or bequeathed them theretofore, or which might thereafter be given to or acquired by them (*b*).

The period for which copyright was capable of existing was somewhat varied by the 54 Geo. 3, c. 156, s. 4, which enacted that instead of enduring for fourteen years, and contingently for fourteen more, authors should have the sole liberty of printing and reprinting their works for the term of twenty-eight years, to commence from the day of the first publication of the same; and further, if the author should be living at the expiration of that period, for the residue of his natural life (*c*).

The present Literary Copyright Act, 1842.

All these Acts have been repealed by an Act of Parliament of the present reign—the 5 & 6 Vict. c. 45, on which the law of literary copyright now depends. To Mr. Serjeant Talfourd is due the honour of obtaining this piece of legislative justice. From 1837 to 1842 he used his best endeavours and expended his most eloquent strains to accomplish its passing. In contending for an extension of the period during which protection was

(*a*) In Scotland this question had been tried as early as 1748, and decided against the author's right: *Midwinter* v. *Hamilton*, June 7, 1748; Mor. Dict. of Dec. 19, 20, 8305. On appeal the case went off upon informality in the original summons: Feb. 11, 1751; 1 Cr. & St. 488. The same decision was pronounced in *Hinton* v. *Donaldson*, July 28, 1773, Mor. Dict. of Dec. 19, 20, 8307; 5 Brown's Sup. 508; and in *Cadell & Davies* v. *Robertson*. Dec. 18, 1804, Mor. Dict. of Dec., App., Lit. Prop. 5, as delivered in the House of Lords, July 16, 1811 (5 Paton, 493), the author's right was held to depend entirely on the Act of Queen Anne: Bell's Com. See *Payne* v. *Anderson*, Mor. Dict. of Dec. vols. 19, 20, p. 8316.

(*b*) *Vide post*, p. 144.

(*c*) An author whose works had been published more than twenty-eight years before the passing of this statute was held not to be entitled to the copyright for life: *Brooke* v. *Clarke*, 1 B. & Ald. 396.

afforded to literary works, he bursts forth:—"There is something peculiarly unjust in bounding the term of an author's property by his natural life, if he should survive so short a period as twenty-eight years. It denies to age and experience the probable reward it permits to youth—to youth, sufficiently full of hope and joys to slight its promises. It gives a bounty to haste, and informs the laborious student, who would wear away his strength to complete some work which 'the world will not willingly let die,' that the more of his life he devotes to its perfection, the more limited shall be his interest in its fruits. It stops the progress of remuneration at the moment it is most needed; and when the benignity of nature would extract from her last calamity a means of support and comfort to the survivors—at the moment when his name is invested with the solemn interest of the grave—when his eccentricities or frailties excite a smile or a shrug no longer—when the last seal is set upon his earthly course, and his works assume their place among the classics of his country—your law declares that his works shall become your property, and you requite him by seizing the patrimony of his children."

CHAPTER II.

WHAT MAY BE THE SUBJECT OF COPYRIGHT.

The subject of copyright.

IN order to acquire a copyright in a work it is necessary that it should be original. If any part of the composition is copied or adopted by the writer from a prior-existing work of course the title fails *quoad hoc*, as the writer cannot have been the author of what he has borrowed from another (*a*). "It is difficult," says Mr. Curtis (*b*), "to lay down any legal definition of originality in a literary composition that may be resorted to as a universal test. Many intellectual productions present no more difficulty upon the question of their originality than some inventions, or discoveries. The poems of the great masters in every language, and a vast body of other writings, however freely their authors may have used the thoughts of others, are at once seen to be just as original in a legal as they are in a critical sense. But in every species of composition, in all literatures, there is of necessity a constant reproduction of what is old, mixed with more or less that is new, peculiar, and original. There are also large classes of works the materials of which are common to all writers, existing in nature, art, science, philosophy, history, statistics, &c., where there must be considerable resemblances, however independently of each other the different authors may have written. Over this vast field it is impossible to erect an invarying general rule, which can be fitted to all cases and capable of determining whether a particular work exhibits the degree of originality necessary

(*a*) 'Copyright,' chap. 5. (*b*) *Ibid.*

to a valid copyright. The laws which protect literary property are designed for every species of composition, from the great productions of genius that are to delight and instruct mankind for ages, to the humble compilation that is to teach children the art of numbers for a few years and then to disappear for ever.

"Hence these laws must be so administered that every literary labourer shall find in them an adequate protection to whatever he can show to be the product of his own labour. Something he must show to have been produced by himself; whether it be a purely original thought or principle unpublished before, or a new combination of old thoughts, and ideas, and sentiments, or a new application or use of known and common materials, or a collection, the result of his industry and skill. In whatever way he claims the exclusive privilege accorded by these laws, he must shew something which the law can fix upon as the product of his, and not another's, labour. But in order that the law should do this ample justice, in the great variety of claimants, it is necessary that its rules should be capable of adaptation to the objects of their labours. They must include in their range everything that can be justly claimed as the peculiar product of individual efforts; otherwise they would exclude from the benefit of literary property objects which are as clearly the product of individual labour as the most original thoughts ever written, namely, new and important combinations and arrangements, or collections of materials known and common to all mankind."

Copyright may exist in a new arrangement or in novel additions.

The law does not require that the subject of a book should be new, but that the method of treating should have some degree of originality about it. Copyright may exist in a novel arrangement, as well as in recent corrections and additions to an old work not the property of the compiler (*a*).

(*a*) *Cary* v. *Longman*, 1 East, 358; *Sayre* v. *Moore*, *ibid.* 361; *Tonson* v. *Walker*, 3 Swans. 672; *Tonson* v. *Collins*, 1 W. Bl. 321; *Cary* v. *Faden*, 5 Ves. 24; *Motte* v. *Falkner*, cited 1 W. Bl. 331; *King* v. *Reed*, 8 Ves. 223, n.; *Hogg* v. *Kirby*, 8 Ves. 215; *Longman* v. *Winchester*, 16 Ves. 269;

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Thus, in the case of 'Gray's Poems,' which had been for many years published and were afterwards collected by a Mr. Mason, and reprinted with the addition of several new poems, the Lord Chancellor granted an injunction against a defendant who had copied the whole, though the plaintiff had but a copyright in the additions (*a*).

So, if a person collects an account of natural curiosities, or of works of art, or of mere matters of statistical or geographical information, and employs the labour of his mind in giving a description of them, his own description may be the subject of copyright. It is equally competent to any person to compile and publish a similar work; but it must be made substantially new and original, like the first work, by resort to the original sources, and must not copy or adopt from the other, upon the notion that the subject is common (*b*).

If a man makes an actual survey of certain roads and depicts such roads on a map, though his map might, and probably would, correspond with many which had previously been published, it would be hard to say that it was not a new work. In such a case it is not a question of the mind, like the 'Essay on the Human Understanding;' it lies *in medio;* every man with eyes can trace it, and the whole merit depends upon the accuracy of the observation; every description will therefore be in a great measure original (*c*). If this be so, every edition will be a new work; if it differs as much from the last edition as it does from the last precedent work, either

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Lewis v. *Fullarton*, 2 Beav. 6; *Leader* v. *Purday*, 7 C. B. 4; *Barfield* v. *Nicholson*, 2 Sim. & Stu. 1; *Jarrold* v. *Houlston*, 3 K. & J. 708; *Emerson* v. *Davies*, 3 Story (Amer.) 768; *Atwill* v. *Ferrett*, 2 Blatch. (Amer.) 46; *Bartlett* v. *Crittenden*, 5 McLean (Amer.) 32. As to musical compositions see *Reed* v. *Carusi*, 8 Law Rep. O.S. (Amer.) 411.

(*a*) *Mason* v. *Murray*, cited 1 East, 360.

(*b*) *Hogg* v. *Kirby*, 8 Ves. 215; and in a Scotch case it was held that the directors of the Customs Annuity and Benevolent Fund have a copyright or right of property in the publication 'The Clyde Bill of Entry and Shipping List,' entitling them to protection against piracy: *Walford* v. *Johnston*, 3rd June, 1846; 20 Sess. Cas. 1160. See *Maclean* v. *Moody*, 23 June, 1858, 20 Sess. Cas. 1154.

(*c*) See Lord Jeffery's observations in *Alexander* v. *Mackenzie*, 9 Sess. Cas. (N.S.) 758; *Blunt* v. *Patten*, 2 Paine (Amer.) 393.

all are original works or none of them. It is an extremely difficult thing to establish identity in a map or a mere list of distances; but there may be originality in casting an index, or pointing out a ready method of finding a place in a map (*a*).

The composing receipts or arranging them in a book will give a copyright to the compiler; but the mere collecting them and handing them over to a publisher will not (*b*); nor will the mere copying that which is public property. However, if there be some new arrangement or classification of the subject, or the copy be at all varied, then a copyright may exist in it (*c*), provided the variation be not merely colourable (*d*).

Thus, where the defendant had used four charts published by the plaintiff in making one large map, but there were very important differences between them, much in favour of the defendant's, and the evidence showed the plaintiff's charts to be founded upon a wrong principle, Lord Mansfield left it to the jury to say whether the alteration was colourable or not. "There must be such a similitude," said he, "as to make it probable and reasonable to suppose that one is a transcript of the other, and nothing more than a transcript. So in the case of different prints; no doubt different men may take engravings from the same picture. The same principle holds with regard to charts; whoever has it in his intention to publish a chart may take advantage of all prior publications." "You are told, that there are various and very material alterations—the chart of the plaintiff is upon a wrong principle, inapplicable to navigation—the defendant, therefore, has been correcting errors, and not servilely copying. If you think so, you will find for the defendant; if you think it

(*a*) *Carnan* v. *Bowles*, 2 Bro. C. C. 80; *Taylor* v. *Bayne*, Mor. Dict. of Dec. in Ct. Sess. vols. 19, 20, 8308; *ibid.* App. pt. 1, 7; *Alexander* v. *Mackenzie*, 9 Sess. Cas. (N.S.) 758.

(*b*) *Randell* v. *Murray*, Jac. 314, *per* Lord Eldon; *Matthewson* v. *Stockdale*, 12 Ves. 270.

(*c*) *Newton* v. *Cowie*, 4 Bing. 234.

(*d*) *Matthewson* v. *Stockdale*, *supra*; *Barfield* v. *Nicholson*, 2 Sim. & Stu. 1.

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is a mere servile imitation, and pirated from the other, you will find for the plaintiff (*a*)." And in *Matthewson* v. *Stockdale* (*b*) Lord Eldon said, "I admit that no man can monopolize such subjects as the English Channel, the Island of St. Domingo, or the events of the world; and every man may take what is useful from the original work, improve, add, and give to the public the whole, comprising the original work, with the additions and improvements."

On the same principle a person may have copyright in mathematical tables *actually calculated by himself*, although on a fresh calculation the same tables would result from the same *data* and the same principles, and although they may have previously been published before his appeared (*c*).

Copyright in private letters.

The copyright of private letters forming literary compositions is in the composer, and not in the receiver, who has only a special property in them; "possibly the property of the paper may belong to him, but this does not give a licence to any person whatever to publish them to the world, for at most the receiver has but a joint property with the writer" (*d*). If a letter, therefore, by any means gets back into the hands of the sender the receiver is entitled to recover it from him by action. In *Oliver* v. *Oliver* the facts were as follows. The plaintiff and defendant were brothers. The letters for the recovery of which the action was brought, related to family affairs. They were written and sent by the defendant to the plaintiff, —had been given back by the plaintiff to the defendant, and proof was given of a demand and refusal to restore them. There was contradictory evidence as to whether

(*a*) *Sayre* v. *Moore*, 1 East, 361, n.
(*b*) 12 Ves. 275; *Wilkins* v. *Aikins*, 17 Ves. 422.
(*c*) *Bailey* v. *Taylor*, 3 L. J. 66.
(*d*) *Per* Lord Hardwicke, *Pope* v. *Curl*, 2 Atk. 342; *Perceval* v. *Phipps*, 2 V. & B. 19; *Forrester* v. *Walker*, 4 Burr. 2331; *Webb* v. *Rose*, *ibid.* 2330; *Macklin* v. *Richardson*, Amb. 694; *Duke of Queensberry* v. *Shebbeare*, 2 Eden, 329; *Millar* v. *Taylor*, 4 Burr. 2303; *Donaldson* v. *Becket*, 2 Bro. P. C. 129; *Oliver* v. *Oliver*, 11 C. B. (N.S.) 139; *Cadell* v. *Stewart*, Mor. Dict. of Dec. vols. 19, 20, App., Lit. Prop. 13; *Palin* v. *Gathercole*, 1 Coll. 565; *Folsom* v. *Marsh*, 2 Story (Amer.) 100; *Boosey* v. *Jefferys*, 6 Exch. 583, *per* Lord Campbell.

the letters had been given by the plaintiff to the defendant to be kept by him as his own property, or whether they had been merely handed to the defendant as custodian, to be re-delivered to the plaintiff on request. The learned judge told the jury that the receiver of a letter had such a property in the paper as to entitle him to maintain an action against the sender if, by any means, it got back into his hands; and that it was for them to say whether the letters in question had been given to the defendant that he might retain them as his own property, in which case the defendant would be entitled to their verdict, or whether they were merely deposited with him to take care of them for the plaintiff, in which case the latter would be entitled to the verdict. Erle, C.J., in refusing a rule for a new trial, upheld this direction, and said: "In the case of letters, the paper at least becomes the property of the persons receiving them. Of course it is necessary to distinguish between the property in the paper and the copyright. The former is in the receiver, the latter is in the writer" (*a*).

The letters of Pope (*b*), Swift, and others, and the letters of Lord Chesterfield (*c*), were prevented from a surreptitious and unauthorized publication by injunction, on the ground of copyright in their authors. Lord Hardwicke, in *Pope's Case*, thought it would be extremely mischievous to draw a distinction between a book of letters, which came out into the world either by the permission of the writer or the receiver of them, and any other learned work. The same objection would, he thought, hold good against sermons which the author may never have intended to be published, but have been obtained from loose papers and brought out after his death.

A distinction drawn between letters of a literary nature, and those of a commercial description.

In the case of the *Earl of Granard* v. *Dunkin* (*d*) the executors of Lady Tyrawley obtained an injunction in the first instance against the defendant publishing letters to Lady Tyrawley from different correspondents, and which

(*a*) See *Howard* v. *Gunn*, 32 Beav. 462; 2 N. R. 256. (*b*) 2 Atk. 342.
(*c*) *Thompson* v. *Stanhope*, Amb. 737. (*d*) 1 Ball & Beatie, 207.

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he had got possession of by being permitted to reside in her house, and continuing to do so after her death. In 1804 the Court of Sessions in Scotland interdicted, at the instance of the children, the publication of the manuscript letters of the poet Burns (*a*).

In the case of *Perceval* v. *Phipps*, though the Vice-Chancellor, Sir Thomas Plumer, held that private letters having the character of literary compositions were within the spirit of the Act protecting literary property, and that by sending a letter the writer did not give the receiver the right to publish it, yet the court would not interfere to restrain the publication of *commercial* or *friendly letters*, except under circumstances (*b*); "for," said he, "though the form of familiar letters might not prevent their approaching the character of literary works, every private letter, upon any subject, to any person, is not to be described as a literary work, to be protected upon the principle of copyright. The ordinary use of correspondence by letters is to carry on the intercourse of life between persons at a distance from each other in the prosecution of commercial or other business, which it would be very extraordinary to describe as a literary work in which the writers have a copyright."

No such distinction at the present time admitted.

Non nostrum est tantas componere lites; yet this distinction appears to us to have but little foundation, and seems to have existed merely in the imagination of Sir Thomas Plumer. It is true that a court of equity cannot interfere to prevent the publication of private letters simply on the ground that such a publication, without the consent of the writer, as a breach of confidence, and social duty, is injurious to the interests of society; but solely on the ground that the writer has an exclusive property which remains in him, even where the letters have been transmitted to the person to whom they were addressed. A

(*a*) *Cadell & Davis* v. *Stewart*, cited 1 Bell's Com. 116, n., cited 2 Kent's Com. 381.

(*b*) 2 V. & B. 19: see *Wetmore* v. *Scoville*, 3 Edw. Ch. (Amer.) 515; *Hoyt* v. *Mackenzie*, 3 Barb. Ch. (Amer.) 320; but see *Woolsey* v. *Judd*, 4 Duer (N. York) 379; and *Eyre* v. *Higbie*, 35 Barb (N. York) 502.

court of equity is not the general guardian of the morals of society. It has not an unlimited authority to enforce the performance or prevent the violation of every moral duty. It would be extravagant to say that it may restrain by an injunction the perpetration of every act which it may judge to be corrupt in its motives or demoralising or dangerous in its tendency. An injunction can never be granted unless it is apparent to the court that the personal legal rights of the party who seeks its aid are in danger of violation, and, as a general rule, that the injury to result to him from such violation, if not prevented, will be irreparable.

Motives why no distinction should be drawn.

The sole foundation is the right which every man has to the exclusive possession and control of the product of his own labour. Why should a writing of inferior composition be precluded from being a subject of property (*a*)? To establish a rule that the quality of a composition must be weighed previous to investing it with the title of property, would be forming a very dangerous precedent. What reason can be assigned why the illiterate and badly spelt letters of an uneducated person should not be as much the subject of property as the elegant and learned epistle of a well known author? The essence of the existence of the property is the labour used in the concoction of the composition, and the reduction of ideas into a tangible and substantial form; and can it be contended that the labour is less in the former than the latter case? Every letter is, in the general and proper acceptation of the term, a literary composition. It is that, and nothing else; and it is so, however defective it may be in sense, grammar, or orthography. Every writing in which words are so arranged as to convey the thoughts of the writer to the mind of the reader is a literary composition; and the definition applies just as certainly to a trival letter as to

(*a*) School books for teaching children are entitled to protection. See *Lennie* v. *Pillans*, 5 Sess. Cas. 2nd series, 416; *Constable & Co.* v. *Brewster*, 3 S. 215 (N. E. 152). So are abstracts and indices of title to land, so long as the compiler retains the ownership of the unpublished manuscript: *Banker* v. *Caldwell*, 3 Min. (Amer.) 94.

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an elaborate treatise or a finished poem. Literary compositions differ widely in their merits and value, but not at all in the facts from which they derive their common sense (*a*).

Printing and publishing cannot make a book "literary" which was not so in manuscript; and consequently, the author of a book (for the same doctrine would apply to a book as to a private letter) which may be of a private nature, and not considered as "a literary composition," ought to be excluded from the benefit of the Acts conferring copyright. But surely it is not contended that the copyright of an author should be liable to impeachment and frustration by reason of an inquiry into the merits or value of his work as published.

The author's right of property alone, protected by the Court of Chancery.

The exclusive right which alone a court of equity is bound to protect, and which, from its nature, can only be protected by an injunction, is the author's right of property in the words, thoughts, and sentiments which, in their connection, form the written composition—which his manuscript embodies and preserves. This composition—whether, as such, it has any value or not, is immaterial—is his work, the product of his own labour, of his hand, and his mind; and it is this fact which gives him the right to say that, without his consent, it shall not be published, and makes it the duty of a court of equity to protect him in the assertion of that right by a permanent injunction. Of this it is a conclusive proof that the right to control the publication of a manuscript remains in the author and his representatives, even when the material property has, with his own consent, been vested in another. The gift of the manuscript, it is settled, unless by an express agreement, carries with it no licence to publish (*b*).

Lord Eldon intimates in *Gee* v. *Pritchard* (*c*) that he

(*a*) 2 Story's Rep., cited *Woolsey* v. *Judd*, 4 Duer (N. York) 379.
(*b*) *Duke of Queensberry* v. *Shebbeare*, 2 Eden, 329; *Thompson* v. *Stanhope*, Amb. 737.
(*c*) 2 Swans. 418, 426, 427. See *Brandreth* v. *Lance*, 8 Paige's R. (Amer.) 24, 26.

does not understand the Vice-Chancellor, in the case of *Perceval* v. *Phipps*, as denying the property of the writer in the letters, but that he appears to have inferred, from the particular circumstances of that case, that the plaintiff had authorized, and for that reason could not complain of, the publication. "I will not say," he adds, "that there may not be a case of exception, but if there is, the exception must be established on examination of the letters; and I think that it will be extremely difficult to say where that distinction is to be found between private letters of one nature and private letters of another nature."

Lord Eldon's opinion of the case of *Perceval* v. *Phipps*.

Mr. Justice Story strongly asserts the propriety of the jurisdiction by injunction for the purpose of restraining the publication of private letters. He thinks the doctrine but sound and just that a court of equity ought to interfere where a letter, from its very nature, as in the case of matters of business, or friendship, or advice, or family or private confidence, imports the implied or necessary intention and duty of privacy and secrecy; or where the publication would be a violation of *trust* or *confidence* founded in contract, or implied from circumstances (*a*). Cicero has with great force thus spoken of the grossness of such offences against common decency: "*Quis enim unquam, qui paulum modo bonorum consuetudinem nosset, literas, ad se ab amico missas, offensione aliquâ interposita, in medium protulit, palamque recitavit? Quid est aliud, tollere e vitâ vitæ societatem quam tollere amicorum colloquia absentium? Quam multa joca solent esse in epistolis, quæ, prolati si sint, inepta videantur! Quam multa seria, neque tamen ullo modo divulganda!*" (*b*)

Mr. Story's opinion.

With these natural feelings on the breach of epistolary confidence the determinations of the Court of Session in Scotland have accorded (*c*); but it must be borne

Principles on which the determinations of the

(*a*) Story's Com. on Eq. Jur. ss. 947–949.
(*b*) Cic. *Orat. Philip.* ii. c. 4. See Sir S. Romily, 2 Swans. 419.
(*c*) So it was held in *Dodsley* v. *M'Farquhar*, Feb. 27, 1775, relative to the publication of Lord Chesterfield's Letters: Mor. Dict. of Dec., Lit.

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Court of *Session have* proceeded.

in mind that that court is held to have jurisdiction by interdict to protect, not property only, but reputation, from injury, and private feelings from outrage and invasion (*a*).

Ground on which a court of equity will frequently interfere.

Courts of equity will, notwithstanding what we have already intimated, sometimes interfere to stay the publication of letters, on the ground that the publication is a *breach of contract* or *confidence*; and *à fortiori*, when they are *intended to be made a source of profit*; for then it is not a mere breach of confidence or contract, but it is a violation of the exclusive copyright of the writer.

Thus, upon the principle of *breach of contract*, an injunction was granted to prevent the publication of letters written by an old lady to a young man, to whom she had been foolishly attached, there being an agreement not to publish the letters, but to deliver them up for a valuable consideration (*b*).

Were the Court of Chancery to interfere on any other principle than that already stated, individuals would be deprived of their defence in proving agency, orders for goods, the truth of an assertion, or some other fact, merely because the testimony establishing the true and genuine circumstances was contained in letters in which a pretended copyright was claimed (*c*).

Instances in which the publication of private letters has been permitted.

Accordingly an injunction obtained on account of agency and confidence was dissolved by the court when the answer denied confidence, and avowed that the defendant's ob-

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Prop., App. 1, 5; Br. Sup. 509; and again more solemnly in *Cadell and Davies* v. *Stewart*, June, 1, 1804, Mor. Dict. of Dec., Lit. Prop., App. 4. *Ibid.* But see, 5 Pat. 493. Here letters written by Burns to a lady whom he distinguished by the name of *Clarinda*, had been by her given to Stewart, a bookseller, who published them. The family of Burns, as interested in his literary reputation, were found entitled to an interdict: Bell's Com.

(*a*) Bell's Com. b. 2, pt. 2, c. 4.

(*b*) *Anon* v. *Eaton*, cited 2 V. & B. 27; *Perceval* v. *Phipps*, 2 V. & B. 27; *Earl of Granard* v. *Dunkin*, 1 Ball. & B. 247; Story's Eq. Jur. vol. 2, ss. 944–950; *Denis* v. *Laclerc*, 1 Martin (Amer.), 297; *Woolsey* v. *Judd*, 4 Duer. (N. York) 379; *Eyre* v. *Higbie*, 35 Barb. (N. York) 502.

(*c*) See Godson on Copy. p. 330.

ject in publishing them in a newspaper, of which he was the proprietor, was not to obtain profit, but to *vindicate his own character* from the imputation of having published false intelligence publicly cast on him by the plaintiff; for defective and injurious indeed would be the effect of a law permitting not the publication or production of business letters when necessary for one's own defence (*a*).

Not permissible for the purpose of representing that to be true which has been admitted to be false.

The receiver of a letter, however, will not be permitted to publish it for the purpose of representing to the public as true that which he has, in legal proceedings upon that very question, admitted to be false. The case of *Palin* v. *Gathercole* (*b*) elucidated this point. The circumstances of that case were these: Palin, the plaintiff, had written to Gathercole, the defendant, who was the editor of a newspaper, certain letters containing information respecting one Noakes, and Gathercole from these letters drew up an article which he published in his newspaper. Noakes brought an action against him for libel, and he compromised the action, paying Noakes' costs, and apologizing. Gathercole then claimed of Palin half the costs that he, Gathercole, had so incurred, and Palin refusing to pay them, Gathercole published in his newspaper a statement that the libel upon Noakes was communicated to him, Gathercole, by Palin. Palin thereupon brought an action against Gathercole; and Gathercole pleaded that the matter, however libellous as between Noakes and Gathercole, was matter of which, as between Palin and Gathercole, Palin was the author; but before trial Gathercole submitted to what was, in effect, a general verdict, establishing in substance, as Vice-Chancellor Knight Bruce expressed it in his judgment, that the libel published by Gathercole on Noakes was not a libel which Palin had communicated to Gathercole. Gathercole then proceeded to shew Palin's letters to third persons, upon which Palin filed his bill for an injunction to restrain Gathercole from

(*a*) *Folsom* v. *Marsh*, 2 Story (Amer.) 100; see *Hoicard* v. *Gunn*, 32 Beav. 462.

(*b*) 1 Coll. 565.

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publishing or showing the letters, and obtained an *ex parte* injunction. The use which Gathercole desired to make of the letters was, it will be observed, to establish the fact that Palin was the author of the libel upon Noakes, the very fact which he had, by submitting to the general verdict in Palin's action, admitted not to exist. Under those circumstances, the court refused to dissolve the injunction, permitting, however, the defendant to exhibit the letters to his solicitors and counsel in the cause.

Communications sent to editors of periodicals.

Communications received from correspondents by editors or proprietors of periodical publications (if sent impliedly or expressly for the purpose of publication) become the property of the person to whom they are directed, and cannot be published by any other person obtaining possession of them (*a*). The editor or proprietor, however, of any such periodical may not publish them if, previous to publication, the writer expresses his desire to withdraw them (*b*); but though the editor may not publish them he may destroy them (*c*).

Power of government to publish or withhold letters.

The government has, moreover, a right to publish or to withhold all letters addressed to the public offices (*d*). This exception in favour of the government is not supposed to make such communications common property, to be published by any person who may see fit, without the sanction of the government, nor to take away the property of the writers or their representatives. "In respect to official letters addressed to government," observed Mr. Justice Story in *Folsom* v. *Marsh* (*e*), "or any of its departments, by public officers, so far as the right of the government extends from principles of public policy to withhold them from publication, or to give them publicity, there may be a just ground of distinction. It may be doubtful whether any public officer is at liberty to publish

(*a*) 8 Ves. 215.
(*b*) *Davis* v. *Miller*, July 28, 1855; 17 Dec. of Ct. of Sess. 2nd series, 1166. See 1 Jur. (N.S.) pt. 2, 523. (*c*) Kerr on Injunc. p. 188.
(*d*) Curtis on Copy. 98.
(*e*) *Folsom* v. *Marsh*, 2 Story (Amer.) 100.

them, at least, in the same age, when secrecy may be required by the public exigencies, without the sanction of the government. On the other hand, from the nature of the public service, or the character of the documents, embracing historical, military, or diplomatic information, it may be the right, and even the duty, of the government, to give them publicity, even against the will of the writers. But this is an exception in favour of the government, and stands upon principles allied to, or nearly similar to, the right of private individuals, to whom letters are addressed by their agents, to use them, and publish them, upon fit and justifiable occasions. But assuming the right of the government to publish such official letters and papers, under its own sanction, and for public purposes, I am not prepared to admit that any private persons have a right to publish the same letters and papers without the sanction of the government for their own private profit and advantage. Recently the Duke of Wellington's despatches have, I believe, been published by an able editor, with the consent of the noble duke and under the sanction of the government. It would be a strange thing to say, that a compilation involving so much expense and so much labour to the editor in collecting and arranging the materials, might be pirated and republished by another bookseller, perhaps to the ruin of the original publisher and editor. Before my mind arrives at such a conclusion, I must have clear and positive lights to guide my judgment, or to bind me in point of authority."

Copyright in lectures.

Copyright may be had in lectures. If a lecture has been reduced wholly or partially into writing, the author has a right of property in it; but when a court of equity is called upon to restrain the publication of such a lecture, the writing must be produced, that the court may compare the original composition with the piracy.

The admission of persons to hear such a lecture affords no presumption that the speaker intends to give them a right to publish the information they may acquire. When the lecture is orally delivered it is difficult to say that an

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injunction can be granted upon the same principle as that upon which an injunction is issued in the case of a literary composition; because the court must be satisfied that the publication complained of is an invasion of the written work, and this can only be done by comparing the composition with the piracy. It does not, however, follow that because the information communicated by the lecturer is not committed to writing, but orally delivered, it is therefore within the power of the person who hears it to publish it (*a*). On the contrary, Lord Eldon, in *Abernethy* v. *Hutchinson*, observed that he was clearly of opinion that, whatever else might be done with it, the lecture could not be published for profit. When persons are admitted as pupils or otherwise to listen to lectures orally delivered, although they may go to the extent, if desirous and capable, of putting down the whole by means of shorthand, yet they can do that only for the purpose of their own information; they may not publish.

The Lecture Copyright Act, 5 & 6 Will. 4, c. 65.

The right of property in lectures, whether written or oral, has now been confirmed by statute. The Lecture Copyright Act is the 5 & 6 Will. 4, c. 65. It provides that, from and after the 1st of September, 1835, the author of any lecture, or the person to whom he has sold or otherwise conveyed the copy in order to deliver the same to any school, seminary, institution, or other place, or for any other purpose, shall have the sole right and liberty of printing and publishing such lecture. And it declares that no person, allowed for a certain fee and reward or otherwise to attend and be present at any lecture delivered at any place, shall be deemed and taken to be licensed, or to have leave to print, copy, and publish such lecture on account merely of having permission to attend the delivery.

Lectures not within the meaning of the Act.

Lectures published by authority, since the publication of which the period of copyright therein given by 8 Anne, c. 19, and 54 Geo. 3, c. 156, has expired, and lectures printed and published before September 1835, are ex-

(*a*) *Per* Lord Eldon, in *Abernethy* v. *Hutchinson*, 3 L. J. (Ch.) 209.

cluded from the protection afforded by the above Act; likewise lectures of the delivery of which notice in writing shall not have been given two days previously to two justices living within five miles of the place of delivery; and those delivered in any university, or public school, or college, or on any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation.

In consequence of these exceptions, few lectures are protected by this Act, for seldom is the requisite notice given. And, under this latter clause, it would appear that sermons delivered by clergymen of the Established Church, in endowed places of public worship, are deemed public property.

Copyright in abridgments.

Copyright may likewise exist in a genuine and just abridgment, for it is said that an abridgment may with great propriety be called a new book (*a*).

What constitutes an abridgment.

To constitute a true and equitable abridgment the entire work must be preserved in its precise import and exact meaning, and then the act of abridgment is an exertion of the understanding, employed in moulding and transfusing a large work into a small compass, thus rendering it less expensive, and more convenient both to the time and use of the reader. In the case known as *Newbery's* (*b*), Lord Chancellor Apsley, having spent some hours in consultation with Mr. Justice Blackstone, decided that an abridgment, where the understanding is employed in retrenching unnecessary and uninteresting circumstances which rather deaden the narration, is not an act of plagiarism upon the original work, nor against any property of the author in it, but an allowable and meritorious work. It requires both invention and judgment, and displays frequently a deal of learning. Lord Hardwicke thus states the rule (*c*):—"Where books are

(*a*) *Bell* v. *Walker*, 1 Bro. C. C. 451. An abstract also was held no piracy: *Dodsley* v. *Kinnersley*, Amb. 403; 4 Esp. 168; 1 Camp. 94.

(*b*) Lofft, 775; *Dodsley* v. *Kinnersley*, *supra*; *Butterworth* v. *Robinson*, 5 Ves. 709.

(*c*) *Gyles* v. *Wilcox*, 2 Atk. 141. See also the case of *Read* v. *Hodges*, referred to in *Tonson* v. *Walker*, 3 Swans. 672, *per* Lord Eldon; *Bell* v. *Walker*, 1 Bro. C. C. 451; *Tinsley* v. *Lacy*, 11 W. R. 877.

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colourably shortened only, they are undoubtedly within the meaning of the Act of Parliament, and are a mere evasion of the statute, and cannot be called an abridgment. But this must not be carried so far as to restrain persons from making a real and fair abridgment; for abridgments may, with great propriety, be called a new book, because not only the paper and print, but the invention, learning, and judgment of the author is shewn in them, and in many cases are extremely useful, though in some instances, prejudicial, by mistaking and curtailing the sense of an author."

On these considerations the Master of the Rolls refused an injunction to restrain the publication of an abridgment of Dr. Johnson's 'Rasselas,' it appearing that not one-tenth part of the first volume had been abstracted, and that the injury alleged to be sustained by the author arose from the abridgment containing the narrative of the tale, and not the moral reflections (*a*).

Considerations in discriminating a *bonâ fide* abridgment from a piracy.

The question in such a case must be compounded of various ingredients: whether it be a *bonâ fide* abridgment, or only an evasion by the omission of some important parts, whether it will in its present form prejudice or supersede the original work, whether it will be adapted to the same class of readers, and many other considerations of the same sort, which may enter as elements, in ascertaining whether there has been a piracy or not. Although the doctrine is often laid down in the books, that an abridgment is not piracy of the original copyright, yet this proposition must be received with many qualifications.

Impropriety of the rule respecting abridgments.

The rule appears very unreasonable, and has been the subject of much criticism by late writers. Why should an abridgment, tending to injure the reputation, and to lessen the profits of the author, not be considered an invasion of his property? (*b*) In many cases the question may naturally turn upon the point, not so much of the quantity

(*a*) Amb. 403.
(*b*) Lord Campbell's 'Lives of the Chancellors,' vol. 5, chap. 131.

as of the value of the selected materials. As was significantly said on another occasion: *Non numerantur; ponderantur.* The quintessence of a work may be practically extracted so as to leave a mere *caput mortuum*, by a selection of all the important passages in a comparatively moderate space.

Quantum but little criterion of piracy.

In the case of *Bramwell* v. *Halcomb* (*a*) it was held that the question whether one author has made a piratical use of another's work does not necessarily depend upon the quantity of that work which he has quoted, or introduced into his own book. On that occasion Lord Cottenham said, "When it comes to a question of quantity, it must be very vague. One writer might take all the vital part of another's book, though it might be but a small proportion of the book in quantity. It is not only quantity, but value, which is looked at. It is useless to look to any particular case about quantity."

The general principle is, that the proper object of the copyright is the *peculiar expression of the author's ideas*, meaning by this, the structure of the work, the sequence of his remarks, and, above all, his language; and that this peculiarity is always distinguishable, as, by a law of nature, every human production is stamped with the idiosyncracy of the author's mind. If these views be correct, it follows that any abridgment of the work, in the original author's language, is an infringement of his right; and indeed any quotation will be, *pro tanto*, a violation, unless excused on the ground of its inconsiderable extent, or on the presumed assent of the author, which, in works of criticism, might be justly implied (*b*).

Copyright in digests.

Copyright may also be had in a digest. The digest of a report, usually included in and known as the head note, is a species of property which will receive protection. "The head note, or the side or marginal note of a report,"

(*a*) 3 My. & Cr. 737; *Bell* v. *Whitehead*, 3 Jur. 68; *Sweet* v. *Shaw*, 3 Jur. 217; *Saunders* v. *Smith*, 3 My. & Cr. 711, 728; *Wheaton* v. *Peters*, 8 Peters. (Amer.) 591; *Gray* v. *Russell*, 1 Story (Amer.) 11; *Mawman* v. *Tegg*, 2 Russ. 385; *Butterworth* v. *Robinson*, 5 Ves. 709.

(*b*) 2 Kent's Com. 382, note; Curtis on Copy. 252.

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said Mr. Justice Crowder, in *Sweet* v. *Benning* (*a*), "is a thing upon which much skill and exercise of thought is required, to express in clear and concise language the principles of law to be deduced from the decision to which it is prefixed, or the facts and circumstances which bring the case in hand within the same principle or rule of law or of practice." It may indeed be considered, perhaps, as in itself a species of brief and condensed report, the reporter furnishing in each case two reports, in one of which he gives the facts, the arguments, and the judgment at length; and in the other, an abstract of the decision, conveying the principle upon which it is founded and the pith and substance of the case. But whether thus regarded, or viewed in the manner adopted by Mr. Justice Maule, in the above cited case, namely, in the nature of an independent deduction from the report, and a succinct statement of the legal principles involved, or of the doctrine of law established by the decision, there is a sufficient exertion of mental power in the formation to render it substantially a subject of copyright.

The right of selecting passages from books of reports (including entire judgments) in treatises upon particular subjects is not disputed. Had it been otherwise decided, the greater part of our law libraries would be much thinned and attenuated, and we should be deprived of many valuable works; for a considerable portion consists of mere transcripts from books of report (*b*).

What would become of the elaborate commentaries of modern scholars upon the classics, which, for the most part, consist of selections from the works and criticisms of various former authors, arranged in a new form, and combined together by new illustrations? What would become of the modern treatises upon astronomy, mathematics, natural philosophy and chemistry? What would

(*a*) 16 C. B. 491; 1 Jur. (N.S.) 543. *Vide D'Almaine* v. *Boosey*, 1 Y. & C. 301; but there Lord Lyndhurst referred to digests such as Vin. Abr. and Comyn's 'Digest.'

(*b*) See *Butterworth* v. *Robinson*, 5 Ves. 709; Evans' 'Statutes,' 2nd. ed. vol. ii. p. 25.

become of the treatises in our own profession, the materials of which, if the work be of any real value, must essentially depend upon faithful abstracts from the reports, and from juridical treatises, with illustrations of their bearing. 'Blackstone's Commentaries' is but a compilation of the Laws of England drawn from authentic sources, open to the whole profession; and yet it was never deemed that it was not a work which, in the highest sense, might be considered an original work, since never before were the same materials so admirably combined and exquisitely wrought out, with a judgment, skill and taste absolutely unrivalled (*a*).

As to whether copyright may exist in a work not claiming an originality in the doctrine contained therein.

The question has been raised whether there can be copyright in a work not claiming an originality in the doctrines contained therein (*b*). And this argument was put forth in the case of *Jarrold* v *Houlston* (*c*) respecting Dr. Brewer's 'Guide to Science,' in which work the author does not profess to have made any discovery in science, or to do more than to provide for the young and other persons who have not been in the habit of making observations for themselves, information by which some of the ordinary phenomena of common life may be explained to them on scientific principles, and that they may themselves be led to observe and to reflect upon those wonderful laws of nature, by which the most ordinary phenomena are governed. And it was determined that, if anyone by pains and labour collects and reduces into the form of a systematic course of instruction those questions which he may find ordinary persons asking in reference to the common phenomena of life, with answers to those questions, and explanations of those phenomena, whether such explanations and answers are furnished by his own recollection of his former general reading, or out of works consulted by him for the express purpose, the reduction of the questions so collected,

(*a*) Story, J., in *Gray* v. *Russell*, 1 Story (Amer.) 17.
(*b*) As to the amount of originality required in a musical composition in America, see *Jollie* v. *Jaques*, 1 Blatch. (Amer.) 626.
(*c*) 3 K. & J. 708; 3 Jur. (N.S.) 1051.

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with such answers, under certain heads and in a scientific form, is amply sufficient to constitute an original work of which the copyright will be protected.

No copyright in that which has no present existence.

Copyright can only exist in respect of some already published or some composed and not yet published literary production. Therefore there can be no copyright in the prospective series of a newspaper. Copyright may attach upon each successive publication; but that which has no present existence as a publication cannot be the subject of this species of property (*a*).

The mere declaration of the intention to publish any articles bearing a particular name or mark, even though made public by registration at Stationers' Hall, cannot create a right to the exclusive use of such name or mark. So in the late cases of *Maxwell* v. *Hogg*, and *Hogg* v. *Maxwell*. Messrs. Hogg, in 1863, registered an intended new magazine to be called 'Belgravia.' In 1866, such magazine not having appeared, Mr. Maxwell, in ignorance of what Messrs. Hogg had done, projected a magazine with the same name, and incurred considerable expense in preparing it, and extensively advertising it in August and September as about to appear in October. Messrs. Hogg knowing of this, made hasty preparations for bringing out their own magazine before that of Mr. Maxwell could appear, and in the meantime accepted an order from Mr. Maxwell for advertising his (Mr. Maxwell's) magazine on the covers of their own publications, and the first day on which they informed Mr. Maxwell that they objected to his publishing a magazine under that name was the 25th of September, on which day the first number of Messrs. Hogg's magazine appeared. Mr. Maxwell's magazine appeared in October. Under these circumstances, on a bill filed by Mr. Maxwell, it was held, that Mr. Maxwell's advertisements and expenditure did not give him any exclusive right to the use of the name 'Belgravia,' and that he could not restrain Messrs. Hogg from publishing a magazine under the same name, the first number of which appeared before Mr. Max-

(*a*) *Platt* v. *Walter*, 17 L. T. (N.S.) 157.

well had published his; and on a bill filed by Messrs. Hogg, that the registration by them of the title of an intended publication could not confer upon them a copyright in that name, and that, in the circumstances of the case, they had not acquired any right to restrain Mr. Maxwell from using the name as being Messrs. Hogg's trade mark (*a*).

Copyright in a title.

The title of a periodical or newspaper was held under the former statutes to be a proper subject of copyright, as characterising the particular publication (*b*); that it cannot therefore be assumed by another without injury, although a similar title distinguishable may be assumed (*c*). On this point nothing is said in the Copyright Act, 1842, unless the words 'sheet of letterpress' be held to include a title; but there is, at least, nothing to sanction any alteration of the grounds upon which the former judgments stood (*d*).

Copyright in encyclopædias and periodicals.

With regard to encyclopædias, periodicals, and works published in series, reviews, or magazines, it is provided by the Copyright Act, 1842, that the copyright in every article shall belong to the *proprietor* of the work for the same term as is given by the Act to authors of books, whenever any such article shall have been or shall be composed on the terms that the copyright therein shall belong to such proprietor and be paid for by him; but payment must be actually made by the proprietor before the copyright can vest in him (*e*). After the term of twenty-eight years from the first publication of any such article the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by the Act; and during such term of twenty-eight

(*a*) *Maxwell* v. *Hogg*; *Hogg* v. *Maxwell*, 15 L. T. 204; 15 W. R. 84, 464; 36 L. J. (Ch.) 433; Law Rep. 2 Ch. Ap. 307.

(*b*) *Hogg* v. *Kirby*, 8 Ves. 215; *Keene* v. *Harris*, cited 17 Ves. 338; *Constable & Co.* v. *Brewster*, 3 Sess. Cas. 215 (N. E. 152).

(*c*) 8 Ves. 222. Where assumed for the purpose of deceiving the public, see *Bell* v. *Locke*, 8 Paige R. (Amer.) 75; and see *Cruttwell* v. *Lye*, 17 Ves. 335.

(*d*) Bell's Com. 6th ed. 549.

(*e*) A contract for payment is not sufficient: *Richardson* v. *Gilbert*, 1 Sim. (N.S.) 336; 20 L. J. (Ch.) 553; 15 Jur. 389. See *Brown* v. *Cooke*, 11 Jur. 77; 16 L. J. (Ch.) 140.

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years the proprietor shall not publish any such article separately, without the previous consent of the author or his assigns, unless the article was written on the express terms that the copyright therein should belong to the proprietor, for all purposes (*a*). But any author may reserve to himself the right to publish any such composition in a separate form, and he will then be entitled to the copyright in such composition, when published separately, without prejudice to the right of the proprietor of the encyclopædia, review, or other periodical, in which it may have first appeared (*b*).

Reservation by author of right to separate publication.

In order to give the proprietor of a periodical a copyright in articles composed for him by others, it is not necessary that there should be an express contract that he should have the property in the copyright. The fact of the author being paid by the proprietor for articles supplied expressly for the periodical, raises the presumption that the copyright is intended to be the property of the proprietor. Otherwise, the articles might be published by the writers thereof simultaneously, or shortly afterwards; possibly to the detriment and injury of the purchasers of the articles for particular periodicals.

Right of separate publication.

In the case of *Smith* v. *Johnson*, where the plaintiff had composed certain tales, under the common title of 'The Chronicles of Stanfield Hall,' for the defendant to publish in the 'London Journal,' of which he was the proprietor, it was held that the subsequent publication of such tales in a weekly supplementary number, for sale with or without the current number, was "a publication separately," within the meaning of the 18th section of the Copyright Act. And Vice-Chancellor Stuart then adopted the same view as did the Vice-Chancellor of England, in the *Bishop of Hereford* v. *Griffin*, and also that subsequently taken by

(*a*) *Hereford* (*Bishop*) v. *Griffin*, 16 Sim. 190; 17 L. J. (Ch.) 210. See 1 J. & H. 112; 3 L. T. (N.S.) 466. As to the course to be adopted on dissolution of partnership, and the withdrawal of one partner from the periodical publication by the firm, see *Bradbury* v. *Dickens*, 27 Beav. 53; 28 L. J. (Ch.) 667, cited Phillips on Copy. 181, note.

(*b*) 5 & 6 Vict. c. 45, s. 18.

Vice-Chancellor Wood, who considered that the meaning of the proviso in the 18th section, taken with the whole clause, was, not to vest a copyright in the proprietors or publishers of a periodical work, but simply to give them a licence to use the matter for a particular purpose. "Keeping in view," says the Vice-Chancellor, "this principle of construction—that the Act of Parliament was intended to give a licence only to the proprietors of periodical works purchasing and paying for a literary composition to be published as a part or portion of a periodical work—the construction of the words in the proviso which prohibit them from publishing these parts or portions which 'alone' are the property of the author—from publishing these portions 'separately and singly,' seems reasonably plain. 'Publishing separately' must mean publishing separately from something. What is that 'publishing,' which the Act of Parliament says shall not be separately made? It must be the publishing of the part or portion separately from that which has been before published. That is the view which has been previously taken, and the language in the case of *Mayhew* v. *Maxwell* was to the effect that the defendant should be prohibited from publishing the literary work then in question, otherwise than as part of the Christmas number of the 'Welcome Guest.' Now, that Christmas number was a thing called 'a part' in the Act of Parliament, which describes these periodical works as being published in a series of parts and numbers. The Christmas number is part or portion of the other composition. The order of this court peremptorily prohibited the defendant Maxwell from publishing it separately from the other part or number. What has the defendant in this case done? He has acquired, under the first clause of the Act of Parliament, an actual property in this literary composition, which is called 'The Stanfield Hall Tales,' published in portions or parts of a certain periodical work. The Act of Parliament says the publishers shall not publish these portions separately from those parts for the publication of which they have obtained a licence already. What

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they have done is to print the portions already published of these antecedent parts in what is called a supplementary number, and which may be purchased with or without the number in which the 'portions' were originally published. That is a separate publication; separate from the 'parts' in which it was originally published. To reprint in numbers, which may be had with or without the concurrent number of the work, is an act not permitted by the legislature" (*a*).

Copyright in work written for another, in the employer.

It is a well-known rule, that if a person be employed to produce anything for another, whether by writing or not, it is to be inferred (in the absence of any circumstances shewing the contrary) that the writing or thing produced by the person so employed is produced upon the terms that it shall be the property of the employer (*b*).

Transactions of this kind between publishers and authors resemble contracts for so much work and labour towards a general undertaking—so many bricks towards the erection of an edifice—and are different from the sale of a copyright. When delivered by the author, his contribution appears to be the property of the owner of the general work, more especially as the several articles are wrought into their appropriate form by the literary agent of the proprietor. In this manner contributions seem after leaving the hands of their authors to lose their separate identity (*c*).

Not so, however, if employer merely suggest the subject.

In *Shepherd* v. *Conquest* (*d*) the Court of Common Pleas questioned whether *under any circumstances* the copyright in a literary work, or the right of representation of a dramatic one, could become vested *ab initio* in an employer other than the person who has actually composed or adapted the work; and they decided that no such effect

(*a*) Vice-Chancellor Stuart, *Smith* v. *Johnson*, 4 Giff. 637; 33 L. J. (Ch.) 137; 9 Jur. (N.S.) 1223; 12 W. R. 122; 9 L. T. (N. S.) 437. See *Wallenstein* v. *Herbert*, 15 W. R. 838; 16 L. T. (N.S) 453.

(*b*) *Sweet* v. *Benning*, 24 L. J. (C.P.) 175; 16 C. B. 459; *Cox* v. *Cox*, 11 Hare, 118; see *Hatton* v. *Kean*, 29 L. J. (C.P.) 20, *post*, and 2 Hill. 'Torts.'

(*c*) Maugham on 'Copyright,' 171.

(*d*) 17 C. B. 427, see 25 L. J. (N.S.) C.P. 127; 2 Jur. (N.S.) 236. See *Pierpont* v. *Fowle*, 2 Wood & Min. (Amer.) 23; *Atwill* v. *Ferrett*, 2 Blatch. *ibid.* 36; *De Witt* v. *Brooks*, M.S. Nelson, J., N. Y. 1861; *Binns* v. *Woodruff*, 4 Wash. (Amer.) 53.

could be produced where the employers merely suggest the subject and have no share or design in the execution of the work, the whole of which, so far as any character of originality belongs to it, flows from the mind of the person employed; for it would be an abuse of terms to say that in such a case the employers were the authors of a work to which their minds had not contributed an idea.

Where, however, the employers do more than suggest the subject, and have a share in or solely design the execution of the work, the case is different. Thus in *Barfield* v. *Nicholson* (*a*) Sir John Leach said, "I am of opinion that, under the statute (8 Anne, c. 19), the person who forms the plans, and who embarks in the speculation of a work, and who employs various persons to compose different parts of it, adapted to their own peculiar acquirements, that he, the person who so forms the plan and scheme of the work, and pays different artists of his own selection, who, upon certain conditions contribute to it, is the author and proprietor of the work, if not within the liberal expression, at least within the equitable meaning of the statute of Anne, which, being a remedial law, is to be construed liberally."

On this principle was determined the case of *Hatton* v. *Kean* (*b*), where the defendant, with the aid of scenery, dresses, and music, adapted one of Shakespeare's plays to the stage, and found the general design of the representation. He employed the plaintiff, a well-known musician named Hatton, for reward, to compose, and he did compose, as part of the representation, and as accessory to the dramatic piece, a musical composition, which formed part of the dramatic piece, on the terms that the defendant should have the liberty of representing and permitting to be represented the said musical composition with the dramatic piece as part thereof. And it was held that the defendant had the sole right of representing the entire

(*a*) 2 Sim. & Stu. 1; S. C. 2 L. J. (Ch.) 90; *Heine* v. *Appleton*, 4 Blatch. (Amer.) 125; *Siebert's Case*, 7 Opin. 656—Cushing Attorn.-Gen. (Amer.) 1856.

(*b*) 8 W. R. 7.

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dramatic piece, including the plaintiff's musical composition, and that he violated no right of the plaintiff within the 3 & 4 Will. 4, c. 15 (*a*), and the 5 & 6 Vict. c. 45, by representing, without the plaintiff's consent in writing, the entire dramatic piece, including the plaintiff's musical composition. The reason assigned was that, though the plaintiff was the author of the musical composition, it appeared that the defendant was the author and designer of the entire dramatic work, and with respect to a part, accessory to that whole (that whole consisting of something produced by the skill of the defendant in its entirety), he employed the plaintiff. The production by the plaintiff would be a part of the whole, and the defendant would have the sole right of performing and representing the entire piece in conjunction with the music.

Copyright in translations.

Copyright may exist in a translation, whether it be the result of personal application and expense, or donation (*b*). In the case of *Wyatt* v. *Barnard* (*c*), Lord Eldon states this to be the law: The plaintiff was the proprietor of a periodical called 'The Repository of Arts, Manufacture, and Agriculture.' He claimed the sole copyright of the work, containing, amongst other articles, translations from the foreign languages. The defendants were publishers of another periodical which contained various articles, being translations from foreign languages, copied or taken from the plaintiff's work without his consent. The defendants, by their affidavit, stated the usual practice among publishers of magazines, &c., to take from each other articles translated from foreign languages, or become public property by reason of their having appeared in other works. They relied on the custom of the trade, and contended that neither of the works was original, both being mere compilations; that it had never been decided that a trans-

(*a*) *Vide, post*, p. 148, app. xv.

(*b*) *Wyatt* v. *Barnard*, 3 V. & B. 77. If a foreigner translates an English work, and then an Englishman re-translates the foreign work into English, that is an infringement of the original copyright: *Murray* v. *Bogue*, 17 Jur. 219; 1 Drew. 353; 22 L. J. (Ch.) 457.

(*c*) 3 V. & B. 78. *Vide Stowe* v. *Thomas*, 2 Amer. L. Reg. 231.

lator might have a copyright in a translation, supposing, what was not proved, that these translations were made by the plaintiff himself. The Lord Chancellor said that the custom among booksellers could not control the law; and upon an affidavit stating that all the articles were translated by a person employed and paid by the plaintiff, and were translated from foreign books imported by the plaintiff at considerable expense, his Lordship granted an injunction.

The work from which the translation was taken in the present case was, of course, unprotected by the copyright law in existence here, and the cases which have treated translations from foreign works, having no copyright in this country, as original, would not necessarily form a precedent in the case of a translation of an English copyright work. But in the case above cited, Lord Eldon draws a conclusion that every translation is an original work, and if this be the case, the translation of an English copyright work cannot be a piracy. For a considerable time this position was doubted. "Does the mere act of giving to a literary composition the new dress of another language," it was asked, "add to the case an element which ought to take it out of the rule by which reproductions in other forms are prohibited?" "The new language in which his composition is clothed by translation," observes Mr. Curtis, "affords only a different medium of communicating that in which he has an exclusive property; and to attribute to such a new medium the effect of entire originality is to declare that a change of dress alone annihilates the most important subject of his right of property. It reduces his right to the narrow limits of an exclusive privilege of publishing in that idiom alone in which he first publishes." Nevertheless, the law may now be taken as decided in favour of copyright in a translation. Mr. Justice Yates, in *Millar* v. *Taylor* (*a*), and Lord Macclesfield, in *Burnett* v. *Chetwood* (*b*), inclined to this opinion; and the late Lord Justice Knight Bruce, when Vice-Chancellor, remarked in

Every fair translation an original work.

(*a*) 4 Burr. 2348.

(*b*) 2 Mer. 441.

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the well-known case of *Prince Albert* v. *Strange* (*a*), that a work lawfully published, in the popular sense of the term, stood in this respect differently from a work which has never been in that situation. The former was liable to be translated, abridged, analyzed, exhibited in morsels, complimented, and otherwise treated in a manner that the latter was not.

The Queen may now direct that the authors of books published after a specified day in any foreign country, their executors, administrators, or assigns, shall have the power (subject to the provisions of the 15 & 16 Vict. c. 12) to prevent the publication in the British dominions of any translations of such books as are not authorized by them, for a period (to be specified by her Majesty) not exceeding five years from the first publication of an authorized translation; and in the case of books published in parts, for a period not exceeding, as to each part, five years from the first publication of an authorized translation of that part (*b*).

No copyright in a libellous, immoral, or obscene work.

Copyright cannot exist in a work of libellous, immoral, obscene, or irreligious tendency (*c*); because in order to establish such a claim the author must, in the first place, show a right to sell; and this he cannot possibly do, he himself not being able to acquire a property therein. *Nemo plus juris ad alium transferre potest quam ipse haberet* (*d*).

Not to protect such works, it has been argued, is to increase the circulation by allowing the publication of pirated editions; but it is an open question whether the circulation is not more effectually restrained by holding that there can be no property in such a work, than by protecting it; for the inducement to the publisher will

(*a*) 2 De G. & Sm. 693. (*b*) 15 & 16 Vict. c. 12, s. 2.

(*c*) *Stockdale* v. *Onchyn*, 5 B. & C. 173; 7 D. & R. 625; *Hime* v. *Dale*, 2 Camp. 28; *Walcot* v. *Walker*, 7 Ves. 1; *Poplett* v. *Stockdale*, 1 R. & M. 337; *Gee* v. *Pritchard*, 2 Swans. 413; *Southey* v. *Sherwood*, 2 Mer. 435; *Murray* v. *Benbow*, 1 Jac. 474; *Lawrence* v. *Smith*, *ibid.* 471; *Forbes* v. *Johnes*, 4 Esp. 97; *Gale* v. *Leckie*, 2 Stark. N. P. C. 107.

(*d*) Ulpian: *Nemo potest plus juris ad alium transferre quam ipse habet*: Co. Lit. 309; Wing. 56.

be less if other persons may copy and publish *ad infinitum*. CAP. II.

In answer to the remark, that by refusing to interfere in cases where the work is of an evil tendency, the court virtually promotes, in some instances, the multiplication of mischievous productions, it must be borne in mind, that a court of equity professes to decide only upon questions of property, concerning itself merely with the civil interests of the parties, and disclaiming interference to prevent or to punish injuries of a criminal nature; and it therefore leaves the offending person to be dealt with at law (*a*). And adopting such a course is not merely to act in conformity with its own general principles, but also with the constitution of the country; for, to assist a person who has exerted himself to the prejudice of national or of individual welfare, by deciding upon questions of a criminal character, the court would be assuming a power of adjudication in instances which, according to our notions of political freedom, ought not to be determined without the intervention of a jury. And it is also observable, that although interposition is refused in cases of this kind, except upon the plaintiff's right receiving the sanction of a court of law, the court of equity does not thereby bereave the party applying of any redress which he might otherwise obtain, or of the means of seeking it, but merely withholds that extraordinary relief which is adapted to other cases (*b*).

The first case establishing the doctrine that there could not be property in a work of the above description, is that known as Dr. Priestley's. The plaintiff brought an action against the hundred to recover damages for injury sustained by him in consequence of the riotous proceedings of a mob at Birmingham, and, among other property alleged to have been destroyed, claimed compensation for the loss of certain unpublished manuscripts, offering to produce booksellers as witnesses to prove that they would have given

(*a*) *Vide* 7 Ves. 2; 2 Mer. 438; 2 Swans. 413; 1 Jac. 473.
(*b*) Jer. Eq. Jur. Bk. 3 Ch. 2.

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considerable sums for them. On behalf of the hundred it was alleged that the plaintiff was in the habit of publishing works injurious to the government of the State; but no evidence was produced to that effect. Upon this the Lord Chief Justice Eyre remarked, that if any such evidence had been produced, he should have held it was fit to be received as against the claim made by the plaintiff. Several passages were read from the work itself in support of the charge as to its tendency.

No copyright in a work of an irreligious tendency.

This dictum was followed in *Walcot* (*Peter Pindar*) v. *Walker* (*a*), and in *Lawrence* v. *Smith* (*b*). In the latter case it was carried very far. The plaintiff having published a work under the title of 'Lectures on Physiology, Zoology, and the Natural History of Man,' filed a bill to restrain the defendant from selling a pirated edition, and obtained an injunction upon motion made *ex parte*. The defendants then moved to dissolve the injunction, and argued that the nature and general tendency of the work in question was such that it could not be the subject of copyright, and in support of this argument, several passages in it were referred to, which, it was contended, were hostile to natural and revealed religion, and impugned the doctrines of the immateriality and immortality of the soul. Lord Eldon, in dissolving the injunction, said: "I take it for granted that when the motion for the injunction was made, it was opened as quite of course; nothing probably was said as to the general nature of the work, or of any part of it; for we must look not only to the general tenor, but at the different parts; and the question is to be decided, not merely by seeing what is said of materialism, of the immortality of the soul, and of the Scriptures, but, by looking at the different parts, and inquiring whether there be any which deny, or which appear to deny, the truth of Scripture; or which raise a fair question for a court of law to determine whether they do or do not deny. Looking at the general

(*a*) 7 Ves. 1. See *Stockdale* v. *Onhwyn*, 5 B. & C. 173; *Poplett* v. *Stockdale*, Ry. & Mood. 337.

(*b*) 1 Jac. 471.

tenor of the work, and at many particular parts of it, recollecting that the immortality of the soul is one of the doctrines of the Scripture, considering that the law does not give protection to those who contradict Scriptures, and entertaining a doubt, I think a rational doubt, whether this book does not violate the law, I cannot continue the injunction. The plaintiff may bring an action, and when that is decided, he may apply again." From a note by the editor, we learn that in 1822, in *Murray* v. *Benbow*, Mr. Shadwell, on the part of the plaintiff, moved for an injunction to restrain the defendants from publishing a pirated edition of Lord Byron's poem of 'Cain.' The Lord Chancellor, after reading the work, refused the motion, on grounds similar to those stated in the above judgment. He said "that the Court of Chancery, like other courts of justice in this country, acknowledged Christianity as part of the law of the land; that the jurisdiction of the court in protecting literary property was founded on this: that, where an action would lie for pirating a work, then the court, attending to the imperfection of that remedy, granted its injunction, because there might be publication after publication, which one might never be able to hunt down by proceeding in other courts. But where such an action did not lie, he did not apprehend that it was according to the course of the court to grant an injunction to protect the copyright. That the publication, if it were one intended to vilify and bring into discredit that portion of Scripture history to which it related, was a publication with reference to which, if the principles on which that case at Warwick (Dr. Priestley's) was decided were just principles of law, the party could not recover damages in respect of a piracy of it. That the court had no criminal jurisdiction; it could not look on anything as an offence; but in those cases it only administered justice for the protection of the civil rights of those who possessed them, in consequence of being able to maintain an action. Milton's immortal work had been alluded to; it so happened that in the course of the previous long vacation, amongst the

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solicitæ jucunda oblivia vitæ, he had read that work from beginning to end; it was therefore quite fresh in his memory, and it appeared to him that the great object of its author was to promote the cause of Christianity; there were, undoubtedly, a great many passages in it of which, if that were not its object, it would be very improper by law to vindicate the publication; but, taking it altogether, it was clear that the object and effect were not to bring into disrepute, but to promote, the reverence of our religion. That the real question was, looking at the work before him, its preface, the poem, its manner of treating the subject, particularly with reference to the Fall and the Atonement, whether its intent was as innocent as that of the other with which it had been compared; or whether it was to traduce and bring into discredit that part of sacred history. This question he had no right to try, because it had been settled, after great difference of opinion among the learned, that it was for a jury to determine that point; and where, therefore, a reasonable doubt was entertained as to the character of the work (and it was impossible for him to say he had not a doubt, he hoped it was a reasonable one), another course should be taken for determining what was its true nature and character" (*a*).

In a case which came before the Vice-Chancellor in 1823, an injunction which had been obtained to restrain the publication of a pirated edition of a portion of the poem of 'Don Juan' was dissolved on a similar principle. His Honour ordered that the defendant should keep an account.

In the case of *Hime* v. *Dale*, referred to in *Clementi* v. *Goulding* (*b*), counsel called attention to the libellous nature of the publication, and contended that it was of such a description that it could not receive the protection of the law. It professed to be a panegyric upon money, but was in reality a gross and nefarious libel upon the solemn administration of British justice. The mischievous

(*a*) *Murray* v. *Benbow*, in Ch. 1822, MS., cited 6 Peters. Abr. 558.
(*b*) 2 Camp. 30.

tendency of the production would sufficiently appear from the following stanza:— CAP. II.

"The world is inclined
To think *Justice* blind,—
Yet, what of all that?
She will blink like a bat
At the sight of friend Abraham Newland!
Oh! Abraham Newland! magical Abraham Newland!
'Tho' Justice, 'tis known,
Can see thro' a milestone,
She can't see through Abraham Newland."

Lord Ellenborough, however, stated that though if the composition had appeared on the face of it to be a libel so gross as to affect the public morals, he should advise the jury to give no damages, as he knew the Court of Chancery on such an occasion would grant no injunction, yet he thought the above ought not to be considered one of that kind.

No copyright in works intended to deceive the public.

Neither can there be copyright in works intended to deceive purchasers, and therefore, in an action for pirating a work of a devotional character, falsely professing to be a translation from the German, of an author who had a high reputation for writings of this kind, the object being to deceive purchasers, and give the work a value which it would not otherwise have possessed, judgment was given for the defendants. Chief Justice Tindal, in the case referred to (*a*), drew a distinction between such a work and books of instruction or amusement which have been published as translations, whilst they have, in fact, been original works, or which have been published under an assumed instead of a true name. Such, for instance, as 'The Castle of Otranto,' professing to be translated from the Italian, and such the case of innumerable works published under assumed names—voyages, travels, biographies, works of fiction or romance, and even works of science and instruction; for, in all these instances the misrepresentation is innocent and harmless. But the facts stated in the pleas in the case under consideration imported a serious design on the part of the plaintiff to

(*a*) *Wright* v. *Tallis*, 1 C. B. 893; 14 L. J. (C.P.) 283; 9 Jur. 946.

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impose on the credulity of each purchaser, by fixing on the name of an author who had a real existence, and who possessed a large share of weight and estimation in the opinion of the public. The object of the plaintiff was, not merely to conceal the name of the genuine author, and to publish opinions to the world under an innocent disguise, but it was to practise upon some of the best feelings of the public, namely, their religious feelings; and thus to induce them to believe that the work was the original work of the author whom he named, when he knew it not to be so. The transaction, therefore, ranged itself under the head of *crimen falsi*. It was a species of obtaining money under false pretences; and as the very act of publishing the work, and the sale of the copies to each individual purchaser, were each liable to the objection above stated, the chief justice thought the plaintiff could not be considered as having a valid and subsisting copyright in the work, the sale of which produced such consequences, or that he was capable of maintaining an action in respect of its infringement. Cases in which a copyright has been held not to subsist, where the work is one which is subversive of good order, morality, or religion, did not bear, he thought, on the case before him, but they had so far analogy, that the rule which denied the existence of copyright in those cases, was the rule established for the benefit and protection of the public.

So decided on the ground of fraud.

This decision proceeded more on the ground of fraud than invasion of literary property, and to the principle of this decision may also be referred the case of *Seeley* v. *Fisher* (*a*), where an injunction was granted to restrain A. from putting forth his work under advertisements which the court below thought tended to produce the impression, contrary to the truth, that it contained matter which was in fact the property of B. But if there be no such fraudulent misrepresentation, but only statements which, whether true or false, tend merely to encourage a belief that the matter contained in A.'s work is the truly valuable matter,

(*a*) 11 Sim. 581.

and that contained in B.'s is spurious and of no value, an injunction will not be granted to restrain such representations; and on the ground that such was the true effect of the advertisements, in the last cited case, the Lord Chancellor dissolved the injunction.

No copyright in a dry catalogue of names.

There can be no copyright in a catalogue, consisting of a mere dry list of names, but where a bookseller's catalogue contained a description of the books offered for sale, with short anecdotes relating to them, protection was afforded (*a*).

(*a*) *Hotten* v. *Arthur*, 1 Hem. & Mil. 603; 32 L. J. (Ch.) 771; 11 W. R. 931; 9 L. T. (N.S.) 199.

CHAPTER III.

TERM OF COPYRIGHT, AND IN WHOM VESTED.

Term of copyright.

MANY have agitated for the establishment of a perpetual copyright, together with a bestowal upon authors of the exclusive power of abridging, dramatizing, and metamorphosing their own works at will, turning prose into poetry, romances into plays, and *vice versâ*. The claim of authors resulting from the principles of natural right involves the perpetual duration of the property. But in order that such property should be of value, it is necessary that society should interfere actively for its protection. It may either interfere by the enactment of penalties, which, in order to be effectual, must be severe; or it may interfere by prohibition, which is a stern and summary exercise of power. Society will not ordinarily be willing to apply such remedies in favour of an exclusive right, further than it finds such a course beneficial to its own interests, in the broadest sense of the term. It is argued, however, that the concessionary allowance of a perpetuity in copyright would encourage publication, and tend greatly to the promotion and furtherance of science and literature. But, admitting that learning and science should be encouraged, that everything tending or conducible to the advancement of knowledge, and consequently to the happiness of the community, should be favoured and tenderly cherished by the legislature, and that the labour of every individual should be properly recompensed, it does not follow that the same or a similar end might not be obtained by different and less objectionable means.

If the individual is a gainer by the existence of perpetual copyright, society is a loser. The absurdity of the asser-

Considerations respecting a perpetuity in copyright.

tion that authors are alone inclined to make known their works from the specific benefit arising from an absolute perpetual monopoly, is manifest. What a studied indignity to those who have devoted their lives to the advancement of every science that adorns the annals of literature! Ambition cannot be deemed a cipher; benevolence will ever exist in the heart of man, and they at least act as powerfully by way of conducives to the communication of knowledge between man and man, as avaricious or mercenary motives.

The effect of a perpetuity in copyright.

A perpetuity in copyright would have the effect of impeding the progress of literature and science, and among other serious inconveniences we will mention one. The text of an author, after two or three generations, if the property be retained so long by his descendants, would belong to so many claimants, that endless disputes would arise as to the right to publish, which in all probability might prevent the publication altogether. The Emperor Napoleon is reported to have stated this objection in council with his characteristic practical wisdom as follows:—

The Emperor Napoleon's opinion of a perpetuity.

"*Napoléon dit que la perpétuité de la propriété dans les familles des auteurs aurait des inconvéniens. Une propriété littéraire est une propriété incorporelle qui, se trouvant dans la suite des temps et par le cours des successions divisée entre une multitude d'individus, finirait, en quelque sorte, par ne plus exister pour personne; car, comment un grand nombre de propriétaires, souvent éloignés les uns des autres, et qui, après quelques générations, se connaissent à peine, pourraient-ils s'entendre et contribuer pour réimprimer l'ouvrage de leur auteur commun? Cependant, s'ils n'y parviennent pas, et qu'eux seuls aient le droit de la publier, les meilleurs livres disparaîtront insensiblement de la circulation.*

"*Il y aurait un autre inconvénient non moins grave. Le progrès des lumières serait arrêté, puis qu'il ne serait plus permis ni de commenter, ni d'annoter les ouvrages; les gloses, les notes, les commentaires ne pourraient être séparés d'un texte qu'on n'aurait pas la liberté d'imprimer.*

"*D'ailleurs, un ouvrage a produit à l'auteur et à ses*

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héritiers tout le bénéfice qu'ils pouvent naturellement en attendre, lorsque le premier a eu le droit exclusif de le vendre pendant tout sa vie, et les autres pendant les dix ans qui suivent sa mort. Cependant, si l'on veut favoriser davantage encore la veuve et les héritiers, qu'on porte leur propriété à vingt ans" (*a*).

Though we could not, therefore, uphold a perpetual copyright, believing that its existence would by no means tend to the spread or encouragement of literature, we would willingly offer our support to the extension of the period during which literary copyright is at present protected.

Present term of copyright.

The third section of the 5 & 6 Vict. c. 45 enacts that the copyright in every book which shall after the passing of that Act be published in the lifetime of its author shall endure for the natural life of such author, and for the further term of seven years, commencing at the time of his death, and shall be the property of such author and his assigns; provided always, that if the said term of seven years shall expire before the end of forty-two years from the first publication of such book, the copyright shall in that case endure for such period of forty-two years; and that the copyright in every book which shall be published after the death of its author shall endure for the term of forty-two years from the first publication thereof, and shall be the property of the proprietor of the author's manuscript from which such book shall be first published, and his assigns.

In whom vested.

The only persons who can claim the copyright in a book published before the 1st of July, 1842, are the proprietor on that day of the copyright therein, or his assigns; and in the case of a book since published, the author or his assigns. And as the word "author" is used without limitation or restriction, it is therefore equally applicable to foreigners as to British subjects (*b*).

Meaning of the word "book."

The term "book" by virtue of the interpretation clause is to be construed to signify and include every volume,

(*a*) Locré, *Législation civile de la France*, tit. ix. pp. 17–19; Renouard, *Droits d'Auteurs*, tom. i. p. 387.

(*b*) *Routledge* v. *Low*, Law Rep. 3 H. L. 100; 37 L. J. (Ch.) 154; 18 L. T. (N.S.) 874; 16 W. R. 1081.

part or division of a volume (*a*), pamphlet, sheet of letter-press (*b*), sheet of music, map, chart, or plan separately published. But a separate article, advertised to form part of a periodical publication, is not a book within the meaning of this Act, and therefore does not require registration under the 24th section (*c*).

What is a publication.

The copyright is, we have seen, to run from the date of the publication of the work, consequently it will be necessary to inquire what, in the eye of the law, may be regarded as equivalent to publication. In *Coleman* v. *Wathen* (*d*), it was said that the acting of a dramatic composition on the stage was not a publication within the statute. The plaintiff, it appears, had purchased from O'Keefe the copyright of an entertainment called the 'Agreeable Surprise,' and the defendant represented this piece upon the stage. The mere act of repeating such a performance from memory was held to be no publication. On the other hand, to take down from the mouths of the actors the words of a dramatic composition, which the author had occasionally suffered to be performed, but never printed or published, and to publish it from the notes so taken down, was deemed a breach of right; and the publication of the copy so taken down was restrained by injunction (*e*).

By the 20th section of the Copyright Act, 1842, it is declared, that the first public representation or performance of any dramatic piece or musical composition shall be deemed equivalent to the first publication of any book (*f*).

Gratuitous circulation a publication.

The gratuitous circulation would seem to amount to a publication (*g*).

(*a*) See the *University of Cambridge* v. *Bryer*, 16 East, 317; *The British Museum* v. *Payne*, 2 Y. & J. 166; *Clayton* v. *Stone*, 2 Paine (Amer.) 383; *Scoville* v. *Toland*, 6 West, L. J. (Amer.) 84. But a label used in the sale of an article is not a book. *Coffeen* v. *Brunton*, 4 McLean (Amer.) 517.

(*b*) See *Clementi* v. *Goulding*, 2 Camp. 25; 11 East, 244; *Hime* v. *Dale*, 2 Camp. 27 a; *White* v. *Geroch*, 2 B. & Ald. 298.

(*c*) *Murray* v. *Maxwell*, 3 L. T. (N.S.) Ch. 466.

(*d*) 5 T. R. 245; see *Roberts* v. *Myers*, 13 Mo. Law Rep. (Amer.) 397; *Croice* v. *Aiken*, Amer. Law Rep. L. Jour. vol. 5, No. 226. 1870.

(*e*) *Macklin* v. *Richardson*, Amb. 694, cited 2 Kent's Com. 378.

(*f*) *Post*, p. 149; App. xxxi.

(*g*) *Vide Novello* v. *Ludlow*, 12 C. B. 177; 16 Jur. 689; 21 L. J. (C.P.) 169; *Dr. Paley's Case*, cited 2 V. & B. 23; *Alexander* v. *Mackenzie*, 9 Scss. Cas., 2nd series, 748.

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Work must be first published in this country, or simultaneously with that in another.

The previous publication of a work abroad disqualifies it for copyright in this country (*a*). If, however, the publication here and abroad be simultaneous, the publication abroad will not stand in the way of copyright in this country (*b*). The legislature contemplates publication *here* and *here only*, and it contemplates such publication only when made by the author, or under such consent and authority from him as the statute requires; and it contemplates publication of foreign books only when they are capable of advancing literature here, that is to say, before the work is published here by a person who has obtained it fairly and *bonâ fide* under a previous publication by the author in a foreign country (*c*).

An Englishman resident abroad may have a copyright.

A residence abroad by an English subject, or the fact of the work having been composed abroad, either by an Englishman or a foreigner, would not have the effect of preventing the author from acquiring a copyright in this country. The reason assigned for the copyright attaching to an English subject, though resident abroad, is that by such residence he does not throw off his natural allegiance; he cannot be relieved from it, and therefore carries with him the natural rights of a subject of England wherever he goes. That gives him, though resident abroad, the right of publishing and acquiring a copyright here, because he has always fulfilled the implied condition of being a subject of, and owing allegiance to, the crown of Great Britain. This of course could not be said of a foreigner, who was not actually resident here (*d*).

Copyright no existence in the law of nations.

Copyright has no existence in the law of nations; it acquires a power simply by the municipal law of each particular community. "As soon," observes Mr. Curtis (*e*), "as a copy of a book is landed in any foreign country, all

(*a*) See *Clementi* v. *Walker*, 2 B. & C. 861; *Guichard* v. *Mori*, 9 L. J. (Ch.) 227; *Hedderwich* v. *Griffin*, 3 Sess. Cas., 2nd series, 383.

(*b*) Phillips on Copy. 52, citing Erle, J., in *Cocks* v. *Purday*, 2 Car. & Kirw. 269.

(*c*) *Per* Bayley, J., *Clementi* v. *Walker*, *supra*; *Chappell* v. *Purday*, 4 Y. & C. 485; 14 M. & W. 303; *Guichard* v. *Mori*, *supra*.

(*d*) *Per* Lord St. Leonards in *Jefferys* v. *Boosey*, 4 H. L. C. 985.

(*e*) 'Copyright,' 22.

complaint of its republication is, in the absence of a treaty, fruitless, because no means of redress exist, except under the law of the author's own country. It becomes public property, not because the justice of the case is changed by the passage across the sea or a boundary, but because there are no means of enforcing the private right."

Whether a foreigner resident abroad can obtain a copyright in a work first published in this country.

In *D'Almaine* v. *Boosey* (*a*) the two principal questions that arose were, whether the law would protect the assignee of foreign copyright at all, and whether any protection could exist where the work had been first published abroad. Alluding to *Delondre* v. *Shaw*, Lord Abinger said, "If the Vice-Chancellor had decided expressly that a foreigner, *quâ* foreigner, had no protection in England in regard to copyright, I confess I should have doubted the correctness of that decision; though, certainly, I should not have decided in opposition to him, but should have put this case to the course of further investigation, out of respect to his authority. But the case which has been cited upon the subject does not go that length; it is in principle not quite intelligible; but there was clear ground for an injunction independently of the question of copyright. Besides, that was a case where one of the parties resided abroad. Now, the Acts give no protection to foreigners resident abroad in respect of works published abroad; and all the Vice-Chancellor said was, that the publisher of a work at Paris could not protect himself in a court of justice in England, either by action or injunction."

Again, in *Bentley* v. *Foster* (*b*), Vice-Chancellor Shadwell said, that if an alien friend wrote a book, whether abroad or in this country, and gave the British public the advantage of his industry and knowledge by first publishing the work here, he was entitled to the protection of the laws relating to copyright in this country.

The question was fully discussed in *Bach* v. *Longman* (*c*).

(*a*) 1 Y. & C. 288.

(*b*) 10 Sim. 329; see also *Page* v. *Townsend*, 5 Sim. 395; *Tonson* v. *Collins*, 1 W. Bl. 301; *Bach* v. *Longman*, 2 Cowp. 623; *contrà*, *Chappell* v. *Purday*, 14 M. & W. 303.

(*c*) 2 Cowp. 623.

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Bach was a musical composer, who had come into this country from Germany. He sued Longman for pirating a sonata, which the latter had published in England, and he was successful in his suit. In accordance with these decisions, in the year 1845 Chief Baron Pollock, in delivering the judgment of the Barons of the Exchequer in *Chappell* v. *Purday*, stated the result of the cases at that time decided on the subject to be that if a foreign author, not having published abroad, first publishes in England, he may have the benefit of the statutes; and on the authority of these cases, and the general rule that an alien may acquire personal rights and maintain personal actions in respect of injuries to them (*a*), it was determined in *Cock* v. *Purday*, that an *alien amy* resident abroad, the author of a work of which he is also the first publisher in *England*, and which he has not made *publici juris* by a previous publication elsewhere, has a copyright in that work, whether it be composed in this country or abroad. This determination was supported in *Boosey* v. *Davidson* (*b*), and subsequently considered by the Court of Exchequer in *Boosey* v. *Purday* (*c*), when that court held that a foreigner had no such capacity.

Case of *Jefferys* v. *Boosey*.

In this unsettled state of the law arose the case of *Jefferys* v. *Boosey*, which was ultimately carried on appeal to the House of Lords.

Bellini, a foreign musical composer, resident at that time in his own country, composed a certain work, in which, by the laws there in force, he had a copyright. He then assigned to Ricordi, another foreigner also resident there, according to the laws of their country, his right to the copyright in the composition of which he was the author, and which was then unpublished. The assignee brought the composition to this country, and, before publication, assigned it, according to the forms required by the laws of this country, to an Englishman. The first

(*a*) See *Pisani* v. *Lawson*, 8 Scott, 182; 6 Bing. (N.S.) 90; 8 Dowl. 57; *Tuerloote* v. *Morrison*, 1 Bulst. 134; Yelv. 198; Dyer. 2 b.
(*b*) 18 L. J. (Q.B.) 174; 13 Q. B. 257. (*c*) 4 Ex. 145.

publication took place in this country. The work was subsequently pirated, and proceedings instituted which ultimately reached the Upper House. The judges were called upon for their opinions, which they delivered *seriatim*, and judgment was finally pronounced by the House in favour of the defendant. The grounds of the decision were that an Act of Parliament of this country, having within its view a municipal operation only, and being therefore limited to this kingdom, cannot be held to extend beyond our own subjects, except as both statutes and common law so provide for foreigners when they become resident here, and owe at least a temporary allegiance to the sovereign, and thereby acquire rights just as other persons do; not because they are foreigners, but because being here, they are here entitled, in so far as they do not break in upon certain rules, to the general benefit of the law for the protection of their property, in the same way as if they were natural-born subjects. "Where an exclusive privilege," said Lord Cranworth (*a*), "is given to a particular class at the expense of the rest of Her Majesty's subjects, the object of giving that privilege must be taken to have been a national object; and the privileged class to be confined to a portion of that community, for the general advantage of which the enactment is made. When I say that the Legislature must *primâ facie* be taken to legislate only for its own subjects, I must be taken to include under the word 'subjects,' all persons who are within the Queen's dominions, and who thus owe to her a temporary allegiance. I do not doubt but that a foreigner resident here, and composing and publishing a book here, is an author within the meaning of the statute; he is within its words and spirit. I go further; I think that if a foreigner having composed, but not having published a work abroad, were to come to this country, and the week or day after his arrival, were to print and publish

(a) *Jefferys* v. *Boosey*, 4 H. L. C. 815; 1 Jur. (N.S.) 615; *Low* v. *Routledge*, 10 Jur. (N.S.) 922; 10 L. T. (N.S.) 838; 11 Jur. (N.S.) 939; *Routledge* v. *Low*, Law Rep. 3 H. L. 100; 37 L. J. (Ch.) 454; 18 L. T. (N.S.) 874.

it here, he would be within the protection of the statute. This would be so if he had composed the work after his arrival in this country, and I do not think any question can be raised as to when and where he composed it. So long as a literary work remains unpublished at all, it has no existence, except in the mind of its author, or in the papers in which he, for his own convenience, may have embodied it. Copyright, defined to mean the exclusive right of multiplying copies, commences at the instant of publication; and if the author is at that time in England, and while here he first prints and publishes his work, he is, I apprehend, an author within the meaning of the statute, even though he should have come here solely with a view to the publication. The law does not require or permit any investigation on a subject which would obviously, for the most part, baffle all inquiry, namely, how far the actual composition of the work itself had, in the mind of its author, taken place here or abroad. If he comes here with his ideas already reduced into form in his own mind, still, if he first publishes after his arrival in this country, he must be treated as an author in this country. If publication, which is (so to say) the overt act establishing authorship, takes place here, the author is then a British subject, wherever he may, in fact, have composed his work. But if at the time when copyright commences by publication, the foreign author is not in this country, he is not, in my opinion, a person whose interests the statute meant to protect."

Such portion of a work as is first published in this country will be protected.

If only a portion of a work be first published in this country, or within the scope of the British Copyright Act, it will be protected. A., a citizen of the United States, published a work of which he was the author, in monthly parts, between January and December, 1867, of a magazine published in the United States. In October, 1867, A. went to reside in Canada for the purpose of acquiring a British copyright, and during such residence, when the work wanted six chapters for completion in the magazine, an edition of the whole was published in London under an

agreement between A. and the plaintiff, an English publisher. A cheap reprint taken from the pages of the 'American Magazine,' having been subsequently published in this country by the defendant, it was held that the copyright was divisible and could be claimed for a portion of the book only; and, accordingly, the publication by the defendant of the last six chapters of the work was restrained by injunction (*a*).

Lord Cairns' and Lord Westbury's opinions on the interpretation of the Copyright Act.

In the late case of *Routledge* v. *Low* (*b*), two of the greatest law lords on the Bench—Lord Cairns and Lord Westbury—were of opinion that the Act of Parliament gives a copyright to every author who first publishes his book in England, no matter where he lives, or under what dynasty he serves. "Protection," said the former learned judge, "is given to every author who publishes in the United Kingdom, wheresoever that author may be resident, or of whatever state he may be the subject. The intention of the Act is to obtain a benefit for the people of this country by the publication to them of works of learning, of utility, of amusement. The benefit is obtained, in the opinion of the legislature, by offering a certain amount of protection to the author, thereby inducing him to publish his work here. This is, or may be, a benefit to the author, but it is a benefit given, not for the sake of the author of the work, but for the sake of those to whom the work is communicated. The aim of the legislature is to increase the common stock of the literature of the country; and if that stock can be increased by the publication for the first time here of a new and valuable work, composed by an alien, who never has been in the country, I see nothing in the wording of the Act which prevents, nothing in the policy of the Act which should prevent, and everything in the professed object of the Act, and in its wide and general provisions, which should entitle such a person to the pro-

(*a*) *Low* v. *Ward*, Law Rep. 6 Eq. 415; 37 L. J. (Ch.) 841; but see *Routledge* v. *Low*, 37 L. J. (Ch.) 454; 18 L. T. (N.S.) 874; Law Rep. 3 H. L. 100.

(*b*) Law Rep. 3 H. L. 100; 37 L. J. (Ch.) 454; 18 L. T. (N.S.) 874.

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tection of the Act, in return and compensation for the addition he has made to the literature of the country. I am glad to be able to entertain no doubt that a construction of the Act so consistent with a wise and liberal policy is the proper construction to be placed upon it." To this view, however, Lord Cranworth objected, and Lord Chelmsford doubted whether it was good in law.

In this same case it was unanimously held by Lords Cairns, Chelmsford, Cranworth, Westbury, and Colonsay, that to acquire a copyright under the 5 & 6 Vict. c. 45 the works must be first published in the *United Kingdom*. The law now, therefore, is, that if a literary or musical work be first published in the *United Kingdom*, it may be protected from infringement in any part of the *British dominions*; but if, on the other hand, any such work be first published in India, Canada, Jamaica, or any other British possession, not included in the *United Kingdom*, no copyright can be acquired in that work, excepting only such (if any) as the local laws of the colony, &c., where it is first published, may afford.

CHAPTER IV.

REGISTRATION OF COPYRIGHT.

A BOOK OF REGISTRY is kept by the Company of Stationers, and the object of the entries therein is clearly shewn by the 2nd section of the Statute of Anne. The entry is deemed equivalent to notice of the existence of the copyright in the particular book or article registered. Unless such entry had been provided, many, through ignorance, would have offended (*a*). By the Statute of Anne it was enacted that no person should be subjected to the forfeitures or penalties therein mentioned in cases of infringement of copyright, unless the title to the copy of such book should, before publication, be entered in the register book of the Stationers' Company (*b*). The Book of Registry.

The Statute of Anne was, however, repealed and incorporated in that of the 5 & 6 Vict. c. 45, the 11th section of which provides that a book of registry, wherein may be registered the proprietorship in the copyright of books, and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licences affecting such copyright, shall be kept at the hall of the Stationers' Company by the officer appointed by the said company for the purposes of the Act, which shall at all convenient times be open to inspection on payment of 1s. for every entry which shall be searched for or inspected in the same book; and that such officer shall, wherever reasonably required, give a copy of any entry, certified

(*a*) Sect. 2 of the 8 Anne, c. 19.
(*b*) *Ibid.*, and see Malins, V.C. in *Cox* v. *The Land and Water Co.*, 18 W. R. 206.

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under his hand, and impressed with the stamp of the said company, to any person requiring the same on payment to him of the sum of 5s.; and such copies shall be received in evidence in all courts, and in all summary proceedings, and shall be *primâ facie* proof of the proprietorship or assignment of copyright or licence as therein expressed, but subject to be rebutted by other evidence, and in the case of dramatic or musical pieces shall be *primâ facie* proof of the right of representation or performance, subject to be rebutted as aforesaid; and that making a false entry in the book of registry, or wilfully producing or causing to be tendered in evidence any paper falsely purporting to be a copy of any entry in the said book, shall be deemed an indictable misdemeanour, and punished accordingly. It provides, further, that it shall be lawful for the proprietor of the copyright in any book to make entry in the said registry book of the title of such book, the time of the first publication, the name and place of abode of the publisher, and the name and place of abode of the proprietor, in a form given in the schedule annexed to the Act, upon payment of 5s. to the officers of the said company; and that it shall be lawful for every such registered proprietor to assign his interest or any portion of his interest therein, by making entry in the said book of registry of such assignment, and of the name and place of abode of the assignees thereof, in the manner, and for the sum aforesaid. And such assignment shall have the same force and effect as if made by deed, without being subject to any stamp duty.

Entry must be correct to support action for penalties.

A proprietor of copyright in a book, registered his book by making an entry, purporting to be pursuant to this Act, but in such entry the exact date of first publication was not stated, the day of the month being omitted, and the month and year only inserted. He filed a bill to restrain a party from infringing the copyright in respect of which such entry had been made. But the court held, that the suit could not be maintained, as the entry was defective; there being no entry of the date of first publication as re-

quired by the statute, unless, in addition to the month and year, the day of the month is also stated.

First date of publication must be stated.

L. & Sons registered a cricketing scoring-sheet, dating it 1851, and, dissolving partnership, again registered it in L.'s own name, dating it 1863. P. having published the same thing, L. threatened an action. P. continued to publish, and, on L. becoming bankrupt, purchased it of the assignees for £20. W., who had bid £10, purchased the sheet of P. for some time, but ultimately printed and published the left-hand half, containing the totals of runs, but not an analysis of bowling, which was on the right-hand half. On a bill filed to restrain the alleged infringement of the copyright, it was determined that the second registration was fatal, not showing the real first date of publication (*a*).

As to the place of residence.

In *Lover* v. *Davidson* (*b*) the plaintiff, who was residing at New York at the time the entry was made, gave the address of his English publishers in the entry under the above provision, and Cresswell, J., was of opinion that Mr. Lover, the plaintiff, having at that time no other place of abode in England, had very properly described himself as of a place where he might be communicated with.

As to the abode of the assignee.

The provision with reference to the place of abode of the assignee would seem not to apply to the case of an assignee to whom the proprietorship has been assigned, not according to the statutory mode, but by an independent method. As soon as the copyright is established in the original proprietor, there is nothing to prevent him from assigning by any other method, although the statute provides one more convenient and less expensive than the ordinary mode of assurance by deed. If the statute is resorted to, the terms of it must be complied with. Unfortunately, there is a discrepancy between the enactment in the 13th section, and the schedule No. 5, to which that section expressly refers. The section requires that there shall be an entry "of such assignment, and of the name

(*a*) *Page* v. *Wisden*, 20 L. T. (N.S.) 435. (*b*) 1 C. B. (N.S.) 182.

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and place of abode of the assignee thereof, in the form given in that behalf in the said schedule," but when we turn to the schedule there is no reference to the place of abode of the assignee. In *Wood* v. *Boosey* (*a*) the question arose, whether section 24 (which enacts that no proprietor of copyright shall maintain an action for infringement of it, unless he shall have caused an entry to be made in the book of registry pursuant to the Act) applies to an assignee. *Cockburn*, C.J., without directly deciding the point, said: "I observe a distinction in the earlier sections between the term 'proprietor,' (as applied to the person by whom the work is originally published and in whom the property vested), and any person who takes by assignment from him; and there is no provision in the statute which gives the assignee a right to have his name inserted in the book of registry as the new proprietor. The only case in which the change of the name of the proprietor is to be made, is where the statutory form of assignment is resorted to, and even in that case it is only the assignor who can insist on the change being made in the book of registry. Taking all this into account, it seems to me that to hold that section 24 applies to an assignee, who has no power under the statute, either through this court or by any other means, to enforce registration of himself as 'proprietor,' would work considerable injustice."

Expunging or varying entry.

By the 14th section it is provided, That if any person shall deem himself aggrieved by any entry made under colour of this Act in the said book of registry, it shall be lawful for such person to apply by motion to the courts of law in term time, or to apply by summons to any judge of such courts in vacation, for an order that such entry may be expunged or varied; and that, upon any such application by motion or summons, the court or judge, as the case may be, shall make such order for expunging, varying, or confirming such entry, either with or without costs, and the officer appointed by the Stationers' Company for the purposes of this Act shall, on the production to him of

(*a*) 7 B. & S. 869, 897.

any such order for expunging or varying any such entry, expunge or vary the same according to the requisitions of such order.

But the entry must be clearly shewn to be false.

It seems that the court will not exercise its power under the above section to expunge any entry of proprietorship of copyright in the register book, unless it be clearly and unequivocally shewn that it is false; or vary it, unless satisfied by affidavit that in so doing it would make a true entry (*a*). And in one case (*b*), the court would not expunge the entry, but ordered an issue to be tried to determine the question of copyright, on the trial of which the entry was not to be used, and stayed proceedings in the action in the mean time.

No copyright acquired by registration before publication.

No copyright is acquired under 5 & 6 Vict. c. 45, by the registration of a book before its actual publication (*c*); and registration under the 24th section is only necessary in order to secure the copyright in books under the 3rd section, and not that of periodicals under the 18th section (*d*).

A newspaper need not be registered.

It is not necessary to register a newspaper. The Act which provided a special registry for them was repealed but lately by the 32 & 33 Vict. c. 24. It must not be inferred from this that there is no copyright in newspapers, for they are obviously covered by the phrase "periodical works" in the 18th section, and the proprietor would therefore have a copyright under that section in all compositions for which he had paid (*e*). He would also, by

(*a*) *Ex parte Davidson* (1856), 18 C. B. 297; S. C. 25 L. J. (C.P.) 237; 2 Jur. (N.S.) 1024.

(*b*) *Ex parte Davidson* (1853), 2 E. & B. 577. "Persons aggrieved" are those whose title conflicts with that of the person registered: *Chappell* v. *Purday*, 12 M. & W. 303. But a person convicted of infringing the copyright in certain paintings and photographs of the registered proprietor, and who sets up no title in himself or adduces no evidence to rebut the *primâ facie* evidence of proprietorship afforded by the book of registry, is not a person "aggrieved" within the meaning of the above section: *Re Walker* v. *Graves*, 20 L. T. (N.S.) 877.

(*c*) *Correspondent Newspaper Co.* v. *Saunders*, 11 Jur. (N.S.) 540; 13 W. R. 804.

(*d*) *Cox* v. *The Land and Water Co.*, 18 W. R. 206; *Browne* v. *Cooke*, 11 Jur. 77; *Sweet* v. *Benning*, 3 W. R. 519; 16 C. B. 459; S. C. 24 L. J. (C.P.) 175; *Mayhew* v. *Maxwell*, 9 W. R. 118; 1 J. & H. 312.

(*e*) *Strahan* v. *Graham*, 15 W. R. 487; see *Prowett* v. *Mortimer*, 4 W. R. 519.

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general law, have a right to prohibit others from appropriating the fruits of his own labour (*a*).

Registration a condition precedent to the title to sue under 5 & 6 Vict. c. 45.

The law, as it existed previous to the 5 & 6 Vict., did not require registration as a condition precedent to the title to sue. The neglect to register did not affect the copyright (*b*), it merely prevented the recovery of the penalties inflicted by the Acts in existence, until such entry had been made.

Subsequent to the Act, however, although the author has copyright in his work still unregistered (*c*), yet he cannot sue, either at law or in equity, to protect himself against infringement, unless he has duly registered in accordance with the Act (*d*). For, by the 24th section, it is declared that no proprietor of copyright in any book which shall be first published after the passing of this Act shall maintain any action or suit at law or in equity, or any summary proceeding, in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made in the book of registry of the Stationers' Company of such book, pursuant to this Act. It is worthy of note, that a different system is adopted in regard to fine arts copyright, the Act of 1862 not permitting actions or proceedings to be taken in respect to anything done before the registration is effected under section 4. This appears a fairer principle. If the process of registration is to be considered as useful as an authentic notice of the copyright, it would seem that it ought in all conscience to be effected at a date prior to that on which the infringement of the right takes place in order to operate on it, for, otherwise, the infringer cannot reasonably be affected by notice, when such notice is wholly subsequent to the commission of the act for which he is

(*a*) *Per* Malins, V.C., in *Cox* v. *The Land and Water Co.*, 18 W. R. 207.

(*b*) *Tonson* v. *Clifton*, 1 Wm. Bl. 330; *The University of Cambridge* v. *Bryer*, 16 East, 317; *Beckford* v. *Hood*, 7 T. R. 620.

(*c*) See *Chappell* v. *Davidson*, 25 L. J. (C.P.) 225; 18 C. B. 194.

(*d*) *Murray* v. *Bogue*, 1 Drew. 353; 17 Jur. 219; 22 L. J. (Ch.) 457. This applies only to books first published after the Act; it does not affect any book published prior.

called upon to make amends, by the legal process issued out against him.

Where the first edition of a work of compilation was published before the 5 & 6 Vict. c. 45, and several editions were published after the Act but were not registered, it was held that, as to so much of the matter contained in the original as was contained in the subsequent editions, the proprietor of the copyright might sue, although such subsequent editions were not registered; but as to the new matter the subsequent editions were books which ought to have been registered, and the owner could not sue for infringement on that point (*a*).

Copy of every book to be delivered to the British Museum.

A copy of every book (*b*), published since the 5 & 6 Vict. c. 45, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same shall be published, and also of any subsequent edition, whether the first edition of such book shall have been published before or after the passing of the Act, and also of any second or subsequent edition of every book of which the first or some preceding edition shall not have been delivered for the use of the British Museum, bound, sewed, or stitched together, and upon the best paper on which the same shall be printed, shall, within one calendar month after the day on which such book shall first be published within the bills of mortality, or within three months if the same shall first be published in any other part of the United Kingdom, or within twelve months after the same shall first be published in any other part of the British dominions, be delivered, on behalf of the publisher thereof, at the British Museum.

Copies for the use of university libraries.

Copies are likewise to be delivered for the benefit of the Bodleian Library at Oxford, the Public Library at Cambridge, the Faculty of Advocates at Edinburgh, and Trinity College, Dublin, on demand at the place of abode of the publishers thereof, at any time within a month after

(*a*) *Murray* v. *Bogue*, *supra*.
(*b*) *Routledge* v. *Low*, Law Rep. 3 H. L. 100; 37 L. J. (Ch.) 454.

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demand, during the period of twelve months from the publication thereof.

Distinction between a delivery to the British Museum and the other libraries.

According to these provisions, the main distinctions between a presentation to the British Museum, and a presentation to any of the other four libraries, are these: first, that the delivery to the Museum is to be made without demand on the part of that institution; whereas delivery to one of the other libraries need not be made at all, unless there be a written demand within twelve months after publication; and secondly, that the copy presented to the Museum must be one from the best copies of the work, while that for any of the other libraries need be only a copy from the set the most numerous. Thus, if a publisher produce a superior and an inferior edition at the same time (as in cases of quarto and octavo editions, so frequent in illustrated works), he must give a copy of the more valuable impression to the Museum; whereas he need only make presentations to the other libraries from the set of lesser cost, provided that set exceed the other by even a single copy (*a*).

Penalty for default.

The 10th section of the same statute enacts, that if the publisher of a book, or of a second or subsequent edition of a book, neglect to deliver a copy of it pursuant to this Act, he shall for every default forfeit, besides the value of the copy he ought to have delivered, a sum not exceeding £5, to be recovered by the librarian or other authorized officer of the library for whose use the copy should have been delivered; either summarily, on conviction before two magistrates for the county or place where the publisher making default resides, or by action of debt or similar proceeding at the suit of such librarian or other officer in any court of record in the United Kingdom, in which action, if the plaintiff obtain a verdict, he shall recover his costs reasonably incurred, or taxed as between attorney and client (*b*).

The first enactment extant, encouraging the establish-

(*a*) Burke's Sup. to Godson's Pat. and Copy. p. 97. (*b*) *Ibid.*

Delivery of copies to the various libraries—origin of claim.

ment of libraries for the use of the learned bodies, is in the reign of Charles II., when two copies of every work were ordered to be delivered by the publisher for the two English universities, and one copy for the king's library, 13 & 14 Car. 2, c. 33, s. 17, continued by 16 Car. 2, c. 18; 17 Car. 2, c. 4; 1 Jac. 2, c. 17, s. 15, &c., but expired in 1679. The clauses of the 17 Car. 2, appear to be perpetual, as far as they relate to the three copies, although it seems it was not so considered, from their not being adverted to in the statute of Anne. The first foundation for the claim by any public library of a gratuitous delivery of new publications is in a deed of 1610, by which the Company of Stationers in London, at Sir Thomas Bodley's request, engaged to deliver a copy of every book printed by the company, and not before printed, to the University of Oxford. The next provision is to be found in 8 Anne, which extended the number of copies demandable to nine, viz., one for the royal library, two for the Universities of Oxford and Cambridge, four for the libraries of the four Scotch Universities, the library of Sion College in London, and the library of the Faculty of Advocates in Edinburgh. This provision was afterwards enforced in 1775 (15 Geo. 3, c. 53, s. 6), by an express enactment that no person should be subject to the penalties of those Acts for pirating books, unless the whole title to the copyright of the book was entered at Stationers' Hall, and the nine copies delivered there for the use of the libraries. Two additional copies were given to Trinity College and the society of King's Inn in Dublin by 41 Geo. 3. The 54 Geo. 3, c. 156, s. 1, repealed so much of the 8 Anne, c. 19, s. 5, and the 41 Geo. 3, c. 107, s. 6, as required that any copy or copies of every book printed should be delivered to the warehouse-keeper of the Stationers' Company for the use of the libraries mentioned, or by him for their use, or which imposes any penalty on such printer or warehouse-keeper for not delivering the copies; and provided that eleven copies should be delivered for the use of the British Museum, Sion College, the Bodleian Library at

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(*a*) In the United States, the law establishing the Smithsonian Institute (Act of Congress, August, 1846, c. 178), directs, without any penalty, that a copy of every book, of which the copyright shall be secured, shall be sent to the library of that institution. Repealed by s. 6 of the Act of 1859, c. 22.

CHAPTER V.

ASSIGNMENT OF COPYRIGHT.

Copyright personal property.

COPYRIGHT is personal property, and may be assigned. It must, however, be in existence to be assigned at law (*a*).

A local right.

It is a local right only, embracing Great Britain and Ireland, the islands of Jersey and Guernsey, the British dominions in the East and West Indies, and the colonies, settlements, and possessions of the British Crown, acquired on or since the 1st day of July, 1842, or which hereafter may be acquired (*b*).

Its distinctive features.

It may be the subject of a bequest, and on the death of the person to whom it belongs, without any such bequest, will devolve on his personal representatives (*c*). An execution purchaser, however, does not acquire the rights of an assignee of the article sold in execution. Thus a seizure and sale on execution of the engraved plate of a map, for which the debtor has obtained a copyright, does not transfer the copyright to the purchaser; and the debtor is entitled, without reimbursing to the purchaser the money paid by the latter on such sale, to an injunction, to restrain the purchaser from striking off and selling copies of the map (*d*). The assignees under a commission of bank-

(*a*) *Sweet* v. *Shaw*, 8 L. J. (N.S.) Ch. 216; 3 Jur. 217; *Colburn* v. *Duncombe*, 9 Sim. 151.

(*b*) 5 & 6 Vict. c. 45, s. 3, cited Phillips on Copy. 55.

(*c*) See *Thompson* v. *Stanhope*, Amb. 737; *Burnett* v. *Chetwood*, 2 Mer. 441, n. As to the right of executors to publish, see *Dodsley* v. *M'Farquhar*, Mor. Dict. of Dec. 19 & 20 App. pt. 1, p. 1; and as to their right to receive the payment of the stipulated price of a portion of a work, although the author died before completing the other portion, see *Constable and Co.* v. *Robinson's Trustees*, 1 June, 1808; Mor. Dict. of Dec. No. 5, App., Mut. Contract.

(*d*) 2 Hilliard on 'Torts,' 58, n.; *Stephens* v. *Cady*, 14 How. 528; *Stephens* v. *Gladding*, 17 How. 447.

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ruptcy are not entitled to the manuscripts of an author, although the copyright of a book which has been printed and published will legally pass for the benefit of the creditors (*a*), and the price paid by the bookseller is as completely open to the diligence of creditors as the price of any other commodity or piece of merchandize. The reason assigned for this distinction is, that the author's right of withholding the publication continues till the very moment his book is actually given out to the public. Even the printer of the book would not be entitled to sell it for his payment, although there is not the smallest doubt that he has a complete lien over it, till delivery, to prevent the author or his creditors from taking advantage of the publication, till he shall have been paid (*b*).

An assignment not to be presumed.

A transfer of the right will not be presumed, unless the intention is manifest; such, for instance, as the acceptance of a receipt in writing for the price paid for the copyright (*c*); and evidence that the plaintiff, in an action for printing a musical work, acquiesced in the defendant's publication of it for six years, did not raise the presumption that the plaintiff had transferred his interest in the copyright. But where a copyright was not asserted for *fifteen years*, the Court of Chancery refused an injunction, until the right should be established at law; the Lord Chancellor saying: "I admit this to be the subject of copyright; but the plaintiff has permitted several people to publish these dances, some of them for fifteen years; thus encouraging others to do so. That, it is true, is *not a justification*; but under these circumstances a court of equity will not interfere in the first instance. If, as is represented, some of them were published only last year, and one two months ago, the bill ought to have been confined to those. You may bring your action, and then apply for an injunction" (*d*).

(*a*) *Longman* v. *Tripp*, 2 Bos. & Pull. New. 67; see 4 Burr. 2311; Amb. 695; *Stevens* v. *Cady*, 14 How. (Amer.) 528; *Stevens* v. *Gladding*, 17 How. (Amer.) 447; *Cooper* v. *Gunn*, 4 B. Mon. (Amer.) 594, 596; see *Atcherley* v. *Vernon*, 10 Mod. 518. (*b*) 1 Bell's Com. 68; cited Kerr on Inj. 186.

(*c*) Otherwise held previous to 5 & 6 Vict. c. 45; see *Latour* v. *Bland*, 2 Stark, 382.

(*d*) *Platt* v. *Button*, 19 Ves. 447; Coop. Ch. Cas. 303.

An assignment of the copyright of a work, under the Statute of Anne, must have been in *writing*, and attested by two witnesses, in order to entitle the assignee to maintain an action for pirating it (*a*). True, this was not expressly demanded, but the statute required that there should be two witnesses to a consent to a publication, and it was naturally inferred that an assignment, which was of a higher nature than a mere consent, must have at least the same solemnity (*b*). The 41 Geo. 3, c. 107, required the consent to be in writing, and to be signed in the presence of two or more credible witnesses. The 54 Geo. 3, c. 156, reciting the former enactments, generally extended the copyright, and spoke of the consent in writing, but said nothing about the two witnesses. Opinions differed upon this subject. It was contended by some that as it was only by implication from two witnesses being required to the consent it was held that two witnesses were required to an assignment, therefore, when the latter Act, the 54 Geo. 3, c. 156, no longer required two witnesses to a consent, the reason failed for requiring, by implication, two witnesses to an assignment. Lord St. Leonards, however, was of opinion that it was properly decided that the assignment ought to be attested by two witnesses; that, he said, was decided upon the Act of Anne as it stood originally and as it was originally construed. "If, by a later Act," said he, "you take away that which was, no doubt, the ground of the decision, viz., the necessity for two witnesses to a consent, does it follow, that you therefore repeal that which was the proper construction of the law applicable to the higher instrument, viz., that the assignment also required two witnesses? It would rather seem, after such a tenor of determination, after the law

An assignment under the Statute of Anne.

(*a*) *Power* v. *Walker*, 4 Camp. 8; S. C. 3 M. & S. 7; *Morris* v. *Kelly*, 1 Jac. & W. 481; *Clementi* v. *Walker*, 2 B. & C. 861; *Davidson* v. *Bohn*, 6 C. B. 456; 12 Jur. 922; 18 L. J. (C.P.) 14; *Leader* v. *Purday*, 7 C. B. 4; *Jefferys* v. *Boosey*, 4 H. L. C. 815; *Cumberland* v. *Copeland*, 31 L. J. (Exch.) 19, *post*, p. 80.

(*b*) Lord Ellenborough, in *Power* v. *Walker*, *supra*; as to the distinction between a licence to publish and an assignment, see 27 L. J. (Ch.) 254, and the principle on which was decided the late case of *Lacy* v. *Toole*, 15 L. T. (N.S.) 512.

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had been so settled, that the legislature, by being silent with regard to the assignment, meant that to remain, *although it alters the law with respect to the consent.*" "The Act of Anne and the Act of the 54 Geo. 3 may well stand together; the latter one does not repeal the former expressly, and there is no reason why it should do so by intendment; and with respect to the assignment, the Act of Anne, being referred to generally by the 54 Geo. 3, must be considered to be referred to as bearing the construction put upon it by the authorities."

This opinion was followed in *Cumberland* v. *Copeland* (*a*), which was a claim for copyright under the 3 & 4 Will. 4, c. 15, it being held by the majority of the Court of Exchequer that an assignment of copyright made previous to the statute 5 & 6 Vict. c. 45, must be attested by two witnesses.

Assignment under the 5 & 6 Vict. c. 45.

Under the 5 & 6 Vict. c. 45, s. 13, the proprietor of a copyright in a composition, if he desire to sell and transfer his right, must make an entry in the register of the Stationers' Company of such work, the time of the first publication thereof, and the name and place of abode of the publisher and proprietor of the copyright; and every such registered proprietor may assign his interest, or any portion thereof, by making an entry in the register of the assignment and of the name and place of abode of the assignee (*b*); and the assignment so entered is expressly exempted from stamp duty, and is of the same force and effect as if it had been made by deed (*c*).

No partial assignment of copyright.

There cannot be a partial assignment of copyright (*d*). Copyright is one and indivisible; it is a right which may be transferred, but cannot be divided. Nothing could be more absurd or inconvenient than that this abstract right

(*a*) 31 L. J. (Ex.) 19. (*b*) *Ante*, p. 69.

(*c*) The proposition that an assignment in writing, since the 5 & 6 Vict. c. 45, need not be attested (4 H. L. C. 855, 881, 891, 931, 943), has been ably disputed in the 8th volume of the Jurist (N.S.) pt. ii. p. 148. And see *Power* v. *Walker*, 3 M. & S. S. Lord Ivory, in *Jeffreys* v. *Kyle*, 16 Ct. of Sess. 2nd ser. p. 911, and others have thought that both *Power* v. *Walker*, and *Bohn* v. *Davidson*, were wrongly decided.

(*d*) *Quære*, in America. See *Roberts* v. *Myers*, 13 Mo. Law Rep. 396; *contrà*, *Keane* v. *Wheatley*, 9 Amer. Law Rep. 33.

should be divided, as if it were real property, into lots, and that one lot should be sold to one man, and another lot to a different man. It is impossible to tell what the inconvenience would be. You might have a separate transfer of the right of publication in every country in the kingdom (*a*). Thus, where Ricordi, the assignee of Bellini, being resident in Milan, assigned the copyright in '*La Sonnambula*' to Boosey for publication in the United Kingdom only, Lord St. Leonards, in passing judgment, observed: "The exercise of the right is confined in that assignment to the United Kingdom. Now, by the 41 Geo. 3, c. 107, copyright is extended to any part of the British dominions in Europe; and by the 54 Geo. 3, c. 156, it was further extended to every other part of the British dominions. It is quite clear, therefore, that if, in this case, there was a copyright under the law of this country, it was a copyright which extended to every part of the British dominions; even considering the right in England, if I may so call it, as being capable of being secured from any foreign right, it would consequently be a partial assignment; and, as a partial assignment, I should venture to recommend your Lordships to decide that it was wholly void, and therefore gave no right at all.

"There is also, let me observe, this particularity: that as the assigment from Ricordi is confined to the United Kingdom, Ricordi himself might, without any breach of his contract, have published this composition in any other part of the British dominions; he might, also, by his Milanese right, have published it the very next day in Milan, without infringing on the right of Boosey under the assignment. The more, therefore, the question is considered, the more, I apprehend, will it appear clear that the assignment in question was void because it was limited to the United Kingdom, and did not extend to the whole of the British dominions."

Assignment by foreigner.

An assignment made by an assignee of a foreigner, though his title be good by the law of the country in

(*a*) Lord St. Leonards, in *Jefferys* v. *Boosey*, 4 H. L. C. 993.

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which the assignment is made, and to which law both assignee and foreigner are subject, yet (being a foreigner) he has not, by the English law, an interest in the copyright, such as he may assign to an Englishman for exclusive publication in England; nor would such an assignment hold good though made according to the law of this country.

This point was determined in *Jefferys* v. *Boosey*, to which we have already referred. Bellini, a foreigner, while living at Milan composed a musical work, in which, by the laws there in force, he had a certain copyright. In February, 1831, he there, by an instrument in writing valid by the law of Milan, assigned the copyright to S. Ricordi, who afterwards came to this country, and in June, 1831, by deed under his hand and seal, in the presence of, and attested by, two witnesses, assigned for a valuable consideration the copyright in the composition to Boosey, for publication in the United Kingdom only. Boosey then printed and published the work in this country, and Jefferys, without licence from Boosey, printed and published a portion of it in England. The case was carried eventually into the Upper House, and judgment given by Lords Cranworth, Brougham, and St. Leonards. The last-named learned judge was of opinion that copyright by the law of Milan could have no effect in this country; that the law of Milan, which gave to Bellini this copyright, could of course give him no right in this country. The first question was, how could a right exist in Bellini, as a foreigner, to copyright in this country? He had it by the law of Milan, because he was a native-born subject, or a subject, at all events, by residence, and the law of that country gave it to him; but the moment he stepped out of that country he could have no other right than was involved in the mere possession of the subject-matter in his hands, except so far as the law of any country to which he resorted might give him such a right. Then, in order to obtain copyright here, he must come and perform the conditions annexed to the enjoy-

ment of that right; and he (Lord St. Leonards) held it to be perfectly clear that that condition is, that he must reside in this country. Then, if that were so, as Bellini did not perform the condition, he never had the right to assign, and he could not assign that which never existed. Remaining abroad, he could not have the right, for the common law of this country gave him no such right. Neither did the statute law of this country give him any such right. Therefore, whilst at Milan he had a Milanese copyright; but he had not, and could not acquire, a British copyright; and if he had no right in this country he could assign none. And in this view he was supported by the other learned judges.

Cocks v. *Purday* overruled.

This case completely overruled that of *Cocks* v. *Purday* (*a*). It had been held that, in the instance in which (by the law of Austria, which prevailed where A., the author of a musical composition, and B., his assignee, were respectively domiciled) A. assigned his right to B., and B., before the publication of the work, sold his copyright to C., an Englishman, there being a sale valid by the law of Austria, the country in which the sale took place, the interest of the author became vested in C. before publication, so as to make him an assignee within the meaning of the 5 & 6 Vict. c. 45, s. 3, and to confer upon him a good derivative title.

The absence of an assignment in writing must be specially pleaded at law (*b*), unless, of course, admitted by the other side (*c*).

Right of assignor to sell stock on hand after assignment.

It has lately been determined that, in the absence of a special contract to the contrary, the assignor of a copyright is entitled, after the assignment, to continue selling copies of the work printed by him before the assignment and remaining in his possession (*d*).

(*a*) 5 C. B. 860; 12 Jur. 677; 17 L. J. (C.P.) 273; and that of *Boosey* v. *Davidson*, 13 Q. B. 257; 13 Jur. 678; 18 L. J. (Q.B.) 174; and *Boosey* v. *Jefferys* (in error), 6 Ex. 580; 15 Jur. 540; 20 L. J. (Ex.) 354; overruled by *Jefferys* v. *Boosey*, 4 H. L. C. 815; 24 L. J. (Ex.) 81; 1 Jur. (N.S.) 615.

(*b*) *Barnett* v. *Glossop*, 1 Bing. N. C. 633; *De Pinna* v. *Polhill*, 8 C. & P. 78; *Cocks* v. *Purday*, 5 C. B. 860.

(*c*) *Moore* v. *Walker*, 4 Camp. 9, n.

(*d*) *Taylor* v. *Pillow*, Law Rep. 7 Eq. 418.

CHAPTER VI.

INFRINGEMENT OF COPYRIGHT.

"O imitatores, servum pecus!"

"Quid nos dura refugimus
Ætas? quid intactum nefasti
Liquimus?"

HORACE.

Infringement of copyright.

THE question must obviously arise somewhat frequently, what is, and what is not, a piracy. In many cases the line of demarcation is so loosely and indifferently drawn, that arrival at a just conclusion is a matter of difficulty. So entirely must each case be governed and regulated by the particular circumstances attending it, that any general rules on the subject must be received with extreme caution. Regard must be had to the value of the work, and the value of the extent of the infringements; for while, on the one hand, the policy of the law allows a man to profit by all antecedent literature, yet, on the other, the use made of such antecedent literature may not be so extensive as to injure the sale of the original work, even though made with no intention to invade the previous author's right (*a*); for the copyright having been violated, the penalty must be paid (*b*).

The result, in such cases, is the true test of the act. Full acknowledgment of the original, and the absence of any dishonest intention, will not excuse the appropriator

(*a*) *Roworth* v. *Wilkes*, 1 Camp. 94; *Emerson* v. *Davies*, 3 Story (Amer.) 768; *Campbell* v. *Scott*, 11 Sim. 31; *Clement* v. *Maddick*, 1 Giff. (Ch.) 98; 5 Jur. (N.S.) 592; *vide* Kindersley, V.C., in *Murray* v. *Bogue*, 1 Drew. 353; Wood, V.C., in *Reade* v. *Lacy*, 1 J. & H. 524; and Story, J., in *Folsom* v. *Marsh*, 2 Story (Amer.) 115; see *Gambart* v. *Sumner*, 5 H. & N. 5.

(*b*) *Millett* v. *Snowden*, 1 West. L. J. (Amer.) 240; *Parker* v. *Hulme*, 7 *ibid.* 426; *Webb* v. *Powers*, 2 Wood & M. (Amer.) 497.

when the effect of his appropriation is, of necessity, to injure and supersede the sale of the original work; for a man must be presumed to intend all that the publication of his work effects (*a*).

Plagiarism not necessarily an invasion of copyright.

Plagiarism does not necessarily amount to an invasion of copyright, and the author of a published book has no monopoly in the theories and speculations, or even in the results of observations therein contained; but no one, whether with or without acknowledgment, can be permitted to take a material and substantial portion of the published work of another author, for the purpose of making or improving a rival publication (*b*).

Want of originality in modern works.

La Bruyère declares that we are come into the world too late to produce anything new, that nature and life are preoccupied, and that description and sentiment have been long exhausted. However this may be, it is apparent that some similarities, and a use, to a certain extent, of prior works, even to the copying of small parts, must be tolerated in the case of such works as dictionaries, gazetteers, grammars, maps, arithmetics, almanacs, concordances, encyclopædias, itineraries, guide books, and similar productions, if the main design and execution are in reality novel and improved, and not a mere cover for important piracies (*c*).

All definitions of the same thing must be nearly the same, and descriptions, which are definitions of a more lax and fanciful kind, must always have in some degree that resemblance to each other which they all have to their object. Consequently, in compiling such works, the materials, to a considerable extent, must be nearly identical, and the prior compiler cannot monopolize what was not original with himself, nor a subsequent compiler

(*a*) Wood, V.C., in *Scott* v. *Stanford*, Law Rep. 3 Eq. 723; *Reade* v. *Lacy*, 9 W. R. 531; 7 Jur. (N.S.) 463; 30 L. J. (Ch.) 655; *Millett* v. *Snowden*, 1 West. L. J. (Amer.) 240; *Nichols* v. *Ruggles*, 3 Day (*ibid.*) 158; *Story* v. *Holcombe*, 4 McLean (*ibid.*) 306; McLean, J., Ohio, 1847.

(*b*) *Pike* v. *Nicholas*, 38 L. J. (Ch.) 529; 20 L. T. (N.S.) 906; reversed, Law Rep. 5 Ch. 251, but not in opposition to the principle above laid down.

(*c*) *Webb.* v. *Powers*, 2 Wood & M. (Amer.) 497–512; *vide* 2 Hilliards on 'Torts,' 49.

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employ a prior arrangement and materials to such an extent as to be a substantial invasion of the anterior compilation.

Encyclopædias may not outstrip the limits of fair quotation.

Thus, where it appeared that 75 out of 118 pages of a work on fencing had been transcribed into an encyclopædia, the court held that a piracy had been committed; for though it is true that an encyclopædia may be allowed to embrace all the information contained in the newest works on the subject, yet definite limits must be set to its extracts. The same rule holds in respect of works under review; the reviewer may fairly make extracts, and may comment on those portions, but it would be unfair if he were allowed to exhibit the substance of the work he chose to review. Sufficient may be taken to form a correct idea of the whole, but no one is allowed to review in such a manner as to make the review serve as a substitute for the work reviewed (*a*).

The latter, to be a piracy, need not serve as a substitute for the former work.

And yet to be a piracy it is not necessary that the latter work should be a substitute for the original composition. It can seldom be the criterion. Vice-Chancellor Shadwell, on one occasion, put the case in a simple aspect: "We all know that there has been a very valuable Greek lexicon published by Mr. Liddell and another friend of his at Oxford; no person who published this lexicon, omitting three or four words at the end of each letter of the alphabet, could have done a work of which it could be said, that it might be taken as a substitute, for nobody would take it as a substitute. But can it be doubted that it might have a very material effect in diminishing the price of the first book? For, though nobody would take it as a substitute, many people might not care about so much, and might take it cheaply for what it really did contain, which might be more than ninety-nine hundredths of the whole, and yet it would in no manner be a substitute; and, therefore, the language is not generally correct, so as to be capable of application to every case."

(*a*) 1 Camp. 97; 4 Esp. 168; 17 Ves. 422; Eden on Injunc. 281; see *Murray* v. *M'Fargilhar*, June 25, 1785, Mor. Dic. of Dec. 8309.

Where a work entitled 'A Practical Treatise on the Law Relative to the Sale and Conveyance of Real Property, &c.,' contained piratical extracts from an earlier standard work, which was entitled 'A Practical Treatise on the Law of Vendors and Purchasers of Estates,' the Vice-Chancellor Shadwell observed, "In cases of this nature, if the pirated matter is not considerable, that is, where the passages, which are neither numerous nor long, have been taken from different parts of the original work, this court will not interfere to restrain the publication of the work complained of, but will leave the plaintiff to seek his remedy at law. But in this case it is plain that the passages which have been pointed out have been taken from the plaintiff's book, and they are so considerable, both in number and length, as to make it right that this court should interfere (*a*)."

Principles by which a piracy is judged.

The inquiry in most cases, is not, whether the defendant has used the thoughts, conceptions, information, and discoveries promulgated by the original, but whether his composition may be considered a *new work*, requiring invention, learning, and judgment, or only a mere transcript of the whole or parts of the original, with mere colourable variations (*b*).

In *Scott* v. *Stanford* (*c*), the plaintiff had published statistical returns of all coal imported into London, and the defendant, in giving the universal statistics of the United Kingdom, had copied from the plaintiff's work to the extent of one-third of the whole of the defendant's work, at the same time acknowledging the source from which his information was derived. Vice-Chancellor Wood decided, that having regard to the quantity and matter of the information which had been taken and republished without the exercise of any independent thought and labour, and the prejudice to the plaintiff in

(*a*) *Sweet* v. *Cater*, 11 Sim. 580. See *Kelly v. Hooper*, 4 Jur. 21.
(*b*) *Stowe* v. *Thomas*, 2 Wall. C. Ct. (Amer.) 547; S.C. 2 Amer. L. Reg. 231.
(*c*) Law Rep. 3 Eq. 718; *Morris* v. *Ashbee*, 19 L. T. (N.S.) 550; Law Rep. 7 Eq. 34. *Mawman* v. *Tegg*, 2 Russ. 398; *Jarrold* v. *Houlston*, 3 K. & J. 708; *Cox* v. *The Land and Water Co.*, 18 W. R. 203.

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having the sale of his work superseded by this republication, the plaintiff was entitled to an injunction. If the defendant, after collecting the information for himself, had checked his results by the plaintiff's tables, that would have been a widely different thing from the wholesale extraction of the vital part of his work. But no man is entitled to avail himself of the previous labours of another for the purpose of conveying to the public the same information, although he may append additional information to that already published. This is consonant to the law as laid down in *Kelly* v. *Morris* (*a*), which was in the following terms: In the case of a dictionary, map, guide-book, or directory, where there are certain common objects of information which must, if described correctly, be described in the same words, a subsequent compiler is bound to set about doing for himself that which the first compiler has done. In the case of a road-book, he must count the milestones for himself, ... and the only use that he can legitimately make of a previous publication is to verify his own calculations and results when obtained.

From these observations it is not to be inferred that in compiling a directory the compiler may not look into the previous directory of another for the purpose of ascertaining where a particular person lives, and for the purpose of ascertaining from that book whether or not it is worth his while to call upon that person (*b*); they imply no further than that he may not take a passage from the directory, and go and see whether it happens to be accurate, and if it be accurate, bodily copy it into his directory.

This latter is precisely what was done in *Morris* v. *Ashbee* (*c*). The defendant copied the plaintiff's book, and then sent out canvassers to see if the information so copied was correct. If the canvasser did not find the occupier of the house at home, or could get no answer

(*a*) Law Rep. 1 Eq. 697. (*b*) *Morris* v. *Wright*, 22 L. T. (N.S.) 78.
(*c*) 19 L. T. (N.S.) 550; Law Rep. 7 Eq. 34.

from him, then the information copied from the plaintiff's book was repeated bodily, as if it were a question for the occupier of the house merely, and not for the compiler of the previous directory. The copying was as direct in the case of *Kelly* v. *Morris*, to which we have already referred, Not only were the slips for the purpose of canvassing copied, but the course pursued really was, that when a slip was presented to the person who was canvassed, and his permission received for the insertion of the particular entry, the slip was forthwith copied into the book. "Now it is plain," observed Lord Justice Giffard, "that it could not be lawful for the defendants simply to cut the slips, which they have cut from the plaintiff's directory, and insert them in theirs. Can it then be lawful to do so, because, in addition to doing this, they sent persons with the slips to ascertain their correctness? I say, clearly not. . . . . In *Pike* v. *Nicholas* (*a*) we had this: Two rival books were published with reference to the same subject matter, and we thought certainly that the defendant had been guided by the plaintiff's book, more or less, to the authorities which the plaintiff had cited; but it was a perfectly legitimate course for the defendant to refer to the plaintiff's book, and if he did, taking that book as his guide himself, go to the original authorities, and compile his book from the original authorities, he made no unfair or improper use of the plaintiff's book."

The question as to how far advantage may be reaped from the work of another, and what use may be legitimately made of it, is difficult of solution. Perhaps the strongest case in favour of the adoption by a subsequent compiler of the work of a preceding one, is that of *Cary* v. *Kearsley* (*b*), where Lord Ellenborough thought that the former might fairly adopt part of the work of the latter, and might so make use of his labours for the promotion of science and the benefit of the public; but having done so, he was of opinion that the question would be, was the matter so taken used fairly with that view, and with-

(*a*) 38 L. L. Ch. 529 (*b*) 4 Esp. 168.

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out what he might term the *animus furandi?* For while he considered himself bound to secure every man in the enjoyment of his copyright, he was fearful of putting manacles upon science.

In *Jarrold* v. *Houlston* (*a*), the publishers of Dr. Brewer's 'Guide to Science' obtained an injunction against the publication of the 'Reason Why.' The judge said: "The question I really have to try is, whether the use that in this case has been made of the plaintiff's book has gone beyond a fair use. Now, for trying that question, several tests have been laid down. One, which was originally expressed, I think, by a common law judge, and was adopted by Lord Langdale in *Lewis* v. *Fullarton*, is, whether you find on the part of the defendant an *animus furandi*—an intention to take for the purpose of saving himself labour. I take the illegitimate use as opposed to the legitimate use of another man's works on subject matters of this description to be this: if, knowing that a person whose work is protected by copyright has, with considerable labour, compiled from various sources a work in itself not original, but which he has digested and arranged, you, being minded to compile a work of a like description, instead of taking the pains of searching into all the common sources, and obtaining your subject matter from them, avail yourself of the labour of your predecessor, adopt his arrangements, adopt, moreover, the very questions he has asked, or adopt them with but a slight degree of colourable variation, and thus save yourself pains and labour by availing yourself of the pains and labour which he has employed, that I take to be an illegitimate use."

A compiler must produce an original result.

The rule appears now to be settled, that the compiler of a work in which absolute originality is of necessity excluded, is entitled, without exposing himself to a charge of piracy, to make use of preceding works upon the subject, where he bestows such mental labour upon what he has taken, and subjects it to such revision and correction

(*a*) 3 K. & J. 708; 3 Jur. (N.S.) 1051.

as *to produce an original result*, provided that he does not deny the use made of such preceding works, and the alterations are not merely colourable (*a*).

The case of a dictionary analyzed.

For an example, take the case of a dictionary. There may be a certain degree of skill exhibited as to order and arrangement, and there may be a good deal of ingenuity exhibited in the selection of phrases and illustrations, which are the best exponents of the sense in which the word is to be used; and there may also be great labour in the logical deduction and arrangement of the word in its different senses, when the sense of the word departs from its primary signification; but there cannot be copyright in much of the information contained in the numerous dictionaries published, each necessarily having a large number of words identically similar. The great point to decide in such cases is, as we have already stated, whether in the particular case the work is a legitimate use of the plaintiff's publication in the fair exercise of a mental operation deserving the character of an original work. (*b*)

The case of *Spiers* v. *Brown*.

Lord Hatherley, while Vice-Chancellor, in the case of *Spiers* v. *Brown* (*c*), thus summed up the law in his peculiarly lucid style: All cases of copyright were very simple when a work of an entirely original character was concerned, being a work of imagination or invention on the part of the author, or original in respect of its being a work treating of a subject common to mankind, such as history, or other branches of knowledge varying much in their mode of treatment, and in which the hand of the artist would be readily discerned. But the difficulty that arose in cases of the class then before him was, that they not only related to a subject common to all mankind, but that the mode of expression and language was necessarily so common that two persons must, to a very great extent, express themselves in identical terms in conveying the instruction or

(*a*) *Spiers* v. *Brown*, 6 W. R. 352; *Reade* v. *Lacy*, 1 J. & H. 524.
(*b*) *Vide Wilkins* v. *Aiken*, 17 Ves. 422; *Bramwell* v. *Halcomb*, 3 My. & Cr. 737; *Cornish* v. *Upton*, 4 L. T. (N.S.) 863.
(*c*) 6 W. R. 352.

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information to society which they were anxious to communicate. The most obvious case was that of figures, such as the table of logarithms—the case before Sir John Leach—where it would be impossible to deviate in the calculations, or to vary the order, and the result must be identical. The same might be said of directories, calendars, court guides, and works of that description. Those were cases in which the only mode of arriving at the amount of labour bestowed was by the common test resorted to of discovering the copy of errors and misprints, indicating a servile copying. Copyright was considered, for the highest purposes of society in every country, as necessary to be secured to those who contributed to the civilization, refinement, or instruction of mankind, and extended, in this country, if not elsewhere, to every description of work, however humble it might be, even to the mere collection of the abodes of persons, and to streets and places; and labour having been employed upon subjects even of that class, no one had a right to avail himself of it. . . . . The real question was, how far the courts had decided that a certain amount of use of preceding works was legitimate in carrying out a second work of a similar description, calculated to afford instruction by means of a dictionary, vocabulary, or the like. In the case of *Cary* v. *Kearsley* (*a*), Lord Ellenborough laid down the law in a manner which had not been questioned. He said, "that part of the work of one author found in another is not of itself piracy, or sufficient to support an action. A man may fairly adopt part of the work of another; he may so make use of another's labour for the promotion of science and the benefit of the public; but, having done so, the question will be, was the matter so taken used fairly with that view, and without what I may term the *animus furandi?* Look through the book, and find any part that is a transcript of the other; if there is none such, if the subject of the book is that which is subject to every man's observation, such as the names of the places and their

(*a*) 4 Esp. 168.

distances from each other, the places being the same, the distances being the same, if they are correct, one book must be a transcript of the other; but when in the defendant's book there are additional observations, and in some parts of the book I find corrections of misprintings, while I shall think myself bound to secure every man in the enjoyment of his copyright, one must not put manacles on science." Then there was the case of *Longman* v. *Winchester* (*a*), in which Lord Eldon said, "Take the instance of a map describing a particular county, and a map of the same county afterwards published by another person; if the description is accurate in both they must be pretty much the same, but it is clear that the latter publisher cannot, on that account, be justified in sparing himself the labour and expense of actual survey, by copying the map previously published by another. So, as to Paterson's 'Road Book,' it is certainly competent to any other man to publish a book of roads, and if the same skill, intelligence, and diligence are applied in the second instance, the public would receive nearly the same information from both works; but there is no doubt that this court would interpose to prevent a mere republication of a work which the labour and skill of another person had supplied to the world. So, in the instance mentioned by Sir Samuel Romilly, a work consisting of a selection from various authors, two men perhaps might make the same selection, but that must be by resorting to the original authors, not by taking advantage of the selection already made by another." And again: "The question before me is, whether it is not perfectly clear that in a vast proportion of the work of these defendants no other labour has been applied than copying the plantiff's work. From the identity of the inaccuracies it is impossible to deny that the one was copied from the other *verbatim et literatim*. To the extent, therefore, in which the defendant's publication has been supplied from the other work the injunction must go; but I have said nothing that has a tendency to prevent any person from

(*a*) 16 Ves. 269.

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giving to the public a work of this kind if it is the fair fruit of original labour, the subject being open to all the world." Another case—which seemed to condense into one point the view taken by the courts in cases where actual use is avowed and the only question is, whether it is a fair use (*a*),—where Lord Eldon says this: "Upon inspection of the different works, I observe a considerable proportion taken from the plaintiff's that is acknowledged, but also much that is not; and in determining whether the former is within the doctrine upon this subject the case must be considered as also presenting the latter circumstance. The question upon the whole is, whether this is a legitimate use of the plaintiff's publication in the fair exercise of a mental operation deserving the character of an original work." These were the words which had been relied on by Lord Cottenham in *Bramwell* v. *Halcomb* (*b*), and it was with the view thus taken by those learned judges that he (the Vice-Chancellor) had gone through a very laborious investigation of the works then in question, there being, as it seemed to him, a considerable portion of the defendant's work which came within the doctrine of its being a legitimate use and a fair exercise of mental operation, and (adding the negative used by Lord Ellenborough) not being done colourably. . . . His Honour said, that the real issue which the court was called on to decide was one of the most difficult ever presented to him, namely, as to how far this very considerable use of the work of another might be taken to be legitimate. There was no concealment of some use having been made; no colourable alteration proved, nor anything tending to show a fraudulent design to make an unfair use of the work of another. The present case went as far as any previous, though not perhaps further than *Mawman* v. *Tegg* (*c*), where a very large and considerable portion of the plaintiff's work had been taken without any alteration or addition. Though a good deal had been taken from the plaintiff, yet a good deal of labour had been bestowed upon what had been taken. . . . Upon the whole,

(*a*) *Wilkins* v. *Aiken*, 17 Ves. 422. (*b*) 3 My. & Cr. 737.
(*c*) 2 Russ. 385.

he could not think that the defendant had gone beyond what the court would allow, having produced that which in the result was, in fact, a different work from that of the plaintiff.

Modes in which copyright may be infringed.

Copyright may be invaded in several ways :—

1st. By reprinting the whole work *verbatim*.

2nd. By reprinting *verbatim* a part of it.

3rd. By imitating the whole or a part, or by reproducing the whole or a part with colourable alterations.

4th. By reproducing the whole or a part under an abridged form (*a*).

5th. By reproducing the whole or a part under the form of a translation.

1. By reprinting the whole *verbatim*.

Piracies of the nature of the first division are seldom committed, on account of the ease with which they could be detected and punished.

2. By reprinting *verbatim* a part.

Piracies of the nature of the second division are far more frequent and more difficult of detection. The quantity of matter subtracted cannot in all cases be a true criterion of the extent of the piracy, for a work may be a piracy upon another, though the passages copied are stated to be quotations, and are not so extensive as to render the piratical work a substitution for the original work.

If so much is taken that the value of the original is sensibly diminished, or the labours of the original author are substantially, to an injurious extent, appropriated by another, that is sufficient, in point of law, to constitute a piracy *pro tanto*. The entirety of the copyright is the property of the author ; and it is no defence that another person has appropriated a part and not the whole of such property.

Quantity but slight criterion of piracy.

Lord Cottenham, in the cases of *Bramwell* v. *Halcomb* and *Saunders* v. *Smith*, adverting to this point, said, "When it comes to a question of quantity, it must be very vague. One writer might take all the vital part of another's book, though it might be but a small proportion

(*a*) Curtis on Copy. chap. 9.

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of the book in quantity. It is not only quantity, but value, that is always looked to. It is useless to refer to any particular cases as to quantity." In short, we must often, in deciding questions of this sort, look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects of the original work. Many mixed ingredients enter into the discussion of such questions. In some cases a considerable portion of the materials of the original work may be fused into another work, so as to be distinguishable in the mass of the latter, which has other professed and obvious objects, and cannot fairly be treated as a piracy; or they may be inserted as a sort of distinct and mosaic work into the general texture of the second work, and constitute the peculiar excellence thereof, and then it may be a clear piracy. If a person should, under colour of publishing "elegant extracts" of poetry, include all the best pieces at large of a favourite poet, whose volume was secured by copyright, it would be difficult to say why it was not an invasion of that right, since it might constitute the entire value of the volume. The case of *Mawman* v. *Tegg* is to this purpose. There was no pretence in that case that all the articles of the encyclopædia of the plaintiffs had been copied into that of the defendants; but large portions of the materials of the plaintiffs' work had been copied. Lord Eldon, upon that occasion, held that there might be a piracy of a part of a work, which would entitle the plaintiffs to a full remedy and relief in equity. In prior cases he had affirmed the like doctrine. In *Wilkins* v. *Aiken*, he said, "There is no doubt that a man cannot, under the pretence of quotation, publish either the whole or a part of another's book, although he may use, what in all cases it is difficult to define, fair quotation."

Reviews or criticisms.

In a case in which the work alleged to be pirated was a play, extending over forty pages, and the defendant had published a journal of theatrical criticism, in which, as

illustrative of his critical remarks, he had introduced broken and detached fragments of the piece in question, amounting in the whole to six or seven pages, some weight appears to have been allowed by the court to the fact of the extent of the extracts being so inconsiderable, as affording ground for doubt whether the defendant had transgressed the limits of fair quotation (*a*).

It is manifest, also, from what fell from Lord Chancellor Cottenham in *Saunders* v. *Smith* (*b*), that he entertained no doubt (although he did not decide the point) that there might be a violation of the copyright of volumes of reports, by copying *verbatim* a part only of the cases reported. In *Lewis* v. *Fullarton* (*c*), Lord Langdale, in the case of a typographical dictionary, held that largely copying from the work, in another book having a similar object, was a violation of that copyright, although the same information might have been (but, in fact, was not) obtained from common sources, open to all persons; and accordingly in that case he granted an injunction as to the parts pirated, notwithstanding the fact that there was much which was original in the new work (*d*).

3rd. Copyright may be infringed by imitating the whole or a part, or by reproducing the whole or a part with colourable alterations.

3. By imitating the whole or part by reproduction with colourable alterations.

A copy is one thing, an imitation or resemblance another. It is indeed certain, that whoever attempts any common topic will find unexpected coincidences of his thoughts with those of other writers; nor can the nicest judgment always distinguish accidental similitude from artful imitation. "There is likewise," says Dr. Johnson, "a common stock of images, a settled mode of arrangement, and a beaten track of transition, which all authors suppose themselves at liberty to use, and which produce the resemblance generally observable among contemporaries. So that in books which best deserve the name of

Distinction between a copy and an imitation.

(*a*) *Whittingham* v. *Wooler*, 2 Swans. 428.
(*b*) 3 My. & Cr. 711.
(*c*) 2 Beav. 6.
(*d*) See *Cox* v. *The Land and Water Co.*, 18 W. R. 206.

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originals, there is little new beyond the disposition of materials already provided; the same ideas and combinations of ideas have been long in the possession of other hands; and by restoring to every man his own, as the Romans must have returned to their cots from the possession of the world, so the most inventive and fertile genius would reduce his folios to a few pages. Yet the author who imitates his predecessors only by furnishing himself with thoughts and elegances out of the same general magazine of literature, can with little more propriety be reproached as a plagiary, than the architect can be censured as a mean copier of Angelo or Wren because he digs his marble from the same quarry, squares his stones by the same art, and unites them in columns of the same order."

There are many imitations of Homer in the '*Æneid*;' but no one would say that the one was a copy of the other. So also can similar passages be found in Virgil and Horace:

"*Ha· tibi erunt artes—*
Parcere subjectis, et debellare superbos."

VIRGIL.

"*Imperet, bellante prior, jacentem*
Lenis in hostem."

HORACE.

And Cicero observes of Achilles, that had not Homer written, his valour had been without praise: *Nisi Ilias illa extitisset, idem tumulus qui corpus ejus contexerat, nomen ejus obruisset;* while Horace remarks that there were brave men before the wars of Troy, but they were lost in oblivion for the want of a poet:

"*Vixere fortes ante Agamemnona*
Multi; sed omnes illacrymabiles
Urgentur, ignotique longâ
Nocte, carent quia vate sacro."

There may be a strong likeness without an identity. The question is, therefore, in many cases a very delicate one: what degree of imitation constitutes an infringement of the copyright of a particular composition? Certainly

not such a similitude as the instances from the classics given above.

It is very evident that any use of materials, whether they are figures or drawings, or other things which are well known and in common use, is not the subject of a copyright, unless there be some new arrangement thereof. Still, even here, it may not always follow that any person has a right to copy the figures, drawings, or other things, made by another, availing himself solely of his skill and industry, without any resort to such common source. In all cases the question of fact to come to the jury is, whether the alterations be colourable or not. There must be a similitude, so as to make it probable and reasonable to suppose that one is a transcript of the other, and nothing more than a transcript; so with regard to charts, there is no monopoly in that subject; but upon a question of the above nature the jury must decide whether the latter work be a servile imitation of the former or not.

In *Trusler* v. *Murray* (*a*) Lord Kenyon put the point in the same light, and said, "The main question here is, whether, in substance, the one work is a copy and imitation of the other; for undoubtedly, in a chronological work (such was the character of the work before the court) the same facts must be related." And Mr. Justice Story, in his elaborate and learned judgment in *Emerson* v. *Davies* (*b*), laid it down as the clear result of the authorities in cases of this nature, that the true test of piracy or not, is to ascertain whether the defendant has, in fact, used the plan, arrangements, and illustrations of the plaintiff as the model of his own book, with colourable alterations and variations only to disguise the use thereof; or whether his work is the result of his own labour, skill, and use of common materials and common sources of knowledge, open to all men, and the resemblances are either accidental or arising from the nature of the subject. In other words, whether the defendant's book is, *quoad*

(*a*) 1 East, 363, note.

(*b*) 3 Story (Amer.) 768, 793.

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hoc, a servile or evasive imitation of the plaintiff's work, or a *bonâ fide* original compilation from other common or independent sources.

An American court, in speaking of a case in which the defendant had pirated a portion of an arithmetic belonging to the plaintiff, observed that the real question on the point was not whether certain resemblances existed, but whether these resemblances were purely accidental and undesigned, and unborrowed, because arising from common sources accessible to both the authors, and the use of materials equally open to both—whether, in fact, the defendant used the plaintiff's work as his model, and imitated and copied that, and did not draw from such common sources or common materials. Then again, it had been said that, to amount to piracy, the work must be a copy and not an imitation. This, as a general proposition, could not be admitted. It was true the imitation might be very slight and shadowy. But, on the other hand, it might be very close, and so close as to be a mere evasion of the copyright, although not an exact and literal copy. "It falls within that class of cases," said Mr. Justice Story, "where the differences between different works are of such a nature, that one is somewhat at a loss to say whether the differences are formal or substantial; whether they indicate a resort to the same common sources to compile and compose them, or one is (as it were) *uno flatu* borrowed from the other, without the employment of any research or skill, with the disguised but still apparent intention to appropriate to one what in truth belongs exclusively to the other, and with no other labour than that of mere transcription, with some omissions or additions as may serve merely to veil the piracy. It is like the case of patented inventions in art or machinery, where the resemblances or diversities between the known and the unknown, and between invention and imitation, are so various or complicated, or minute or shadowy, that it is exceedingly difficult to say what is new or not, or what has been pirated and what is substantially different. The

approaches on either side may be almost infinitely varied, and the identity or diversity sometimes becomes almost evanescent. In many cases, the mere inspection of a work may at once betray the fact that it is borrowed from another author, with merely formal or colourable omissions or alterations. In others, again, we cannot affirm that identity in the appearance or use of the materials is a sufficient and conclusive test of piracy, or that the one has been fraudulently or designedly borrowed from the other. Take the case, for example, of two maps of a city, a county or a country. We cannot predicate that the one is a piracy from the other, simply because their external appearance is in nearly all respects the same, with or without some additions or alterations or omissions. Take the case of two engravings copied from the same picture, or two pictures of natural objects by different artists; it would not be practicable, in many cases, from the mere inspection of them and their apparent identity, to say, that the one was a transcript of the other. It would be necessary to resort to auxiliary and supplementary evidence to establish the fact either way (*a*)."

Not every imitation a proof of plagiarism.

"As not every instance of similitude," observes Dr. Johnson, "can be considered as a proof of imitation, so not every imitation ought to be stigmatized as plagiarism. The adoption of a noble sentiment, or the insertion of a borrowed ornament, may sometimes display so much judgment as will almost compensate for invention; and an inferior genius may, without any imputation of servility, pursue the path of the ancients, provided he declines to tread in their footsteps."

4. By reproduction under an abridged form.

4th. Copyright may be infringed by reproducing the whole or a part under an abridged form.

A fair abridgment, when the understanding is employed in retrenching unnecessary circumstances, is not a piracy of the original work. Such an abridgment is allowable, and is regarded in the light of a new work. The law with reference to abridgments might, we think, with justice

(*a*) *Emerson* v. *Davies et al.*, 3 Story (Amer.) 768–784.

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receive some modification. The decisions on the subject are somewhat inconsistent. The fundamental principle on which is based the protection afforded to authors from piracies, appears to be the injury or damage caused to them by the depreciation in the value of their original works. It seems a very unsatisfactory answer to an original author, who has been injured by an abridgment, to say, that because the wrongful taker has exhibited talent and ingenuity, both in the taking and in the use which he has made of it, the original author has no remedy. "The form," says Mr. Curtis (*a*) "under which the original matter reappears should be treated as a disguise; and the extent of the transformation shows only the extent to which the disguise has been carried, as long as anything remains which the original author can show to be justly and exclusively his own."

Now, few abridgments do not affect in some way the original work. By the selection of all the important passages in a comparatively moderate space, the quintessence of a work may be piratically extracted, so as to leave a mere *caput mortuum*. These considerations have been relied upon by the judges in coming to a determination upon the subject, and the proposition, that an abridgment is not a piracy of the original copyright, must be received with many qualifications.

The first case is that of *Dodsley* v. *Kinnersley* (*b*), where

(*a*) 'Copyright,' 272.

(*b*) Amb. 403. See *Pinnock* v. *Rose*, 2 Bro. C. C. 85, note. Mr. Curtis, the learned author of an American work on copyright, thus states, in his lucid style, the injustice of the law respecting abridgments: "When the author of a book," says he, "of whatever kind, possessing the legal attributes of originality, has secured his copyright according to the prevailing law of his country, he has secured the exclusive right to print and publish his own book. In the jurisprudence with which we are concerned, this right includes the whole book and every part of it; for we have seen that there may be a piratical taking of extracts and passages, and that the quantity thus taken may be immaterial. It includes also, or may include, the style, or language and expression; the learning, the facts, or the narrative; the sentiment and ideas, as far as their identity can be traced; and the form, arrangement, and combination which the author has given to his materials. These are, or may be, all distinct objects of the right of property; and in every work of originality, likely to be abridged or capable of being abridged, they are all important objects of that right. However imperfectly the subject may have been regarded in

an injunction was applied for, to restrain the publication of an abridgment of Dr. Johnson's 'Rasselas.' It appeared that not one-tenth part of the first volume had been abstracted, and that the injury alleged to have been sustained by the author arose from the abridgment containing the narrative of the tale, and not the moral reflections. The Master of the Rolls, Sir Thomas Clarke, refused the injunction, saying, "I cannot enter into the goodness or badness of the abstract.

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former times, it is now, I think, to be regarded as settled, that whatever is metaphysically part or parcel of the intellectual contents of a book, if in a just sense original, is protected and included under the right of property vested by law in the author; and it is very material to observe, that the arrangement, the method, the plan, the course of reasoning, or course of narrative, the exhibition of the subject, or the learning of the book, may be, according to its character, as much objects of the right of property, as the language and the ideas.

"What then does the maker of an abridgment print, publish and sell, after he has made it? He has been employed, according to the definition above quoted, 'in retrenching unnecessary and uninteresting circumstances, which rather deaden the narration;' that is to say, he has rejected what *in his judgment* are redundancies. Does this make him the author or proprietor of what remains? If the work be a history, did he, the person abridging it, compile the materials into their present shape, and describe the course of events, and embody the whole of what constitutes the intellectual contents of the book, or are these things the product of another's labour, research and faculty of writing? If it be a fictitious narrative, whose genius created the characters, and animated them with the sentiments which they utter, and invented the pleasing incidents of their mock existences, and wove the whole into the novel or the poem; which exists as an intellectual whole, after as well as before the process by which 'the unnecessary and uninteresting circumstances' are 'retrenched?' Or, if it be a work of science, or a treatise in any branch of knowledge, whose are the ideas, the course of reasoning and illustration, the plan and analysis of the subject, and the collection and arrangement of materials which constitute the identity of the book? These questions can have but one answer; and if the abridgment, in any given case, consists solely in the reduction of the bulk of the volume by the rejection of redundancies, it is a mere republication of a connected series of extracts, in a different juxtaposition from the original author's, to which the party had no title whatever. On the other hand, if the abridgment not only rejects redundancies, but also clothes the sentiments and ideas which may be left, in different phraseology, then it falls under the predicament of a colourable alteration, which cannot escape the censure of justice." And in a note he takes the above case of Dr. Johnson's 'Rasselas,' and adds, "The moral reflections are left out, the narrative goes into the 'Gentleman's Magazine.' Whose genius produced that stately and immortal fiction? Who described and created the characters of Imlac, and the Princess, and the Prince of Abyssinia, and placed them in the Happy Valley, and sent them forth in a series of gentle trials and pleasing and sad perplexities, in the world beyond its walls? Who wrote that narrative? Not, certainly, the Grub Street hack, who was employed to 'leave out the reflections.' What he took and his employers published, was the literary property of another, the profits of which the law had not vested in them."—Page 273.

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It may serve the end of an advertisement. In general, it tends to the advantage of an author, if the composition be good; if it be not, it cannot be libelled. What I materially rely upon is, that it could not tend to prejudice the plaintiffs, when they had before published an abstract of the work in the 'London Chronicle.' If I were to determine this to be elusory, I must hold every abridgment to be so." Chancellor Kent, in referring to this case, says, "This latitudinarian right of abridgment is liable to abuse, and to trench upon the copyright of the author. The question as to a *bonâ fide* abridgment may turn, not so much upon the quantity as the value of the selected materials" (*a*).

In *Dickens* v. *Lee* (*b*), the plaintiff's work was an imaginative tale; the defendant had taken the fable, the characters, the incidents, the names, and even the style of language. It is to be gathered from the report, that thus using all the plaintiff's materials, he had told the story in a shorter manner, and he relied upon abridgment as his defence; but the court held that such an abridgment was not an exercise of mental labour deserving the character of an original work, and granted an injunction, putting the plaintiff to establish his right at law, if the defendant desired it. In this case, Vice-Chancellor Knight Bruce is reported to have said, that he was not aware that one man had the right to abridge the works of another; on the other hand, he did not mean to say that there might not be an abridgment which might be lawful, which might be protected; but, to say that one man had the right to abridge, and so publish in an abridged form, the work of another, without more, was going much beyond his notion of what the law of this country was.

In the case of *Butterworth* v. *Robinson* (*c*), a motion was made upon certificate of the bill, for an injunction to restrain the defendant from selling a work, entitled, 'An

(*a*) 2 Kent's Com. 382, note; *Gyles* v. *Wilcox*, 2 Atk. 141. See Campbell's 'Lives of the Chancellors,' vol. v. p. 56; 2 Story, Eq. Jur. s. 939.
(*b*) 8 Jur. 183.
(*c*) 5 Ves. 709.

Abridgment of Cases argued and determined in the Courts of Law, &c.,' until answer or further order. A copy of the work was handed to the Lord Chancellor. In support of the motion it was stated, that this work was by no means a fair abridgment; that, except in colourably leaving out some parts of the cases, such as the arguments of counsel, it was a mere copy *verbatim* of several of the reports of cases in the courts of law, and among them of the 'Term Reports,' of which the plaintiff was proprietor; comprising not a few cases only, but all the cases published in that work; the chronological order of the original work being artfully changed to an alphabetical arrangement under heads and titles, to give it the appearance of a new work. In support of the motion, *Bell* v. *Walker* (*a*) was cited. The Lord Chancellor said, "I have looked at one or two cases, with which I am pretty well acquainted, and it appears to me an extremely illiberal publication. Take the injunction upon the certificate of the bill filed, to give them an opportunity of stating what they can upon it."

The leading case on the subject of piracy, by way of digest, is that of *Sweet* v. *Benning* (*b*), where it was held by a majority of the judges that parties who take *verbatim* portions of reports (as the head-notes), the copyright of which belongs to others, and put them together, merely arranged in a different manner (as in an alphabetical order), so as to form a different work, of which they make any considerable proportion, will be guilty of piracy. The court were divided, and accordingly the judges delivered their judgments *seriatim*. Jervis, C.J., on the question of piracy, said: "The head-notes of the 'Jurist' reports may indeed be considered, perhaps, as in themselves a species of brief and condensed reports, the reporter furnishing in each case two reports, in one of which he gives the facts, the arguments, and the judgments at length, and in the other an abstract of the decision, conveying the principle

(*a*) 1 Bro. C. C. 451.
(*b*) 16 C. B. 459; Com. Law. Rep. vol. ii. pt. ii. 1452.

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upon which it is founded, and the pith and substance of the case. The defendants have, for the purposes of their digest, copied *verbatim* the head-notes, the shorter species of reports. But if they were allowed to take the head-note, it is plain that they might equally have taken the report. And if they might take either, they might take both, and might republish the entire of the reports, merely altering their arrangement by putting them in an alphabetical order. The question is, whether, by this arrangement of matter, which is taken *verbatim* from the plaintiffs' periodical, they acquire a right so to use it. I think not. I admit that a digest may be made from a copyright work without piracy upon it, but that is a work in which a man applies his mind to the labour of extracting the principles of the original work, and by his labour, really produces a new work. It is not so where he merely reduces extracts or passages of another man's work to an alphabetical order, which is a work a clerk might accomplish, and requires neither learning nor study, but may be little more than a merely mechanical operation of cutting out and classifying under certain letters of the alphabet. In one of the cases cited the 'Term Reports' were so dealt with, and it was held to be a piracy. I think that case is decisive of the present, and therefore that the plaintiffs are entitled to our judgment."

What use of former musical composition constitutes a piracy.

In *D'Almaine* v. *Boosey* (*a*) the question arose as to what imitation or use of a musical composition constituted a piracy. In this case the plaintiffs published, first, the overture to Auber's opera of '*Lestocq*,' and then a number of airs, and all the melodies. It was admitted that the defendant had published portions of the opera containing the melodious parts of it; that he had also published entire airs; and that in one of his waltzes he had introduced seventeen bars in succession, containing the whole of the original air, although he added fifteen other bars which were not to be found in it. It was, nevertheless, contended that this was not a piracy, because the whole of the air

(*a*) 1 Y. & Col. 288.

had not been taken; and because the latter publication was adapted for dancing only, and that some degree of art was needed for the purpose of so adapting the piece; and, moreover, but a small part of the merit belonged to the original composer. Lord Lyndhurst, then Lord Chief Baron, observed that it was a nice question, what should be deemed such a modification of an original work as should absorb the merit of the original in the new composition. "No doubt," said he, "such a modification may be allowed in some cases, as in that of an abridgment or a digest. Such publications are in their nature original. Their compiler intends to make of them a new use; not that which the author proposed to make. Digests are of great use to practical men, though not so, comparatively speaking, to students. The same may be said of an abridgment of any study; but it must be a *bonâ fide* abridgment, because if it contains many chapters of the original work, or such as made that work most saleable, the maker of the abridgment commits a piracy. Now it will be said that one author may treat the same subject very differently from another who wrote before him. That observation is true in many cases. A man may write upon morals in a manner quite distinct from that of others who preceded him; but the subject of music is to be regarded upon very different principles. It is the air or melody which is the invention of the author, and which may in such case be the subject of piracy; and you commit a piracy if, by taking, not a single bar, but several, you incorporate in the new work that in which the whole meritorious part of the invention consists.

"I remember, in a case of copyright, at *nisi prius*, a question arising as to how many bars were necessary for the constitution of a subject or phrase. Sir George Smart, who was a witness in the case, said, that a mere bar did not constitute a phrase, though three or four bars might do so. Now it appears to me that if you take from the composition of an author all those bars consecutively which form

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the entire air or melody, without any material alteration, it is a piracy; though, on the other hand, you might take them in a different order, or broken by the intersection of others, like words, in such a manner as should not be a piracy. It must depend on whether the air taken is substantially the same with the original. Now the most unlettered in music can distinguish one song from another, and the mere adaptation of the air, either by changing it to a dance, or by transferring it from one instrument to another, does not, even to common apprehensions, alter the original subject. The ear tells you that it is the same. The original air requires the aid of genius for its construction, but a mere mechanic in music can make the adaptation or accompaniment. Substantially, the piracy is, where the appropriated music, though adapted to a different purpose from that of the original, may still be recognised by the ear. The adding variations makes no difference in the principle."

5. By translation.

5th. Copyright may be infringed by reproducing the whole or part under the form of a translation. Translations are protected in this country, and an unauthorized copy of a translation, though the original be not entitled to copyright here, is a piracy.

Though it does not appear, if the original work be a foreign work, not entitled to protection in this country, and a translation of it be made and published first by A., and a translation be subsequently made and published by B., that this latter would be necessarily a piracy of A.'s translation or an infringement of his right; yet, a re-translation without the consent of the author of the original work is a piracy whenever that original work is entitled to copyright.

In *Murray* v. *Bogue* (*a*), a case respecting an alleged infringement of the copyright in a guide book, the Vice-Chancellor put the following case: If Boedeker's were a translation of Murray's into German, and the other defendant had re-translated Bœdeker's work into English,

(*a*) 1 Drew. 353, 368.

even if he did not know that Bœdeker's was taken from Murray, the plaintiff's book could not be thus indirectly pirated.

By the International Copyright Act, translations, entitled under that Act to protection in this country, are prohibited (*a*).

(*a*) See *post*, chapter on International Copyright, and App. liv.

CHAPTER VII.

REMEDY AT LAW IN CASES OF INFRINGEMENT OF COPYRIGHT.

Three remedies for infringement of copyright.

THERE are three remedies in cases of infringement of copyright—an action at law, a suit in equity, and in some instances by summary proceeding before justices of the peace. We propose to deal, in the first place, with the remedy provided by the 5 & 6 Vict. c. 45.

Remedy for piracy by action on the case.

By the 15th section of this Act, it is provided, that if any person in any part of the British dominions shall print or cause to be printed, either for sale or exportation, any book in which there shall be a subsisting copyright, without the consent in writing of the proprietor, or import for sale or hire any such book unlawfully printed from parts beyond the sea, or knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose for sale or hire, or shall have in his possession for sale or hire, any such book without the consent of the proprietor, such offender shall be liable to a special action on the case, at the suit of the proprietor of the copyright, to be brought in any court of record in that part of the British dominions in which the offence shall be committed: Provided always, that in Scotland such offender shall be liable to an action in the Court of Session, there to be brought and prosecuted in the same manner as any other action of damages to the like amount (*a*). No person except the proprietor of the copyright, or some one authorized by him, may import into the United Kingdom,

(*a*) 5 & 6 Vict. c. 45, s. 15; App. xxvii.

or other parts of the British dominions, for sale or hire, any printed book first composed or written, or printed and published, in the United Kingdom, wherein there is copyright, and reprinted in any country or place out of the British dominions; and if any person, not the proprietor or party authorized by him, shall import or bring, or cause to be imported or brought, for sale or hire, any such printed book into the British dominions, or shall knowingly sell, publish, or expose for sale, or let to hire, or have in his possession for sale or hire, any such book, then every such book shall be forfeited and be seized and destroyed by any officer of the customs or excise, and every person so offending shall, on conviction, forfeit the sum of ten pounds, and double the value of every such book so unlawfully imported, sold, published, or exposed for sale, or let to hire; five pounds to the use of such officer of customs or excise, and the remainder of the penalty to the use of the proprietor of the copyright in such book (*a*).

By the customs laws it is absolutely prohibited to import into the United Kingdom books wherein the copyright shall be subsisting, (first composed, or written, or printed in the United Kingdom, and printed or reprinted in any other country), as to which the proprietor of such copyright or his agent shall have given to the Commissioners of Customs a notice in writing that such copyright subsists, such notice also stating when such copyright will expire.

All copies of any book wherein there may be copyright, and of which entry shall have been made in the registry book, and which shall have been unlawfully printed or imported without the consent of the registered proprietor of such copyright, shall be deemed to be the property of

(*a*) 5 & 6 Vict. c. 45, s. 17; App. xxix. As to separate penalties upon each separate violation of the Act on the same day, see 12 Geo. 2, c. 36, and *Pooke* v. *Milliken*, 3 T. R. 509. A publisher of a piratical work will not be liable at law for the infringement, unless guilty knowledge can be brought home to him; such knowledge will not be presumed from the mere fact of his selling piratical works in print: *Leader* v. *Strange*, 2 Car. & Kir. 1010.

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the proprietor of such copyright; and such proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same, or damages for the detention thereof, in an action of detinue, from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of trover (*a*).

Notice of objection to plaintiff's title to be given.

The 16th section of the Copyright Act, 1842, enacts that in actions for piracy the defendant shall give notice of the objections to the plaintiff's title on which he intends to rely; and if the nature of his defence be that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person whom he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when and the place where such book was first published; otherwise the defendant in such action shall not, at the trial or hearing of such action, be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright therein; and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the copyright therein, than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication, with the title, time, and place specified in such notice. (*b*)

In *Leader* v. *Purday* (*c*) a gentleman named Bellamy

(*a*) 5 & 6 Vict. c. 45, s. 23; App. xxxii. (*b*) App. xxviii. (*c*) 7 C. B. 4.

adapted words to an old air called 'Pestal,' and procured a friend of the name of Horne to write an accompaniment. The defendant, in an action for piracy of the same, gave notice of the following objections, among others: 'That the plaintiffs were not the owners of the copyright; that there was no subsisting copyright in the musical publication.' It was held that the objection could not be taken by the defendant, *that the copyright of the air was in Horne, and not assigned by writing to Bellamy,* Horne's name not being mentioned in the objections, as required by the above section. This was decided, although the objection appeared upon the plaintiff's case.

Notice of objection by defendant.

The notice of objection is sufficient, if it allege a definite publication of the disputed work at some particular place, by some definite party, either before, or simultaneously with, the publication by the plaintiff, or with a publication in another place (*a*).

When sufficient.

And on application by the plaintiff to have the notice of objections delivered with the defendant's pleas under this same section, amended, it was held that the alleged first publication having occurred abroad, and so far back as the year 1831, it was sufficient for the defendant to state the year of the first publication, and that it was not necessary that he should be bound to specify the day or month; but that he was bound to state the name of the party whom he alleged to be the proprietor or first publisher, the title of the work, the place where and the time when the first publication took place (*b*).

Amending notice of objection.

In *Chappell* v. *Purday* (*c*), however, the defendant was allowed to plead that the plaintiff was not the proprietor of the copyright at the time of commencing the grievance; and also that he was not the proprietor of the copyright when the books were printed.

(*a*) *Boosey* v. *Purday*, 10 Jur. 1038; see *Boosey* v. *Davidson*, 4 D. & L. 147; *Leader* v. *Purday*, 7 C. B. 4; 1 D. & L. 408; *Sweet* v. *Benning*, 16 C. B. 459; Bullen and Leake's 'Pleadings,' 298, 720; and see *Neilson* v. *Harford*, 8 M. & W. 806. For form of particulars of objections, *Cocks* v. *Purday*, 5 C. B. 862.

(*b*) *Boosey* v. *Davidson*, *supra*. (*c*) 1 D. & L. 458; 12 M. & W. 303.

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In any action the defendant may plead the general issue and give special matter in evidence.

The 26th section of the Act enacts that if any action or suit be commenced or brought against any person for doing or causing to be done anything in pursuance of this Act, the defendant may plead the general issue and give the special matter in evidence; and if upon such action a verdict be given for the defendant, or the plaintiff become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant has by law in any case.

Construction of the words "in pursuance of this Act."

According to numerous decisions, the words, *in pursuance of this Act*, do not only refer to those who have kept within the strict line of their duty, but also to those who intended to do so, but have by mistake gone beyond it. The general rule seems to be settled, that persons who *bonâ fide* and honestly believe that they are acting in the execution of the powers conferred on them by such a statute as the above, are within its privilege, although, in fact, they may have mistaken the extent of their power and have exceeded it, or failed to comply with the directions of the enactment (*a*).

All actions to be commenced within twelve months.

All actions, suits, bills, indictments, or informations for any offence committed against this Act, must be commenced within twelve calendar months after the commission of the offence; but this limitation does not extend to any actions, suits, or proceedings commenced under this Act in respect of copies of books required to be delivered to the British Museum and the four other libraries (*b*); nor to suits in equity, or to actions at common law for infringement (*c*).

In an action of damages for infringement of copyright, the *locus* of the infringement was not specified; yet the

(*a*) *Smith* v. *Shaw*, 10 Barn. & Cres. 277; cited Burke's Sup. to Godson's Copy, 99; *Gaby* v. *The Wilts and Berks Canal Co.*, 3 M. & Selw. 580; *Theobald* v. *Crichmore*, 1 B. & Ald. 227; *Parton* v. *Williams*, 3 *ibid.* 330; *Smith* v. *Wiltshire*, 2 B. & B. 619; *Cook* v. *Leonard*, 6 B. & C. 351.

(*b*) 5 & 6 Vict. c. 45, s. 26.

(*c*) See the principle on which were decided the cases of *Clark* v. *Bell*, 29 Feb. 1804; Mor. Dict. of Dec. No. 3, App., Lit. Prop.; and *Stewart* v. *Black*, 9 Sess. Cas., 2nd series, 1026.

plaintiff was allowed to amend his statement on payment of expenses incurred since the closing of the record (*a*).

The Act 2 & 3 Vict. c. 22, imposes a penalty of 5*l.* per copy for every omission to print the name and place of abode of the printer, on the first or the last leaf of every paper or book. It is no answer, however, to an action for infringing the copyright of a work, that it was printed and published without the name and residence as required by this Act (*b*).

(*a*) *Graves & Co.* v. *Logan*, 7 Sess. Cas. 3rd series, 204.
(*b*) *Chappell* v. *Davidson*, 18 C. B. 194.

CHAPTER VIII.

REMEDY IN EQUITY IN CASES OF INFRINGEMENT OF COPYRIGHT.

Remedy by *injunction.*

In equity is to be found the most usual and expeditious means of obtaining redress from piracy, and for preventing the continuance of the injury. "*Melius est in tempore occurrere, quam post causam vulneratam remedium quærere*" (*a*). Here, by the preliminary process of injunction, justice is more readily administered than in a court of law—the property in question protected from, perhaps, irreparable damage pending the trial of the right; and the wrong is not permitted to continue until the final decision of the court, at which time, frequently, from the circumstances of the case, the mischief may be irremediable (*b*).

Where the question of legal injury is referred to a court of law under the sanction of a court of equity, an injunction is granted to restrain the evil complained of until the merits of the case can be finally heard, when, if the opinion of the court of law be in favour of the plaintiff, it will grant its final preventive relief, which, by way of distinction from the temporary process just mentioned, is termed a perpetual injunction.

Definition of an injunction.

An injunction may be described as a prohibitory writ, issuing out of Chancery to restrain the defendant from using some legal right, the exercise of which would be contrary to equity and good conscience; or from doing some act inconsistent with the admitted or probable legal rights of the complainant, and with the due preserva-

(*a*) 2 Inst. 299.

(*b*) *Vide* 2 Story, Eq. Jur. 926; 1 Fonbl. Eq. 34, *notis*; Kerr. on Injunc. 439; *Saunders* v. *Smith*, 3 My. & Cr. 728; *Platt* v. *Button*, 19 Ves. 447.

tion of the property affected by the act sought to be restrained (*a*).

Formerly, courts of equity would not interfere by way of injunction, to protect copyrights any more than patent rights, until the title had been established at law (*b*). Thus, in an anonymous case reported in Vernon (*c*), upon a motion by the king's patentees for an injunction to stay the sale of English Bibles printed beyond the sea, Lord Keeper King refused the application until the validity of the patent had been established at law. The same judge again refused, in a subsequent case (*d*), to grant an injunction against printing Bibles, until the plaintiffs had brought their action in the King's Bench.

Lord Mansfield's opinion upon the issuing of injunctions.

In the general discussion of the common-law right of literary property, in *Millar* v. *Taylor* (*e*), great stress was laid upon the different injunctions which had been granted by courts of equity in favour of such right. Lord Mansfield (who had had very great experience in the Court of Chancery) said, that he looked at the injunctions which had been granted or continued before hearing, as equal to any final decree; for, such injunction never was granted upon motion, unless the legal property of the plaintiff was made out, nor continued after answer, unless it remained clear. The Court of Chancery never granted injunctions in cases of this kind, when there was any doubt. Sir Joseph Yates, on the contrary, in combatting the general common-law right, expressed his opinion that the injunction, being temporary only, decided nothing at all. Lord Camden, in his speech in *Donaldson* v. *Becket*, already referred to, expressed himself upon this part of the argument as follows: "All the injunction cases have been

(*a*) Drewry on Injunc. Intro. 5.

(*b*) 2 Story Eq. Jur. chap. 23. s. 935; *Hills* v. *University of Oxford*, 1 Vern. 275; *Baskett* v. *Cunningham*, 2 Eden, 137; *East India Co.* v. *Sandys*, 1 Vern. 127; *Jefferys* v. *Baldwin*, Amb. 164; *Bateman* v. *Johnson*, Fitz-Gib. 106; *Blanchard* v. *Hill*, 2 Atk. 485. See *Redfield* v. *Myddleton*, 7 Bosw. (Amer.) 649.

(*c*) 1 Vern. 120.

(*d*) *Hills* v. *University of Oxford*, 1 Vern. 275. See *Baskett* v. *Cunningham*, 2 Eden, 137; *Grierson* v. *Jackson*, 2 Ridg. Irish T. R. 304.

(*e*) 4 Burr. 2303.

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ably given; though I shall only add, in general terms, that they can prove nothing if a thousand injunctions had been granted, unless the Chancellor, at the time he granted them, had pronounced a solemn opinion, that they were grounded upon the common law. Lord Hardwicke, after twenty years' experience, in the last case of the kind that came before him, declared that the point had never yet been determined. Lord Northington granted them on the idea of a doubtful title. I continued the practice on the same foundation, so did the present Lord Chancellor. Where then is the Chancellor who had declared, *ex cathedrâ*, that he decided upon the common-law right? Let the decision be produced in direct terms" (*a*).

The modern practice.

The modern practice of granting injunctions is somewhat different; for now, in cases where the circumstances warrant it, the party will be entitled to an injunction, not only to the hearing, but, upon proper application, a perpetual injunction will issue.

Where this remedy applied, and on what evidence.

The jurisdiction will be exercised in all cases where there is a clear colour of title founded upon long possession and assertion of right (*b*). Even an equitable interest limited in point of time or extent is sufficient (*c*). But a mere agent to sell has not such a real interest in a work as will entitle him to relief (*d*). Where the plaintiff states circumstances showing a good equitable title, the court will, for the purpose of determining the fact of piracy, order the defendant to admit the legal title of the plaintiff (*e*). Judge Story remarks: "In some cases a court of equity will take upon itself the task of inspection and comparison of books alleged to be piracies; but the usual

(*a*) Cited from Evans' 'Statutes,' vol. ii. p. 26. *Vide Bruce* v. *Bruce*, cited 13 Ves. 505; *Harmer* v. *Plane*, 14 Ves. 130; *Hogg* v. *Kirby*, 8 Ves. 215, 224; and Lord Erskine, in *Gurney* v. *Longman*, 13 Ves. 493, 505.

(*b*) *Univ. of Oxf. and Cam.* v. *Richardson*, 6 Ves. 689; *Maxman* v. *Tegg*, 2 Russ. 385, 391; *Sheriff* v. *Coates*, 1 Russ. & My. 159, 167; *Colburn* v. *Duncombe*, 9 Sim. 151; *Chappell* v. *Purday*, 4 Y. & C. 485; *Bohn* v. *Bogue*, 10 Jur. 420.

(*c*) *Sweet* v. *Cator*, 11 Sim. 572.

(*d*) *Nicol* v. *Stockdale*, 3 Swans. 687.

(*e*) Kerr on Injunc. 439, citing *Dickens* v. *Lee*, 8 Jur. 183; *Bohn* v. *Bogue*, *supra*; *Sweet* v. *Shaw*, 8 L. J. (N.S.) Ch. 216; *Sweet* v. *Cater*, 11 Sim. 572.

practice is, to refer the subject to a master, who then reports whether the books differ, and in what respects; and upon such a report the court usually acts in making its interlocutory, as well as its final decree" (*a*). And Mr. Curtis, on the same head, says: "In general, if the court sees strong ground for supposing that the defendant's work is a violation of the plaintiff's copyright, the course is to grant an injunction *ex parte*, until answer or further order. Then, in order to ascertain the fact of piracy or no piracy, it is referred to a master to examine into the originality of the new book, or the court takes upon itself the inspection of both works. Where the works are long and of a complex character, containing original matter mixed with much that is common property, they will be referred to a master; but where they are of a class affording facility for the detection of piracy by immediate inspection, the court will examine them" (*b*). At the present day the court usually takes upon itself the inspection of the book (*c*).

Injunction auxiliary to legal right.

In all cases of injunctions in aid of legal rights, whether it be copyright, patent right, or some other description of legal right which comes before the court, the office of the court is consequent upon the legal right; and it generally happens, that the only question the court has to consider is, whether the case is so clear and so free from objection upon the grounds of equitable consideration, that the court ought to interfere by injunction without a previous trial at law, or whether it ought to wait till the legal title has been established. That distinction depends upon a great variety of circumstances, and it is utterly impossible to lay down any general rule upon the subject, by which the discretion of the court ought in all cases to be regulated (*d*).

In what cases it will be granted.

If irreparable damage would be caused to the property

(*a*) 2 Story, Eq. Jur. 124, s. 941; Eden on Injunc. chap. 13, 289; *Carnan* v. *Bowles*, 2 Bro. C. C. 80; —— v. *Leadbetter*, 4 Ves. 681; *Carey* v. *Faden*, 5 Ves. 24; *Jeffery* v. *Boucles*, 1 Dick. 429. (*b*) Curtis on Copy. 325.

(*c*) *Murray* v. *Bogue*, 1 Drew. 368; *Spiers* v. *Brown*, 6 W. R. 352; *Jarrold* v. *Houlston*, 3 K. & J. 708; *Holton* v. *Arthur*, 1 H. & M. 603; *Pike* v. *Nicholas*, 38 L. J. (Ch.) 529; L. R. 5 Ch. Ap. 251.

(*d*) *Per* Lord Cottenham, in *Saunders* v. *Smith*, 3 My. & Cr. 728.

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of the plaintiff by the refusal of the court to interfere, the injunction will be immediately granted (*a*). If, however, an injunction would cause a severer injury to the defendant than that occasioned the plaintiff by reason of his being required, in the first instance, to establish his legal right, the other alternative will be adopted (*b*).

Equitable remedy refused in cases of a certain description.

Though the author or his assignee may enjoy a *primâ facie* legal title sufficient to support an application for an injunction, yet the subject of his title may be such that, for reasons of morality or public policy, no action at law could be maintained upon it (*c*). The doctrine of equity in reference to works of such a nature is, that if an author can maintain an action he may, at least with some exceptions, come into equity to have his remedy made more effectual. But if the action could not be maintained in the former court, nothing can be done in equity, which is only auxiliary to the law, and therefore gives not relief, except where the law gives damages (*d*). In Scotland the question is disposed of otherwise; the principle adopted in English practice is not sanctioned. Even if property in the work be the sole ground of interdict, the proof of ownership alone (undistracted by any inquiry into the nature or value or subject of it) in that country guides judicial interference. For the use or abuse of that property the law provides another remedy, in administering which, that particular use forms the true point of inquiry.

Scotch law on this subject.

As to the continuation of the injunction, or its dissolution.

It is frequently a matter of difficulty to decide whether the injunction should be continued, or whether it should be dissolved until hearing (*e*). An injunction should in general be granted and maintained in the interim, if the defendant's publication is prejudicial to the plaintiff,

(*a*) *Sweet* v. *Shaw*, 8 L. J. Ch. (N.S.) 266; *Dickens* v. *Lee*, 8 Jur. 183.

(*b*) *Saunders* v. *Smith*, *supra*; *Bramwell* v. *Halcomb*, 3 My. & Cr. 737; *Spottiswoode* v. *Clarke*, 2 Ph. 154, 157; *M'Neil* v. *Williams*, 11 Jur. 344; Kerr on Injunc. 442.

(*c*) *Vide* 2 Mer. 439; *Hime* v. *Dale*, 2 Camp. 31, *notis per* Lord Ellenborough.

(*d*) *Walcot* v. *Walker*, 7 Ves. 1; *Lawrence* v. *Smith*, 1 Jac. 471; *Murray* v. *Benbow*, 1 Jac. 474, *notis*; *Southey* v. *Sherwood*, 2 Mer. 435.

(*e*) *Bramwell* v. *Halcomb*, 3 My. & Cr. 737; *Univ. of Oxf. and Cam.* v. *Richardson*, 6 Ves. 689.

although the plaintiff's right admits of a fair doubt; but in cases of works the sole or the chief value of which arises from a temporary demand, the court acts upon the opposite principle, and if there be a doubt as to the legal right, does not grant the injunction before the establishment of that right at law (*a*).

Thus, in *Spottiswoode* v. *Clarke* (*b*), the Lord Chancellor laid down the principles which ought to govern the discretion of the court, as follows: "The first question to be determined is as to the legal right, and if the court doubts about that, it may commit great injustice by interfering until that question has been decided."

Where a portion only of the work is piratical.

Where a very large proportion of a work of a piratical nature is unquestionably original, but the parts which have been copied cannot be separated from those which are original without destroying the use and value of the original matter, he who had made an improper use of that which did not belong to him must suffer the consequences of so doing, for an injunction will be issued against the whole.

In cases of this nature the court has first to decide whether there ought to be an injunction; and if there is to be one, it has next to determine whether the injunction should be issued against the entire work, or only against a portion of it. The extent to which the injunction ought to go, must, in each case, depend on the particular circumstances attending it.

The opinion of Lord Hardwicke (*c*) appears to have been that an injunction might be granted against the whole, although only a portion was pirated; and in the instance of Milton's 'Paradise Lost,' with Dr. Newton's notes, there being nothing new in that work except the notes, he granted an injunction against the entire book. There is the record of a case tried before Lord Kenyon (*d*), in which he states that the question whether

(*a*) Curtis on Copy. 317. (*b*) 2 Phillips' Ch. Rep. 154.

(*c*) 4 Burr. 2326. See *Story's Executors* v. *Holcombe*, 4 McLean. (Amer.) 306, 315.

(*d*) *Vide Cary* v. *Longman*, 1 East, 360; *Trusler* v. *Murray*, 1 East, 363.

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an injunction could be issued against the whole of a book on account of the piratical quality of a part, came before Lord Bathurst; and Lord Bathurst seems to have held it could not, unless the part pirated was such, that granting an injunction against such part necessarily destroyed the whole. Lord Kenyon, who possessed great information on this subject, states himself to have been perfectly satisfied with the opinion of Lord Bathurst, as bearing upon the judgment of Lord Hardwicke and the other cases. In the case referred to before Lord Kenyon the declaration at law contained a count for publishing the whole work, and another for publishing a part; and Lord Kenyon's direction to the jury seems to have been to find damages for publishing the part only.

"In the cases which have come before me," said Lord Eldon, in *Mawman* v. *Tegg* (*a*), the case from which we have already quoted, "my language has been, that there must be an injunction against such part as has been pirated; but in those cases the part of the work which was affected with the character of piracy was so very considerable, that if it were taken away there would have been nothing left to publish except a few broken sentences. Now, the difficulty here is this: whether I have before me sufficient grounds to authorize me to say, how far the matter which is proved (if I may use the word) to have been copied, is sufficient to enable me to decide how much I may enjoin against; and if I can be thus authorized to say how much I can enjoin against, then the question is, what will be the effect if that injunction applied to so much of the work, in the state of uncertainty in which we now are? Or whether, on the other hand, as the matter cannot be tried by the eye of the judge, I must not pursue a course which has been adopted in cases of a similar nature, namely, refer it to the Master (*b*) to report to what extent the one book is a copy of the other, upon

(*a*) 2 Russ. 385, 399.

(*b*) *Carnan* v. *Bowles*, 1 Cox. 283, S. C.; 2 Bro. C. C. 85; *Jeffrey* v. *Bowles*, 1 Dick. 429; *Nicol* v. *Stockdale*, 12 Ves. 277; —— v. *Leadbetter*, 4 Ves. 681. In America, in *Smith* v. *Johnson*, 4 Blatch. (Amer.) 252.

the comparison of all the numbers [the works were periodicals] that have been published?

"Another way of ascertaining the facts of the case is to send it to a jury; and, in either of those ways of disposing of it, the court will order the defendant to keep an account of the profits in the mean time. But one difficulty in all these cases is that, though keeping an account of the profits may prevent the defendant from deriving any profit, as he may ultimately be obliged to account to the plaintiff for all his gains, yet, if the work, which the defendant is publishing in the meantime, really affects the sale of the work which the plaintiff seeks to protect, the consequence is, that the rendering the profits of the former work to the complaining party may not be a satisfaction to him for what he might have been enabled to have made of his own work, if it had been the only one published; for he would argue, that the profits of the defendant, as compared with the profits which he, the plaintiff, has been improperly prevented from making, could only be in the proportion of 8s., the price of a copy of the one book, to one guinea, the price of a copy of the other. If the principle upon which the court acts, is, that satisfaction is to be made to the plaintiff, I cannot see, though I never knew it done, why, if a party succeeds at law in proving the piracy, the court could not give him leave to go on to ascertain, if he can, his damages at law; or if, after applying the profits which are handed over to him by the defendants, he can shew that they were not a satisfaction for the injury done to him, I cannot see why the court might not in such a case direct an issue to try what further damnification the plaintiff had sustained."

Due diligence to be observed in obtaining an injunction.

A person who solicits the assistance of the court for the protection of his copyright from violation, must evince due assiduity and diligence in coming to the court. Delay or acquiescence will be fatal to the success of the application, unless it can be satisfactorily accounted for (*a*).

(*a*) *Maxman* v. *Tegg*, 2 Russ. 385, 393; *Baily* v. *Taylor*, Tam. 295; 1 Russ. & My. 73; *Campbell* v. *Scott*, 11 Sim. 31; *Buxton* v. *James*, 5 De G. & Sm. 80; *Tinsley* v. *Lacy*, 1 H. & M. 747.

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In *Mawman* v. *Tegg* five months' delay was adequately explained by the necessity of comparing the whole of the two works for the purpose of discovering the extent of the piracy (*a*).

If the conduct of the party complaining has conduced to the condition of affairs that occasions the application he cannot have relief (*b*). According to 5 & 6 Vict. c. 45, s. 26, all suits and bills should be commenced within twelve months of the offence (*c*).

Methods usually adopted by the court in particular instances.

If the court is satisfied that the alleged title is good, and that there has been a piracy, it may interfere at once and restrain the piracy *simpliciter* by injunction; but if the title is not clear, or the fact of violation is denied, the course the court usually adopts is either to grant the injunction pending the trial of the legal right, or to direct the motion to stand over until hearing, on the terms of the defendant keeping an account of the number of copies sold, in order that justice may ultimately be done between the parties (*d*).

The 25 & 26 Vict. c. 42, commonly known as Rolt's Act, confers upon the Court of Chancery power to determine every question of law and fact incident to the relief sought; and this is now the duty of that court (*e*).

In instances where the publication is of a temporary character.

It is here worthy of remark, that if the work be of such a character that the sale is temporary, the Court of Chancery is more cautious, inasmuch as an intermediate injunction in such a case may be of equal effect with a perpetual injunction (*f*). Where, indeed, an intermediate injunction

(*a*) *Vide Smith* v. *London and S. W. Railway Co.*, 1 K. 408, 412; *Lewis* v. *Chapman*, 3 Beav. 133, 135; *Bridson* v. *Benecke*, 12 Beav. 3; *Lewis* v. *Fullarton*, 2 Beav. 8; *Buxton* v. *James*, *supra*; *Wintle* v. *Bristol and S. Wales Union Railway Co.*, 6 L. T. (N.S.) 20; *Bacon* v. *Jones*, 4 My. & Cr. 433.

(*b*) *Randell* v. *Murray*, Jac. 311; *Saunders* v. *Smith*, 3 My. & Cr. 711. See also *Lewis* v. *Chapman*, 3 Beav. 135; *Platt* v. *Button*, 19 Ves. 447; *Randell* v. *Murray*, *supra*; *Campbell* v. *Scott*, 11 Sim. 31.

(*c*) Kerr on Injunc. chap. 20. s. 1.

(*d*) *Ibid.* chap. 20.; *Walcot* v. *Walker*, 7 Ves. 1; *Wilkins* v. *Aikin*, 17 Ves. 422.

(*e*) *Re Hooper*, 11 W. R. 130; 32 L. J. (Ch.) 55; *Baylis* v. *Watkins*, 7 L. T. (N.S.) 843.

(*f*) See *Gurney and Longman*, 13 Ves. 493, *ante*, p. 120.

is granted it does not often happen that the cause is brought to a hearing; for the merits of the case will probably have been discussed upon the motion (*a*), and therefore it rarely happens that a perpetual injunction is decreed (*b*). If, however, the cause should be brought to a hearing, the court will then, if the plaintiff's cause be relieved of all doubt, grant a perpetual injunction (*c*), or it will dismiss the plaintiff's bill (*d*).

As to the piratical copies which may have been sold, the registered proprietor is not entitled in equity to the gross produce of the sale, but only to the *profits* which the defendant may have made by the sale (*e*). Nor will a court of equity grant its assistance to the party seeking its relief, unless he waive the penalty or forfeiture imposed by the Acts of Parliament (*f*).

Direct invasions of copyright by several persons, cannot be restrained in one suit (*g*).

Mode of procedure.

The mode of procedure is extremely simple. A bill is filed by the proprietor of the copyright, stating his title to the original work, the nature of the piracy, and the consequent injury. If the plaintiff has merely an equitable title, the person in possession of the legal title should be made a party (*h*).

Every application for an injunction before answer must be supported by an affidavit of merits verifying the material statements of the bill (*i*); and where the plaintiff had forgotten a material fact when he made his application

(*a*) 4 Burr. 2324, 2400; *Tonson* v. *Walker*, 3 Swans. 672; 2 Eden, 328.
(*b*) 2 Sw. 430. See *Whittingham* v. *Wooler*, 2 Swans. 428, n.
(*c*) *Macklin* v. *Richardson*, Amb. 694.
(*d*) *Dodsley* v. *Kinnersley*, Amb. 403.
(*e*) *Delf* v. *Delamotte*, 3 Jur. (N.S.) Ch. 933; 3 K. & J. 581.
(*f*) *Colburn* v. *Simms*, 2 Hare, 554; see *Geary* v. *Norton*, 1 De G. & Sm. 9; and *Stevens* v. *Gladding*, 17 How. (Amer.) 455; *Mason* v. *Murray*, cited 3 Bro. C. C. 38; *Brand* v. *Cumming*, 22 Vin. Abr. 315, pl. 4.
(*g*) *Dilly* v. *Doig*, 2 Ves. 486; and see *Hudson* v. *Maddison*, 12 Sim. 416; and *Midwinter* v. *Kincaid*, (H. L.), 11 Feb. 1751, 1 Pat. App. 488.
(*h*) *Colburn* v. *Duncombe*, 9 Sim. 151.
(*i*) No affidavit as to the title of the author or proprietor will be received after the defendant's answer has been filed, though affidavits in opposition to the answer may be read as to the facts: *Platt* v. *Button*, 19 Ves. 447; and see *Norway* v. *Rowe*, *ibid.* 143.

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for the injunction, and so stated on his oath in answer to a motion to dissolve, his defect of memory was held to be no excuse, otherwise the same excuse might prevail in every case.

Neither the bill nor affidavit needs specify the parts of the work stated to have been pirated, though no copyright is claimed in all the identical passages. The Vice-Chancellor, in *Sweet* v. *Maugham* (*a*), said, "It has always been considered sufficient to allege, generally, that the defendant's work contains several passages which have been pirated from the plaintiff's work. Then, when the injunction has been moved for, the two works have been brought into court, and the counsel have pointed out to the court the passages which they rely upon as shewing the piracy."

But where A. applied for an injunction against the stereotyper, to prevent his selling copies printed by him from advance sheets, furnished him by A., of a work written by B., it was held that, an allegation "That sheets were sent to him for the advantage of said B.," and of himself, was too vague to be made the foundation of an injunction on the ground of protecting B.'s rights (*b*).

If the plaintiff claims as assignee, he must, by affidavit or otherwise, show that the assignment to him has been in accordance with the provisions of the Act (*c*); and if there has been a complete assignment, the assignor should not be made a party to the suit (*d*). Any one associated by the proprietor of a copyright with himself in an entry in the book of registry has *primâ facie* a title to sue jointly with him in a court of equity (*e*).

In the majority of cases, the bill prays that an account may be taken of the books printed, and of the profits

(*a*) 11 Sim. 51. (*b*) *Redfield* v. *Myddleton*, 7 Bosw. (Amer.) 619.

(*c*) *Morris* v. *Kelly*, 1 Jac. & W. 481. He must make a particular title, by tracing his title either to the author or his assign, who alone have title under the statute: *Gilliver* v. *Snaggs*, 2 Eq. Abr. 522; 4 Vin. Abr. 278, A. 4.

(*d*) *Sweet* v. *Maugham*, *supra*; *Colburn* v. *Simms*, 2 Hare, 560.

(*e*) *Stevens* v. *Wildy*, 19 L. J. (N.S.) Ch. 190.

thereof, from the person who has pirated from the plaintiff's works, and moreover that an injunction may be issued to restrain the further sale (*a*).

Should the cause be brought to a hearing, and a perpetual injunction be issued, the right to the account will invariably be decreed as incidental to the plaintiff's other relief (*b*). The account is in practice generally waived; but where it is not, the court grants it upon the principles enumerated in *Colburn* v. *Simms* (*c*). "It is true," said Sir James Wigram in that case, "that the court does not, by an account, accurately measure the damage sustained by the proprietor of an expensive work from the invasion of his copyright by the publication of a cheaper book. It is impossible to know how many copies of the dearer book are excluded from sale by the interposition of the cheaper one. The court, by the account, as the nearest approximation which it can make to justice, takes from the wrongdoer all the profits he has made by his piracy, and gives them to the party who has been wronged. In doing this the court may often give the injured party more, in fact, than he is entitled to, for *non constat* that a single additional copy of the more expensive book would have been sold, if the injury by the sale of the cheaper book had not been committed. The Court of Equity, however, does not give anything beyond the account."

We will conclude this subject with the words of Sir William D. Evans: "It is clear," says he in the second volume of his 'Statutes' (*d*), "that the proceeding by injunction is the most ready and effectual remedy which can be resorted to on the part of the plaintiff, but that a great degree of caution in the application of that

(*a*) Where in America an account only was sought for, and no injunction applied for, the court held that the party must proceed at law for damages: *Monck* v. *Harper*, 3 Edw. Ch. (Amer.) 109.

(*b*) *Hogg* v. *Kirby*, 8 Ves. 215; *Bailey* v. *Taylor*, 1 Russ. & My. 73; *Sheriff* v. *Coutes*, 1 R. & M. 159; *Kelly* v. *Hooper*, 1 Y. & Coll. 197; *Grierson* v. *Eyre*, 9 Ves. 341; *Univer. of Oxf. and Cam.* v. *Richardson*, 6 Ves. 689; 2 Story's Eq. Jur. s. 933.

(*c*) 2 Hare, 513, 560.

(*d*) Part iii. class 1, note 29.

CAP. VIII. proceeding, in the first instance, is requisite for preventing injustice to the defendant, whose loss does not, from the nature of it, admit of reparation if the injunction should, upon further investigation, be found to have been erroneously applied; and the judges of courts of equity have in many cases expressed a strong sense of the importance of this principle."

CHAPTER IX.

CROWN COPYRIGHT.

Prerogative copyright.

THE prerogative copyrights of the Crown constitute a peculiar branch of literary property which has given rise to much controversy.

The sovereign's prerogative in granting letters patent for the privilege of printing prerogative copies, as they are called, is said to embrace the English translation of the Bible, the Book of Common Prayer, the statutes, almanacs, and the Latin grammar.

The validity of this privilege has been questioned on the ground that grants of this exclusive nature, tend to a monopoly. They contribute forcibly to enhance the prices of books, to restrain free trade, to discourage industry, and by discountenancing competition they serve to render the patentees careless and remiss in their duty. Notwithstanding, it must be admitted that the sovereign has a peculiar prerogative in printing, which has been vindicated, allowed, and maintained through all ages.

Nature of the right.

The right is said to be founded on grounds of public policy. Lord Mansfield considered it as merely a modification of the general and common right of literary property; and from the cases which had been decided in favour of the particular copies, he inferred, as a necessary consequence, the existence of the general right. They rested upon property arising from the king's right of original publication. The copy of the Hebrew Bible, of the Greek Testament, or of the Septuagint, did not belong to the king—it was common; but the English translation he bought, and therefore it was concluded to be his property.

Printing, on its first introduction, was considered, as

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well in England as in other countries, to be a matter of state. The quick and extensive circulation of sentiments and opinions which that invaluable art produced could not but fall under the gripe of government, whose principal strength was built upon the ignorance of the people governed. The press was, therefore, wholly under the coercion of the Crown, and all printing, not only of public books, containing ordinances, religious or civil, but of every species of publication whatsoever, was regulated by the king's proclamations, prohibitions, charters of privilege, and, finally, by the decrees of the Star Chamber. After the demolition of that odious jurisdiction (*a*), the Long Parliament, on its rupture with Charles I., assumed that power which had previously existed solely in the Crown. After the Restoration, the same restrictions were re-enacted and re-annexed to the prerogative by the statute 13 & 14 Car. 2, and continued down, by subsequent Acts, until after the Revolution. The expiration of these disgraceful statutes, by the refusal of Parliament to continue them any longer, formed the great era of the liberty of the press in this country, and stripped the Crown of every prerogative over it, except that which, upon just and rational principles of government, must ever belong to the executive magistrate in all countries, namely, the exclusive right to publish religious or civil constitutions, in a word, to promulgate every ordinance by which the subject is to live and be governed. These always did belong, and from the very nature of civil government always ought to belong, to the sovereign, and hence have gained the title of "prerogative copies" (*b*).

The Bible and Book of Common Prayer (*c*).

The Bible and Common Prayer Book.

For two hundred years and more the kings have in England granted patents to their printers. From the time of Henry VIII. have different persons enjoyed, by letters

(*a*) "Where change of fav'rites made no change of laws,
And senates heard before they judged a cause"(?)—JOHN.

(*b*) Lord Erskine's Speeches, vol. i. p. 40, by Ridgway.

(*c*) See *Mayo* v. *Hill*, cited 2 Show. 260; *King's Printer* v. *Bell*, Mor. Dict. of Dec. 19-20, p. 8316.

patent, the privilege of printing prerogative copies to the exclusion of all other persons.

These patents have, from time to time, come under the consideration of the courts, and the judges have been invited to settle their limits. Many have given it as their opinion, that the prerogative is founded on the circumstance of the translation of the Bible having been actually paid for by King James, and its having thus become the property of the Crown (*a*). Others have referred it to the circumstance of the king of England being the supreme head of the Church of England, and have invested him with the prerogative in virtue of that character. This latter argument, Mr. Godson (*b*) contends, destroys the proposition it is adduced to support; for, if the sovereign *as head of the church*, has the exclusive right of printing *all books* of Divine service, why not, as head of the church, have a right to print the principal book used in the Divine service—*the Bible*—and all kinds of Bibles, in whatever language they may be written? And yet the principle of *property* is resorted to for the right of printing the present edition of the Bible; and Lord Mansfield has declared that there is no prerogative right to the Bible in the original languages (*c*).

Others again have been of opinion that it is to be referred to another consideration, namely, to the character of the duty imposed upon the chief executive officers of the government, to superintend the publication of the acts of the legislature and acts of state of that description; and also of those works upon which the established doctrines of our religion are founded, that it is a duty imposed upon the first executive magistrate, carrying with it a corresponding prerogative. That was the opinion of Lord Camden as expressed in the case of *Donaldson* v. *Becket*, and of Chief Baron Skinner in *Eyre and Strahan* v. *Carnan* (*d*).

(*a*) *Nullum tempus occurrit regi. Rex nunquam moritur.*
(*b*) 'Patents and Copyrights,' p. 437.
(*c*) 4 Burr. 2405, cited Godson's Pat. and Copy. 437.
(*d*) Exchequer, 1781, cited 6 Ves. 697, and reported at length in 6 Bac. Abr., tit., Prerog. 509.

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No attempt has ever been made to prevent any person from publishing a translation of one book, or of a part of the Bible, from the original text, and enjoying a copyright in his production. And, with respect both to Acts of Parliament and Bibles, any one is at liberty to print them *with notes*.

Mr. Reeves, one of the royal patentees, and the writer of several learned juridical publications, in the preface to his edition of the Bible (divided into sections), observes, that all the authorized Bibles published by the king's printer and the universities are wholly without explanatory notes. These privileged persons have confined themselves to printing the bare text, in which they have an exclusive right, forbearing to publish it with notes, which it is deemed may be done by any of the king's subjects as well as themselves. He subjoins to this passage, a note in the following terms: "I mean such notes as are *bonâ fide* intended for annotations, not the pretence of notes which I have seen in some editions of the Bible and Common Prayer Book, placed there merely as a cover to the piracy of printing upon the patentees, as if fraud could make legal anything that was in itself illegal. In some of these editions the notes are placed purposely to be cut off by the binder" (*a*).

View taken in Ireland.

In *Grierson* v. *Jackson* (*b*), upon an application for an injunction against printing an edition of a Bible in numbers with prints and notes, Lord Clare, as Chancellor of Ireland, asked if the validity of the patent had ever been established at law, and said he did not know that the Crown had a right to grant a monopoly of that kind. In the course of the discussion he made the following observations: "I can conceive that the king, as head of the church, may say that there shall be but one man who shall print Bibles and Books of Common Prayer for the use of churches and other particular purposes, but I cannot conceive that the king has any prerogative to grant a monopoly as to Bibles for the instruction of mankind in the revealed religion; if he had, it would be in the power

(*a*) 2 Evans' 'Statutes,' 2nd ed. p. 19. (*b*) Irish T. R. 304.

of the patentee to put what price he pleased upon the book, and thus prevent the instruction of men in the Christian religion. If ever there was a time which called aloud for the dissemination of religious knowledge, it is this, and therefore I should with great reluctance decide in favour of such a monopoly as this, which must necessarily confine the circulation of the book."

View taken in England.

This has not been the view taken of the subject in England, for in the case of the *Universities of Oxford and Cambridge* v. *Richardson* (*a*), an injunction upon motion was granted against the king's printer in Scotland, who had a patent for the sale of Bibles, printing or selling them in England, upon the ground that possession, under colour of title, was sufficient to injoin and to continue the injunction till it was proved at law that it was only colour and not real title. In the course of the case it appeared that, in the year 1718, Sir Joseph Jekyll, as master of the rolls, had granted an injunction in a similar case, which was supported on appeal before the Lord Chancellor; and also, that a decree of the Court of Session had, in the year 1717, been reversed by the House of Lords in favour of the right of the king's printer in England, confining the right of the Scotch printer to Scotland. With respect to the precedent of the injunction, it is clear that there had been abundance of injunctions before upon private copyright, until the claim was finally put an end to by the decree of the Lords; and questions between rival patentees were not the most probable method of bringing into fair discussion the general rights of the subject to resist the claim of prerogative, root and branch (*b*). The Lord Chancellor, in his judgment, said, "My opinion is, that the public interest may be looked to upon a subject, the communication of which to the public in an authentic shape, if a matter of right, is also a matter of duty in the Crown, which are commensurate. It is not accurate to say, these privileges are not granted for the sake of unlimited sale, and for the

(*a*) 6 Ves. 689. See *Manners* v. *Blair*, 3 Bli. R. (N.S.) 391.
(*b*) 2 Evans' 'Statutes,' 2nd ed. 17.

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sake of the universities, &c. They are, to a certain degree, like all other offices, calculated for that sort of advantage which will secure to the public the due execution of the duty; upon this principle proceed all the branches of our constitution, (which does not adopt the wild theories that require the execution of a duty without a due compensation), that the duty is well secured in one way by giving a responsibility, in point of means, to the person to execute it. The reasoning which affects to depreciate monopoly, will perhaps tend to create it." There certainly is no great risk that false copies of the Bible would get into general circulation by an unlimited right of printing them. We do not find it materially the case in other works; and there are, I conceive, very few persons indeed who would admit that the beneficial circulation of any commodity in general, or of these writings in particular, can be promoted by means of an exclusive monopoly; and the principal object, both of the right and the duty, with respect to the particular subject, appears to be the benefit arising to the privileged individual (*a*).

The question was afterwards brought before the House of Lords, and the injunction against the Scotch printer continued.

The Universities of Oxford and Cambridge and the queen's printer long exercised this monopoly, under patents from the Crown, but the claim has not been very rigidly enforced. The patent granted to the queen's printer expired a short time back, and it was recommended by a committee of the House of Commons that the exclusive privilege of publishing the sacred volume should not be renewed. The House, however, took no action on this recommendation, and the Crown renewed the patent during pleasure.

Acts of Parliament and Matters of State.

The right in state documents.

The exclusive right of printing Acts of Parliament has been regarded somewhat more favourably than the other

(*a*) 2 Evans' 'Statutes,' 2nd ed. p. 18.

branches of the royal prerogative in question. Upon what ground, however, it is in some degree difficult to discover. Lord Clare, while negativing the prerogative in the matter of the Bible, said he could well conceive that the king should have a power to grant a patent to print the statute books, because it was necessary that they should be correctly printed, and because the copy can only be had from the rolls of Parliament, which are within the authority of the Crown.

There was no king's printer by patent till the reign of Edward VI. He, in 1547, granted one to Grafton.

The right seemed to have been in effect recognised and established in the case of *Millar* v. *Taylor*, by the unanimous opinion of the judges, though they differed respecting the origin of it. This is certain respecting its origin, that it has ever been a trust reposed in the king, as executive magistrate, to promulgate to the people all those civil ordinances which are to be the rule of their civil obedience. There are traces of the ancient mode of promulgating the ordinances of the state yet remaining to us, suited to the gloominess of the times when few who heard them could have read them; the king's officers transmitted authentic copies of them to the sheriffs, who caused them to be publicly read in their county court (*a*). When the demand for authentic copies began to increase, and when the introduction of printing facilitated the multiplication of copies, the people were supplied with them by the king's patentee. From such source they were far more likely to be correct and accurate than if obtained from those unable to resort to the fountain head; and our courts of justice appear to have so considered, when they established it as a rule of evidence, that Acts of Parliament printed

(*a*) The statute itself was drawn with the aid of the judges and other grave and learned men, and was entered on a roll called the 'Statute Roll.' The *tenor* of it was afterwards transcribed into parchment, and annexed to the proclamation-writ, directed to the sheriff of every county in England, and commandment given him, that he should not only proclaim it through his whole bailiwick, but see that it was firmly observed and kept; and the usage was, to proclaim it at his county court, and there to keep the transcript, that whoso would might read or take a copy of it.—Dwarris on Stat. p. 16; 4 Inst. cap. 1.

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The patent was to print "all law books that concern the common law." The first case on the subject arose between Atkins, the law-patentee, and some members of the Stationers' Company. The plaintiff claimed under the letters patent. The defendants had printed 'Rolle's Abridgment.' The bill was brought for an injunction, and the Lord Chancellor issued one against every member of the company. The defendants appealed to the House of Lords, but the decree was affirmed.

It was argued that printing was a power of the Crown, acquired by Henry VI. by purchase, the first printer established in England having been brought to Oxford, by Archbishop Bourchier, at that king's expense! (*a*)

Perhaps the most important case on this head is that of *Roper* v. *Streater* (*b*), the facts of which were these:—Roper bought of the executors of Justice Croke the third part of his reports, which he printed; Colonel Streater had a grant for years from the Crown for printing all law books, and he reprinted Roper's work without permission; on which Roper brought an action under the Licensing Act. Streater pleaded the king's grant, and on demurrer it was adjudged for the plaintiff against the validity of the patent, on these grounds: that the patent tended to a monopoly; that it was of a large extent; that printing was a handicraft trade, and no more to be restrained than other trades; that it was difficult to ascertain what should be called a law book; that the words in the patent "*touching* or *concerning* the common or statute law," were loose and uncertain; that if this were to be considered as an office, the grant for years could not be good, as it would go to executors and administrators; and that there was no adequate remedy in the way of redress in case of abuses by unskilfulness, selling dear, printing ill, &c. This judgment, however, was reversed on a writ of error in Parlia-

(*a*) 1 Bl. 113; 6 Bac. Abr. 507; Carter, 89: 10 Mod. 105.
(*b*) Skin. 234. See 1 Mod. 257; 2 Show. 260; 10 Mod. 105.

ment, for the following reasons: that the invention of printing was new; that this privilege had been always allowed, which was a strong argument in its favour, although it could not be said to amount to a prescription, as printing was introduced within time of memory; that it concerned the state, and was matter of public care; that it was in the nature of a proclamation, which none but the king could make; that the king had the making of judges, serjeants, and officers of the law; that as to the uncertainty, these words in the patent were to be taken *secundum subjectam materiam*, and not to be extended to a book containing a quotation of law, but where the principal design was to treat on that subject; that as to its being an office, it was not so properly an office as an employment, which may well enough be managed by executors or administrators; and that as to abuses, these, like all others, were punishable at common law, or the patent itself might be repealed by *sci. fac.* (*a*)

In the case of *Baskett* v. *The University of Cambridge* (*b*) the prerogative right of printing Acts of Parliament was sanctioned by a decision of the Court of King's Bench. That case arose upon a bill filed by the plaintiffs for an injunction to restrain the defendants from printing and selling a book entitled 'An Exact Abridgment of all the Acts of Parliament relating to the Excise on Beer, &c." Both parties claimed under letters patent from the Crown; the plaintiffs as the king's printers. The court were of opinion that during the term granted by the letters patent to the plaintiffs, they were entitled to the right of printing Acts of Parliament and abridgments of Acts of Parliament, exclusive of all other persons not authorized to print the same by prior grants from the Crown; but they thought that by the letters patent granted to the university, it was entrusted with a concurrent authority to print Acts of Parliament and abridgments of Acts, within the university, upon the terms contained in those letters patent.

Soon after the Restoration an Act of Parliament having

(*a*) 3 Mod. 77; 6 Bac. Abr. 507. (*b*) 1 W. Bl. 105; 2 Burr. 661.

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prohibited the printing of law books without the licence of the lord chancellor, the two chief justices, and the chief baron, it became the practice to prefix such a licence to all reports published after that period, in which it was usual for the rest of the judges to concur, and to add to the *imprimatur* a testimonial of the great judgment and learning of the author. This Act was renewed from time to time, but finally expired in the reign of the third William. The form of licence and testimonial, however, was continued till the reign of George II., when the judges seemed to have arrived at the determination not to grant any more of them (*a*). Sir James Burrow offers an apology for publishing his reports without an *imprimatur* (*b*).

As to the publication of proceedings in courts of justice.

Though a court of justice appears to have the sole power of authenticating the publication of its own proceedings, it does not necessarily follow that it has an exclusive right of publication.

Since the year-books, it seems that no judicial proceedings, with the exception of state trials, have been published under authoritative care and inspection, either by the House of Lords or by any court in Westminster Hall.

In *Sayer's Case* (*c*) the judges of the Court of Queen's Bench directed, and in part revised, a report of the trial. The trial of Lord Melville (*d*) was likewise published by order of the Lords; and the person appointed for that purpose by the Lord Chancellor obtained an injunction against a bookseller for publishing another report of the case. *Manley* v. *Owen* (*e*) recognises the exclusive right of the Lord Mayor of London, as head of the commission, to appoint a person to print the sessions papers of the Old Bailey. Formerly, it was held to be a contempt of court to publish any reports whatever, but the practical application of this doctrine was soon relaxed, and publication is

(*a*) Pref. to Dougl. R. (*b*) Burr. R. Pref. viii.
(*c*) 16 How. St. Tr. 93; 8 Parl. Hist. 54.
(*d*) 29 How. St. Tr. 549. See *Bathurst* v. *Kearsley*, cited *Gurney v. Longman*, 13 Ves. 493, 509.
(*e*) Cited *Millar* v. *Taylor*, 4 Burr. 2329. See 13 Ves. 493; *Stockdale* v. *Hansard*, 9 Ad. & E. 1, 97.

now only treated as a contempt in those cases in which the report is published in opposition to an order of the court.

Publication during the course of a trial will be prohibited, when the publication would have a tendency to interfere with a fair and impartial decision; on this principle Lord Abbott, C.J., sitting at the Old Bailey, acted on the indictment of Thistlewood and others for high treason in the year 1820 (*a*). The prohibition was infringed by the proprietor of the *Observer* newspaper, and the proprietor was fined 500*l.* for contempt of court. He appealed subsequently to the Queen's Bench, on which occasion Holroyd, J., in refusing to make absolute a rule *nisi* obtained, said: "This was an order made in a proceeding over which the court had judicial cognizance; the subject matter respecting which it was made was then in the course of judicature before them. The object for which it was made was already, as it appears to me, one within their jurisdiction, viz., the furtherance of justice in proceedings then pending before the court; and it was made to remain in force so long, and so long only, as those proceedings should be pending before them. Now, I take it to be clear, that a court of record has a right to make orders for regulating their proceedings and for the furtherance of justice in the proceedings before them, which are to continue in force during the time that such proceedings are pending. It appears to me, that the arguments as to a further power of continuing such orders in force for a longer period, do not apply. It is sufficient for the present case, that the court have that power during the pendency of the proceedings. This order was made to delay publication only so long as it was necessary for the purposes of justice, leaving every person at liberty to publish the report of the proceedings subsequently to their termination. I am therefore of opinion, that this was an order which the court had the power to make."

Publication of *ex parte* statements

A criminal information will lie for publishing an *ex parte* statement of the proceedings upon a coroner's inquest,

(*a*) *Reg.* v. *Clement*, 4 Barn. & Ald. 218.

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upon a coroner's inquest.

accompanied with comments, although the statement be correct, and the party has no malicious motive in the publication. Mr. Justice Bayley on one occasion observed that it was a matter of great criminality; for the inquest before the coroner leads to a second inquiry, in which the conduct of the accused is to be considered by persons who ought to have formed no previous judgment in the case. A jury who are afterwards to sit upon the trial ought not to have *ex parte* accounts previously laid before them; they ought to decide solely upon the evidence which they hear upon the trial (*a*).

No prerogative claim to the exclusive publication of judicial proceedings has now been asserted for very many years, and in *Butterworth* v. *Robinson* (*b*), and *Saunders* v. *Smith* (*c*), individuals were treated as authors and proprietors of copyright in law reports (*d*).

Almanacs.

As to the right in almanacs.

The origin of this absurd claim is put upon still more ridiculous grounds. Property in almanacs is said to be the king's: 1st, because derelict; 2nd, because they regulate the feasts of the church (*e*).

On the 8th of March, 1615, the king by letters patent granted to the Stationers' Company and their successors for ever (*inter alia*) exclusive power and licence to print, or cause to be printed, "all manner of almanacs and prognostications whatsoever in the English tongue, and all manner of books and pamphlets tending to the same purpose, and which are not to be taken and construed other than almanacs or prognostications being allowed by the Archbishop of Canterbury and the Bishop of London, or one of them, for the time being."

In an action of debt by the *Company of Stationers against Seymour* (*f*), for printing 'Gadbury's Almanac,' it was ad-

(*a*) *Rex* v. *Fleet*, 1 Barn. & Ald. 379, 384. (*b*) 5 Ves. 709.
(*c*) 3 My. & Cr. 711, and *Vesey* v. *Sweet*, cited 5 Ves. 709, note 3.
(*d*) Phillips on Copy. 196.
(*e*) 2 Show. 258; *Stationers' Co.* v. *Wright*, 2 Ch. Cas. 76.
(*f*) 1 Mod. 256.

judged that the letters patent granted to the company for the sole printing of almanacs were valid; and though the jury found that the almanac so printed contained some additions, yet having likewise found that the said almanac had all the essential parts of the almanac that was printed before the Book of Common Prayer, the additions were regarded as immaterial.

So also was an injunction granted against Lee (*a*), on the application of the Stationers' Company, to restrain him from selling "primers, psalters, *almanacs*, and singing psalms, imported from Holland," the sole privilege of printing these belonging to that company; and that without any trial directed as to the validity of the patent. Notwithstanding the above decisions, the prerogative right to the printing of almanacs was strongly protested against in the case of the *Stationers' Company* v. *Partridge* (*b*). No judgment, indeed, was given in that case, but it stood over that the company might see if they could make it like the case of the Common Prayer Book,—whether they could show that the right of the Crown had any foundation in property; and it was never referred to again.

In a subsequent case, that of the *Stationers Company* v. *Carnan* (*c*), the right was successfully combated, and judgment given in favour of the defendant. An account of these various phases of legal doubt and indecision is succinctly given by Lord Erskine in *Gurney* v. *Longman* (*d*): "It appears in the case of *Millar* v. *Taylor* that the Crown had been in the constant course of granting the right of printing almanacs; and at last King James II. granted that right by charter to the Stationers' Company and the two universities, and for a century they kept up that monopoly by the effect of prosecutions. At length Carnan, an obstinate man, insisted upon printing them. An injunction was applied for in the Court of Exchequer, and was granted to the hearing; but at the hearing, the Court of Exchequer directed the question to

(*a*) 2 Ch. Ca. 76, 93; 2 Show. 258.
(*b*) 10 Mod. 105, cited 2 Bro. P. C. 137.
(*c*) 2 Wm. Bl. 1004.
(*d*) 13 Ves. 508.

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be put to the Court of Common Pleas, whether the king had a right to grant the publication of almanacs, as not falling within the scope of the necessity or expediency, the foundation of prerogative copies. It was twice argued in the Court of Common Pleas; and the answer returned by that court to the Court of Exchequer was, that the charter was void, and almanacs were not prerogative copies. The injunction was accordingly dissolved, that usurpation having gone on for a century; and the House of Commons threw out a bill, brought in for the purpose of vesting that right in the Stationers' Company."

In consequence of this decision, an Act was passed, which, after reciting, that the power of granting a liberty to print almanacs and other books was theretofore supposed to be an inherent right in the Crown, and that the Crown had, by different charters under the great seal, granted the universities of Oxford and Cambridge, among other things, the privilege of printing almanacs; and that the universities had demised to the Company of Stationers their privilege of vending almanacs and calendars, and had received an annual sum of £1000 and upwards as a consideration for such privilege, and that the sum so received by them had been laid out and expended in promoting different branches of literature and science, to the great increase of religion and learning and the great benefit and advantage of these realms; and that the privilege or right of printing almanacs had been, by a late decision at law, found to have been a common right, over which the Crown had no control and consequently the universities no power to demise the same to any particular person or body of men, whereby the payments so made to them by the Company of Stationers had ceased and been discontinued, enacted that £500 a year should be paid to each of the universities, out of the moneys arising from the duties upon almanacs (*a*).

Any person may now make the calculations usually published in almanacs, and claim a copyright therein.

(*a*) 21 Geo. 3, c. 56, s. 10.

The Nautical Almanac.

A power was given by Act of Parliament to certain commissioners, to publish a 'Nautical Almanac, or Astronomical Ephemeris,' and to *license* some one to print it. Any other person printing, publishing, or vending it, subjects himself to a penalty. The 'Nautical Almanac' is now, however, placed under the control of the Lords of the Admiralty, and the penalty is increased to £20, with costs of suit, to be paid and applied to the use of the Royal Hospital for Seamen at Greenwich (*a*).

As to the Latin grammar.

The claim to the prerogative right in 'Lilly's Latin Grammar' was founded on an allegation that the work had been originally written and composed at the king's expense. Mr. Justice Yates observed in *Millar* v. *Taylor* that the expense of printing prerogative books was "in fact no private disbursement of the king, but done at the public charge, and formed part of the expense of government." How, then, could they be his private property, like private property claimed by an author in his own compositions? (*b*) The claim has long been abandoned.

(*a*) 9 Geo. 4, c. 66.
(*b*) See *Stationers' Co.* v. *Partridge*, 4 Burr. 2339, 2382, 2402; 10 Mod. 105; *Nicol* v. *Stockdale*, 3 Swans. 687.

CHAPTER X.

UNIVERSITY AND COLLEGE COPYRIGHT.

Copyright at the universities and colleges.

Upon the introduction of the art of printing into England by Henry VI. a press was set up at Oxford; and an important dominion over the publication of books was, for many years, very naturally assumed by that learned body. The sway was extended to the sister university, and increased in power by charters and grants conferred upon them by the liberality and bounty of several kings.

Immediately after, and in consequence of, the decision in *Donaldson* v. *Becket* (*a*), the universities hastened to Parliament, and in the same year obtained an Act (*b*) for enabling the two universities in England, the four universities in Scotland, and the several colleges of Eton, Westminster, and Winchester, to hold in perpetuity their copyright in books given or bequeathed to them for the advancement of useful learning and other purposes of education.

The right exists in all such books as had, before the year 1775, or have since, been given or bequeathed by the authors of the same, or their representatives, to or in trust for those universities, or any college or house of learning within them, or to or in trust for the colleges of Eton, Westminster, and Winchester, or any of them, for the beneficial purpose of education within them or any of them.

The exception in favour of the universities and colleges is to extend only to their own books, so long as they are printed at the college press and for their sole benefit; and any delegation of the right works a forfeiture, and the privilege becomes of no effect.

(*a*) 4 Burr. 2408. (*b*) 15 Geo. 3, c. 53; App. vi.

As to their registration and sale.

A power is given to the universities to sell or dispose of the copyrights given or bequeathed to them, but if they delegate, grant, lease, or sell the copyright of any book, or allow any person to print it, their privilege ceases to exist. The copyright of any work presented to the universities must be registered at Stationers' Hall within two months after any such gift shall come to the knowledge of the officers of the universities.

By an Act passed in the forty-first year of Geo. 3, c. 107 (*a*) a similar copyright is given to Trinity College, Dublin. And by the 27th section of the 5 & 6 Vict. c. 45 (*b*) the rights of the respective universities and colleges above enumerated are saved from the operation of the Copyright Act.

(*a*) App. xii.

(*b*) App. xxxiii.

CHAPTER XI.

MUSICAL AND DRAMATIC COPYRIGHT.

Dramatic compositions within the Literary Copyright Act.

DRAMATIC compositions, when in manuscript, are protected like other literary compositions; when printed and published they are books within the meaning of the Literary Copyright Act.

The point whether there could be copyright in a musical composition first came before Lord Mansfield in *Bach* v. *Longman*. It was a case sent out of Chancery for the opinion of the Court of King's Bench: "Whether, in a composition for the harpsichord, called a *sonata*, the original composer had a copyright?" The opinion given, was that the same rules of law apply both to literary and musical compositions. It was said that the words of the Act of Parliament were very extensive: "Books, or other writings," and consequently they were not confined to language and letters only. Music is a science; it may be written, and the mode of conveying the ideas is by signs and marks. If the narrow interpretation contended for were to hold (*i.e.*, confined to books only), it would apply equally to mathematics, algebra, arithmetic, or hieroglyphics. The case being one sent out of Chancery, the certificate of the judge was: that a musical composition is a writing within the statute of 8 Anne, c. 19, and that of course the plaintiff was entitled to the copyright given to the author by that Act.

Now, by the interpretation clause of the 5 & 6 Vict. c. 45, the word "book," in the construction of the Act, is to mean and include "every volume, part or division of a

volume, pamphlet, sheet of letterpress, *sheet of music*, map, chart, or plan separately published."

Musical compositions intended for the stage come under the head of dramatic compositions.

Formerly representation not equivalent to publication.

In an early case, it was declared that the acting a play was not a publication of it; and by analogy, it was subsequently held, at common law, that the mere *acting* of a play which had been printed and published did not constitute a piracy or an infringement of the copyright (*a*).

In the former case, the plaintiff was the author of a farce called 'Love à la Mode,' consisting of two acts, which was performed, by his permission, several times at the different theatres in successive years, but was never printed or published by him. When the farce was over he used to take the copy away from the prompter, and when it was played at the benefits of particular actors he made them pay a certain sum for the performance. The defendants, who were proprietors of a magazine, employed a shorthand writer to take down the words of the play at the theatre, and thus published the first act, giving notice that they would publish the second, in their next number. An injunction, however, was obtained on the ground that acting a play was not a publication of it (*b*).

The latter case was an action on the Statute of Anne, for publishing an entertainment called 'The Agreeable Surprise.' The plaintiff had purchased the copyright from O'Keefe, the author, and the only evidence of the publication by the defendant was the representation of the piece upon his stage at Richmond. It was held that there was no publication; the statute for the protection of copyright only extending to prohibit the publication of the work itself by any other than the author (*c*).

When the play is an abridgment or alteration of a

(*a*) In equity, injunctions have been granted to stop the performance of printed dramatic works at the request of the authors of them: *Morris* v. *Harris*, *Morris* v. *Kelly*, 1 Jac. & W. 481; cited Godson on 'Patents and Copyrights,' 390.

(*b*) *Macklin* v. *Richardson*, Amb. 694; but see 5 & 6 Vict. c. 45, s. 20.

(*c*) *Coleman* v. *Wathen*, 5 T. R. 245: see, however, 5 & 6 Vict. c. 45, s. 20.

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former dramatic representation, no action can be maintained by the original author. Thus where Lord Byron's tragedy of 'Marino Faliero,' altered and abridged for the stage, was performed without the consent of the owner of the copyright, who applied for an injunction, it was laid down, that an action could not be maintained, "for publicly acting and representing the said tragedy, abridged in manner aforesaid (*a*)."

The 3 & 4 Will. 4, c. 15, to amend the law relating to dramatic copyright.

The many defects existing in the law of dramatic copyright led to the passing of the 3 & 4 Will. 4, c. 15 (*b*), which gave to the author, or his assignee, of any printed and unpublished tragedy, comedy, play, opera, farce, or other dramatic piece or entertainment (*c*), the sole right of having it represented in any part of the British dominions; and to the author, or his assignee, of any such dramatic production which was printed or published after the passing of the Act, or ten years before, the sole right of representation from the time of publication, or of the passing of the Act, for a period of twenty-eight years, or, if the author were living at the end of that time, for the remainder of the author's life. And further enacted, that if any person should represent, or cause to be represented, without the consent in writing of the author or other proprietor, at any place of dramatic entertainment, any such production, or any part thereof, every such offender should be liable for each and every such representation to the payment of an amount not less than 40*s.*, or to the full amount of the benefit or advantage arising from such representation, or the injury or loss sustained by the plaintiff therefrom, whichever should be the greater damages, to the author or other proprietor of such production so represented, to be recovered, together with double costs of suit.

Double costs were taken away in all cases by the 5 & 6

(*a*) *Murray* v. *Elliston*, 5 Barn. & Ald. 657. (*b*) App. xv.

(*c*) In *Lee* v. *Simpson*, 3 C. B. 871, it was determined that a pantomime, or rather the introduction to one, which is the only written part of the entertainment, is protected from piracy under this Act.

Vict. c. 97, and the plaintiff can now only recover a full and reasonable indemnity as to all expenses incurred, to be taxed by the proper officer in that behalf.

Provisions of the 3 & 4 Will. 4, c. 15, extended to musical compositions, and representation made equivalent to publication.

The provisions of the 3 & 4 Will. 4, c. 15, are extended to musical compositions, and the term of copyright as provided by the 5 & 6 Vict. c. 45, applied to the liberty of representing dramatic pieces and musical compositions, by the 20th section of the latter Act (*a*), which enacts that the sole liberty of representing or performing, or causing (*b*) or permitting to be represented or performed, any dramatic piece or musical composition shall endure and be the property of the author thereof and his assigns for the term in the Act provided for the duration of copyright in books (*c*); and the provisions thereinbefore enacted in respect of the property of such copyright, and of registering the same, shall apply to the liberty of representing or performing any dramatic piece or musical composition, as if the same were therein expressly re-enacted and applied thereto, save and except that the first public representation or performance of any dramatic piece or musical composition shall be deemed equivalent, in the construction of the Act, to the first publication of any book: provided always, that in case of any dramatic piece or musical composition in manuscript, it shall be sufficient for the person having the sole liberty of representing or performing, or causing to be represented or performed, the same, to register only the title thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor thereof, and the time and place of its first representation or performance.

Omission to register does not affect the copyright.

Pursuant, however, to the 24th section of the same statute, the omission to register will not prejudice the remedies which the proprietor of the sole liberty of representing any dramatic piece has by virtue of this Act or of the 3 & 4 Will. c. 15.

There are several points which we propose now to con-

(*a*) App. xxxi. (*b*) See *Parsons* v. *Chapman*, 5 Car. & Payne, 33.
(*c*) Strictly, a copyright song cannot be publicly sung, or a tune publicly played, without the permission of the composer or his assigns.

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sider in the order in which they are enumerated in the sections before us.

As to the consent of the author.

The penalties are only incurred if the representation be without the *consent in writing of the author or other proprietor.* The consent may be given by the author's agent, and it has been decided that the Dramatic Authors' Society is agent to its members, for the purpose of authorizing managers of theatres to perform pieces composed by its members (*a*).

The consent may apply to works not in existence at the time it is given. It is not as it is under the Statute of Frauds, which expressly requires that the contract shall be signed by the party to be charged; and even that is satisfied, if it is signed in his name by an agent duly authorized so to sign. It is very rarely the case that a document required by the law need be wholly in the handwriting of the party on whose behalf it is to be given. The present statute does not require signature, nor the *handwriting* of the author. All that it requires is that there should be his consent, and that it should appear in writing (*b*).

Performance at a place of dramatic entertainment.

Again, although by a former Act the performance which is alleged to be an infringement of the original right must have taken place at some place of dramatic entertainment, for the author to have maintained an action, yet the above provision does not appear to be so restrictive. It has never been judicially decided that an infringement which is not committed in a place of dramatic entertainment would be the subject of an action; but, from the general aspect of the above, we are inclined to think that it would. The question was raised in *Russell* v. *Smith* (*c*), but the judges did not express an opinion upon it, because the case was decided upon other grounds. Mr. Russell, who was the composer of a song called 'The Ship on Fire,' brought an action against a man of the name of Smith for singing the same song, among others, at an entertain-

(*a*) *Morcton* v. *Copeland*, 16 C. B. 517; S.C. 24 L. J. (C.P.) 169; *Fitzball* v. *Brooke*, 2 Dow. & Lown. 477; *Shepherd* v. *Conquest*, 25 L. J. (C.P.) 127; 17 C. B. 427.

(*b*) *Per* Maule, J., in *Morcton* v. *Copeland*, *supra*. (*c*) 12 Q. B. 217.

ment which he opened at Crosby Hall, Bishopsgate, and to which he gave admission by shilling and two-shilling tickets. The building called Crosby Hall belonged to a literary institution, and contained a large room in which elocution classes met periodically, but which, at other times, was let out for concerts and musical entertainments. It had been hired for recitations intermixed with songs, and for performances of ventriloquy; and a music licence had been taken out for it under statute 25 Geo. 2, c. 36. On the trial it was objected that Crosby Hall was not a "place of dramatic entertainment" within the meaning of statute 3 & 4 Will. 4, c. 15, s. 1 (*a*), referred to by statute 5 & 6 Vict. c. 45, s. 20 (*b*). But Lord Denman held, that as Crosby Hall was used for the public representation for profit of a dramatic piece, it became a place of dramatic entertainment for the time within the statutes in question. "The use for the time in question," added the learned chief justice, "and not for a former time, is the essential fact. As a regular theatre may be a lecture-room, dining-room, ball-room, and concert-room on successive days, so a room used ordinarily for either of those purposes would become for the time being a theatre, if used for the representation of a regular stage play. In this sense, as 'The Ship on Fire' was a dramatic piece in our view, Crosby Hall, when used for the public representation and performance of it for profit, became a place of dramatic entertainment."

In an action for penalties brought under the 3 & 4 Will. 4, c. 15, the declaration stated that the plaintiff was the author of a certain dramatic piece or musical composition, &c., and that defendant caused the said piece to be represented at a certain place of dramatic entertainment, &c., whereby, &c. It was determined, first, that the introduction of a pantomime was a dramatic entertainment within the meaning of the statute; secondly, that it was not necessary to allege in the declaration, or to prove at the trial, that the defendant knew that the

(*a*) App. xv. (*b*) App. xxxi.

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plaintiff was the author; thirdly, that the allegation in the declaration, that the same was represented at a certain place of dramatic entertainment, was sufficient.

Punishment for infringement not to be visited on one not actually taking part in the performance.

Though it was here decided that a person ignorant of the piratical nature of a representation may be an offender within the meaning of the Act, yet one cannot be considered a transgressor of the provisions of the statute, so as to subject himself to an action of the above nature, unless he himself, or his agent, actually takes part in the representation which is a violation of copyright. Were it to be otherwise held, all those who supply some of the means of representation to him who actually represents, would have to be considered as thereby constituting him their agent, and thus *causing* the representation, within the meaning of the Act; such a doctrine would embrace a class of persons not at all intended by the legislature (*a*).

A person, therefore, who lets for hire by the evening a place of dramatic entertainment for the public performance of songs and music, and provides the hirer, who performs songs and music which he has not liberty to perform, with lights, benches, &c., is not liable to pay damages to the author for causing or permitting to be represented or performed a musical composition without the author's written consent (*b*).

This doctrine was followed in *Lyon* v. *Knowles* (*c*). The defendant, the proprietor of a theatre, allowed one Dillon to have the use of it for the purpose of dramatic entertainments. The defendant provided the band, the scene-shifters, the supernumeraries, the money-takers, and paid for printing and advertising. Dillon employed his own company of actors and actresses, and selected the pieces which were to be represented, free from control on the part of the defendant. It was arranged that the money taken at the doors should be divided equally between the defendant and Dillon. During the period of such occupation of the theatre by Dillon, certain pieces

(*a*) *Russell* v. *Briant*, 29 L. J. (C.P.) 33; 14 Jur. 201; 8 C. B. 836.
(*b*) *Ibid.* (*c*) 11 W. R. 266; 32 L. J. (Q.B.) 71; 10 L. T. (N.S.) 876.

were performed which the plaintiff had the sole liberty of representing or causing to be represented; and it was held, in an action to procure the penalties imposed by the above sections, that the plaintiff could not recover, inasmuch as, under the circumstances, the defendant was not shewn to have represented, directly or indirectly, the said dramatic pieces. If the representation of the pieces could have been considered a joint act of the defendant and Dillon, the defendant would have been liable. The defendant had no right to interfere in the choice of the pieces to be represented; and in short, though the proprietor, he was not the manager. Neither was he a partner; for the receipt of the moneys at the door was a receipt of gross proceeds, not net profits, and was merely a mode of receiving and securing the rent. There was an agreement between them to divide the gross receipts in lieu of payment of a specific sum as rent. But this did not make them partners. The defendant, then, having no control over the performances, could not be said to have caused them to be represented, and was consequently not liable. The defendant, to have been made liable, must have been shewn to have been either the partner or principal of Dillon, the person who actually directed the representation (*a*).

Representing, within the meaning of the Act, is defined to be the bringing forward on a stage or place of public representation; and the question whether in any particular case the act done amounts to a representation, is a proper question for a jury.

If the words of one song only be taken from a musical or dramatic piece protected by the Act, or be sung on a stage or in any place of theatrical entertainment, without the permission of the proprietor, the representation will be actionable (*b*).

A song which related the burning of a ship at sea and the escape of those on board, describing their feelings in vehement language, and sometimes expressing them in

(*a*) *Lyon* v. *Knowles*, 11 W. R. 266; 3 B. & S. 556: affirmed on appeal 5 B. & S. 751; 12 W. R. 1083; 10 L. T. (N.S.) 876.
(*b*) *Planché* v. *Braham*, 1 Jur. 823; 8 C. & P. 68; 4 Bing. (N.S.) 17.

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As to what is a dramatic piece.

the supposed words of the suffering parties, was considered dramatic, and consequently within the meaning of the statute, even though it was sung by one person only, sitting at a piano, giving effect to the verses by the delivery, but not assisted by scenery or appropriate dress (*a*).

That the whole is expressed in music makes no difference. The early Greek drama was musical throughout; so in the modern Italian Opera. Nor can any distinction arise from the want of scenery or appropriate dress; an oratorio has neither, yet it is often dramatic. Nor, again, is it material that no second person performs. No one would suggest that Mr. Matthews' representations, or the readings of Shakespeare by Mrs. Siddons or Mr. Charles Kemble, were not dramatic. The character of Elijah is essentially a dramatic one, requiring, however, not dramatic action, but dramatic sentiment, in order to delineate it. Sometimes the wrath and gloom of such a character must be displayed, at other times the most pathetic tenderness. If the character of drama were denied to this species of entertainment, nothing short of requiring all the ingredients of a play would be admitted as a dramatic representation. If the interpretation clause of statute 5 & 6 Vict. c. 45 (*b*) be referred to, it will be remarked that the second section declares that "dramatic pieces" within that Act include "tragedy, comedy, play, opera, farce," or "other scenic, musical, or dramatic entertainment." These words comprehend any piece which can be called dramatic in its widest sense; any piece which, on being presented by any performer to an audience, will produce the emotions which are the purpose of the regular drama, and which constitute the entertainment of the audience (*c*).

Assignment of the right.

By the 22nd section of the 5 & 6 Vict. c. 45 (*d*) it is enacted that no assignment of the copyright of any book consisting of or containing a dramatic piece or musical composition, shall be holden to convey to the assignee the right of representing or performing such dramatic piece or

(*a*) *Russell* v. *Smith*, 12 Q. B. 217.
(*b*) App. xxii.
(*c*) Lord Denman, J.C., in *Russell* v. *Smith*, 12 Q. B. 217; 17 L. J. (Q.B.) 225.
(*d*) App. xxxii.

musical composition, unless an entry in the registry book, to which reference has already been made (*a*), shall be made of such assignment, wherein shall be expressed the intention of such parties that such right should pass by such assigument.

This provision will prevent the recurrence of what took place in *Cumberland* v. *Planché* (*b*), where, by the transfer of the copyright of a play, the right of representation was held to have passed also.

It is competent for an assignee of the sole right of representing a dramatic piece to sue for penalties under 3 & 4 Will. 4, c. 15 (*c*), notwithstanding the assignment is now made by deed, or registered under 5 & 6 Vict. c. 45 (*d*).

The administrator of an author of a dramatic piece first acted in 1843, by deed dated the 14th of April, 1859, in consideration of £100, assigned to the plaintiff the copyright and right of representation in all dramatic pieces written by the author; no entry of the assignment to the plaintiff had been made in the registry book in pursuance of the section under consideration; and it was held that the plaintiff might maintain an action for penalties under statute 3 & 4 Will. 4, c. 15, against the defendant, for representing the piece without his licence within twenty-eight years of its publication, the period for which the sole liberty of representation is given by that statute, although the deed was not registered under statute 5 & 6 Vict. c. 45, s. 22 (*e*).

That section in terms applies only to the effect of an assignment of the copyright, and was intended to correct what had probably been an omission in previous legislation; for upon the construction of statute 3 & 4 Will. 4, c. 15, s. 1, by the Court of Queen's Bench in *Cumberland* v. *Planché*, the assignment of the copyright of a dramatic piece carried with it, incidentally, the exclusive right of representation. Section 22 of statute 5 & 6 Vict. c. 45 was intended to meet that decision by enacting that no

(*a*) *Ante*, p. 67. (*b*) 1 Ad. & E. 580. (*c*) App. xvii.
(*d*) *Marsh* v. *Conquest*, 17 C. B. (N.S.) 418. (*e*) App. xxxii.

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assignment of the copyright of a dramatic piece or musical composition should be holden to convey the right of representing or *performing* it, unless an entry was made in the registry book that it was the intention of the parties that such right should pass by the assignment. That enactment does not apply to a case in which there is an assignment of the *right of representing or performing*. In the case of *Lacy* v. *Rhys*, there was an assignment of the right of acting, as well as of the copyright; and it was held, that it did not follow that, because section 24 required registration of an assignment of the copyright, and there was such an assignment there, therefore the assignment of the *right to represent* was in any way affected: *Utile per inutile non vitiatur*. When a person professes to convey two things, one of which he has a right to convey and the other he has not, the instrument operates to pass the property in that which he has a right to convey, and the rest is surplusage (*a*).

Assignment of the right of representation need not be registered.

It is clear, therefore, that an assignment merely of the right of representation needs not to be registered under the 22nd section.

The legal assignment must be in writing.

The legal assignment must be in writing. This was decided in *Shepherd* v. *Conquest* (*b*), where it appeared that the plaintiffs, being proprietors of the Surrey Theatre, verbally agreed with one Courtney that the latter should go to Paris for the purpose of adapting a piece there in vogue for representation on the English stage; that the plaintiffs should pay all Courtney's expenses, and should have the sole right of representing the piece in London, Courtney retaining the right of representation in the provinces. Courtney accordingly proceeded to Paris, produced a piece called 'Old Joe and Young Joe,' and was paid by the plaintiffs as agreed. The piece was brought out at the Surrey Theatre by the plaintiffs, and afterwards at the Grecian Saloon by the defendant, who had obtained an assignment from Courtney. The representations by the

(*a*) *Per* Cockburn, C.J., in *Lacy* v. *Rhys*, 4 B. & S. 873, 883; 12 W.R. 309; 33 L.J. (Q.B.) 157; 10 Jur. (N.S.) 612. See *Marsh* v. *Conquest*, 10 L.T. (N.S.) 717; 17 C.B. (N.S.) 418. (*b*) 17 C.B. 427; 25 L.J. (C.P.) 127.

defendant at the Grecian Saloon were the infringements of the plaintiffs' right complained of. The defendant objected that, as there was no assignment in writing from Courtney to the plaintiffs, the action was not maintainable. The plaintiffs contended that no assignment was necessary, for that, by virtue of Courtney's employment by them, they were the proprietors of the piece in question from the first moment of its composition, or that at least they were entitled to the sole right of representation in London. The Court of Common Pleas were of opinion that though Courtney made the adaptation at the suggestion of the plaintiffs, he acquired for himself, as the author of the adaptation, and as far as that adaptation gave any new character to the work, the statutory right of representing it; and that, inasmuch as the plaintiffs had no assignment in writing of that right, they could not sue for an infringement of it.

In the course of the delivery of the judgment, Jervis, C.J., doubted whether, under any circumstances, the copyright in a literary work, or the right of representation of a dramatic one, could become invested *ab initio* in an employer other than the person who had actually composed or adapted the work. But he was clearly of opinion that no such effect could be produced when the employers merely suggested the subject, and had no share in the design or execution of the work, the whole of which, so far as any character of originality belongs to it, flows from the mind of the person employed. It appeared to him to be an abuse of terms to say that, in such a case, the employers were the authors of a work to which their minds had not contributed an idea; and it is upon the author, in the first instance, that the right is conferred by the statute which creates it. Literary property stands upon a different and higher ground from that occupied by mechanical invention. The intention of the legislature in the enactments relating to copyright was to elevate and protect literary men; such an intention can only be effectuated by holding that the actual composer of the work is the author and proprietor of the copyright, and that no

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relation existing between him and an employer, who himself takes no intellectual part in the production of the work, can, without an assignment in writing, vest the proprietorship of it in the latter (*a*).

The enactments upon which literary property and patents for inventions are respectively founded differ widely in their origin and in their details. In order to show that the position and rights of an author with the former Acts are not to be measured by those of an inventor within the latter, it is only necessary to bear in mind that, whilst on the one hand a person who imports from abroad the invention of another, previously unknown here, without further originality or merit in himself, is an inventor entitled to a patent; on the other hand, a person who merely reprints for the first time in this country a valuable foreign work, without bestowing on it any intellectual labour of his own, as by translation (which, to some extent, must impress a new character), cannot thereby acquire the title of an author within the statutes relating to copyright (*b*). In *Morris* v. *Kelly* (*c*) an injunction was granted to restrain the performance of a comedy, the copyright of which had been sold by the author and had been afterwards assigned by writing to the plaintiffs, although it did not appear whether the original assignment was in writing, that fact being presumed till the contrary was shewn.

The composer's interest is not affected by showing that the song was composed to be sung by a particular performer at the opera, and that by the regulations of that establishment such compositions become the property of the house (*d*).

Infringement of the copyright in a musical composition.

As to what amounts to an infringement of the copyright in a musical composition (*e*), it has been decided that to publish, in the form of quadrilles and waltzes, the airs of an opera of which there exists an exclusive copyright,

(*a*) *Ante*, p. 44.
(*b*) Jervis, C.J., in *Shepherd* v. *Conquest*, 25 L. J. (N.S.) (Ch.) 127.
(*c*) 1 Jac. & W. 481. (*d*) *Storace* v. *Longman*, 2 Camp. 27.
(*e*) Assumption of the name and description of a song, see *Chappell* v. *Sheard*, 2 K. & J. 117.

amounts to such. In *D'Almaine* v. *Boosey* (*a*), the plaintiff published, first the overture, and then a number of airs, and all the melodies. It was admitted that the defendant had published portions of the opera containing the melodious parts of it; that he had also published entire airs; and that, in one of his waltzes, he had introduced seventeen bars in succession containing the whole of the original air, although he added fifteen other bars which were not to be found in it. This, it was contended, was not a piracy: first, because the whole of each air had not been taken; and secondly, because what the plaintiff had purchased of the original author was the entire opera, and the opera consisted, not merely of certain airs and melodies, but of the whole score. Lord Lyndhurst, Chief Baron, however, held, as to the first argument, that piracy might be of part of an air as well as of the whole; and with reference to the second, that, admitting that the opera consisted of the whole score, yet if the plaintiff was entitled to the work, *à fortiori* he was entitled to publish the melodies which formed a part. The Lord Chief Baron regarded the subject of music on a different principle to that which he regarded other literary works; for he would not admit that the adapting for dancing, or otherwise, from the original composition, in which some degree of art is needed, could be deemed such a modification of an original work as should absorb the merit of the original in the new composition. It is the air or melody which is the invention of the author, and which may, in such case, be the subject of piracy; and a piracy is committed if, by taking, not a single bar, but several, that in which the whole meritorious part of the invention consists is incorporated in the new work.

"If," said Lord Lyndhurst, "you take from the composition of an author all those bars consecutively which form the entire air or melody, without any material alteration, it is a piracy; though, on the other hand, you might take them, in a different order, or broken by the intersection of

(*a*) 1 Y. & C. 288. See *Chappell* v. *Sheard*, 1 Jur. (N.S.) 996.

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others, like words, in such a manner as should not be a piracy. It must depend on whether the air taken is substantially the same with the original. Now, the most unlettered in music can distinguish one song from another, and the mere adaptation of the air, either by changing it to a dance or by transferring it from one instrument to another, does not, even to common apprehensions, alter the original subject. The ear tells you that it is the same. The original air requires the aid of genius for its construction, but a mere mechanic in music can make the adaptation or accompaniment. Substantially, the piracy is, when the appropriated music, though adapted to a different purpose from that of the original, may still be recognised by the ear. The adding variations makes no difference in the principle."

A novel may be dramatized without infringement.

Though no person may, without the author's written consent, represent the incidents of his published dramatic piece, however indirectly taken, yet no action will lie, at the suit of the author of a novel, against a person who dramatizes it and causes it to be acted on the stage (*a*).

This was decided in *Reade* v. *Conquest* (*b*). The second count of the declaration alleged that the plaintiff was the duly registered proprietor of the copyright in a certain registered book, namely, a tale or novel or story entitled 'It is Never too Late to Mend,' and complained that the defendant, without the plaintiff's consent, dramatized the said novel, and caused it to be publicly represented and performed as a drama at the Grecian Theatre for profit, and thereby the sale of the book was injured, &c. To this count there was a demurrer; and it was insisted, on the part of the defendant, that representing the incidents of a published novel in a dramatic form upon the stage, although done publicly and for profit, is not an infringement of the plaintiff's copyright therein; and the Court of Common Pleas were of opinion that the defendant was right (*c*).

(*a*) *Reade* v. *Conquest*, 9 C. B. (N.S.) 755; S.C., 30 L. J. (N.S.) (C.P.) 209; 9 W. R. 434; 7 Jur. (N.S.) 265. (*b*) *Ibid.*

(*c*) In a French case cited in Le Blanc on 'Piracy,' p. 233, under the

Neither the 3 & 4 Will. 4, c. 15, nor the 5 & 6 Vict. c. 45, contemplated the conversion of a book into a dramatic piece, and the definition of copyright in the second section of the latter Act, "the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied," evidently did not include the claim of the plaintiff in the above case.

But the drama may not be printed.

All that was here decided was, that the defendant had a right to act, that is to say, to speak and *represent, the drama* which was constructed out of the plaintiff's novel; it was not held that the defendant had a right to *print it.*

In a subsequent case, in 1862 (*a*), Lush, as counsel for the defendant, submitted that he had a right to print and publish such a drama, with the exception of any passages which were mere copies of the novel; but the circumstances of the case did not render it necessary that the point should be decided. "If that question should arise," said Erle, C.J., "it would then be time to decide whether the defendant could find any defence; but it is clear he could not in that case defend himself on the ground that he was the author of the parts which he copied."

The question, however, has since arisen in the case of *Tinsley* v. *Lacy* (*b*). A bill was filed by the publishers and owners of the copyright in two novels, called 'Aurora Floyd' and 'Lady Audley's Secret,' written by Miss Braddon. The novels had been dramatized by a Mr. Suter and performed at the Queen's Theatre. The defendant, Mr. Lacy, had *published* the two plays as they were performed. It was proved that a large portion of the dramas, including the most striking incidents and much of the

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name of *Lefranc* v. *Paul de Brusset*, a different principle was followed. The defendant there had dramatized a tale written by the plaintiff, and represented it upon the stage for profit; the plaintiff claimed to be entitled, as *collaborateur*, to a portion of the profits, and the court decided that, although he could not claim in that capacity, inasmuch as the adaptation of the tale to the stage was without his knowledge or consent, still he had a good claim for damages against the defendant for the piracy, and they muleted the defendant in damages and costs.

(*a*) *Reade* v. *Conquest*, 31 L. J. (C.P.) 158; 8 Jur. (N.S.) 764; 11 C. B. (N.S.) 479. (*b*) 32 L. J. (Ch.) 535; 11 W. R. 876; 1 Hem. & Mill. 747.

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actual language of the novels, had been taken bodily from the novels. Vice-Chancellor Wood, in passing judgment, admitted that the defendant was entitled to dramatize the novels for the purpose of a mere acting drama; but held that he was not so entitled for the purpose of printing or selling his compilation. "He has taken," said the Vice-Chancellor, "to use the language of Lord Cottenham in *Bramwell* v. *Halcomb*, the vital portion of the novels, the leading incidents of the plot, and in many instances the very language of the novel itself. He reprints in his books (and I confine myself to what appears in the books, and say nothing as to the represented drama), the very words of the most stirring passages of the novels. It is no answer to say that similar infringements have often been committed. Although Sir Walter Scott and other authors did not choose to assert any claim of this kind, this does not affect the rights of the plaintiff; and it is to be observed, moreover, that there has been a considerable alteration of the law since the time referred to by the extension of copyright to dramatic performances. . . . The question of the extent of appropriation which is necessary to establish an infringement of copyright is often one of extreme difficulty; but, in cases of this description, the quality of the piracy is more important than the proportion which the borrowed passages may bear to the whole work. Here it is enough to say, that the defendant admits that one-fourth of the dramas is composed of matter taken from the novels. In *Campbell* v. *Scott* (*a*), which has a strong bearing on this point, the defendants had published a work containing biographies and selections from the works of a large number of modern poets, and among others, six short poems and extracts from larger poems written by the plaintiff. The defence was, that the poems were *bonâ fide* selections, forming a very small proportion of the writings of the plaintiff; that such compilations were cautiously made by the most respectable publishers; that the price of the compilation was £1 1s.,

(*a*) 11 Sim. 31.

while the plaintiff's entire works were published at 2*s.* 6*d.*; and that the plaintiff would be rather benefited than injured by the defendant's work, which contained 10,000 lines, of which only a few hundreds were taken from the plaintiff's poems." The Vice-Chancellor, after observing that in the case of the '*Encyclopædia Londinensis*' the jury found for the plaintiff, though the matter taken formed but a very small proportion of the work into which it was introduced, adds, that "it is not necessary to consider whether the selections were the cream and essence of all that Mr. Campbell ever wrote. There is no doubt that in this case, as in that of Campbell's poems, the passages taken were the striking passages, and these have been taken by the author of the defendant's publications for the express purpose of using Miss Braddon's property for his own benefit. So long as he confined himself to dramatic representation she could not be interfered with; but when he printed his plays he brought himself within the letter of the law."

The only way in which it appears possible for an author to prevent other persons from reciting or representing as a dramatic performance the whole or any portion of a work of his composition, is himself to publish his work in the form of a drama, and thus bring himself within the scope of the dramatic copyright clauses.

Where the plaintiff, the author of a drama, published a novel founded thereon, containing in substance the same incidents, characters and language, and the defendant's son dramatized the novel, and in so doing took many of the characters and incidents and much of the language of the novel, and, consequently, much which was the same as in the plaintiff's drama, but without having seen or in any way known of the plaintiff's drama, and the defendant then represented what his son had so dramatized, at his theatre; such representation was held to be an infringement of the plaintiff's stage copyright in his drama, as the defendant's son was not the author in respect of such parts of his drama copied from the novel which were

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the same as the corresponding parts of the plaintiff's drama (*a*).

The pianoforte score of an opera.

The pianoforte score of an already existing opera, whether arranged by the composer himself or by another person, is the subject of copyright. The arrangement of the opera score for the pianoforte involves labour as well as intelligence and skill, which constitutes it a new work (*b*). In Renouard's '*Traité des Droits d'Auteurs*,' tome ii. p. 190, pt. iv. ch. 2, p. 78, it is said: "*Des arrangemens, variations, valses, contredanses, etc., composés sur un thème, un air, un motif même, appartenant au domaine public; des pots-pourris, sorte de compilation musicale, disposés dans un certain ordre et avec certaines liaisons ou transitions, sont-ils des objets de privilège? Je n'hésite pas à croire que la solution affirmative résulte des principes généraux sur la matière, exposés au commencement de ce chapitre. Il résulte des mêmes principes que ces compositions ne conféreront un privilège qu'autant qu'elles supposeront de l'art, du travail, un effort d'intelligence; qu'elles seront, en un mot, une production de l'esprit.*"

Remedy in cases of infringements.

The 21st section of the 5 & 6 Vict. c. 45 (*c*) gives to the proprietors of the right of dramatic or musical representation or performance, during the term of their interest, all the remedies provided by the 3 & 4 Will. 4, c. 15. By the second section of this latter Act it is enacted, that if any person, during the continuance of the exclusive right of representing a dramatic piece, cause to be represented, without the author's or the proprietor's previous written consent, such production at any place of dramatic entertainment within the British dominions, every such offender shall, for each representation, be liable to the payment of not less than 40s., or of the full amount of the advantage arising from the representation, or of the loss sustained by the plaintiff, whichever shall be the greater damage.

(*a*) *Reade* v. *Conquest*, 31 L. J. (C.P.) 153; 8 Jur. (N.S.) 764; 11 C. B. (N.S.) 479.

(*b*) *Wood* v. *Boosey*, 7 B. & S. 869; L. R. 2 Q. B. 340; 36 L. J. (Q.B.) 103; 15 W. R. 309; 15 L. T. (N.S.) 530; affirmed 9 B. & S. 175; L. R. 3 Q. B. 223; 37 L. J. (Q.B.) 84; 16 W. R. 485; 18 L. T. (N.S.) 105.

(*c*) App. xxxi.

These penalties are recoverable by the author or proprietor in any court having jurisdiction in such cases in that part of the British dominions where the offence is committed.

Actions to be brought within twelve months.

The third section of the 3 & 4 Will. 4, c. 15, provides that all proceedings for any offence or injury against that Act shall be brought within twelve months from the committing of the offence, or else the same shall be void and of no effect.

CHAPTER XII.

COPYRIGHT IN ENGRAVINGS, PRINTS, AND LITHOGRAPHS.

Nature and origin of the right.

STRANGE yet true it is, that an art of so much importance —one which has exercised such an influence on the refinement of the people, and tended so apparently, yet indirectly, to the formation of the polished character of civilized Europe—should have remained for years without any protection whatever from the legislature.

In England, protection was not afforded to the artist until that great engraver and designer, Hogarth, arose like a giant from the most elevated of his associates in the art, and without the aid of his keen and penetrating intellect discovered, that, toil and labour how much soever he might, the product of his intellectual genius was by no means regarded as solely his, nor he deemed to have acquired a more permanent property in it than the purchaser or imitator of one of his numerous works of art.

Engravings resemble literary works as regards the incorporeal right in them accruing to the author by the exertion of his mental powers in their production; but differ, as they also require a considerable amount of his manual skill and labour; they are, therefore, his property upon the same general principles as any other manufacture.

In handling the present state of the law on this branch of the fine arts we may properly investigate, under one view, the various Acts of Parliament which are particularly appurtenant to the collective arts of designing, engraving, and etching, inasmuch as they, unlike those respecting literary copyright, have not yet been consolidated. A bill, however, to effectuate this, and to

consolidate the whole of the law of copyright in works of fine arts, is certainly now before the House, but when it will probably become law is a matter difficult of solution.

Engravings are works having a commercial value, and as such have a double claim upon the protection of the legislature. On the one hand, the artist claims that the productions of his genius may be protected, and injury to his fame and reputation, by the circulation of inferior imitations, prevented, or preventively guarded against; and on the other hand, security in the possession of the money value of the creation of his own mind.

Fine arts encouraged by the Stuarts.

During the reign of the Stuarts the fine arts received more or less patronage, and engraving and other productive arts began to flourish accordingly. George I. knighted the engraver of the Cartoons. Line engraving, however, had been most cultivated, and the amount of skill required to imitate a plate must have nearly equalled that of its first production; every stroke of the graver would have to be repeated, so that the pirate could hardly undersell the original; and from the costliness of this style and its refinement few could afford to purchase, and few, perhaps, would appreciate. As so much talent had to be spent by the engraver in transferring the forms to a new medium, from the canvas to the copper-plate, the value of the right of engraving to the owner of the picture was small; and the picture itself, whether a portrait or work of imagination, was executed solely as an individual work of art. Gradually, however, it became a practice to publish small prints, not for the profit on them, but to assist in spreading the reputation of the painter, and this was done in the case of portraits of public men. Of course the name of the artist was not omitted; it was attached to the corner, to secure, not, as now, the property in the print, but the fame of the picture. The diffusion of some new mechanic or chemic arts of engraving or etching facilitated this (*a*).

The first Act recognising engraving as an art, and

(*a*) Turner on 'Copyright in Designs,' p. 13.

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The first copyright engraving Act.

extending towards its professors the protection they so unquestionably deserved, was that of the 8 Geo. 2, c. 13 (*a*), entitled "An Act for the Encouragement of the Arts of designing, engraving, and etching historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers during the time therein mentioned." After reciting that "divers persons had, by their genius, industry, pains, and expense, invented and engraved, or worked, in mezzotinto or chiaro-oscuro, sets of historical and other prints, in hopes to have reaped the sole benefit of their labours, and that printsellers and other persons had of late, without the consent of the inventors, designers, or proprietors of such prints, frequently taken the liberty of copying, engraving, and publishing, or causing to be copied, engraved, and published, base copies of such works, designs, and prints, to the very great prejudice and detriment of the inventors, designers, and proprietors thereof," it enacted, that from and after the 24th of June, 1735, every person who should invent and design, engrave, etch, or work in mezzotinto or chiaro-oscuro any historical or other print or prints, should have the sole right and liberty of printing and representing the same for the term of fourteen years, to commence from the day of the first publishing thereof, which should be truly engraved with the name of the proprietor on each plate, and printed on every such print or prints. And the Act inflicted on other persons pirating the same "without the consent of the proprietor thereof first had and obtained in writing," the penalty of forfeiting the plate, the sheets on which the prints were copied, together with 5*s.* for every print so pirated, the one moiety to the king, and the other to any person who should sue for the same. And it further provided, that it should be lawful for any person who should thereafter purchase any plate for printing from the original proprietor, to print and reprint from the said plates without incurring any penalty.

Under this Act Lord Hardwicke refused relief to a person complaining of the piracy of a drawing or design

(*a*) App. i.

which he had only procured to be made; "for," said he, "the case was not within the statute, which was made for the encouragement of genius and art; if it was, any person who employs a printer or engraver would be so too. The statute is, in this respect, like the statute of new inventions, from which it is taken."

No provision, it will be seen, is in this Act made for the protection of any work of which the engraver is not also the designer; and this has been accounted for by the fact that Hogarth, by whose influence the Act was introduced, was invariably the designer as well as the engraver of his celebrated works.

The second Act.

The 7 Geo. 3, c. 38 (*a*), was made to remedy this oversight, and protection consequently extended to any person making an engraving from the original work of another. Its title is, "An Act to amend and render more effectual an Act made in the 8 Geo. 2, for Encouragement of the Arts of designing, engraving, and etching historical and other Prints, and for vesting in and securing to Jane Hogarth, widow, the Property in certain Prints." The first section recites that the former Act had been found ineffectual for the purposes thereby intended, and enacts that all and every person and persons who shall invent or design, engrave, etch, or work in mezzotinto or chiaro-oscuro, any historical print or prints, or any other print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, shall have the benefit and protection of the said Act and this Act, under the restrictions and limitations thereinafter mentioned. The second section enacts that all and every person and persons who shall engrave, etch, or work in mezzotinto or chiaro-oscuro, or cause to be engraved, etched or worked, any print taken from any picture, drawing, model, or sculpture, either ancient or modern, shall have the benefit and protection of the said Act and this Act for the term thereinafter mentioned (twenty-eight years), in like manner as if such print had been graved or drawn

(*a*) App. iv.

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from the original design of such graver, etcher, or draftsman; and if any person shall engrave, print, and publish, or import for sale, any copy of any such print, contrary to the true intent and meaning of this Act and the said former Act, every such person shall be liable to the penalties contained in the said Act, to be recovered as in the said Acts mentioned (*a*).

The third Act.

The next Act (17 Geo. 3, c. 57) (*b*) gave a special action upon the case, in which the proprietor might recover damages.

Provisions of Acts to be strictly complied with.

In order to vest the copyright of an engraving in the designer or engraver of the same, no registration, such as is necessary in the case of literary copyright, is required; the Acts above enumerated have merely to be strictly complied with. In the first place, it is therefore important that engravings should contain the date of publication and name of the publisher, in order to entitle the party to the penalties imposed by the statute Geo. 2. The reason assigned by the court in *Sayer* v. *Dicey* (*c*) being, "that any person may know when the proprietor's exclusive right ceases, and when, and against whom, he may be guilty of offending contrary to the statute." Lord Hardwicke, in an early case, doubted whether the clause on this subject in the Act ought to be construed as directory or descriptive, but he was of opinion that the property was vested absolutely in the engraver, although the *day* of publication was not mentioned, and compared it to the clause under the Statute of Anne, which requires entry at Stationers' Hall, upon the construction of which it has been determined that the property vests although the direction has not been complied with (*d*). However, it has subsequently been taken for granted by the Court of King's Bench that both the name and date should appear; the *date*, Lord Kenyon observed, is of importance, that the public may know the

(*a*) For the defective working of this Act, see Mr. Corrie's remarks in *Reg.* v. *Powell*, the 'Times,' November 10, 1862. (*b*) App. x. (*c*) 3 Wils. 60.
(*d*) *Blackwell* v. *Harper*, 2 Atk. 95; Barn. Ch. Rep. 210. See *Jefferys* v. *Baldwin*, Amb. 164; *Roworth* v. *Wilkes*, 1 Camp. 94; *Harrison* v. *Hogg*, 2 Ves. 323; *Thompson* v. *Symonds*, 5 T. R. 41.

period of the monopoly; the *name* should appear, in order that those who wish to copy it may know to whom to apply for consent (*a*).

In *Harrison* v. *Hogg* (*b*) Lord Alvanley differed from Lord Hardwicke, considering the insertion of the name and date essential to the plaintiff's right; and this ruling has been followed in all subsequent cases, though it is not deemed necessary that the designation "proprietor" should be added to the same (*c*).

As to the date.

The correct date is, moreover, a *sine quâ non*. In *Bonner* v. *Field* (*d*) this objection prevailed. It was an action for pirating a print of the seal of the Countess of Talbot. The plaintiff had been employed by Lady Talbot to engrave this plate for her, which he executed on the 1st of June, 1778, when he took off some impressions for her use. On the *following day* she gave the plate to the plaintiff, who engraved on the bottom of it, "Drawn and engraved by J. Bonner; published on the 1st of June, 1778, as the Act directs." The declaration having stated that the plaintiff was the proprietor on the 1st of June, Lord Mansfield nonsuited the plaintiff on the ground that he had no title on the day when he claimed it.

Engravings or etchings when published with letterpress.

These essentials, in order to secure to the artist the copyright in engravings or etchings when published separately, are not requisite where the engravings form part of a book in which there is copyright; for the Copyright Act, 1842, gives a copyright in "every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, manuscript, map, plan, or chart, separately published," and this definition, though it would not, of course, extend to prints or designs separately published, yet is sufficiently comprehensive to include prints and designs forming part of a book. The book is not less a book

(*a*) *Thompson* v. *Symonds*, 5 T. R. 41.
(*b*) 2 Ves. 323; *Newton* v. *Cowie*, 4 Bing. 234; *Brooks* v. *Cook*, 3 Ad. & E. 138, 4 N. & M. 652; *Colnaghi* v. *Ward*, 12 L. J. (Q.B.) 1; 6 Jur. 969; *Bogue* v. *Houlston*, 5 De G. & Sm. 267; *Avanzo* v. *Mudie*, 10 Ex. 203 *Graves* v. *Ashford*, 15 W. R. 495; Kerr on Injunc. 465.
(*c*) *Newton* v. *Cowie*, *supra*.
(*d*) Cited 5 T. R. 41.

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because it contains prints or designs, or other illustrations of the letter-press. A book must include every part of the book; it must include every print, design, or engraving which forms part of the book, as well as the letter-press therein, which is another part of it. A plaintiff published a book containing letter-press, illustrated by wood engravings, printed on the same paper at the same time. The defendants published a similar book with different letter-press, but containing pirated copies of the wood engravings. The plaintiff, upon motion for an injunction, proved that he had complied with the requisitions of the Copyright Act, 1842, but had not complied with the Act for the protection of engravings (8 Geo. 2, c. 13), by printing the date of publication and the name of the proprietor on each copy. Vice-Chancellor Parker considered the plaintiff entitled to an injunction, for upon the construction of the 5 & 6 Vict. c. 45, where there are designs forming part of a book in which a person has copyright, such copyright extends to the illustrations and designs of the book, equally as to the letter-press (*a*).

Ignorance no excuse.

It matters not whether the person selling the pirated engravings is aware of their being spurious or genuine; for though the 8 Geo. 2, c. 13 (*b*), imposed, first, a penalty upon any person who should engrave, copy, or sell, or cause to be copied or sold, in the whole or in part, by varying, adding to, or diminishing from the main design; and, secondly, upon persons selling the same, "*knowing the same to be so printed or reprinted*;" yet in the 17 Geo. 3, c. 57 (*c*), the words "knowing the same to be so printed or reprinted" are omitted; and it may, therefore, fairly be inferred that the legislature intended to comprehend even those who were not aware that they were selling base copies (*d*).

The former part of the 17 Geo. 3, c. 57, s. 1, applies

(*a*) *Bogue* v. *Houlston*, 5 De G. & Sm. 267; *Woods* v. *Highley*, 1866, before Vice-Chancellor Wood. (*b*) App. i. (*c*) App. x.
(*d*) *West* v. *Francis*, 5 Barn. & Ald. 737; 1 D. & R. 400; *Gambart* v. *Sumner*, 1 L. T. (N.S.) 13; *Clement* v. *Maddick*, 1 Giff. 98; 5 Jur. (N.S.) 592.

to persons who actually make the copy, and who therefore must know it to be a piracy. But the latter branch applies to all persons who import for sale, or sell, any copy of a piratical print.

As to what is an infringement.

What is an infringement is, in many cases, a difficult matter to solve. There can be no reason why a person should not be liable where he sells a copy with a mere collusive variation, for a copy is defined to be that which comes so near to the original as to give to every person seeing it the idea created by the original (*a*).

Great solicitude is requisite to guard against two extremes equally prejudicial: the one, that men of ability, who have employed their energies for the service of the community, may not be deprived of their just merits, and the reward of their ingenuity and labour; the other, that the community may not be deprived of improvements, nor the progress of the arts retarded. The Act which secures copyright to authors, *guards against* the piracy of the words and sentiments, but it does not prohibit writing on the same subject. As in the case of histories and dictionaries: in the first, a man may give a relation of the same facts, and in the same order of time; in the latter, an interpretation is given of the identical words. In all these cases the question of fact to come before a jury is, whether the alteration be colourable or not? There must be such a similitude as to make it probable and reasonable to suppose that one is a transcript of the other, and nothing more than a mere transcript. So in the case of prints, no doubt different men may take engravings from the same picture. There is no monopoly of the subject here any more than in the other instances, but upon any question of this nature, the jury will decide whether it be a servile imitation or not (*b*).

The first engraver does not claim the monopoly of the use of the picture from which the engraving is made; he says, Take the trouble of going to the picture yourself, but

(*a*) *West* v. *Francis*, *supra*. See *Roworth* v. *Wilkes*, 1 Camp. 94; *Moore* v. *Clark*, 9 M. & W. 692.

(*b*) *Sayre* v. *Moore*, 1 East, 361, n.

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do not avail yourself of my labour, who have been to the picture and have executed the engraving (*a*).

An engraver is invariably a copyist, and if engravings from drawings were not to be deemed within the intention of the legislature these Acts would afford no protection to that most useful body of men, the engravers. The engraver, although a copyist, produces the resemblance he is desirous of obtaining by means very different from those employed by the painter or draftsman from whom he copies; means which require great labour and talent. The engraver produces his effects by the management of light and shade, or, as the term of his art expresses it, the *chiaro-oscuro*. The due degrees of light and shade are produced by different lines and dots; he who is the engraver must decide on the choice of the different lines or dots for himself, and on his choice depends the success of his print. If he copies from another engraving, he may see how the person who engraved that has produced the desired effect, and so without skill or attention become a successful rival (*b*).

Engraving Acts extended to Ireland.

The Engraving Acts were extended to Ireland in 1837. By the 6 & 7 Will. 4, c. 59 (*c*), it was enacted that, from and after the passing of that Act, if any engraver, etcher, printseller, or other person should, within the period limited for the protection of copyright in engravings, engrave, etch, or publish, or cause to be engraved, etched, or published, any engraving or print of any description whatsoever, either in whole or in part, which might have been or which should thereafter be published in any part of Great Britain or Ireland, without the express consent of the proprietor or proprietors thereof first had and obtained in writing signed by him, her, or them respectively with his, her, or their own hand or hands in the presence of and attested by two or more credible witnesses, then every such proprietor should and might, by and in a separate

(*a*) *De Berenger* v. *Wheble*, 2 Stark. N. P. C. 548.
(*b*) *Newton* v. *Cowie*, *per* Best, C.J., 4 Bing. 246; *Martin* v. *Wright*, 6 Sim. 297.
(*c*) App. xx.

action upon the case, to be brought against the person so offending in any court of law in Great Britain or Ireland, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, should give or assess.

Engraving Acts to include lithographs.

The 15 & 16 Vict. c. 12, s. 14, declares that the provisions of this Act and the engraving Acts collectively are intended to include prints taken by lithography or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely, and the said Acts shall be construed accordingly (*a*).

The right in engravings may be infringed by photography.

It is therefore an infringement of the copyright given by the Engraving Acts to copy by photography, or sell a photographic copy of a print in which a copyright has been acquired under these Acts (*b*). The question arose not long since.

It was in an action for the infringement by the defendant of the plaintiff's copyright in two engravings, the one from Rosa Bonheur's 'Horse Fair,' the other from Holman Hunt's 'Light of the World.' It was proved that the plaintiff was the proprietor of these two engravings, and that the defendant had copied them on a very reduced scale by means of photography, and sold a great number of copies. The point was argued before the Court of Common Pleas, and it was unanimously decided that all processes for the indefinite multiplication of copies, whether mechanical or otherwise, were within the Acts for the protection of artists and engravers; and that when they declare mechanical processes of multiplying copies to be within them, no doubt they would have also thus declared the multiplication by means of photography, if the art of photography had then been known. If the object of the Acts of Parliament on the subject were, not simply to protect the reputation of the artist or the engraver, but to protect him against the invasion of his substantial

(*a*) App. lxxx.

(*b*) *Gambart* v. *Ball*, 14 C. B. (N.S.) 306; 11 W. R. 699; 32 L. J. (C.P.) 156; *Graves* v. *Ashford*, 15 W. R. 495; L. R. 2 C. P. 410; 16 L. T. (N.S.) 98; 36 L. J. (C.P.) 139.

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commercial property in the work of his genius or of his industry, it is plain that he sustains an injury by another offering a photographic copy which is capable of exciting in the mind of the beholder the same or somewhat similar pleasurable emotions as would be communicated by a copy of the engraving itself. The value of the artist's property would be sensibly diminished were the multiplication of copies by means of photography held to be lawful. In the case above referred to, Chief Justice Erle, in passing judgment, said: "In the representation of 'The Horse Fair,' we feel the same degree of pleasure in looking at the forms and attitudes of the beautiful animals there portrayed, whether we see them in the size in which they are drawn in the original picture, or in the reduced size of the engraving, or in the still more diminished form in which they appear in the photograph. . . . The object of the statute, to my mind, was, not merely to prevent the reputation of the artist from being lessened in the eyes of the world, but to secure to him the commercial value of his property, to encourage the arts, by securing to the artist a monopoly in the sale of an object of attraction. . . . It seems to me that the making of copies in that way and selling them is within the words as well as the meaning of the Act" (*a*).

Though the language of the statute includes, as we have seen, copies made by mechanical or chemical process, and capable of being multiplied indefinitely, yet it would seem not to include copies made by hand or designs transferred to an article of manufacture.

What not an infringement.

Nor where the print or engraving differs materially from the original in character, and is dealt with in a different manner, can the former be considered a piracy of the latter within these Acts. Thus in 1821, plaintiff, a celebrated artist, composed and painted from sketches he had designed a picture called 'Belshazzar's Feast,' which he shortly afterwards sold. In 1826 he engraved and published from the sketches a print of the same name,

(*a*) This judgment was confirmed on appeal by the Court of Exchequer Chamber.

having previously done all necessary acts for securing to himself the copyright of the print. The defendant having purchased one of the prints, had it copied on canvas in colours on a very large scale, with dioramic effect; and he publicly exhibited such dioramic copy at the Queen's Bazaar in Oxford Street for money, describing it, in his handbills and advertisements as "Mr. Martin's grand picture of 'Belshazzar's Feast,' painted with dioramic effect." The plaintiff applied for an injunction, but the Vice-Chancellor refused to grant one, on the ground that exhibiting for profit was in no way analogous to selling a copy of the plaintiff's print, but was dealing with it in a very different manner. The Engraving Acts were not intended to apply to a case where there was no intention to print, sell, or publish, but to exhibit in a certain manner. "If, however," added the Vice-Chancellor, "Martin had exhibited his picture as a diorama, then he might have been entitled to an injunction" (*a*)

The statutes do not apply to the taking a print unlawfully from a lawful plate. In *Murray* v. *Heath* (*b*), where the defendant, an engraver, took a number of impressions from a plate engraved by himself, but which he had undertaken to engrave for the use of the plaintiff, it was decided that no action was maintainable against him under the 17 Geo. 3, c. 57 (*c*). Of course at common law an action for damages might have been maintained by reason of the breach of contract to deliver to the plaintiff all the impressions.

So, upon a similar principle, it was held in *Mayall* v. *Higbey* (*d*) that a person who lends photographs to another for a particular purpose, may prevent him from taking and selling copies, except in pursuance of the purpose for which they were lent, and this, although the photographs have been published and irrespective of the question of copyright. The above was a case in which the plaintiff had lent photographs of eminent persons to Tallis, the

(*a*) *Martin* v. *Wright*, 6 Sim. 297; *Page* v. *Townsend*, 5 Sim 395.
(*b*) 1 Barn. & Adol. 804. (*c*) App. x. (*d*) 1 H. & C. 148.

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proprietor of the 'Illustrated News of the World,' for the purpose of engraving them for that newspaper. Tallis became bankrupt, and his assignees sold the photographs to the defendant; and it was held that the plaintiff was not only entitled to the photographs but to the unsold copies, and to an injunction to restrain the further sale. The Court said that there was no question of copyright, and compared it to the case of a valuable statue, which a friend to whom it is lent has no right to get copied.

In what class of engravings no copyright.

No copyright can exist in any obscene, immoral, or libellous engraving(*a*); and were one to destroy such a print or engraving, he would merely be liable at law to pay the value of the paper and print (*b*).

International copyright.

By an Act of Parliament to amend the law relating to international copyright (7 & 8 Vict. c. 12, ss. 2–4) (*c*), Her Majesty is empowered by an order in council to grant the privilege of copyright for such period as shall be defined in such order (not exceeding the term allowed in this country) to the authors, inventors, and makers of books, prints, articles of sculpture, and other works of art, or any particular class of them to be defined in such order, which shall, after a future time to be specified in such order, be first published in any foreign country, to be named in such order. But no such order in council shall have any effect unless it shall be therein stated as the ground for issuing the same that due protection has been secured by the foreign power named in such order in council for the benefit of parties interested in works first published in the dominions of Her Majesty similar to those comprised in such order. And every such order in council is to be published in the 'London Gazette' as soon as may

(*a*) See 5 Geo. 4, c. 83, s. 4; 1 & 2 Vict. c. 38, s. 2; 20 & 21 Vict. c. 83; *Fores* v. *Johnes*, 4 Esp. 97.

(*b*) *Du Bost* v. *Beresford*, 2 Camp. 511. In *The Emperor of Austria* v. *Day and Kossuth*, 7 Jur. (N.S.) 641, Ch.; on appeal, 4 L. T. (N.S.) 494, the Lord Chancellor stated that the cases of *Burnett* v. *Chetwood* (2 Mer. 441, note) and *Du Bost* v. *Beresford*, *supra*, were wrongly decided. Compare the fact of the liability of the destroyer for the amount of the paper, with the maxim in Moor, 813: "*Inveniens libellum famosum et non corrumpens punitur*," and, *if possible*, reconcile the two.

(*c*) App. lviii.

be after the making thereof, and from the time of such publication shall have the same effect as if every part thereof were included in the Act. And no copyright is allowed in any work of art first published out of Her Majesty's dominions otherwise than under this Act.

Summary proceedings for the recovery of penalties.

In concluding, we will offer a few remarks on the remedy afforded by a late Act of Parliament for the recovery of the penalties for infringement under the Engraving Acts. The mode of recovery was much simplified by the 8th section of the 25 & 26 Vict. c. 68, commonly known as the Copyright (Works of Art) Act (*a*). By this clause all pecuniary penalties which shall be incurred, and all such unlawful copies, imitations, and all other effects and things as shall have been forfeited by offenders pursuant to any Act for the protection of copyright engravings, may be recovered by the person empowered to recover the same, and thereinafter called the complainant or the complainer, as follows:

In England and Ireland.

In *England* and *Ireland*, either by action against the party offending, or by summary proceedings before any two justices having jurisdiction where the party offending resides (*b*);

In Scotland.

In *Scotland*, by action before the Court of Session in ordinary form, or by summary action before the sheriff of the county where the offence may be committed or the offender resides, who, upon proof of the offence or offences, either by confession of the party offending or by the oath or affirmation of one or more credible witnesses, shall convict the offender, and find him liable to the penalty or penalties aforesaid, as also in expenses; and it shall be lawful for the sheriff, in pronouncing such judgment for the penalty or penalties and costs, to insert in such judg-

(*a*) App. xcii.

(*b*) A magistrate sitting at a police court within the metropolitan police district, and every stipendiary magistrate appointed or to be appointed for any other city, town, liberty, borough, or place, or the lord mayor, or an alderman of London, sitting at the Mansion House, or Guildhall Justice Rooms, has power, when sitting alone, to exercise the jurisdiction given by this Act to two justices. 2 & 3 Vict. c. 71, s. 14; 11 & 12 Vict. c. 43, ss. 29, 33, 34.

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ment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by pounding; provided always that it shall be lawful to the sheriff, in the event of his diminishing the action and assoilzieing the defender, to find the complainer liable in expenses; and any judgment so to be pronounced by the sheriff in such summary application shall be final and conclusive, and not subject to review by advocation, suspension, reduction, or otherwise.

Further, it is declared lawful for the superior courts of record in which any action may be pending, or if the courts be not then sitting, then for a judge of one of such courts, on the application of either the plaintiff or defendant, to make an order for an injunction, inspection, or account, as to such court or judge may seem fit.

Evidence on behalf of plaintiff.

The evidence to be adduced at the trial on behalf of the plaintiff is simply that he is the proprietor of the print or engraving pirated; and it is sufficient that he produce one of the prints taken from the original plate. The production of the plate itself is not requisite.

CHAPTER XIII.

COPYRIGHT IN SCULPTURE AND BUSTS.

The art of sculpture

THE art of sculpture has never been particularly favoured by the English nation. It is an art which ought certainly to be patronised more extensively, for it refines and improves the public mind and taste.

The erection of national monuments to the memory of individuals who by their works or their virtues have conferred lasting benefit or honour on mankind in general or their own country in particular, or in order to commemorate important public events, is a means by which the art produces the most influential moral effects.

These mementoes or memorials, though in the present age the unphilosophical and sciolistic spirit of some have led them to regard with contempt this method of honouring the illustrious great, excite a laudable admiration for the service or benefit to which they testify, and are living realities to perpetuate at once the respect entertained by the nation, both for the individual himself and the performance that has entitled him to their gratitude. When efficiently executed, they not only perpetuate the memory of the individual himself and record his good deeds, but appeal continuously to the national mind, and encourage and stimulate all posterity to follow in his footsteps. The person represented seems to be ever present. The deeds commemorated appear still in vivid force, and although we have not the actual presence of the departed, we retain his remembrance and preserve much of his influence.

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"Public monuments, moreover," says Mr. Harris (*a*), "give a character to a nation and record the existence of what are in reality its noblest treasure,—the great men who have adorned it. They much influence the genius of a people, and in their turn exhibit the national feeling and genius. Indeed, the moral effect of these erections, both in ancient and modern times, has been made obvious. . . . . The essential advantage in regard to civilization, arising from the national veneration paid to heroes and great men, results from the stimulus which it excites to emulate their virtues, and to shun all those vices which are opposed to the latter, and by which lustre like theirs would be tarnished. The use of monuments in this respect is two-fold: first, to preserve the memory of those great men to whom they are erected, and of their virtues also; secondly, to testify the regard of the nation for those great men and for the virtues which they displayed. In both these respects, they are extensively and directly conducive to civilization, and are calculated to carry it to its highest point."

On these social grounds, therefore, it is incumbent upon the legislature to cherish and encourage an art yielding fruit such as this is capable of bearing.

Busts of private individuals are not likely to have much value as copyright, but busts of great men have a general interest and value. The demand for copies is so small that seldom is it that piracy takes place. The only case in which we remember the Sculpture Act being applied, is that of a bust of Fox.

The means of reproduction by a cast is very simple and merely mechanical (at least, after a single copy has been obtained), and this fact accounts for the limited application of the Act. Most of the ornamental casts in request are taken from foreign works of art, or from such as have been dedicated to the public by exposure or become public property; seldom is the licence of the original designer required. There is little skill in the

(*a*) 'Civilization considered as a Science.'

preparation of the type-mould, which corresponds to the plate of the engraver, unless, perhaps, where the scale is reduced (*a*).

Extent and duration of Acts.

The copyright in busts and sculptures mainly depends upon the 54 Geo. 3, c. 56 (*b*). This Act amended and extended the provisions of the 38 Geo. 3, c. 71, which had been found ineffectual for the purposes thereby intended. So ineffectual had it proved that although avowedly passed for the preventing the piracy of busts and other figures made and published by statuaries, it was decided to be no offence to *sell* a pirated cast of a bust if the piracy had any addition to or diminution from the original; nor was it an offence to *make* a pirated cast if it were a perfect *fac simile* of the original (*c*). Lord Ellenborough thought the statute had been passed with a view to defeat its own object, and taking advantage of the opportunity of making a joke, which the bar, as a matter of duty, had to imagine exceedingly good, advised artists when they applied to Parliament for further protection, not to *model* the new Act themselves as they appeared to have done the one in question.

The two statutes above referred to are commonly known as the Sculpture Copyright Acts, and the court will, in putting a construction upon any one of them, give effect to the intention of the legislature by construing them collectively (*d*).

The 54 Geo. 3, c. 56 (18th of May, 1814), enacts that every person or persons who shall make or cause to be made any new and original sculpture, or model, or copy, or cast of the human figure or human figures, or of any bust or busts, or of any part or parts of the human figure, clothed in drapery or otherwise, or of any animal or animals, or any part or parts of any animal, combined with the human figure or otherwise, or of any subject being matter

(*a*) Turner on 'Copyright in Design.'
(*b*) App. xii.
(*c*) *Gahagan* v. *Cooper*, 3 Camp. 111.
(*d*) *Newton* v. *Cowie*, 4 Bing. 245, and *Russell* v. *Smith*, 17 L. J. (Q.B.) 225, 229; the former with reference to the Engraving Acts, the latter to literary copyright.

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of invention in sculpture, or of any alto or basso-relievo representing any of the matters or things thereinbefore mentioned, or any cast from nature of the human figure, or of any part or parts of the human figure, or of any cast from nature of any animal, or of any part or parts of any animal, or of any such subject containing or representing any of the matters and things thereinbefore mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture, model, copy, and cast of the human figure and human figures, and of all and in every such bust or busts, and of all and in every such part or parts of the human figure, clothed in drapery or otherwise, and of all and in every such new and original sculpture, model, copy, and cast, representing any animal or animals, and of all and in every such work representing any part or parts of any animal combined with the human frame or otherwise, and of all and in every such new and original sculpture, model, copy, and cast of any subject being matter of invention in sculpture, and of all and in every such new and original sculpture, model, copy, and cast in alto or basso-relievo, representing any of the matters or things thereinafter mentioned, and of every such cast from nature, for the term of fourteen years from first putting forth or publishing the same; provided in all and every case the proprietor or proprietors do cause his, her, or their name or names, with the date, to be put on all and every such new and original sculpture, model, copy, or cast, and on every such cast from nature, before the same shall be put forth or published.

After the expiration of this term of fourteen years the copyright shall return to the person who originally had the copyright, if he be then living, for the further term of fourteen years, excepting in the case where such person shall by sale or otherwise have divested himself of such right (*a*).

(*a*) Sect. 6, App. xv. See *Grantham* v. *Hawley*, Hob. 132, cited *Lunn* v. *Thornton*, 1 C. B. 379; Vin. Abr. 'Grants,' M., *Carnan* v. *Bowles*, 2 Bro. C. C. 85.

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Conditions to be complied with in order to effectuate a copyright.

The conditions under which the copyright is acquired are almost identical with those required to be performed in order to obtain a copyright under the Engraving Acts. When a sculptor models a design for himself, and afterwards executes from such model a finished bust for another in marble or any other material, it is not sufficient for the sculptor, in order to acquire the copyright therein, to affix his name and the year when the finished copy from the model was executed (as is frequently the case); he must conform strictly to the letter of the Acts (*a*), and therefore engrave on the *model*, as well as on every cast or copy thereof, his name (*b*), and the day of the month and year when the model is first shewn or otherwise published in his studio, or elsewhere; and such *date must never be altered.*

Assignment of the right.

By the 54 Geo. 3, c. 56, it was further provided that no person who should thereafter purchase the right or property of any new and original sculpture, or model, or copy, or cast, or of any cast from nature, of the proprietor, expressed in a deed in writing signed by him in the presence of and attested by two or more witnesses, should be subject to any action for copying, or casting, or vending the same; and that all actions brought for pirating under this Act should be commenced within six calendar months next after the discovery of the offence.

Registration.

Sculptures and models may now be registered under the Designs Act (13 & 14 Vict. c. 104, s. 6) (*c*), which provides that the registrar of designs, upon application by or on behalf of the proprietor of any sculpture, model, copy, or cast within the protection of the Sculpture Copyright Acts, and upon being furnished with such copy, drawing, print, or description, in writing or in print, as in the judgment of the said registrar shall be sufficient to identify the particular sculpture, model, copy, or cast in respect of which registration is desired, and the name of the person

(*a*) As under the Designs Act, see *Pierce* v. *Worth*, 18 L. T. (N.S.) 710.

(*b*) The name need not necessarily be the baptismal and surname of the proprietor, but such as he or his co-proprietors are commonly known by or trade under.

(*c*) App. lxx.

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claiming to be proprietor, together with his place of abode or business, or other place of address, or the name, style, or title of the firm under which he may be trading, shall register such sculpture, model, copy, or cast, in such manner and form as shall from time to time be prescribed or approved by the Board of Trade, for the whole or any part of the term during which copyright in such sculpture, model, copy, or cast may or shall exist under the Sculpture Copyright Acts; and whenever any such registration shall be made, the said registrar shall certify under his hand and seal of office, in such form as the said board shall direct or approve, the fact of such registration and the date of the same, and the name of the registered proprietor, or the style or title of the firm under which such proprietor may be trading, together with his place of abode or business, or other place of address.

The application under this section need not necessarily be made by the author; it is to be made by the proprietor.

Infringement of the right, and penalties attached thereto.

The 7th section (*a*) provides that if any person shall, during the continuance of the copyright in any sculpture, model, copy, or cast which shall have been so registered as aforesaid, make, import, or cause to be made, imported, exposed for sale, or otherwise disposed of, any pirated copy or pirated cast of any such sculpture, model, copy, or cast, in such manner and under such circumstances as would entitle the proprietor to a special action on the case under the Sculpture Copyright Acts, the person so offending shall forfeit for every such offence a sum not less than £5 and not exceeding £30, to the proprietor of the sculpture, model, copy, or cast whereof the copyright shall have been infringed; and for the recovery of any such penalty the proprietor of the sculpture, model, copy, or cast which shall have been so pirated shall have and be entitled to the same remedies as are provided for the recovery of penalties incurred under the Designs Act, 1842: provided always, that the proprietor of any sculpture, model, copy, or cast which shall be registered under this Act shall not

(*a*) App. lxx.

be entitled to the benefit of this Act unless every copy or cast of such sculpture, model, copy, or cast which shall be published by him after such registration, shall be marked with the word "registered" and with the date of registration.

This is a great improvement on the law as it stood prior to the year 1842, but why the provisions for registration should not have been extended to engravings and prints is a matter of surprise.

In conclusion, we must express a hope that protection will before long be afforded to the sculptor against drawings or engravings of any description, which may now be taken from his work with impunity. If the sculpture be a production of any merit and value, if well designed and engraved, it might be profitable to the author in various ways; while, on the contrary, if it be badly or carelessly executed, it may be alike annoying to him and injurious to his reputation and fame.

CHAPTER XIV.

COPYRIGHT IN PAINTINGS, DRAWINGS, AND PHOTOGRAPHS.

The arts of painting and drawing.

Of all the branches of the fine arts this was the last recognised as worthy of protection by the legislature. On what ground it is difficult to comprehend. Where is the difference in principle between a picture and a poem? The claims of the artist to a copyright in his works are quite as valid as those of the literary author in his; and if the principle were once admitted that a man should be protected in the enjoyment of his intellectual productions, and a certain period of exclusive possession allowed to the author for his benefit, before the public were in full and free enjoyment of the work, on what ground could Parliament so long withhold the same privilege from the artist as it had already granted to the author.

It is a strange anomaly that while the law gave a property to that which was, in the ordinary way, the work of a man's hands, and allowed a copyright in inventions and designs, it should have afforded no protection to those productions which were exclusively the creations of the mind. It was thought but an act of justice and right that a copyright should exist in literary productions, but when it was proposed, as late as 1862, to give a similar right in pictures, a cry was raised that it was derogatory on the part of jurisprudence to protect the works of those who contributed by their art to the honour of their country, the elevation of the national taste, and the amusement, instruction, and delight of the community at large.

With respect to the fine arts, two series of Acts had

been passed, giving a copyright of a limited and special nature in sculptures and engravings; hence this unaccountable opposition to the bestowing a copyright in paintings appears the more extraordinary. For while an engraving enjoyed protection, the picture from which it was taken was without. A man might make any number of copies of the best work of the artist—sell them, and there was no remedy. Not unfrequently these copies were sold as originals, and even the name of the original artist forged upon them, but the injured party was without redress.

The evil was almost peculiar to this country. In most European countries the principle of copyright extended through the whole range of the fine arts, and, unlike our law, especially protected the works of painters.

At the present day, if one purchases the copyright of a picture he holds the picture, free from any interference, and with the perfect right of dealing with it as he pleases. If, however, he buys the picture simply as a picture, he will then have the gratification and delight resulting from its contemplation—he cannot make copies or engravings from it, or use it for a different purpose from that for which the artist sold it. The same rule applies to authors. When a person buys a book he can read it, but cannot multiply copies of it unless he purchases the copyright. This appears but fair, especially if we bear in mind that the greater part of the artist's remuneration probably arises from the reproduction of his work.

The existence of copyright in painting is a protection also to the purchaser of a picture. It was formerly well known that after a person had purchased a picture the artist might have made a copy and multiplied it to any extent, although the purchaser might have been under the impression that he had bought a picture as being the single work of the artist. Of course such an action would not have become an honourable man, but still the right remained to the artist to act in such a manner had he thought proper. It is not a desirable thing to have a great work of art multiplied indefinitely, and hawked

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about for sale. It is well known that the frequent repetition of a work of art diminishes the worth of the original; indeed, nothing detracts so much from its commercial value.

At length the wished-for day arrived, and the artists succeeded in obtaining for their protection an Act of Parliament.

Creation of copyright in works of art.

The Act (25 & 26 Vict. c. 68) (*a*) is entitled, 'An Act for amending the Law relating to Copyright in Works of the Fine Arts, and for repressing the commission of Fraud in the Production and Sale of such Works.' It provides that the author, being a British subject or resident within the dominions of the Crown, of every original painting, drawing, and photograph which shall be or shall have been made, either in the British dominions or elsewhere, and which shall not have been sold or disposed of before the commencement of the Act, and his assigns, shall have the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing and the design thereof, or such photograph and the negative thereof, by any means and of any size, for the term of the natural life of such author, and seven years after his death; provided that when any painting or drawing or the negative of any photograph shall for the first time after the passing of this Act be sold or disposed of, or shall be made or executed for or on behalf of any person for a good or a valuable consideration, the person so selling or disposing of or making or executing the same shall not retain the copyright thereof unless it be expressly reserved to him by agreement in writing, signed at or before the time of such sale or disposition by the vendee or assignee of such painting or drawing or of such negative of a photograph, or by the person for or on whose behalf the same shall be so made or executed, but the copyright shall belong to the vendee or assignee of such painting or drawing or of such negative of a photograph, or to the person for or on whose behalf the same shall have been made or

(*a*) App. lxxxviii.

executed; nor shall the vendee or assignee thereof be entitled to any such copyright, unless at or before the time of such sale or disposition an agreement in writing, signed by the person so selling or disposing of the same, or by his agent duly authorized, shall have been made to that effect. CAP. XIV.

By whom it may be claimed.

It is important that the artist, at the sale or at or before the time of delivery or the completion of the bargain, should obtain the signature of the vendee or assignee, or of the person for whom the work has been executed, to a written reservation of the copyright to himself, if he desires to retain it; or assign in writing the same to the purchaser at or before the completion of the transaction, otherwise the copyright will be irredeemably lost. If the vendee obtains not this assignment in writing, he will be unable to protect himself against piracy or repetition by the artist, as section 6 only protects pictures, &c., in which there is subsisting copyright. The copyright cannot, unless reserved in writing, vest in the vendor; it cannot, if not assigned in writing, vest in the vendee or assignee. It, however, would pass without a written agreement to the person for or on whose behalf a work is expressly executed, *as in commissions*.

The copyright given by the above section is qualified by the following one, to the extent that nothing shall prejudice the right of any person to copy or use any work in which there is no such copyright, or to represent any scene or object, notwithstanding that there may be copyright in some representation of such scene or object.

This must refer to and include all works of ancient and deceased masters, and all paintings of living artists sold before the passing of this Act, or since, without the statutory provisions having been complied with for the creation and transfer of copyright.

All formalities, such as are required under the Engraving or the Sculpture Copyright Acts, are unnecessary in the assignment and transfer under this Act; for copyright is declared to be personal property, and capable

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Assignment and registration.

of being assigned by any note or memorandum in writing, signed by the proprietor of the copyright, or by his agent appointed for that purpose in writing.

By the 4th section (*a*) it is declared that a book of registry shall be kept at Stationers' Hall, entitled 'The Register of Proprietors of Copyright in Paintings, Drawings, and Photographs,' in which shall be entered a memorandum of every copyright to which any person shall be entitled under this Act, and also of every subsequent assignment; and that such memorandum shall contain a statement of the date of the agreement or assignment, and of the name and address of the person in whom such copyright shall be vested, and also of the author of the work, together with a short description of the subject of the work; and if the person registering shall so desire, a sketch, outline, or photograph of the work.

It is not a valid objection that the registration does not give such a description of the work as may enable a person from it alone to ascertain whether he is about to sell the copy of a registered work, for that knowledge may be gained from other sources, and the object of the legislature, as pointed out by the statute, is that there shall be such a description of the picture as to enable a person who has it before him to judge whether or not the registration applies to the one he is about to copy. This was decided in 1868. Mr. Henry Graves, being the proprietor of the copyright in two paintings in oil and in a photograph, entered them under this section, thus: "Painting in oil, 'Ordered on Foreign Service;' painting in oil, 'My First Sermon;' photograph, 'My Second Sermon.'" The first picture represented an officer taking leave of a lady; the second, a young child sitting in a pew, apparently listening with her eyes wide open; the photograph represented the same child asleep in a pew; and it was considered that the nature and subject of the works were sufficiently described under this section. "If we consider it as a question of fact," observed Mr. Justice Blackburn, "there can be no

(*a*) App. lxxxix.

reasonable doubt that the description of each of the pictures is sufficient. The picture, 'Ordered on Foreign Service,' represents an officer who is ordered abroad, taking leave of a lady, and no one can doubt that is the picture intended. So again 'My First Sermon' describes with sufficient exactness a child, impressed with the novelty of her situation, sitting in a pew, and listening with her eyes open; while the same child, fast asleep in a pew, forms the subject of 'My Second Sermon.' Who can doubt that in each of these cases the description is sufficient? There may be a few instances in which the mere registration of the name of the picture is not sufficient; for instance, Sir E. Landseer's picture of a Newfoundland dog might possibly be insufficiently registered under the description of 'A distinguished Member of the Humane Society.' Similarly, the well-known picture called 'A Piper and a Pair of Nutcrackers,' representing a bullfinch and a pair of squirrels, might not be accurately pointed out by its name. In either of those cases the names would scarcely be sufficient, and it would be advisable for a person proposing to register them to add a sketch or outline of the work. But when the subject is indicated, as it is here, it seems to be merely a question of fact whether the description affords enough information, and I cannot doubt that it does" (*a*).

No copyright to accrue until after registration.

It is further enacted by the 4th section that no proprietor of any copyright shall be entitled to the benefit of this Act until such registration, and no action shall be sustainable nor any penalty be recoverable in respect of anything done before registration (*b*).

This section, though it prevents an assignee from suing for penalties, before the assignment to him has been registered, does not render it necessary that all or any previous assignment should also be registered, or that the copyright of the original author should be registered (*c*).

(*a*) *Ex parte Beal*, 3 Law Rep. (Q.B.) 387; 37 L. J. (Q.B.) 161; S. C. 18 L. T. (N.S.) 285. (*b*) *Vide ante*, p. 72. See App. lxxxix.
(*c*) *Re Walker & Graves*, 20 L. T. (N.S.) Q.B. 877.

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The enactments of the 5 & 6 Vict. c. 45, in relation to the registry thereby prescribed, are applicable to the registry under the 25 & 26 Vict. c. 68, except that the forms of entry prescribed by the earlier Act may be varied under the latter to meet the circumstances of any case. Consequently, the making of false and fraudulent entries of proprietorship of copyright for any purpose, either to acquire property in such copyright or to improperly restrain the publication or copying of works in which no copyright lawfully exists, is a misdemeanour. And the person aggrieved may apply to the court or a judge to obtain an order for the cancellation or substitution of names so inserted (*a*).

Infringement of the right, and penalties attached thereto.

Invasion of the property is guarded against by the 6th section, which provides that if the author, after having sold or disposed of the copyright, or if any other person not being the proprietor for the time being of the copyright, shall repeat, copy, colourably imitate, or otherwise multiply for sale, hire, exhibition, or distribution, or cause or procure to be repeated, copied, imitated, or otherwise multiplied for sale, hire, exhibition, or distribution, any such work or the design thereof, or knowing that any such repetition (*b*), copy, or other imitation has been unlawfully made, shall import into the United Kingdom, or sell, publish, let to hire, exhibit or distribute, or offer for sale, hire, exhibition, or distribution, or cause or procure to be imported, sold, published, let to hire, distributed or offered for sale, hire, exhibition, or distribution any repetition, copy, or imitation of the said work, or of the design thereof, such person, for every such offence, shall forfeit to the proprietor of the copyright for the time being a sum not exceeding £10; and all such repetitions, copies, and imitations, and all negatives of photographs made for the purpose of obtaining such copies, shall be forfeited to the proprietor of the copyright.

(*a*) *Chappell* v. *Purday*, 12 M. & W. 303.

(*b*) *Actus non facit reum, nisi mens sit rea* (*Reg.* v. *Sleap*, 8 Cox, C. C. 472; *Reg.* v. *Cohen*, *ibid.* 41; *Hearne* v. *Garton*, 28 L. J. (M.C.) 216.

Under this clause, where the subject of a picture is copied, it is of no consequence whether that is done directly from the picture itself or through intervening copies; if, in result, that which is copied be an imitation of the picture, then it is immaterial whether that be arrived at directly or by intermediate steps. A copy, therefore, from an intervening copy is a copy from the original work, and within the prohibitory clauses of the statute. Nor does the copying refer merely to the imitation of a painting by a painting, or drawing by a drawing, or a photograph by a photograph, so that a photograph of a drawing, or a drawing of a painting, protected by the Act, would be a piracy. For, on inspecting the 1st section, which is the key to the whole Act, it gives to the author of every original painting, drawing, or photograph the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing and the design thereof, or such photograph and the negative thereof, by any means and of any size; and the terms used are so extensive that it is plain that a photograph of a painting, of a drawing, or of another photograph made without the consent of the owner, though of a different size, provided it be a reproduction of the design, is an infringement such as would subject the maker to the penalty.

The penalties cumulative.

Moreover, the offending individual is liable to the penalty for every copy sold. Thus, where twenty-six copies were disposed of in two parcels of thirteen copies each, it was held that the penalty was properly imposed on every copy sold. "In the case of *Brooke* v. *Milliken* (*a*)," says Mr. Justice Blackburn, in *Beal's Case* (*b*), to which we have already referred, "the penalty was imposed by 12 Geo. 3, c. 36, for importing for sale any book first published in this kingdom and reprinted in any other place, and it enacted that the offender should forfeit £5. and double the value of every book sold. In that case there could be no doubt that the meaning of the statute was, the penalty should be cumulative, viz., double the

(*a*) 3 T. R. 509. (*b*) Law Rep. 3 (Q.B.) 395.

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value of each book. In the present case the words are, 'such person for every such offence shall forfeit to the proprietor of the copyright for the time being a sum not exceeding £10.' It is quite clear that this imposes a penalty for every copy sold; a different construction would result in an absurdity, and defeat the intention of the legislature. The penalty is imposed also for importation, and it would be monstrous, that if a man had consigned from abroad a cargo of imitations, the utmost penalty that could be imposed on him would be the sum of £10. It would be well worth his while to run the risk of paying that small sum, and to import and distribute for sale elsewhere a quantity worth many thousands. The legislature were dealing with an offence which was likely to be committed wholesale, and they have used words meaning that the sale of every copy shall be an offence, and if ten copies be sold at one time, ten offences are committed, and the offender may be punished for each separately."

Provisions for repressing the commission of fraud in the production and sale of works of art.

The 7th section (*a*) imposes penalties on every person doing or causing to be done any of the following acts:

1st. If he shall fraudulently sign or otherwise affix, or cause to be signed or otherwise affixed, to any painting, drawing, or photograph, or the negative thereof, any name, initial, or monogram.

This clause was rendered necessary by the decision in the case of *The Queen* v. *Closs* (*b*). A picture had been painted by Mr. Linnell, who signed and sold it for £180. The prisoner was a picture dealer, and was indicted for fraudulently selling a copy of Linnell's picture as and for the genuine picture which he had painted. Mr. Linnell's name was likewise painted on such copy, which the prisoner sold for £130. The indictment contained three counts: the first charged the prisoner with obtaining money under false pretences, but upon this count he was acquitted; the second count charged him with a *cheat* at common law (*c*), by means of writing Linnell's name upon the copy; and

(*a*) App. xci. (*b*) 27 L. J. (M. C.) 54; 7 Cox, C. C. 494; 6 W. R. 109.
(*c*) *Albin's Case*, Tremaine, P. C. 109; *Worrall's Case*, *ibid.* 106; 2 East, P. C. 18, cited 2 Russell on 'Crimes,' 282.

the third count charged the prisoner with a *cheat* by means of a forgery of Linnell's name upon the copy. Upon these last two counts the prisoner was convicted; but his counsel objecting, that they disclosed no indictable offence at common law, the judgment was respited in order that the opinion of the Criminal Court of Appeal might be taken upon the objection so raised. The case was afterwards argued before five judges, who formed such court of appeal, and they unanimously held that the conviction was *wrong*; that there was no forgery; that "forgery must be of some document or writing," and Linnell's name in this case must be looked at merely as in the nature of an arbitrary mark made by the master to identify his own work, and was no more than if the painter had put any other arbitrary mark made by him, as a recognition of the picture being his. As to the second count of the indictment, the court held that the conviction could not be sustained, because it did not sufficiently shew that the prisoner sold the copy by *means* of Linnell's signature being forged upon it.

2nd. If he shall fraudulently sell, publish, exhibit, or dispose of the same, or offer it for sale, exhibition or distribution.

3rd. If he shall fraudulently sell any copy or colourable imitation of any painting, drawing, or photograph or negative of a photograph, whether there shall be subsisting copyright therein or not, as having been executed by the author of the original work from which such copy or imitation shall have been made.

4th. If, where the author of any painting, drawing, or photograph, or negative of a photograph, shall have sold such work, any person shall afterwards make any alteration by addition or otherwise during the life of the author, without his consent, and shall knowingly sell (*a*) or publish such work, or any copies thereof so altered, or of any part thereof, as or for the unaltered work of such author.

(*a*) Unless the person selling were cognizant of the fact of alteration the Act would be an entirely innocent one. See *Reg.* v. *Sleap*, 8 Cox, C. C. 472; *Reg.* v. *Cohen*, *ibid.* 41; *Hearne* v. *Garton*, 28 L. J. (M.C.) 216.

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This clause is intended to prevent the alterations so frequently made in the works of great artists for fraudulent purposes. Mr. Charles Landseer stated a most glaring case in his evidence before a committee appointed by the Society of Arts. It appears that he painted a picture called the 'Eve of the Battle of Edgehill,' in which he introduced two dogs, which had been touched up by his brother Sir Edwin, and, as he himself admitted, greatly improved. The picture was sold to a dealer, who cut out the figures of the dogs and sold them as the work of Sir Edwin Landseer, and he then filled up the hole in the original picture with two dogs painted by an inferior artist, and sold the whole picture as the work of Mr. Charles Landseer.

Every offender under this section shall forfeit to the person aggrieved a sum not exceeding £10, or not exceeding double the full price at which all such copies or altered works shall have been sold or offered for sale; and they shall be forfeited to the person, or the assigns, or legal representatives of the person whose name, initials, or monogram shall have been fraudulently used; provided such person shall have been living at or within twenty years next before the time when the offence may have been committed.

It would seem that if the double price of the copies be less than £10, yet that amount may still be recovered, and that if the double value exceed £10, then any sum up to such double price may be recovered by the person aggrieved, as an inducement to him to proceed, he having to give up the spurious work to the true artist or his representatives, and receive from the person who has defrauded him the price he has paid and as much more.

The penalties imposed as a punishment for a criminal offence.

Under these penal sections it has been determined that a person sentenced to pay a penalty cannot, by executing a deed of arrangement with his creditors, escape from the imprisonment consequent on a failure to pay (*a*).

(*a*) *Graves, Ex parte*, 19 L. T. (N.S.) 241; Law Rep. 3 Ch. 642; 16 W. R. 993; *Bancroft* v. *Mitchell*, Law Rep. 2 (Q.B.) 549. See, however, *Johnson*,

Mr. Graves, the well-known publisher of engravings, became the proprietor of the copyright in Frith's 'Railway Station' and other paintings, and the designs thereof, and also in the copyright in the engravings of such pictures. Photographic copies of these engravings were then fraudulently made, and sold for about one-twentieth of the price at which the copies of Mr. Graves's prints were sold. Such photographic copies were exact reproductions of the engravings and of a large size. Upon the 16th of May, 1868, a man named William Banks Prince was convicted by a magistrate at Lambeth of having sold no less than nineteen of the fraudulent photographic copies in question. He was adjudged to pay a penalty of £5 in respect of each of the copies sold; and, in default of payment, the magistrate, under powers given him by the Small Penalties Act, 1865, sentenced Prince to fourteen days' imprisonment in respect of each of the nineteen offences he had committed by selling the photographic copies. While the magistrate was giving his judgment Prince executed a deed of composition with his creditors, which contained a release from them. That deed was assented to by certain creditors of Prince, and then registered in due form. Not having paid the penalties in which he was convicted he was taken into custody upon a magistrate's warrant, and imprisoned pursuant to his sentences. Thereupon he applied to the Bankruptcy Court for his discharge from custody, upon the ground that the penalties in which he had been convicted were *debts*, from the payment of which he had been released by the deed of composition executed between him and his creditors. The court held that Prince was entitled to his discharge.

From this decision Mr. Graves appealed to the lords justices, upon the ground that penalties recovered under

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Ex parte, In re Johnson, 15 W. R. 160; 15 L. T. (N.S.) 163; *Rex* v. *Stokes*, Cowp. 136; *Rex* v. *Wakefield*, 13 East, 190; *Rex* v. *Myers*, 1 T. R. 265. As to limitation of time of three months for action under the 8 Geo. 2, c. 13, not applying to an action for damages, see *Graves* v. *Mercer*, 16 W. R. 790.

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the Copyright (Works of Art) Act, 1862, were in the nature of a punishment, and consequently were not released by the composition deed which had been executed between Prince and his creditors. On the contrary, it was argued for the respondent that, inasmuch as under the Copyright (Works of Art) Act the penalties were payable to Mr. Graves, they amounted in the aggregate to nothing more than a debt, which would have been provable under bankruptcy, and was therefore released by the deed. But Lord Justice Page Wood, held that what Prince had done in selling the photographic copies was throughout the Copyright (Works of Art) Act treated as an offence, as a *fraudulent* act, for which a punishment was to be inflicted. The penalty provided by the Act was not meant to be the measure of damage sustained by the proprietor of the copyright work which had been pirated, because he was expressly permitted to recover damages by action (in addition to the penalties) under the 11th section of the Act (*a*). The object of the Small Penalties Act was merely to provide a simple method of enforcing the payment of penalties not exceeding 5*l*. The penalty given by the Copyright (Works of Art) Act was, in His Lordship's opinion, a punishment for what was in the nature of a criminal offence, and the debtor was therefore not entitled to his discharge from custody unless the penalties were paid. The Lord Justice Selwyn was also of opinion that whether the words or the spirit of the Copyright (Works of Art) Act, under which the penalties had been incurred, were looked at, the order in bankruptcy was wrong, and must therefore be dismissed with costs.

(*a*) App. xciii.

CHAPTER XV.

COPYRIGHT IN DESIGNS.

Copyright in designs.

CALICO-PRINTING, the art of dyeing woven fabrics of cotton with variegated figures and colours more or less permanent, has been practised from time immemorial in India. The art was known to the ancient Hindus and Egyptians. Pliny describes it with sufficient precision. "Robes and white veils are painted in Egypt," says he, "in a wonderful way; being first imbued, not with dyes, but with dye-absorbing drugs, by which they appear to be unaltered, but when plunged for a little in a cauldron of the boiling dye-stuff they are found to be painted. Since there is only one colour in the cauldron, it is marvellous to see many colours imparted to the robe in consequence of the modifying agency of the excipient drug. Nor can the dye be washed out. Thus the cauldron, which would of itself undoubtedly confuse the colours of cloths previously dyed, is made to impart several dyes from a single one, painting while it boils" (*a*).

Anderson, in his 'History of Commerce,' places the origin of English calico-printing as far back as the year 1676; but Mr. Thomson, a better authority, assigns the year 1696 as the date of the commencement of the practice of this art in England, when a small print-ground was established on the banks of the Thames, at Richmond, by a Frenchman.

Linen was long ago, and silks and woollen fabrics also have recently been, made the subject of topical dyeing, upon principles analogous to those of calico-printing, but

(*a*) Pliny, 'Natural History,' lib. xxxv. c. 2.

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with certain peculiarities arising from the nature of their textile materials.

The first Act granting protection to the inventor of designs was passed in 1787 (the 27 Geo. 3, c. 38). This Act was followed by the 29 Geo. 3, c. 19, and the 34 Geo. 3, c. 23. But these Acts did not extend to Ireland, nor to fabrics other than linen and cotton, and did not afford any protection to designs on fabrics composed of animal products, as wool, silk, or hair, or mixtures of those materials with flax and cotton. The printing on fabrics of animal and vegetable substances, and on mixed fabrics, having subsequently grown up into an important branch of manufacture, an Act of Parliament was introduced in 1839 (2 Vict. c. 13), by which the same protection was given to designs printed on fabrics of animal substances, or a mixture of animal and vegetable substances, as was afforded to designs printed on fabrics of vegetable substances; and the provisions of the existing Acts were extended to Ireland.

We followed the French in establishing any design rights at all; and it would be well if we adopted their simple, sensible arrangement for securing them.

In the early part of the last century the French entertained more correct notions of the rights of property in design than the British, and so convinced were they that great benefits would flow from rejecting the claim of the copyist to reap the original designer's profits, that, in 1737 and 1744, laws established a property in designs for the manufacturers of Lyons, and in 1787 the benefits of legal protection were fully established. The basis of the pre-eminence of the French, and the means by which they have attained their unrivalled position in *taste*, is *efficient protection*, and it is certainly singular that this fundamental element and primary cause of superiority should have been so long overlooked in this country.

Division of the right.

We have in England two distinct rights, founded upon different Acts of Parliament, in the application of designs —copyright in the application of designs for ornamental

purposes, and copyright in the application of designs for the shape and configuration of articles of utility.

The former, of which we shall first treat, is regulated by the 5 & 6 Vict. c. 100, amended by 6 & 7 Vict. c. 65, 13 & 14 Vict. c. 104, 21 & 22 Vict. c. 70, and 24 & 25 Vict. c. 73.

Copyright in designs for ornamental purposes.

The 5 & 6 Vict. c. 100 repeals all the previous Designs Acts, and enacts that the proprietor of every new and original design not previously published (*a*), whether such design be applicable to the ornamenting of any article of manufacture, or of any substance, artificial or natural, or partly artificial and partly natural, and whether such design be so applicable for the pattern or for the shape or configuration, or for the ornament, or for any two or more of such purposes, or by whatever means such design may be so applicable, whether by printing, or by painting, or by embroidery, or by weaving, or by sewing, or by modelling, or by casting, or by embossing, or by engraving, or by staining, or by any other means whatsoever, natural, mechanical, or chemical, separate or combined, shall have the sole right of applying the same to any article of manufacture or to any such substance as aforesaid during the respective terms thereinafter mentioned (*b*).

Duration of the right.

The terms are to be computed from the time of the design being registered.

Class		
I.	Articles of manufacture composed wholly or chiefly of any metal or mixed metals.	Five years.
II.	Articles of manufacture composed wholly or chiefly of wood.	The period of three years.
III.	Articles of manufacture composed wholly or chiefly of glass.	
IV.	Articles of manufacture composed wholly or chiefly of earthenware, bone, papier-mache, and other solid substances.	

(*a*) As to what amounts to publication, see *Cornish* v. *Keene*, Webst. Pat. Ca. 501, 508. See Anon. 1 Chitt. 24; *Carpenter* v. *Smith*, 9 M. & W. 300; S.C. Webst. Pat. Ca. 530, 536; *Jones* v. *Berger*, *ibid.* 550; *The Hourchill Company* v. *Neilson*, *ibid.* 718, n.; *Stead* v. *Williams*, 7 Man. & Gran. 818. See *Prince Albert* v. *Strange*, 1 H. & Tw. 1; *Dalglish* v. *Jarvie*, 14 Jur. 945; S.C. 2 Mac. & G. 231.

(*b*) App. xxxvi.

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Class		
IV.	Articles of ivory not comprised above (*a*).	The period of three years.
V.	Paper-hangings.	
VI.	Carpets.	
„	Oil-cloths (*b*).	
VIII.	Shawls to which the design is not applied solely by printing, or by any other process by which colours are or may be produced upon tissue or textile fabrics (*c*).	
XI.	Woven fabrics composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which the colours are or may hereafter be produced upon tissue or textile fabrics, such woven fabrics being or coming within the description technically called furnitures, and the repeat of the design whereof shall be more than twelve inches by eight inches.	
VII.	Shawls, if the design be applied solely by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics.	The period of nine months.
IX.	Yarn, thread, or warp, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced.	
X.	Woven fabrics composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, excepting the woven fabrics enumerated above (*d*).	The period of three years.
XII.	Woven fabrics not comprised above (*e*).	The period of twelve calendar months.
XIII.	Lace, and any article of manufacture or substance not comprised above.	

The Board of Trade empowered to extend time.

By the 13 & 14 Vict. c. 104, s. 9 (*f*), the Board of Trade is empowered from time to time to order that the copyright of any class of designs or any particular design registered or which may be registered under the Designs Act, 1842, shall be extended for such term, not exceeding the additional term of three years, as the said board may think fit; and the said board has power to revoke or alter any order as may from time to time appear necessary. When-

(*a*) By the 13 & 14 Vict. c. 104, s. 8. (*b*) By the 6 & 7 Vict. c. 65, s. 5.
(*c*) *Norton* v. *Nicholls*, 5 Jur. (N.S.) 120; 7 W. R. 420.
(*d*) *Vide Lowndes* v. *Browne*, 12 Ir. Law Rep. 293; time of protection extended by 7 & 8 Vict. c. 12, s. 3.
(*e*) *Harrison* v. *Taylor*, 4 H. & N. 815; 5 Jur. (N.S.) 1219; 29 L. J. (Ex.) 3. Copyright in designs for damasks after the 5th of November, 1850, under the power conferred on the Board of Trade by the 9th section, for the period of two years, in addition to the term of one year given by the Act. (*f*) App. lxxi.

ever any order is made by the said board under this provision it must be registered in the office for the registration of designs; and during the extended term the protection and benefits conferred by the said Designs Acts are to continue as fully as if the original term had not expired.

Registration of designs for ornamental purposes.

No person is entitled to the benefit of the Act unless the design in respect of which he seeks protection has, previous to publication, been registered in accordance with the Act, and unless at the time of such registration such design has been registered in respect of the application thereof to some or one of the articles of manufacture or substances comprised in the above-mentioned classes, by specifying the number of the class in respect of which such registration is made, and unless the name of such person shall be registered according to this Act as a proprietor of such design (*a*), and unless after publication of such design every such article or substance to which the design is applied has thereon, at the end or edge thereof (*b*) or other convenient place, the letters "Rd.," together with such number or letter, and in such form as shall correspond with the date of the registration of such design according to the registry in that behalf; and such marks may be put on any such article or substance, either by making the same in or on the material itself, or by attaching thereto a label containing such marks.

When a piece of manufacture with a design impressed upon it is registered without any explanation or addition in writing, and that design consists of several parts not

(*a*) The author of any new and original design is to be considered its proprietor, unless he has executed the work for another person for a good or a valuable consideration; in which case such person is to be considered the proprietor, and is entitled to be registered in place of the author. Every person acquiring for a good or a valuable consideration a new and original design or the right to its application to the above-mentioned articles or substances, either exclusively of any one else or otherwise, and every person upon whom the property in a design or the right to its application may devolve, shall be considered the proprietor of the design in the respect in and to the extent to which such property may have been acquired, but not otherwise (s. 5). App. xxxix.

(*b*) *Heywood* v. *Potter*, 1 E. & B. 439; 22 L. J. (N.S.) Q.B. 133. And see 21 & 22 Vict. c. 70, s. 4.

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necessarily united in configuration, but capable of being severed into independent integral parts, then the design registered is the entire thing, exactly as it is described in the pattern furnished to the registrar; and such registration is therefore not open to the objection of uncertainty, but is valid according to the 21 & 22 Vict. c. 70, s. 5 (*a*).

It is not sufficient registration, however, under the 17th section, of an article comprised in class 8 of section 3, to leave with the registrar an article manufactured according to the combinations relied upon, with an intimation that it is to be applied to class 8, though it might be sufficient as regards articles comprised in class 5.

Thus, in a case where the plaintiff had registered a shawl, the component parts of the composition of which were all old, but the combination itself new, by leaving with the registrar one of his shawls, Lord Campbell said, "Take the example of paper hangings, class 5. A section of the paper having the design impressed upon it would clearly disclose the claim of the inventor, and would fully put the registrar in possession of all the information he ought to have to enable him to perform the duties imposed upon him. But the plaintiff, by leaving one of his shawls with the registrar, gives no information of the nature of his claim, and cannot, we think, be said to have registered his 'design'" (*b*).

Copies of a registered design published in a book for sale need no registration mark, nor is such publication a licence to the purchaser of the book to apply the designs to articles for sale (*c*).

A design may be registered in respect of one or more of the classes, according as it is intended to be employed in one or more species of manufacture, but a separate fee must be paid on account of each separate class, and all such registrations must be made at the same time.

(*a*) *Holdsworth* v. *McCrae*, 16 W. R. 225; L. R. 2 H. L. 380; 36 L. J. (Q.B.) 297; App. lxxxv.

(*b*) *Norton* v. *Nicholls*, 28 L. J. (Q.B.) 225, 227; 5 Jur. (N.S.) 1203; 7 W. R. 420. But see 21 & 22 Vict. c. 70, s. 5.

(*c*) *Riego de la Branchardière* v. *Elvery*, 18 L. J. (Ex.) 381; 4 Ex. 380.

The periods and prices of the classes vary, and it is the ultimate result that is looked to in selecting among them; thus in *Lowndes* v. *Browne* (*a*), a pattern first *printed* on the ground and then *worked* with a needle, was held to be well registered under class 10.

In *West's Case* a Mr. Barfourd had registered a design under class 2, for the application of an ornamental border of the Brazilian pine leaf to straw hats, which the defendant having, as the plaintiff alleged, pirated, he laid an information before justices against him, whereupon the defendant was convicted. It was subsequently contended that the conviction was bad, inasmuch as there had been no legal registration of the design, it being registered under a wrong class, namely, under class 2, and not 13, and there being a much shorter term of protection for the latter than for the former. The question, however, was not decided.

It might sometimes be worth while to register an ornamental design in more than one class to prevent vulgarization, such as the printing on calico a design registered for silks (*b*); but as publication in one class would be so in all, this must be done before any form of the pattern be in circulation.

By the 14th section of the 5 & 6 Vict. c. 100, for the purpose of registering designs under that Act, the Board of Trade was empowered to appoint a registrar, and if necessary a deputy-registrar, clerks, and other officers and servants, and, subject to the provision of the Act, was authorized to make rules for regulating the execution of the duties of the office (*c*).

Accordingly, the Board of Trade has issued directions for registering and for facilitating searches.

Mode of registration.

Persons proposing to register a design for ornamenting an article of manufacture must deliver at the Designs Office: two exactly similar copies, drawings (or tracings),

(*a*) 12 Ir. L. R. 293.

(*b*) A registered pattern for a paper-hanging it will be competent for a carpet manufacturer to apply to carpets, unless the paper-stainer register for class 6, as well as class 5.

(*c*) App. xlv.

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photographs, or prints thereof, with the proper fees; the name and address of the proprietor or proprietors, or the title of the firm under which he or they may be trading, together with their place of abode or place of carrying on business, distinctly written or printed; and the number of the class in respect of which such registration is intended to be made, except it be for sculpture.

By the 21 & 22 Vict. c. 70 (*a*) it was declared that the registration of any *pattern* or *portion* of any article of manufacture to which a design is applied, instead or in lieu of a copy, drawing, print, specification, or description in writing, should be as valid and effectual to all intents and purposes as if such copy, drawing, print, specification, or description in writing had been furnished to the registrar under "The Copyright of Designs Acts."

The appointment and duties of the registrar.

The appointment and duties of the registrar are set forth in the 5 & 6 Vict. c. 100, ss. 14, 15, and the 6 & 7 Vict. c. 65, ss. 7–9 (*b*). Under this last section a discretionary power is conferred upon him of refusing to register under the latter Act if it should appear to him that the design brought to him for that purpose would more properly be registered under the former; and further, he is at liberty to exercise his discretion in refusing to register any design which is not intended to be applied to any article of manufacture, but only to some label, wrapper, or other covering in which such article might be exposed for sale, or any design which is contrary to public morality or order; subject, however, to an appeal to the Privy Council.

After the design has been registered, one of the two copies, drawings (or tracings), or prints, will be filed at the office, and the other returned to the proprietor with a certificate annexed, on which will appear the *mark to be placed* on each article of manufacture to which the design shall have been applied (*c*).

Certificate of registration.

This certificate, in the absence of evidence to the contrary, shall be sufficient proof of the design, and of the

(*a*) App. lxxxiv. (*b*) See App. xlv. xlvi. and lii. liii.
(*c*) 5 & 6 Vict. c. 100, ss. 15, 16.

name of the proprietor therein mentioned, having been duly registered; of the commencement of the period of registry; of the person named therein as proprietor being the proprietor; of the originality of the design, and of the provisions of the Copyright Designs Act, and of any rule under which the certificate appears to be made having been complied with. And such certificate may be received in evidence without proof of the handwriting of the signature thereof, or of the seal of the office affixed thereto, or of the person signing the same being the registrar or deputy registrar (*a*).

The registration mark.

If the design is for an article registered under class 10, no mark is required, but there must be printed on such article, at each end of the original piece thereof, the name and address of the proprietor, and the word "Registered," together with the years for which the design is registered (*b*).

If the design is for sculpture, no mark is required to be placed thereon after registration, but merely the word "Registered" and the date of registration.

If the design is for provisional registration, no mark is required to be placed thereon after registration, but merely the words "Provisionally registered" and the date.

Penalty for wrongful usage of the registration mark.

Any person putting the registration mark on a design not registered, or after the copyright thereof has expired, or when the design has not been applied within the United Kingdom, is liable to forfeit for every offence £5. (*c*)

The registration books open to inspection.

All designs of which the copyright has expired may be inspected at the Designs Office (*d*) on the payment of the proper fee; but *no* design, the copyright of which is existing, is, in general, open to inspection. Any person, however, may, by application at the office, and on production of the registration mark of any particular design, be

(*a*) 5 & 6 Vict. c. 100, s. 16; App. xlvi. See 13 & 14 Vict. c. 104, ss. 12–14, App. lxxii. And an action lies for false representation as to the registry of a design: *Barley* v. *Walford*, 9 Q. B. 197.

(*b*) *Harrison* v. *Taylor*, 3 H. & N. 301, reversed (Ex. Ch.) 4 H. & N. 815; 29 L. J. (Ex.) 3; 5 Jur. (N.S.) 1219.

(*c*) 5 & 6 Vict. c. 100, s. 11; *Barley* v. *Walford*, 9 Q. B. 197. See *Rodgers* v. *Nowell*, 5 C. B. 109. £10, by 21 & 22 Vict. c. 70, s. 7.

(*d*) No. 1, Whitehall, S.W.

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furnished with a certificate of search, stating whether the copyright be in existence, and in respect of what particular article of manufacture it exists; also the term of such copyright, the date of registration, and the name and address of the registered proprietor thereof (*a*).

Any person may also, on the production of a piece of the manufactured article with the pattern thereon, together with the registration mark, be informed whether such pattern, supposed to be registered, is really so or not.

As this mark is not applied to a provisional registered design, or to articles registered under class 10, certificates of search for such designs will be given on production of the design, or a copy or drawing thereof, or other necessary information, with the date of registration.

The transfer, and authority to register same.

In case of transfer of a registered design, whether provisionally or completely, a copy of the certified copy thereof must be transmitted to the registrar, together with the form of application properly filled up and signed. The transfer will then be registered, and the certified copy returned.

The following may be the form of transfer and authority to register:—

"I, *A. B.*, author [*or proprietor*] of designs No. , having transferred my right thereto [*or, if such transfer be partial*], so far as regards the ornamenting of [*describe the articles of manufacture or substances, or the locality, with respect to which the right is transferred*], to *B. C.*, of , do hereby authorize you to insert his name on the register of designs accordingly" (*b*).

The following may be the form of request to the registrar:—

"I, *B. C.*, the person mentioned in the above transfer, do request you to register my name and property in the said design as entitled [*if to the entire use*]

(*a*) 5 & 6 Vict. c. 100, s. 17. *Et vide* 6 & 7 Vict. c. 65, s. 10; App. xlvii. liv.
(*b*) The form of transfer may be varied at pleasure; no particular form is imperative.

to the entire use of such design [*or, if to the partial use*], to the partial use of such design, as far as regards the application thereof [*describe the articles of manufacture, or the locality, in relation to which the right is transferred*]."

No time should be allowed to elapse between a transfer and its registration; for, in case of the bankruptcy of the registered proprietor of a design, after the execution of a transfer and before registration of such transfer, the copyright of the design would probably be considered in the order and disposition of the bankrupt, and would therefore pass to his assignees (*a*).

An original combination a proper subject of registration.

A new combination of old patterns may be a new and original design, and as such would be a proper subject of registration.

This was determined in the Exchequer Chamber, on appeal from the Court of Exchequer, in the case of *Harrison* v. *Taylor* (*b*). The plaintiff registered, under the 5 & 6 Vict. c. 100, a design for ornamenting woven fabrics. The design was applied to a fabric woven in cells, called "The Honeycomb Pattern," and it consisted of a combination of the large and small honeycomb, so as to form a large honeycomb stripe on a small honeycomb ground. Neither the large honeycomb nor the small honeycomb was new, but they had never been used in combination before the plaintiff registered his design. Other fabrics had been woven with a similar combination of a large and small pattern. In an action against the defendant for infringing the plaintiff's copyright it was held that the plaintiff's design was a "new and original design" within the meaning of the 5 & 6 Vict. c. 100.

But where four old designs were respectively applied to three ribbons and to a button, and the three ribbons were then united by the button so as to form a badge, it was

(*a*) See *Longman* v. *Tripp*, 2 Bos. & Pul. New R. 67; *Hesse* v. *Stevenson*, 3 Bos. & Pul. 565; *Re Dilworth*, 1 Dea. & Chitt. 411.
(*b*) 3 H. & N. 301, reversed (Ex. Ch.) 4 H. & N. 815; 29 L. J. (Exch.) 3; 5 Jur. (N.S.) 1219.

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held that such union did not amount to a new design within the above statute (*a*).

In the *Queen* v. *Firman* it was decided that the result of simultaneously applying two old and known designs to the ornamenting of a button might be a new and original combination to be protected as a design; but the result of the combination to be protected as a "design" must be one design and not a multiplicity of designs.

Remedies for piracy of the right in designs for ornamental purposes.

The 7th section of the 5 & 6 Vict. c. 100 (*b*) enacts, for preventing the piracy of registered designs, "that during the period of any such right to the entire or partial use of any such design, no person shall either do or cause to be done any of the following acts, with regard to any articles of manufacture or substance, in respect of which the copyright of such design shall be in force, without the licence or consent in writing of the registered proprietor thereof" (that is to say):—

> No person is to apply any registered design, or any fraudulent imitation thereof, for the purpose of sale, to the ornamenting of any article. No person is to publish, sell, or expose for sale, any article to which a pirated design, or any fraudulent imitation of a registered design, shall have been applied, after the person has received verbally or in writing, or otherwise, from any source other than the proprietor, notice that his consent has not been given to such application, nor after the person has been served with or had left at his premises a written notice signed by the proprietor or his agent.

The words of the old Act rendered it necessary that the proprietor should prove that the offending party exposed

(*a*) *Mulloney* v. *Stevens*, 10 L. T. (N.S.) 190. A claim to a design for the shape or configuration of the body of a four-wheel dog-cart was rejected, because the design consisted only of an arch in the fore part of the carriage, made a little higher than that in ordinary use, to permit the convenience of larger fore wheels; *Windover* v. *Smith*, 11 W. R. 323; 32 Beav. 200; 32 L. J. (Ch.) 561; 9 Jur. (N.S.) 397; 7 L. T. (N.S.) 776.

(*b*) App. xl.

the pirated goods for sale, knowing that the proprietor had not given his consent; and the proof by the proprietor of this knowledge on the part of the offending party was more than the proprietor could, in general, adduce. The objectionable words are omitted in the above clause, and in their stead are substituted the words relative to notice.

A notice under this section is not sufficient unless it expressly state that the proprietor of the design has not given his consent to the application of the design; and whether he intends to sue either for the application of the design to an article of manufacture or for the sale of such article with the design applied. It should also specify the real claim intended to be made.

In order to establish a case of piracy under these provisions, the plaintiff must prove that the alleged piracy is an application or a fraudulent imitation of his registered design.

Ignorance of the registration of the design does not excuse the piracy (*a*).

The above section is extended by 6 & 7 Vict. c. 65, s. 2 (*b*), to designs for articles of manufacture having reference *to some purposes of utility*, so far as the design shall be for the *shape* and *configuration* of such article.

As to what is a subject proper for registration under the Designs Act.

Where the design was of a new ventilator, consisting of an oblong pane of glass fixed in a frame, which was inserted into an ordinary window-frame, and was hinged at the top, so as to open and admit the air, by means of a screw acted upon by cords passing over its head, and having a half-pane of glass fixed in the lower portion of the frame in which the ventilating frame ended, so as to prevent a downward draught, the claim of the inventor was said to be for the general configuration and combination of the parts, some of which were not original. This was held not to be a design for the shape and configuration of an article of manufacture within the 6 & 7 Vict. c. 65, and therefore not the subject of registration; and a conviction for the infringement of such a registered design was

(*a*) *McRae* v. *Holdsworth*, 2 De G. & Sm. 497; 12 Jur. 820. (*b*) App. 1.

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quashed for want of jurisdiction (*a*). Erle, J., in giving his opinion that the invention was not within the meaning of the statute, said: "It is a combination of means for the purpose of easily admitting air and avoiding a downward draught, and there is a skilful combination of means to produce this result. But the particular shape or configuration is accidental and wholly unimportant, and unconnected with the purpose to be attained. An oblique pane is of no particular use; a square or circular pane, and a straight or curved screen, would produce the same result. If the prosecutor relies on the shape or configuration as producing a useful result, he fails in making out that the defendant has infringed his right, because there is no doubt that the shape of the defendant's invention varies materially from that registered by the prosecutor: in the one the pane being nearly square and in the other oblong, and the screw being straight in the one, and crooked in the other. The prosecutor intended to protect a combination of means producing a useful result, and that is within the law relating to patents, and not within statute 6 & 7 Vict. c. 65." (*b*)

Again, the design of a "protector label," which consisted in making in the label an eyelet-hole, and lining it with a ring of metallic substance, through which a string attaching the label to packages passed, was held not to be within the protection of this statute (*c*). But the design of a newly-invented brick, the utility of which consisted in its being so shaped that when several bricks were laid together in building a series of apertures were left in the wall through which the air might circulate, and a saving in the

(*a*) *Reg.* v. *Bessell*, 15 Jur. 773; 20 L. J. M. C. 177; 16 Q. B. 810.

(*b*) The contrary was held in *Heywood* v. *Potter*, 1 E. & B. 439; 17 Jur. 528; 22 L. J. (Q.B.) 133; but subsequently the 21 & 22 Vict. c. 70, s. 4, enacted that nothing in the 4th section of the 5 & 6 Vict. c. 100 should extend, or be construed to extend, to deprive the proprietor of any new and original design applied to ornamenting any article of manufacture contained in the said 10th class of the benefits of the Copyright of Designs Act or of this Act; provided there shall have been printed on such articles at each end of the original piece thereof the name and address of such proprietor, and the word "Registered," together with the year for which such design was registered.

(*c*) *Margetson* v. *Wright*, 2 De G. & Sm. 420.

number of bricks effected, was held to form the proper subject of registration under this Act (*a*).

The subject of registration must not be an article of manufacture, but a design; that is, a combination of lines producing pattern, shape, or configuration, by whatever means such design may be applicable to the manufacture. The "design" is always considered different from the "article of manufacture, or the substance to which it is to be applied."

This is particularly to be observed in section 3 of the Act (*b*) in course of examination, where the articles of manufacture are enumerated to which the design is to be applied. Among these are "shawls." The "shawl" is not the "design," but the article of manufacture to which the design is to be applied. An ornament for a lady's gown may well be a "design" to be protected, although the ornament be the result of a new combination of lace and ribbon; but the whole gown itself would hardly be such a "design."

Mr. Carpmael, of the Repertory of Patent Inventions, Lincoln's Inn, has thus endeavoured to make the distinction clear: "In registering any new design for a table lamp, all which could be secured under such registration would be some peculiarity of form of an ornamental character in the stem or oil vessel, or in the glass shade, or some ornament applied thereto, if under the first mentioned statute, or some novelty in the shape or configuration, without reference to ornament, if under the second statute;—no new mode of supplying oil to the wick, nor any new mode of raising the wick, nor any new apparatus for supplying air to support combustion, could become the subject-matter of a registration. The simple configuration, or contour, or ornament of the lamp, or some particular part of the lamp, would be the only subject for registration; and any person might, without infringing the registration, make the same description of lamp, all parts acting mechanically in the same manner to produce the same end, so long as the outer configurations were not

(*a*) *Rogers* v. *Driver*, 20 L. J. (Q.B.) 31; 16 Q. B. 102. See *Millingen* v. *Picken*, 1 Com. Ben. Rep. 799; 14 L. J. (N.S.) (C.P.) 254; 9 Jur. 714.
(*b*) App. xxxvii.

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imitated. A patent, on the contrary, can scarcely ever be said to depend on shape; supposing a patent be taken for any improved construction of lamp—such, for instance, as an improved means of raising the oil from the stem or pillar of a table lamp,—the patent would be equally infringed whether the external figure or design be retained or not, so long as the means of raising the oil were preserved."

Penalty for infringement.

In case of infringement the offender is liable to forfeit a sum not less than 5*l*., nor exceeding 30*l*., to the proprietor of the design, who may recover the same either by action on the case, or by summary proceeding before justices (*a*).

Proceedings may be taken in the county court.

By the 8th section of the 21 & 22 Vict. c. 70 (*b*), proceedings for the recovery of damages for infringement may be brought in the county court, provided in any such proceeding the plaintiff shall deliver with his plaint a statement of particulars as to the date and title or other description of the registration whereof the copyright is alleged to be pirated, and as to the alleged piracy; and the defendant, if he intends to rely as a defence on any objection to such copyright, or to the title of the proprietor therein, shall give notice in the manner provided in the 76th section of the 9 & 10 Vict. c. 95, of his intention to rely on such special defence, and shall state in such notice the date of publication and other particulars of any designs whereof prior publication is alleged, or of any objection to such copyright, or to the title of the proprietor to such copyright; and it shall be lawful for the judge of the county court, at the instance of the defendant or plaintiff respectively, to require any statement or notice so delivered by the plaintiff or by the defendant respectively to be amended in such manner as the said judge may think fit.

And further, the proceedings in any plaint, and those in appeal and in writs of prohibition, provided by the 9 & 10 Vict. c. 95, and the 12 & 13 Vict. c. 100 (*c*), shall

(*a*) 5 & 6 Vict. c. 100, s. 8. See *Bessell* v. *Wilson*, 1 E. & B. 489.
(*b*) App. lxxxvi.
(*c*) So printed by the Queen's printers, but it is clearly a mistake. It is evidently intended for 12 & 13 Vict. c. 101, which amends the County Court Act, 9 & 10 Vict. c. 95.

be applicable to any proceedings for piracy of copyright of designs under the Copyright of Designs Acts.

The articles alleged to be piracies should be produced to the court, in order that they may be compared with the original design and the articles to which it has been applied by the proprietor (*a*). But where the alleged piracies were proved to have been stolen out of the possession of the plaintiff, the uncontradicted testimony of a witness as to their nature has been held sufficient (*b*).

The court, or a jury, will then be able to pronounce, on the comparison, whether the registered design has been applied or not. But if what is complained of is a fraudulent imitation, and not an application of the exact design, it will be convenient, if possible, to shew by direct evidence that the defendant's design has been taken from the plaintiff's (*c*).

The form of a declaration, in a case where a pattern for printed calico had been pirated, contrary to the provisions of 34 Geo. 3, c. 23, may be seen in *Macmurdo* v. *Smith* (*d*). With some variations this will serve as a precedent for a declaration in an action on the case under 5 & 6 Vict. c. 100, s. 3, or statute 6 & 7 Vict. c. 65, s. 2.

The following pleas may be found convenient: That the design was not an original design (*e*): That the plaintiff's design was a fraudulent imitation of one previously registered: That the plaintiff was not the proprietor of the design (*f*): That every article to which the design was applied had not the registration mark (*g*).

Copyright in designs of utility.

With regard to any new or original design for any article of manufacture having reference to some purpose of utility, so far as such design shall be for the shape or configuration of such article, and that, whether it be for

(*a*) *Sheriff* v. *Coates*, 1 Russ. & My. 159.
(*b*) *Fladella* v. *Weller*, 2 Russ. & My. 247.
(*c*) *Lowndes* v. *Browne*, 12 Ir. L. Rep. 293; cited Norman on 'Designs,' p. 51.
(*d*) 7 T. R. 518.
(*e*) *Rogers* v. *Driver*, 20 L. J. (N.S.) (Q.B.) 31; 16 Q. B. 102.
(*f*) *Millingen* v. *Picken*, 1 C. B. 799, 805; 9 Jur. 714; 14 L. J. (N.S.) (C.P.) 254.
(*g*) *De la Branchardière* v. *Elvery*, 4 Ex. 380; 18 L. J. (Ex.) 381; cited Norman on 'Designs,' p. 69.

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the whole of such shape or configuration or only for a part thereof, it has been enacted by the 6 & 7 Vict. c. 65, that the proprietor of such design not previously published in the United Kingdom of Great Britain and Ireland, or elsewhere, shall have the sole right to apply such design to any article, or make or sell any article according to such design, for the term of three years, to be computed from the time of such design being registered according to this Act. But it is provided that this enactment shall not extend to such designs as are within the 5 & 6 Vict. c. 100, 38 Geo. 3, c. 71, or the 54 Geo. 3, c. 56 (*a*).

What necessary in order to obtain protection.

It appears to be the received opinion that under this clause may be registered designs, the subjects of which could, in many cases, have obtained a patent (*b*).

To obtain the protection of the Act it is necessary:—

1st. That the design should not have been published, either within the United Kingdom or elsewhere, previous to registration (*c*).

2nd. That after registration every article of manufacture made according to such design, or to which such design is applied, should have upon it the word "Registered," with the date of registration.

Persons proposing to register a design for purposes of utility must furnish the registrar with two exactly similar drawings or prints of such design, with such description in writing as may be necessary to render the same intelligible, according to the judgment of the registrar, together with the title of the said design, and the name of every person claiming to be proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode, or place of carrying on business, or other place of address. But by the 5th section of the Copyright of Designs Act, 1858 (*d*), it is declared that the registration of any *pattern* or *portion* of an article of manufacture to which a design is applied, instead or in lieu of a copy,

(*a*) App. xii. and xxxvi. (*b*) 16 Q. B. 108: see 1 C. B. 812.
(*c*) 6 & 7 Vict. c. 65, s. 3. (*d*) App. lxxxv.

drawing, print, specification, or description in writing, shall be valid and effectual to all intents and purposes as if such copy, drawing, print, specification, or description in writing had been furnished to the registrar under the above Act.

As this Act affords protection only to the shape or configuration of articles of utility, and not to any mechanical action, principle, contrivance, application, or adaptation (except in so far as these may be dependent upon and inseparable from the shape or configuration), or to the material of which the article may be composed; no design will be registered the description of or statement respecting which shall contain any expressions suggestive of the registration being for any such mechanical action, principle, contrivance, application, or adaptation, or for the material of which the article may be composed (*a*).

A discretionary power is vested in the registrar, either to register any design under the 5 & 6 Vict. c. 100 or the 6 & 7 Vict. c. 65; and a further power is given him to reject such designs as are simply labels, wrappers, or other coverings in which any article of manufacture may be exposed for sale, or such designs as may appear to him to be contrary to public morality or order. From the exercise of this latter power there is an appeal to the Privy Council.

All the clauses and provisions contained in the 5 & 6 Vict. c. 100, with reference to the transfer of designs, to their piracy, to the mode of recovering penalties, to actions for damages, to cancelling and amending registrations, to the limitation of actions, to the awarding of costs, to the certificate of registration, to the fixing and application of fees for registration, and to the penalty for extortion, are extended and applied to this Act (*b*).

In addition to the penalties imposed by virtue of the incorporation of the penal clauses of the 5 & 6 Vict. c. 100, is imposed a penalty of not more than £5 nor less than £1,

(*a*) See *Millingen* v. *Picken*, 1 C. B. 799; 14 L. J. (N.S.) (C.P.) 254; 9 Jur. 714.

(*b*) Sect. 6; App. ii.

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upon all persons marking, selling, or advertising for sale any article as "registered," unless the design for such article has been registered under one of the above-mentioned Acts (*a*).

Provisional registration of designs.

Provisional registration is permitted by the 13 & 14 Vict. c. 104, the 1st section of which provides that any design registered in accordance with that Act shall be deemed "Provisionally registered," and the registration shall continue in force for the term of one year (which may be further extended for six months by the Board of Trade) from the time of such registration, during which period the proprietor shall have the sole right and property in such design, and be protected in the enjoyment of this right by the penalties and provisions enumerated in the Designs Act, 1842. During the term for which protection is afforded by this provisional registration, the proprietor of any design may sell or transfer the right to apply the same to an article of manufacture, but should he sell, expose, or offer for sale, any article to which the design has been applied until after complete registration, the provisional registration shall be deemed null and void (*b*).

Neither the exhibition nor the exposure of any design provisionally registered, or of any article to which such design may have been applied, in any place, whether public or private, in which articles are not sold, or exposed, or exhibited for sale, and to which the public are not admitted gratuitously, or in any place which shall have been previously certified by the Board of Trade to be a place of public exhibition within the meaning of the 13 & 14 Vict. c. 104, shall prevent the proprietor thereof from registering such design: provided that every article to which such design shall be applied and which shall be exhibited or exposed by or with the consent of the proprietor of such design, shall have thereon or attached thereto the words "Provisionally registered," with the date of the registration (*c*).

(*a*) Sect. 4; App. li.

(*b*) 13 & 14 Vict. c. 101, s. 4; App. lxix.
(*c*) *Ibid.* s. 3.

By the 14 Vict. c. 8, provision was made for the protection of those exhibiting in the Exhibition of 1851, the 8th section of that Act declaring that, notwithstanding anything contained in the Designs Act, 1850, and those of 1842 and 1843, the protection intended to be by them extended to the proprietors of new and original designs should be extended to the proprietors of all new and original designs which should be provisionally registered and exhibited in such place of public exhibition as aforesaid, notwithstanding that such designs might have been previously published or applied elsewhere than in the United Kingdom of Great Britain and Ireland: provided such design or any article to which the same had been applied had not been publicly sold or exposed for sale previously to such exhibition thereof (*a*).

The 24 & 25 Vict. c. 73 declares that the various Acts on the subject of copyright of designs shall be construed as if the words "provided the same be done within the United Kingdom of Great Britain and Ireland" had not been contained in the said Acts; and that they shall apply to every design as therein referred to, whether the application thereof be within the United Kingdom or elsewhere, and whether the inventor or proprietor be or be not a subject of Her Majesty. And that the said Acts shall not be construed to apply to the subjects of Her Majesty only (*b*).

(*a*) Since extended by 15 Vict. c. 6.
(*b*) 24 & 25 Vict. c. 73, s. 2; App. lxxxviii.

CHAPTER XVI.

NEWSPAPERS.

Newspapers.

THE Acts of Parliament on the subject of the press are 36 Geo. 3, c. 8; 39 Geo. 3, c. 79; 51 Geo. 3, c. 65; 55 Geo. 3, c. 65; 55 Geo. 3. c. 101; 60 Geo. 3 and 1 Geo. 4, c. 9; 11 Geo. 4 and 1 Wm. 4, c. 73; 6 & 7 Wm. 4, c. 76; 2 & 3 Vict. c. 12; 5 & 6 Vict. c. 82; 9 & 10 Vict. c. 33; 16 & 17 Vict. c. 59. They were, with the exceptions hereafter enumerated, repealed by "The Newspapers, Printers, and Reading Rooms Repeal Act, 1869" (the 32 & 33 Vict. c. 24) (*a*).

Name and abode of printer to appear.

Every person printing any paper, except bills, bank notes, bonds, deeds, agreements, receipts, &c., or any paper printed by the authority of any public board or public office (*b*), for profit, must keep one copy at least of such paper, and write or print thereon the name (*c*) and abode of his employer, and, if required, produce and shew the same to any justice of the peace within six months next after the printing, on penalty, in case of neglect or refusal, of the sum of £20 (*d*).

If any person file a bill for the discovery of the name of any person concerned as printer, publisher, or proprietor of any newspaper, or of any matters relative to the printing or publishing of any newspaper, in order the more effectually to bring or carry on any suit or action for damages alleged to have been sustained by reason of any slanderous or libellous matter contained in any such newspaper respecting

(*a*) App. xciv.
(*b*) 51 Geo. 3, c. 65, s. 3.
(*c*) See *Bensley* v. *Bignold*, 5 B. & Ald. 335.
(*d*) 39 Geo. 3, c. 79, s. 29; 32 & 33 Vict. c. 24.

such person, it is provided by the 19th section of the 6 & 7 Wm. 4, c. 76 (*a*), that it shall not be lawful for the defendant to plead or demur to such bill. He may be compelled to make the discovery required, which discovery, however, cannot be used in any proceeding against the defendant except in that for which the discovery is made.

By the 2 & 3 Vict. c. 12, s. 2, it is provided that every person who shall print any paper or book whatsoever which shall be meant to be published or dispersed, and who shall not print upon the front of every such paper, if the same shall be printed on one side only, or upon the first or last leaf of every paper or book consisting of more than one leaf, in legible characters, his or her name and usual place of abode or business, and every person who shall publish or disperse, or assist in publishing or dispersing any printed paper or book on which the name and place of abode of the person printing the same shall not be printed as aforesaid, shall, for every copy of such paper so printed by him or her, forfeit a sum of not more than £5.

In the case of books or papers printed at the University Press of Oxford or the Pitt Press of Cambridge, the printer, instead of printing his name thereon, is to print the following words: "Printed at the University Press, Oxford," or, "The Pitt Press, Cambridge," as the case may be (*b*).

These enactments do not extend to impressions of engravings, or the printing of the name and address or business or profession of any person, and the articles in which he deals, or to any papers for the sale of estates or goods by auction or otherwise (*c*).

Prosecutions must be commenced within three months after the penalty is incurred; and where the penalty incurred does not exceed £20 it may be recovered before any justice of the peace for the county or place where the same may have been incurred, or where the offending

Prosecutions to be commenced within three months.

(*a*) App. xcviii. (*b*) 2 & 3 Vict. c. 12, s. 3.
(*c*) 39 Geo. 3, c. 79, s. 31; App. xcvii.

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party may happen to be (*a*); one moiety of such penalty to the informer and the other to Her Majesty.

All proceedings to be conducted in the name of the attorney or solicitor-general.

By the 4th section of the 2 & 3 Vict. c. 12, and 9 & 10 Vict. c. 33, s. 2 (*b*), no action for penalties may be commenced except in the name of the attorney or solicitor-general in England, or the Queen's advocate in Scotland; and every action, bill, plaint, or information which may be commenced or prosecuted in the name or names of any other person or persons, and any proceeding thereon, are thereby declared null and void to all intents and purposes (*c*).

Copyright in newspaper, though registration unnecessary.

In *Cox* v. *The Land and Water Company* (*d*) it was contended that newspapers being but ephemeral productions, seldom, if ever, reprinted, could not properly be the subject of copyright. But the Vice-Chancellor decided otherwise, remarking that the idea of there being no copyright at all in newspaper articles was repugnant to common sense and common honesty.

It is not necessary for newspapers to register under the 5 & 6 Vict. c. 45. The object of that Act in requiring registration was to let the public know when the copyright in a work would expire. Registration was clearly unnecessary for this purpose in the case of a newspaper, which, therefore, was not within the policy of the Act; neither was it within the words. By the 2nd section "book" was to include "every volume, part, or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan separately published." Now a newspaper is not within any one of these words; it is a well-known species of publication, and would have been inserted by name if intended to be included (*e*).

(*a*) 39 Geo. 3, c. 79, ss. 35, 36.
(*b*) App. xcviii. xcix.
(*c*) 32 & 33 Vict. c. 24.
(*d*) *Cox* v. *Land & Water Co.* 18 W. R. 206.
(*e*) *Ibid.*

CHAPTER XVII.

INTERNATIONAL COPYRIGHT.

Non erit alia lex Romæ, alia Athenis; alia nunc alia posthac, sed et apud omnes gentes et omnia tempora una eademque lex obtinebit.—CICERO.

International copyright the offspring of modern civilization.

INTERNATIONAL law is entirely the offspring of modern civilization, and is the latest important discovery in political science.

The origin and progress of international law is itself a remarkable step in the march of civilization. Nations now begin to acknowledge their subjection to laws in conformity with natural justice and reason, as in the very origin of society individuals acknowledged themselves so bound. And the development of international law will proceed amongst the civilized nations of the earth, until citizens can enjoy, in foreign countries, all the rights which they enjoy in their own. Commerce, the influence of which unites the human family by one of its strongest ties, the desire of supplying mutual wants, demands an international code for the civilized nations of the earth. Art demands that the property in its inventions should be secured by an international law of patents. Literature, that the property in its works should be secured by international copyright.

International copyright regulated by 7 Vict. c. 12, and 15 Vict. c. 12.

International copyright is regulated by the 7 Vict. c. 12, explained by the 15 Vict. c. 12 (*a*).

The former repealed the 1 & 2 Vict. c. 59, which had been found "insufficient to enable Her Majesty to confer upon authors of books first published in foreign countries copyright of the like duration, and with the like remedies for the infringement thereof, which were conferred and pro-

(*a*) App. liv. lxxv.

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vided by the said Copyright Amendment Act (5 & 6 Vict. c. 45), with respect to authors of books first published in the British dominions."

Formerly, if a book were written by a foreigner and published abroad, a person who purchased the right to publish here could not enjoy the right exclusively (*a*).

To remedy this, and to afford protection in this country to the authors of books first published in foreign countries, in cases where protection should be afforded in such foreign countries to the authors of books first published here, the International Copyright Act, 1837, was passed.

The Act of 1837 has reference solely to books.

This Act, however, did not empower Her Majesty to confer any exclusive right of representing or performing dramatic pieces or musical compositions first published in foreign countries upon the authors thereof, nor to extend the privilege of copyright to prints and sculpture first published abroad; it merely had reference to books.

Enlargement of the power conferred on Her Majesty of concluding international copyright conventions.

In order to confer such power an Act of Parliament was passed in 1844 to amend the law. By this Act (*b*) Her Majesty was empowered by any order in council to grant the privilege of copyright for such period as should be defined in such order (not exceeding the term allowed in this country) to the authors, inventors and makers of books, prints, articles of sculpture, and other works of art, or any particular class of them, to be defined in such order, which should, after a future time to be specified in such order, be first published in any foreign country, to be named in such order. And Her Majesty was also empowered by any order in council to direct that the authors of dramatic pieces and musical compositions, which should, after a future time to be specified in such order, be first publicly represented or performed in any foreign country, to be named in such order, should have the sole liberty of representing or performing in any part of the British dominions such dramatic pieces or musical compositions during such period as should be defined in such order, not exceeding the period allowed

(*a*) *Guichard* v. *Mori*, 9 L. J. (Ch.) 227.
(*b*) 7 Vict. c. 12; App. liv.

in this country. Provision, moreover, was made for the entry of proper particulars of the subjects for which copyrights should be granted in the register book of the Stationers' Company in London, within a time to be prescribed in each such order in council. And all copies of books wherein there should be any subsisting copyright by virtue of the Act, or of any order in council made in pursuance thereof, printed or reprinted in any foreign country, except that in which such books were first published, were absolutely prohibited to be imported into any part of the British dominions, except with the consent of the registered proprietor of the copyright thereof, or his agent, authorized in writing. But it was provided that no such order in council should have any effect unless it should be therein stated as the ground for issuing the same, that due protection had been secured by the foreign power named in such order for the benefit of parties interested in works first published in the dominions of Her Majesty, similar to those comprised in such order. And that every such order should be published in the *London Gazette* as soon as might be after the making thereof, and from the time of such publication should have the same effect as if every part thereof were included in the Act. And that no copyright could be acquired in any book, dramatic piece, musical composition, print, article of sculpture, or other work of art, first published abroad, otherwise than under the said Act.

Convention between England and France.

This Act was followed by a convention between this country and France, which was concluded at Paris the 3rd of November, 1851, and subsequently ratified by Act of Parliament (*a*).

The convention provides that the authors of works of literature and art published in England shall have the same protection in France as French authors have there, and *vice versâ*. Works of literature and art are understood to comprehend books, dramatic works, musical compositions, drawings, paintings, sculptures, engravings,

(*a*) 15 & 16 Vict. c. 12; App. lxxv.

CAP. XVII. lithographs, and any other production whatsoever of literature or the fine arts.

The protection granted to original works is extended to translations; it being, however, clearly understood that protection is afforded simply to a translator in respect of his own translation, and not to confer the exclusive right of translating upon the first translator of any work.

If the author of any work published in either country wishes to reserve to himself the exclusive right of translating his work in the other country, he may do so for five years from the first publication of the translation authorized by him, on complying with the following conditions:—

1st. The original work must be registered and deposited in the one country within three months after the publication in the other.

2nd. The author must notify on the title-page of his work his intention to reserve the right of translation.

3rd. At least a part of the authorized translation must appear within a year after the registration and deposit of the original, and the whole must be published within three years after the date of such deposit.

4th. The authorized translation must appear in one of the two countries, and be registered and deposited in the same way and within the same time as an original book.

With reference to works published in parts: each part is to be treated as a separate work, and registered and deposited in the one country within the three months after its first publication in the other, and a declaration by the author to the effect that he reserves the right of translation in the first part will be sufficient. Dramatic works and musical compositions are protected in France to the same extent as in England. The translation of a dramatic work, however, must appear within

three months after the registration and deposit of the original.

This protection is not intended to prohibit fair imitations or adaptations of dramatic works to the stage in England and France respectively, but is only designed to prevent piratical translations. And the question what is an imitation or a piracy is in all cases to be decided by the courts of justice of the respective countries, according to the laws in force in each.

Extracts from newspapers and periodicals may be freely taken from either country, and republished or translated in the other, if the source whence they are taken be acknowledged; unless the authors of the articles shall have notified in a conspicuous manner in the journal or periodical in which such articles have appeared that they interdicted the republication thereof.

Importation of pirated copies is prohibited, and in the event of an infraction of this prohibition the pirated works may be seized and destroyed.

Registration.

In order to obtain protection in either country the work must be registered in the following manner:—

If the work first appear in France it must be registered at Stationers' Hall, London.

If it appear first in England, at the Bureau de la Libraire of the Ministry of the Interior at Paris, within three months after the first publication in England. As to works published in parts, they must be registered within three months after the publication of the last part; but in order to preserve the right of translation each part must be registered within three months after its publication. A copy of the work must also be deposited within the same time as registration is to be made either at the British Museum in London, or in the National Library at Paris, as the case may be.

Fees for registration.

The charge for registration is in France one franc twenty-five centimes, and in England one shilling; and the further

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charge for a certificate of such registration must not exceed the sum of five shillings in England nor six francs twenty-five centimes in France; and the certified copy of the entry in either case is evidence of the exclusive right of publication in both countries, until the contrary is proved.

With regard to articles other than books, maps, prints, and musical compositions, in which protection may be claimed, any other mode of registration which may be applicable by law in one of the two countries to any work or article first published in such country for the purpose of affording protection to copyright in such article, is extended on equal terms to any similar article first published in the other country.

The convention ratified by the 7 & 8 Vict. c. 12 (*a*).

By an Act of Parliament passed in the following May, the French Treaty became law in this country, so far as it did not clash with anything in the Act that made it law. Little difference is discernible between the treaty and the Act, with the exception that the latter explains clearly one or two passages in the former that might otherwise have been disputed. It further empowered Her Majesty to make similar stipulations in any treaty on the subject of copyright with other foreign powers.

Authors of works in France claiming copyright in this country are not exempt from the conditions affecting authors of works in this country (*b*).

By analogy it follows that to obtain the benefit of the International Copyright Act, the proprietor of a foreign print must comply with the provisions of the Engraving Acts and the proprietor's name must be printed on it (*c*).

The 19th clause of the 7 & 8 Vict. c. 12 (*d*), which enacts that no author of any book or dramatic piece, which shall be first published out of Her Majesty's dominions, shall have copyright therein, otherwise than under the provisions of that Act, applies to British subjects first publish-

(*a*) App. liv.
(*b*) *Cassell* v. *Stiff*, 2 K & J. 279.
(*c*) *Avanzo* v. *Mudie*, 10 Ex. 203.
(*d*) App. lxiv.

ing in a country with which no international convention exists (*a*).

In *Cassell* v. *Stiff* (*b*) a motion was made to restrain the infringement of an alleged copyright in a French newspaper, but the Vice-Chancellor doubted whether the case came within the provisions of the order in council.

Translations and imitations of foreign works.

The recent case of *Wood* v. *Chart* (*c*) illustrates the principles by which the court will be guided in questions respecting translations and imitations of foreign works under the above Act.

The provisions of the International Copyright Act, so far as they came in question in this case, were these: the authors of foreign plays (*i.e.*, plays first published abroad) may prevent the representation in the British dominions of any unauthorized translation, for a period not exceeding four years from the first publication or representation of an authorized translation, but nothing in that Act, as we have already seen, was to prevent "fair imitations or adaptations to the English stage" of a foreign play. The facts of the case are as follows:—"Frou-frou," a French comedy, was registered in England; an English version was made, published, and registered. Mr. Wood, the plaintiff, became assignee of all English rights, both of the authors and translators. An unauthorized version was made and publicly acted by the defendants. Thereupon the plaintiff filed his bill for an injunction and an account. The authorized English version of the plaintiff was entitled "Like to Like," the scene transferred to England, the names of the characters changed to English names, and certain alterations and omissions made in the dialogue, but the plot and the main incidents continued the same. The Vice-Chancellor dismissed the bill, holding that the requisitions to entitle the plaintiff to the benefit of the Act had not been complied with, for "Like to Like" was not a

(*a*) *Boucicault* v. *Delafield*, 9 Jur. (N S.) 1282; 33 L. J. Ch. 38; 12 W. R. 101; *Wood* v. *Boosey*, 15 W. R. 309: 15 L. T. (N.S.) 530; Law Rep. 2 Q. B. 340, affirmed on appeal; 9 B. & S. 175; Law Rep. 3 Q.B. 223; 37 L. J. (Q.B.) 84; 16 W. R. 485; 18 L. T. (N.S.) 105.

(*b*) 2 K. & J. 279. (*c*) 22 L. T. (N.S.) 432; 39 L. J. (N.S.) Ch. 641.

CAP. XVII. "translation" within the meaning of the Act, but rather "an imitation or adaptation to the English stage."

"With respect to the representation of the English play," said Sir W. M. James, when Vice-Chancellor, "the plaintiff has got to make out his title, which depends upon the convention, and upon the Act. Now the Act of Parliament for some reason or other—I suppose a sufficient reason, but I do not know what it may be—has required, in order to give an author, or the assignee of that author, the particular copyright in question, that the original work shall be deposited in the United Kingdom; and then with regard to works other than dramatic works, it says, 'The translation sanctioned by the author, or part thereof, must be published in the British dominions not later than one year after the registration and deposit in the United Kingdom of the original work.' That is, the translation of part thereof; and the whole of such translation must be published within three years of such registration and deposit. It contemplates and requires that the whole work shall be translated. But it would not be a compliance with that to translate a quarter, or half, or three-quarters of a work that is protected, and then say, 'That is all I want protected, that is my authorized translation; and I have published the whole of that part which I have thought right to have translated.' The whole work must be translated, and the translation must be published in this country. Then, for some other sufficient reason, it is provided that in the case of dramatic pieces the translation sanctioned by the author must be published within three calendar months of the registration of the original work. Now, I do not think it is possible to say that this means that anything which the author shall sanction as a translation must be published within three calendar months; but that the translation, which has been authorized and sanctioned by the author, must be published within that time. It appears to me that the plaintiff has gone out of his course to dig a pitfall for himself; for that which he says he has done is, the

original thing being called 'Frou-frou,' he has published in England a comedy called 'Like to Like' . . . he has introduced English characters; he has transferred the scene to England; he has made the alterations necessary for making it an English comedy, and not a translation of a French comedy; and he has left out a great number of speeches and passages, especially in the first act, which would seem to imply at first he was merely making an imitation or adaptation, and afterwards was minded more completely to make a translation.

"The first two acts seem particularly to be what is referred to in the Act of Parliament itself as 'an imitation or adaptation.' Whether it be a fair adaptation is another question; but if one wanted to have an example of what is an imitation or adaptation to the English stage, I should have said that this is exactly the thing. This is an imitation and adaptation to the English stage; that is, you transfer the scene to England, you make the characters English, you introduce English manners, when our manners differ from French manners, and you leave out things which you say would not be suitable for representation on the English stage. But what the Act required for some sufficient reason, as I have said before, when it required that a translation should be made accessible to the English people, was that the English people should have the opportunity of knowing the French work as accurately as it was possible to know a French work by the medium of a version in English. That seems to me to be what was intended, and having come to the conclusion that this is not a translation, I am of opinion that the plaintiff has failed to comply with the condition precedent which the Act has imposed upon him to entitle him to sustain this suit. It is said that one ought to give a liberal interpretation, that one ought not to strain the meaning of the word 'translation' or any other word, for the purpose of depriving a foreign author of the benefit of the Act. Of course not. Of course, one ought to take a liberal view, and one ought not to strain any word, but

CAP. XVII. one must at the same time give a real and natural meaning to those words, and, according to my view of the case, there never would have been the slightest difficulty whatever in the plaintiff's obtaining the full benefit of his assignment, and putting himself in a position to prevent any representation of the French play, or of any English translation of it, if he had simply employed Mr. Sutherland Edwards to do what he could very well have done, namely, have made a translation. If he had said to him, 'Now make a translation of this; do not be thinking of an adaptation to the English stage, but make me a translation,' he could have made a translation which could have been published in this country; and then it would have been quite open to the author, or the person claiming under the author, to have represented that, with any excision, with any alteration, with any adaptation he might have thought fit for the purpose of making it more suitable for the English stage. I have no doubt whatever, if he had published a translation, he could then have acted the thing which Mr. Sutherland Edwards has called a version, and that nobody could have acted anything like that—anything approaching to it, because (although I say this is not a translation, but an imitation and adaptation to the English stage) I have no hesitation in saying that if the authors, or any other persons claiming under them, had complied with the condition required by the Act of Parliament, I should at once have restrained the acting of this very thing as not being a fair imitation or adaptation, but as being a piratical translation of the original work. That would have been the proper thing for me to have done in that case; but the plaintiff having brought his suit, and not having a title, must fail, with the usual consequences —he must pay the costs."

Colonial copyright.

By the 5 & 6 Vict. c. 45 the copyright of books, &c., printed in the United Kingdom, is extended to all the British dominions; the words "British dominions" meaning "all parts of the United Kingdom of Great Britain and Ireland, the islands of Jersey and Guernsey, all parts of the

East and West Indies, and all the colonies, settlements, and possessions of the Crown which now are or hereafter may be acquired;" and the 8 & 9 Vict. c. 93, concerning the trade of the colonies, absolutely prohibited these dependencies from importing pirated editions of copyright works. Practically, this last enactment was unavailing. Large quantities of cheap reprints of British copyright books continued to be imported from the United States into the British American possessions. Remonstrances against these irregularities at length led to some special legislation.

In 1847 the 10 & 11 Vict. c. 95 (*a*), was passed for enabling Her Majesty by order in council to suspend the enactment contained in the Copyright Act, 1842, against the importation into any part of Her Majesty's colonies, &c., of "foreign reprints" of English copyright works. But such order in council was not to be made as to any colony, &c., unless by local legislation such colony had in the opinion of Her Majesty, so far as foreign reprints were concerned, "made due provision for protecting the rights of British authors there." Every such order in council to be published in the *London Gazette*, and orders in council and the colonial Acts or ordinances to be laid before Parliament within a certain specified time. Accordingly, the following colonies have placed themselves within its provisions, viz.: Canada, December 12, 1850; St. Vincent, August 18, 1852; Jamaica, December 29 and June 25, 1857; Mauritius, April 1, 1853; Nevis, Grenada, Newfoundland, July 30, 1849; St. Christopher, November 6, 1849; St. Lucia, November 13, 1850; New Brunswick, August 11, 1848; St. Kitts, British Guiana, October 23, 1851; Prince Edward's Island, October 31, 1848; Barbadoes, December 16, 1848; Bermuda, February 13, 1849; the Bahamas, May 21, 1849; Cape of Good Hope, March 10, 1851; Nova Scotia, August 11, 1848; Antigua, June 19, 1850; and Natal, May 16, 1857 (*a*). In fact, all the important colonies with the exception of Australia. The understood arrangement is, that English publishers shall

(*a*) App. lxvi.

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furnish catalogues of their copyrights to the custom-house authorities in the different colonies, as a guide for exacting what is termed the protective duties (amounting in Canada to 12½ per cent. *ad valorem*). These measures are next to inoperative, and the whole thing is little better than a delusion; so little is collected, that publishers generally have ceased to give themselves any concern in the matter. In short, unauthorized cheap reprints of British copyright works may be said to be freely imported into and sold in the colonies; this kind of trade in itself tending to indispose the United States to enter into an international treaty with the United Kingdom.

These statements are confirmed by a letter dated the 11th of June, 1868, from Mr. John Lovell (a Montreal publisher) to Mr. Rose, which appears in the correspondence carried on between the Canadian Government and the Imperial authorities upon the subject of "Copyright Law in Canada," and lately published. Mr. Lovell says: "At present only a few hundred copies pay duty, but many thousands pass into the country without registration, and pay nothing at all; thus having the effect of seriously injuring the publishers of Great Britain, to the consequent advantage of the United States. I may add that, on looking over the custom-house entries to-day, I have found that not a single entry of an American reprint of an English copyright (except the reviews and one or two magazines) has been made since the 3rd day of April last, though it is notorious that an edition of 1000 of a popular work coming under this description, has been received and sold within the last few days by one bookseller in this city."

In the late case of *Routledge* v. *Low*, Lords Cairns, Cranworth, Chelmsford, Westbury, and Colonsay, unanimously held that *to acquire a copyright* under the 5 & 6 Vict. c. 45, the work must be first published in the *United Kingdom*. The law now, therefore, is, that if a literary or musical work be first published in the *United Kingdom*, it

(*a*) 'Parliamentary Return,' obtained by Mr. Headlam, in August, 1857.

may be protected from infringement in any part of the *British dominions*; but if, on the other hand, any such work be first published in India, Canada, Jamaica, or any other British possession not included in the *United Kingdom*, no copyright can be acquired in that work, excepting only such (if any) as the local laws of the colony, &c., where it is first published may afford.

This opinion has caused great and general dissatisfaction in the colonies and India; it has either destroyed all copyright property in the numerous works since 1842, which have been first published there, or rendered such property comparatively worthless; and this hardship is increased by the fact that, since 1842, it has been, and still is, compulsory upon all publishers in the British dominions, gratuitously to send one copy of every book published by them to the British Museum, and four to the libraries of Oxford, Cambridge, &c. (*a*)

International copyright conventions.

The German Diet introduced a convention on the subject of international copyright between the different members of the Confederation in 1837. Austria and Prussia gave in their adherence on behalf of those portions of their territories which did not belong to the Confederation. Austria and Sardinia had a convention in 1840, to which the other states of Italy, and one of the cantons, adhered. In 1837, Prussia passed a law of reciprocity in this matter with all foreign states. In 1846, a convention was concluded between Great Britain and Prussia, to which Brunswick, Saxony, the Thuringian Union, and Anhalt, gave their adhesion (*b*). We also concluded one with Hanover and Oldenburg in 1847; with the Hanse Towns and with Belgium in 1854; with Prussia, additional to the convention of 1846, in 1856, and with Spain in 1857.

(*a*) See an able article in the *Athenæum*, Nov. 20, 1869. (*b*) App. c.

CHAPTER XVIII.

COPYRIGHT IN FOREIGN COUNTRIES.

France.

Copyright in France.

THE infringement of copyright was formerly visited with far heavier penalties in France than in this country. The printing a work, the sole right to which belonged to another, was regarded as little better than theft; indeed, it was said that such conduct was worse than to enter a neighbour's house and steal his goods; for, in the latter case, negligence might be imputed to him for permitting the thief to enter, whereas in the former, it was stealing a thing confided to the public honour (*a*).

The protection afforded by the various edicts of the French kings to the authors of literary works was however taken away by the famous decree of the National Assembly, by which all privileges of whatever kind were abolished (*b*).

Duration of right in literary works.

In July, 1793, a decree was passed by which it was declared that authors should enjoy exclusively during their lives the emoluments and profits of their works, and that their heirs or assigns should enjoy the same for the term of ten years after their death. The penalty imposed upon any infringement of the right bestowed by this decree was a fine equivalent in value to 3000 copies of the original edition (*c*).

The imperial decree of the 5th of February, 1810, made some modifications of that law. It gives to the author of

(*a*) Lowndes on Copy.
(*b*) 4th of August, 1789; Lowndes on Copy., App. 116.
(*c*) *Lois de la Presse, Décret* 19 *juillet*, 1793, *art.* 4.

all kinds of literary productions a copyright for his life, and until twenty years after his death, or the death of the author's wife or husband, if secured to either by marriage settlement; if the author and his wife have no children, then for an additional ten years after their deaths for their heirs or their assigns. It accrues for the benefit of the widow, if the marriage was one *sous le régime de la communauté*, a mode of settlement which establishes complete community of property between husband and wife.

Duration of *right in* dramatic and musical compositions.

The copyright of dramatic or musical compositions, which gives to the proprietor the right of representing or performing all species of dramatic and musical pieces, endures for the life of the author, and for five years after his death for the benefit of his heirs or assigns. In case, however, he leaves a widow or children, the widow will have during her lifetime the right of authorizing the representation; after her, her children for thirty years. The copyright in painting, drawing, engraving, and sculpture endures for the life of the author, and for ten years after his death for his heirs or assigns.

The copyright of a work arises on publication, performance, or representation, as the case may be, without any previous registration or formality, though a deposit of two copies of the work, one at The Bibliothèque Impériale, or Imperial Library, and the other at the office of the minister of the interior, Paris, is necessary, especially before any proceedings at law can be instituted by the injured party. No distinction is made between foreigners and French subjects as to copyright, provided they make the necessary deposit. All kinds of unpublished works, lectures, &c., are the exclusive property of their authors (*a*).

Piracy in France a misdemeanour.

Piracy is, according to the law of France, a misdemeanour. The Penal Code, lib. iii. tit. ii. art. 425, provides as follows: "*Toute édition d'écrits, de composition musicale, de dessin, de peinture, ou de toute autre production, imprimée ou gravée en entier ou en partie, au mépris des*

(*a*) Levi's 'Commercial Law,' vol. ii. p. 581.

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lois et réglemens relatifs à la propriété des auteurs, est une contrefaçon; et toute contrefaçon est un délit.

"*Le débit d'ouvrages contrefaits, l'introduction sur le territoire français d'ouvrages qui, après avoir été imprimés en France, ont été contrefaits chez l'étranger, sont un délit de la même espèce.*

"*La peine contre le contrefacteur ou contre l'introducteur sera une amende de cent francs au moins et de deux mille francs au plus; et contre le débitant, une amende de vingt-cinq francs au moins et de cinq cents francs au plus. La confiscation de l'édition contrefaite sera prononcée tant contre le contrefacteur que contre l'introducteur et le débitant. Les planches, moules, ou matrices des objets contrefaits, seront aussi confisqués.*

"*Tout directeur, tout entrepreneur de spectacle, toute association d'artistes, qui aura fait représenter sur son théâtre des ouvrages dramatiques au mépris des lois et réglemens relatifs à la propriété des auteurs, sera puni d'une amende de cinquante francs au moins, de cinq cents francs au plus, et de la confiscation des recettes.*

"*Dans les cas prévus par les quatre articles précédens, le produit des confiscations, ou les recettes confisqués, seront remis au propriétaire, pour l'indemniser d'autant du préjudice qu'il aura souffert; le surplus de son indemnité, ou l'entière indemnité, s'il n'y a eu ni vente d'objets confisqués ni saisie de recettes, sera réglé par les voies ordinaires* (a)."

A number of interesting cases have been decided in the French tribunals on the subject of copyright, and they are reported in the *Répertoire de Jurisprudence, par Merlin, tit. contrefaçon*, sec. 1–15; and in his *Questions de Droit, tit. Propriété Littéraire*, secs. 1, 2.

It is unlawful under the French law, without the permission of the author, to publish a work already published in a foreign country with which no copyright convention exists.

There has been a desire on the part of the French nation to enlarge the time during which an author has the

(*b*) *Code Pénal*, lib. iii. tit. ii. art. 425–429.

sole property in his works. A commission was appointed in 1826, with M. le Vicomte de la Rochefoucauld at its head, to examine and report upon the question. They submitted a report proposing to give to authors and artists of works of all kinds property in their works for life, and to their legal representatives for fifty years from their deaths. In 1837 a commission was again appointed under the presidency of M. le Comte de Ségur, but no report has yet passed into law.

Prussia.

Copyright endures for the author's life, and his heirs have a term of thirty years from his decease. In this country when an author assigns a copyright to a publisher without any special stipulation, the publisher is entitled to issue only one edition, the extent of which he may determine. This principle is adopted both in Saxony and Bavaria, the edition in the latter country, in the absence of stipulation, being limited to 1000 copies. But a distinction is made in Prussia between reprints or new issues (*auflagen*) and new editions (*ausgaben*). In the case of the former, the publisher is left free, on condition that he shall pay to the author, on the occasion of each new issue, half the sum which he paid him for the first. New editions, on the contrary, can be published only with the permission of the author, which must be given in writing. This privilege is limited to the author's life, though his children have a claim for an *honorarium* for each edition issued after his death.

Copyright in Prussia.

Austria,

By treaty with Sardinia, Tuscany, and the Papal States, gives a copyright to the heirs for thirty years after the author's decease, in the Italian States of the empire. It also allows forty years for posthumous publications.

Copyright in Austria.

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Holland and Belgium.

Copyright in Holland and Belgium.

Previously to the French Revolution, Holland acknowledged the author's right as a perpetual one, capable of transmission to heirs or assigns for ever. By the law of the 25th of January, 1817, literary copyright was limited to the author for his life, and to his heirs or representatives for twenty years after his death. The penalty inflicted for infringement of copyright was confiscation of all the unsold pirated copies in the kingdom; also a fine, equivalent in value to 2000 copies of the original edition, to the use of the proprietor; besides a fine of not more than 1000, nor less than 100 florins, to be given to the poor of the district where the offender resides; and in case of a second offence, the offender was to be disabled from the exercise of his trade of printer or bookseller, the whole without prejudice to the provisions and penalties imposed, or to be imposed, by the general laws respecting piratical printing (*a*).

Denmark and Sweden.

Copyright in Denmark and Sweden.

The copyright was till lately perpetual (*b*); now, however, in the former country copyright exists for thirty years, but it lapses if the work in which it exists be out of print during five years; and in the latter, copyright endures for a term of twenty years, with the proviso that should the author, or his representative, neglect to continue the publication, the copyright falls to the state.

The 38th section of the ordinance of the 11th of July, 1837, extends the protection of the Danish law to works first published in a foreign state, in the same proportion as works first published in Prussia are protected in that foreign state.

Spain.

Copyright in Spain.

Copyright in this country is for the author's life, and for fifty years after his death.

(*a*) Lowndes on Copy., App. 121.
(*b*) Amer. Juris. vol. x. 69, until the 11th of July, 1837.

Russia.

Copyright in Russia.

Copyright endures for life, and after the death of the author devolves to his heirs and assigns for twenty-five years; and for a further term of ten years, if they shall publish an edition within five years before the expiration of the first term.

In every case the party guilty of piracy must pay to the proprietor of the work the difference between the actual cost of the pirated edition and the selling price of the original edition, besides forfeiting to the use of the proprietor all the copies of such unlawful reprint. And until definite judgment be pronounced, the edition accused of being pirated will be restrained from being sold. The judgment must determine the amount of damages resulting from the offence (*a*).

Germany.

Copyright in Germany.

Copyright in this country has been regulated as respects its duration by the Confederation, a resolution of which in 1837 fixed the duration of literary property at ten years; but copyright for a longer period was granted for voluminous and costly works, and for the works of the great German poets. The following works were thus protected for twenty years from the date of the decree: on the 23rd of November, 1838, Schiller's works; the 4th of April, 1840, Goethe's works; the 22nd of October, 1840, Jean Paul's works; the 11th of February, 1841, Wieland's works; the 23rd of July, 1840, Herder's works. In the course of time, however, a copyright for ten years proved insufficient even for inferior works; it was therefore extended by a decree of the Diet, dated the 10th of June, 1845, to the term of the author's life, and for thirty years after his death. With respect to the works of all authors deceased before the 9th of November, 1837, including the works of the poets enumerated above, the Diet decided that they should all be protected until the 9th of November, 1867.

(*a*) Lowndes on Copy., App. 130.

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The Two Sicilies, &c.

Copyright in the Two Sicilies.

In May, 1840, a treaty was entered into by the Sardinian and Austrian Lombardy governments, providing for the security of literary property within their respective dominions; and the King of the Two Sicilies, the Grand Duke of Tuscany, and the Dukes of Lucca and Modena, have acceded to the treaty. The copyright, or right of property in works of science, literature, and art, appearing within their respective Italian States, is secured to the author and his assigns for life, and for thirty years after his death. If published after his death, it is protected for forty years from the time of publication. Every article of an encyclopædia or periodical work, exceeding three printed sheets, is to be held a separate work, and all allowable extracts are to be confined to three pages of the original (*a*).

Greece.

Copyright in Greece.

Copyright is for fifteen years from the date of publication.

United States.

Copyright and its extent in the United States.

Authors of books, maps, charts, and musical compositions, and the inventors and designers of prints, cuts, and engravings, being citizens of the United States, or resident therein (*b*), are entitled to the exclusive right of printing, reprinting, publishing, and vending them, for the term of twenty-eight years from the time of recording the title thereof; and if the author, inventor, or designer, or any of them, where the work was originally composed and made by more than one person, be living, and a citizen of the United States, or resident therein, at the end of the term, or being dead, shall have left a widow, or child, or children, either or all of them living, she or they are entitled to the same exclusive right for the further term

(*a*) *Vide* 2 Kent Com. pt. v. lect. xxxvi. 378, n.
(*b*) *Keane* v. *Wheatley*, 9 Amer. Law Reg. 33, 45; *Boucicault* v. *Wood*, 16 Amer. Law Rep. 539.

of fourteen years, on complying with the terms prescribed by the Act of Congress. In order to acquire a copyright a person must be a resident in the country. A temporary residence there, even though with a declared intention of becoming a citizen, is not sufficient. Captain Maryatt, the well-known novelist, a subject of Great Britain, and an officer under our Government, being temporarily in the United States, took the required oath of his intention to become a citizen, and then took out a copyright for one of his books and assigned the same to the plaintiff; but it was nevertheless held, that the author was not a "resident" within the meaning of the Act of 1831, so as to be entitled to a copyright in his book (*a*).

To acquire a copyright in the States a person must be a citizen.

The person to whom the copyright is granted, is required to cause to be inserted in the several copies of each and every edition published, during the term secured, on the title-page, or on the page immediately following, if it be a book; or if a map, chart, musical composition, print, cut, or engraving, by causing to be impressed on the face thereof, or if a volume of maps, charts, music, or engravings, upon the title or frontispiece thereof, the following words, viz., "Entered according to Act of Congress, in the year —— by A. B. in the clerk's office of the district court of ——" (as the case may be).

Method of acquiring a copyright.

The author or proprietor of such book, &c., shall, within three months from the publication, deliver or cause to be delivered a copy of the same to the clerk of the district court, who is annually to transmit a certified list of all such records of copyright, and the several books or other works deposited as aforesaid, to the secretary of state, to be preserved in his office (*b*). The violation of the copyright thus duly secured is guarded against by adequate penalties and forfeitures (*a*). Fifty cents, for every sheet printed, published, imported, or exposed

The infringement of copyright.

(*a*) *Corey* v. *Collier*, 56 Niles Reg. 262; Betts, J.
(*b*) *Daboll's Case*, 1 Opin. 532, Wirt Atty-Gen. 1822; *Dwight* v. *Appletons*, 1 N. Y. Leg. Obs. 195, 199. Thompson, J., N. Y. 1843.
(*c*) *Dwight* v. *Appletons*, *supra*; *Backus* v. *Gould*, 7 How. (Amer.) 798, 811.

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for sale, besides a forfeiture of the books; and in case of cuts, prints, or engravings, a forfeiture of the plates and $1 for every sheet found in the possession of the party prosecuted, together with full costs. A penalty of $100 is incurred by publishing in a book or other work that a copyright has been secured when the same has not been secured. Injunctions may also be obtained to prevent the publication of manuscripts where the author's right would be violated by the publication. The Act to establish the Smithsonian Institution for the Increase and Diffusion of Knowledge enacted that the author or proprietor of any book, map, chart, musical composition, print, cut, or engraving, for which a copyright should be secured under the existing Acts of Congress, or those which should thereafter be enacted respecting copyrights, should, within three months from the publication of the said book, &c., deliver, or cause to be delivered, one copy of the same to the librarian of the Smithsonian Institution, and one copy of the same to the librarian of the Congress Library, for the use of the said libraries (*a*).

On the renewal of the copyright, the title of the work must again be recorded, and a copy of the work delivered to the clerk of the district, and the entry of the record noted as aforesaid, at the beginning of the work. All these regulations must be complied with within six months before the expiration of the first term. In addition to these regulations, the author or proprietor must, within two months from the date of the renewal, cause a copy of the record thereof to be published in one or more of the public newspapers printed in the United States, for the space of four weeks (*b*).

This, however, is merely directory, and constitutes no part of the essential requisites for securing the copyright (*c*).

(*a*) Repealed by sect. 6 of the Act of 1859, c. 22.

(*b*) Act of Congress. 3rd Feb. 1831, c. 16.

(*c*) *Nichols* v. *Ruggles*, 3 Day (Amer.) 158; see *Ewer* v. *Coxe*, 4 Wash. (Amer.) 487, 490; *Baker* v. *Taylor*, 2 Blatch. (Amer.) 83, 84; *Jollie* v. *Jaques*, 1 Blatch. (Amer.) 618, 620; *Struve* v. *Schwedler* 4 Blatch., *ibid.* 23; *Paller* v. *Derby*, 5 McLean, *ibid.* 332.

By the Act of Congress of the 18th of August, 1856, s. 1, it is declared that any copyright thereafter granted, under the laws of the United States, to the author or proprietor of any dramatic composition, designed or suited for public representation, shall be deemed to confer upon the author or proprietor, his heirs, or assigns, along with the sole right to print and publish the said composition, the sole right also to act, perform, or represent the same, or cause it to be acted, performed, or represented, on any stage or public place, during the whole period for which the copyright is obtained. This clause, however, refers only to cases in which copyright is effectively secured under the Act of 1831 (*a*).

The Act of Congress is declared not to extend to prohibit the importation, or vending, printing, or publishing within the United States, of any map, chart, or book, musical composition, print, or engraving, written, composed, or made by any person not a citizen of the United States, nor resident within the jurisdiction thereof.

The copyright recorded in any State extends to all the other States in the Union.

(*a*) *Keane* v. *Wheatley*, 9 Amer. Law. Reg. 33, 44; *Roberts* v. *Myers*, 13 Mo. Law Rep. (Amer.) 397, 400.

CHAPTER XIX.

ARRANGEMENTS BETWEEN AUTHORS AND PUBLISHERS.

Arrangements between authors and publishers.

A FEW remarks may, perhaps, be here advantageously offered on compacts, arrangements, and stipulations between authors and publishers, and we trust they may prove profitable both to the former and the latter.

In these days, when literature and commerce march in open array, and their pace is so rapid and great; when on the one hand a few authors write for fame, some for gain, and many for both; and on the other hand publishers regard their writings purely in a commercial point of view, estimating their worth (at least to them) by the amount of profit likely to accrue from the publication, two antagonistic parties frequently come in contact.

Authors who compose exclusively for fame are, on the assumption that they ever existed, rapidly becoming extinct; while those who write for gain are much on the increase. The spirit of the age is commerce, and almost every transaction of the present day is regarded in a commercial light.

Thus we have two parties in opposition: the one estimating the value of his work in proportion to his toil and labour in its composition, the other computing it in proportion as he conceives the public may become purchasers. The publisher could not undertake to requite or recompense the author according to the degree of exertion employed by him; for what amount of drudgery and toil may not be expended upon a work which would not even cover the expenses of printing and publication? Publishers invariably act like merchants, whose principle is to risk as

little capital as possible, and to replace *that* with profit as early as feasible.

The reward due to the author.

The reward due to an author is thus justly referred to by Mr. Serjeant Talfourd: "We cannot decide the abstract question between genius and money, because there exists no common properties by which they can be tested, if we were dispensing an arbitrary reward; but the question how much the author ought to receive is easily answered: so much as his readers are delighted to pay him. When we say that he has obtained immense wealth by his writing, what do we assert, but that he has multiplied the sources of enjoyment to countless readers, and lightened thousands of else sad, or weary, or dissolute hours? The two propositions are identical, the proof of the one at once establishing the other. Why, then, should we grudge it any more than we would reckon against the soldier, not the pension or the grant, but the very prize-money which attests the splendour of his victories, and in the amount of his gains proves the extent of ours? Complaints have been made by one in the foremost rank in the opposition to this bill [a bill for the extension of copyright], the pioneer of the noble army of publishers, booksellers, printers, and bookbinders, who are arrayed against it, that in selecting the case of Sir Walter Scott as an instance in which the extension of copyright would be just, I had been singularly unfortunate, because that great writer received during the period of subsisting copyright an unprecedented revenue from the immediate sale of his works. But, sir, the question is not one of reward—it is one of justice. How would this gentleman approve of the application of a similar rule to his own honest gains? From small beginnings, this very publisher has, in the fair and honourable course of trade, I doubt not, acquired a splendid fortune, amassed by the sale of works, the property of the public—of works, whose authors have gone to their repose, from the fevers, the disappointments, and the jealousies which await a life of literary toil. Who grudges it to him? Who doubts his title to retain it? And yet this gentleman's fortune is all, every

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farthing of it, so much taken from the public, in the sense of the publishers' argument; it is all profits on books bought by that public, the accumulation of pence, which, if he had sold his books without profit, would have remained in the pockets of the buyers. On what principle is Mr. Tegg to retain what is denied to Sir Walter? Is it the claim of superior merit? Is it greater toil? Is it larger public service? His course, I doubt not, has been that of an honest, laborious tradesman; but what has been its anxieties compared to the stupendous labour, the sharp agonies, of him whose deadly alliance with those very trades whose members oppose me now, and whose noble resolution to combine the severest integrity with the loftiest genius, brought him to a premature grave,—a grave which, by the operation of the law, extends its chillness even to the results of those labours, and despoils them of the living efficacy to assist those whom he has left to mourn him? Let any man contemplate that heroic struggle, of which the affecting record has just been completed, and turn from the sad spectacle of one who had once rejoiced in the rapid creation of a thousand characters flowing from his brain and stamped with individuality, for ever straining the fibres of the mind till the exercise which was delight became torture, girding himself to the mighty task of achieving his deliverance from the load which pressed upon him, and with brave endeavour, but relaxing strength, returning to the toil, till his faculties give way, the pen falls from his hand on the unmarked paper, and the silent tears of half-conscious imbecility fall upon it—and to some prosperous bookseller in his counting-house, calculating the approach of the time (too swiftly accelerated) when he should be able to publish for his own gain, those works fatal to life; and then tell me, if we are to apportion the reward of the effort, where is the justice of the bookseller's claim? Had Sir Walter Scott been able to see, in the distance, an extension of his own right in his own productions, his estate and his heart had been set free; and the publishers and printers, who are our opponents now, would have been

grateful to him for a continuation of labour and rewards which would have impelled and augmented their own" (*a*).

An action maintainable for not supplying a work agreed to be furnished.

If an author agree in writing to supply a bookseller or publisher with a manuscript of a work to be printed by the latter, an action for damages can be maintained for refusing to furnish the same (*b*), provided the work be one which, if published, would not subject the author to punishment (*c*).

Should the work be stopped the author must be paid for work already done.

Where, however, the author was engaged for a certain sum to write an article to appear, among others, in a work called 'The Juvenile Library,' and before he had completed his article, and before any portion of it had been published, the work in which it was to have appeared was discontinued, Lord Chief Justice Tindal held that the publishers were not entitled to claim the completion of the article in order that it might be published in a separate form for general readers, but were bound to pay the author a reasonable sum for the part which he had prepared (*d*).

An author may bind himself not to write upon a particular subject.

An author may bind himself not to write upon a particular subject, or only for a particular person; for a bond or covenant to that effect would not resemble one in restraint of trade.

Thus, where Colman had contracted with the proprietors of the Haymarket Theatre not to write dramatic pieces for any other theatre, the Lord Chancellor maintained that such a contract was not unreasonable upon either construction, whether it was that Mr. Colman should not write for any other theatre without the licence of the proprietors of the Haymarket Theatre, or whether it gave to those proprietors merely a right of pre-emption. If, said he, Mr. Garrick were now living, would it be unreasonable that he should contract with Mr. Colman to perform only at the Haymarket Theatre, and Mr. Colman with him to write for that theatre alone? Why should they not thus engage for the talents of each other? I cannot see anything

(*a*) Speech in the Commons, April 25, 1838, 42 Parl. Deb. 560.
(*b*) *Gale* v. *Lackie*, 2 Stark, N. P. C. 107; the Court of Chancery, however, could not compel him: *Clarke* v. *Price*, 2 Wils. C. C. 157.
(*c*) *Ibid.* (*d*) *Planché* v. *Colburn*, 5 Car. & Pay. 58.

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unreasonable in this; on the contrary, it is a contract which all parties may consider as affording the most eligible, if not the only, means of making this theatre profitable to them at all as proprietors, authors, or in any other character which they are by the contract to hold (*a*).

But in *Brooke* v. *Chitty* (*b*), where the defendant has undertaken not to write or edit any work upon the criminal law, except a work of which the plaintiff had purchased the copyright, and an advertisement of an edition of Burn's 'Justice of the Peace,' by the defendant, had appeared, Lord Brougham refused to grant an injunction, observing that the defendant was at liberty to write in his closet what he pleased, and that the court would not interfere until there was a violation of the alleged undertaking by actual printing and publication.

So, where an author sells the copyright of a work (*c*) published under his own name, and covenants with the purchaser not to publish any other work to prejudice the sale of it, it seems that another publisher, who has no notice of this covenant, may be restrained from publishing a work subsequently purchased by him from the same author, and published under his name, on the same subject, but under a different title, and though there be no piracy of the first book (*d*).

Independent of a covenant to the contrary, author at liberty to publish a continuation of his work.

But where no such covenant had been entered into and the publisher had agreed with an author for an edition of a history to be written by the latter, in four volumes, and had obtained subscriptions for all that could fall within his edition, the court held that the author was at liberty to publish a continuation of the history which

(*a*) *Morris* v *Colman*, 18 Ves. 437. (*b*) 2 Cooper's Cases, 216.

(*c*) A contract for sale of a copyright is enforceable in equity: *Thombleson* v. *Black*, 1 Jur. 198.

(*d*) *Barfield* v. *Nicholson*, 2 Sim. & Stu. 1; 2 L. J. (Ch.) 90. But where, in an action by several plaintiffs for piracy of copyright, it appeared that the defendant, the author, had published the work in question pursuant to the conditions of a *cognovit* given by him to one of the plaintiffs and another person, in an action for not performing an agreement to write the work in question, it was held that this was a sufficient defence: *Sweet et al.* v. *Archbold*, 10 Bing. R. 133; cited Curtis on Copy. 231.

embraced part of the period and also much of the matter contained in the last of the four volumes (*a*).

As to the alteration of an author's work.

Although the publisher may have the copyright in a book he may not publish a new edition under the author's name so incorrect as to be injurious to the author's reputation. If he does, he renders himself liable to an action for damages (*b*).

When, however, a portion of a work is written to be published under the name of another, the author would have no remedy in case of its alteration or variation. This was decided in *Cox* v. *Cox* (*c*). The defendant, a house agent, having prepared a book on the sale of estates, applied to the plaintiff, a barrister, to correct the work, and to supply the legal matter necessary to complete it, for which the plaintiff was to be paid a certain remuneration, according to the number of pages the work might contain. "No agreement," said the Vice-Chancellor in passing judgment, "was come to as to the name under which the work was to appear. The case, therefore, stood thus: The defendant said, 'I am going to write a work, which you shall correct and put into shape, and a part of which you shall supply for a certain remuneration.' If that be so, the plaintiff was evidently in the subordinate position of assisting in the production of a work which was to come out in the name and as the work of the defendant. The work would be partly the defendant's own composition, and it would be partly the work of the plaintiff; but it was to come out as one entire publication, and to be paid for at one uniform rate. The bulk of the matter was apparently to be supplied by the defendant. The plaintiff employed himself in the preparation of a treatise on the law of vendor and purchaser and landlord and tenant, the whole of which the defendant desired to have compressed into one printed sheet. The plaintiff, on the other hand, thought that no information of value on the legal incidents of the property treated of could be condensed within that compass, and he

(*a*) *Blackie & Co.* v. *Aikman*, May 26, 1827; 5 Ses. Cass. 719 (N.E.) 671.
(*b*) See *Archbold* v. *Sweet*, 1 Moo. & Rob. 162; 5 Car. & Pay. 219.
(*c*) 11 Hare, 118.

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extended this portion of the work to three sheets and a half. The defendant then said: 'If you will reduce this matter to one-half of its present magnitude, I am willing to print it; if not, I decline to print it at all.' This was an absolute rejection of the plaintiff's contribution, except upon the terms of reducing it in quantity to the extent which the defendant required. The plaintiff, on the other hand, was resolved that the whole should be printed or none. There was at this point of the transaction great difficulty in the way of any arrangement. The defendant said, 'I will have only one sheet and three-quarters of legal matter.' The plaintiff insisted that he should have three sheets and a half, or none. Then what followed? The plaintiff looked over the manuscript again, but did not reduce it to the required dimensions; and the defendant, although it had not been so reduced, took the manuscript in the state in which it had been left (which he could only have been entitled to do under the contract), and he began to print the work. The plaintiff proceeded to correct the proof sheets; but (as he states), when he began to find that the legal portion of the work was introduced in a mutilated form, he intimated his refusal to consent to any alteration; and in this state of things the application is made for the injunction. I have stated what appears to me to be the substance of the contract between the parties, up to the time of the discussion as to the space which the legal matter should occupy; and that contract the plaintiff has, by the fourteenth paragraph of the bill, treated as subsisting, for he thereby claims 60*l.* as the unpaid part of the remuneration on the whole contract. On the other hand, the defendant, having taken the manuscript and used it, cannot, I think, dispute his liability to pay for it, according to the terms of the contract. But that would be a question for a court of law. Something was said with regard to the possible effect of the alteration of the plaintiff's portion of his work, as affecting his reputation; but, as it was held in Sir James Clarke's case (*a*), the possible

(*a*) *Clarke* v. *Freeman*, 11 Beav. 112.

effect on reputation, unless connected with property, is not a ground for coming to this court, though it may be an ingredient for the court to consider when the question of a right of property also arises. . . . . A serious question was then adverted to—but it is one which does not arise in this case—how far a party who had purchased a manuscript has a right to alter it, and produce it in a mutilated form?—how far, in a case in which the property has completely passed, it is to be assimilated to a case of goods sold and delivered, and thenceforward in the complete dominion of the purchaser? A qualified contract may be made; an essay may be supplied to a magazine or an encyclopædia, on the understanding that it is to be published entire; and it may be accepted by the editor, and paid for as what it purports to be. In the instance of an essay which had been accepted in that shape, the question might arise whether any curtailment could be allowed under that special contract. But here there is no such special contract. The contract is, that the plaintiff shall supply the defendant with the matter which is required, in such a form as to enable the defendant to publish it as his own. I can find no circumstances from which any such special contract as I have mentioned can be inferred. The plaintiff has, indeed, sought to make it a stipulation that his contribution of the legal materials shall not be published otherwise than entire; but this stipulation has no foundation in the original contract, upon which his case rests. It may well be that this part of the work may suffer in value from the alterations made by the defendant, but no one will probably expect to find the law set forth with any great amount of precision in a work issued by a house agent for the guidance of his customers in dealings of a simple character. If any such mistakes should occur in the legal portion of the work, as the plaintiff apprehends, he will have the remedy in his own hands, by correcting the errors in a subsequent work, in which he may publish his treatise in a distinct form."

The plaintiff would have had this right by analogy to

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the principle that a publisher acquiring from an author a right to publish a treatise in a particular work, such as in the 'Encyclopædia Britannica,' would not be entitled to make the publication in another work not embraced in the contract, nor to publish generally beyond his licence (*a*). But it must be borne in mind that the opportunity of correcting the errors by separate publication could not have arrived until the expiration of twenty-eight years from the first publication.

Copyright of articles in the proprietor of periodicals.

A person may be the proprietor of a copyright in the separate parts of a periodical simply by reason of his employment of the writers (*b*). It appears but reasonable, that where the proprietors of a periodical employ a gentleman to write a given article, or a series of articles or reports, expressly for the purpose of publication therein, to imply that the copyright of the articles so expressly written for such periodical, and paid for by the proprietors and publishers, shall be the property of such proprietors and publishers; otherwise the author, the day after his article had been published by the persons for whom he contracted to write it, might republish it in a separate form, or in another serial, and there would be no correspondent benefit to the original publishers for the payment they had made.

Construction of agreements between authors and publishers.

Should an author, in consideration of a sum of money paid to him, agree that certain persons shall have the sole power of printing, reprinting, and publishing a particular work for all time, that would be parting with the copyright; but if the agreement be that the publishers, performing certain conditions on their part, should, so long as they perform such conditions, have the right of printing and publishing the book, that is a very different agreement.

(*a*) *Stewart* v. *Black*, 9 Sess. Cas. 2nd series, 1026; cited Phillips on Copy. 178. As to bookseller's lien on the copyright for his disbursements, see *Brook* v. *Wentworth*, 3 Anstr. 881.

(*b*) But see Jervis, C.J., in *Shepherd* v. *Conquest*, 25 L. J. (C.P.) 127; 17 C. B. 427.

(*c*) Where publishers of a magazine employ and pay an editor, and the editor employs and pays persons for writing articles in the magazine,—*Semble*, the copyright in such articles is not vested in the publishers under 5 & 6 Vict. c. 45, s. 18; *Brown* v. *Cooke*, 11 Jur. 77; 16 L. J. (N.S.) Ch. 140.

In the case of *Sweet* v. *Cater* (*a*) the agreement, after reciting that the author had prepared a tenth edition of his work, which the publisher was desirous of *purchasing*, and that it had been agreed that a certain printer should print a given number of copies, and the publisher should pay to the author *for the said tenth edition* a certain sum, went on to direct that the work should be in a given number of volumes, and should *be sold* to the public for a given price. It was objected that the plaintiff, the publisher, was not under this agreement the *proprietor of the copyright* within the meaning of the statute (54 Geo. 3, c. 156, s. 4), but a mere licensee to sell a given number of copies. The court overruled the objection, holding that the copyright was equitably vested in the publisher, on the ground that the contract was obligatory on both parties, that the plaintiff was bound to sell, and therefore the author was bound to abstain from doing anything which would interfere with the sale. The court, moreover, were of opinion that the equitable right to the copyright endured until the number of copies fixed by the terms of the agreement had been exhausted. It is to be regretted that the court did not advert to the question whether the words of purchase of the agreement—viz., that the publisher was to pay for *the edition*—gave him, independently of the implied contract on the part of the author not to do any act which might interfere with the sale, an equitable copyright in the work.

Agreements for division of profits, personal.

Where there was an agreement in writing between an author and certain publishers, that they should print, reprint, and publish his book, upon condition that the author should prepare it all before a certain day, and should correct the press, and that the publishers should direct the mode of printing, and pay all the expenses and take all risk of publishing, and out of the produce should first repay such expenses, and then divide the profits between themselves and the author equally; and that if all copies should be sold and a new edition should be

(*a*) 5 Jur. 68; 11 Sim. 572.

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required, the author should prepare the same, and the publishers should print and publish it on the same conditions; and that, if all the copies of any edition should not be sold in five years from the time of publication, the publishers might sell the remaining copies by auction or otherwise, in order to close the account; it was held to be a personal contract by the author, and not a contract for an assignment of the copyright; and, consequently, the benefit thereof could not be assigned by the publishers (*a*).

Agreement for division of profits a joint adventure.

An agreement similar to this, and without specifying a particular edition, constitutes a joint adventure between the parties (*b*), which either party is at liberty to terminate upon notice after the publication of a given edition, if at the date of such notice no fresh expense has been incurred by the party to whom such notice be given.

By a memorandum of agreement made in November, 1852, between the plaintiff and the defendant, it was agreed that the latter should publish, at his own expense and risk, a work entitled 'Peg Woffington,' of which the former was the author; and after deducting from the produce of the sale thereof the charges for printing, paper, advertisements, embellishments (if any), and other incidental expenses, including the allowance of 10 per cent. on the gross amount of the sale for commission and risk of bad debts, the profits remaining of every edition that should be printed of the work were to be divided into two equal parts, one moiety to be paid to the plaintiff, and the other to the defendant.

Subsequently the same parties entered into a similar agreement relative to the publication of another work entitled 'Christie Johnstone,' of which the plaintiff was also the author; and they signed for that purpose a memorandum of agreement, which, except as to the date and the title of the work, was in the same words as the former.

(*a*) *Stevens* v. *Benning*, 1 K. & J. 168, affirmed, 6 D. M. & G. 223. See *Pulte* v. *Derby*, 5 McLean (Amer.) 332.

(*b*) Joint owners of a copyright may make a contract between themselves as to the printing and publishing of the work, and neither will be permitted to set up against the other his original rights as a joint owner in violation of such contract: *Gould* v. *Banks*, 8 Wend. (Amer.) 568.

Two editions of the former work and four of the latter having been published by the defendant, and no fresh expenditure having been incurred by him since the publication of those editions, the plaintiff claimed a right to terminate the joint adventure between them, and to prevent the defendant from publishing any further edition of either work.

The main question to determine was, what was the effect of the agreement which had been entered into between the plaintiff and the defendant?

It was contended by the plaintiff that the case was one of simple agency; that by the effect of the agreement the defendant became a mere agent of the plaintiff. "But," observed the Vice-Chancellor, "it is clear that he became more than that. A mere agent may be paid, as the defendant was to be paid, by a share of the profits; but a mere agent never embarks in the risk of the undertaking; and here the defendant took upon himself the whole expense and risk of bringing out the work. Clearly, therefore, the case is something more than simple agency."

Sir W. Page Wood, in passing judgment, made the following observations: "Agreements between authors and publishers assume a variety of forms. Some are so clear and explicit that no doubt can arise upon them. Thus, where an author assigns his copyright, the transaction is one which every person understands, and which leaves no room for uncertainty as to the rights of the parties. Again, where, as in *Sweet* v. *Cater* (*a*), the author assigns a particular edition, the rights of himself and the publisher are equally clear; and although in that case the point did not require determination, the court observed, and justly observed, that, where an author has sold an edition of a given number of copies to one publisher, he is not at liberty, before they are sold, to publish the same work himself or through another publisher, in such a manner as to compete with the edition he has sold, but is bound to afford to the purchaser a full opportunity of realizing the benefit of his

(*a*) 5 Jur. 68; 11 Sim. 572.

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contract. The case before me, like that of *Stevens* v. *Benning* (*a*), is of an intermediate description. Here, as there, the author does not sell, or purport to sell, any interest whatever in the copyright. It was contended, and very strongly, in *Stevens* v. *Benning*, that the author had done so; but I held that he had not, and my view was affirmed by the lords justices. Here also, as there, the publisher was to publish at his own risk. Nevertheless, in *Stevens* v. *Benning*, the agreement contained other provisions, considerably more definite than any in this case. It pointed to a series of editions to be published for the author by the same publisher, as to every one of which the author himself stipulated, as part of the contract, that he would assist in the publication. Here the agreement is simply that the publisher shall publish the work at his own expense and risk, and, after deducting all the expenses specified in the memorandum, and an allowance of £10 per cent., the profits remaining of every edition that shall be printed of the work are to be divided into two equal parts, one of which is to be paid to the author, and the other to the publisher.

"It was contended for the defendant that if the effect of the agreement was not an assignment of the copyright (which it is now clearly decided that it could not be), it resulted in a joint adventure, in which the defendant was to have a licence to publish the work; and that, from the nature of the case, and by the terms of the agreement, that licence was irrevocable. In *Stevens* v. *Benning* I considered the agreement must be regarded as creating, to a certain extent, a joint adventure, and Lord Justice Knight Bruce adopted the same view. He says, it must be observed, that such interest, if any, in the copyright of the author's work as the other parties to the agreement acquired under it, they acquired, not exclusively of the author, 'but by way of joint adventure with him, or of partnership with him, in respect and for the objects of which he undertook the fulfilment by himself personally

(*a*) 1 K. & J. 168; 6 D. M. & G. 223.

of certain duties to him' (*a*). Community of risk did not appear to him to be by our law, any more than it was by the civil law, essential to constitute a partnership, one partner being at liberty to contract with another that he will take all the losses of the concern upon himself. Lord Justice Turner looked upon the agreement in *Stevens* v. *Benning* in the double light of a licence and a partnership; speaking, however, less decidedly as to its being a partnership. He says: 'Next, if there was a partnership, then, if the agreement does not affect the copyright, the partnership was not in the copyright, but in the copies printed under the licence contained in the agreement' (*b*) —viewing it, therefore, as a licence for the publication of the work, and then a joint adventure between the author and publisher in the copies so to be published. If that were the effect of the agreement in the present case, the question would still remain, whether the licence be irrevocable.

"The plaintiff does not attempt to interfere with the publication of an edition which the defendant had commenced, and incurred expense in preparing for publication, before he exercised the option of determining the agreement. His claim is limited to editions about which no such expense had been incurred by the defendant; and his argument is, that, unless he has a right to determine the agreement as to all such editions, the consequence will be, that, during the whole of the defendant's life, he may be under an obligation to the defendant, while the defendant will be under no reciprocal obligation to him. It is true that, according to *Stevens* v. *Benning*, a licence like the present would, I apprehend, be restricted to the defendant personally, and would not extend to his executors, or to any future partner or assignee; but if the defendant's construction be correct, it follows, that, so long as he lives and is willing to continue publishing fresh editions of the work, so long, according to the doctrine in *Sweet* v. *Cater*, the plaintiff will be precluded from asserting a right to publish any competing edition. The

(*a*) 6 D. M. & G. 223, 229. (*b*) *Ibid.* 231.

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defendant could compel the plaintiff to abstain from publishing a single copy of the work, so long as he expressed his readiness to continue publishing. But the plaintiff has no reciprocal power. He could never compel the defendant to publish more than a single edition of the work. His powers are limited to what the contract gives him; and, according to the contract, when the defendant has published a single edition the contract on his part is fulfilled. That is a position of considerable hardship for an author, and one which ought to be clearly shewn, upon the face of a contract, to have been contemplated by the parties who entered into it . . . . In the present case, no new expense has been incurred by the defendant, either in printing, advertising, or otherwise, as regards 'Peg Woffington,' since the publication of the second edition, and, as regards 'Christie Johnstone,' since the publication of the fourth edition; and that being, as I have already intimated, the true test in construing the agreement, it appears to me, that, when these editions were published, the period had arrived at which the parties intended a division of profits to take place, and at which the plaintiff became entitled to terminate his agreement with the defendant. This is the only conclusion at which I can arrive, after a very careful consideration of the contracts. But it is much to be regretted that contracts should be framed with such uncertainty, when it would have been so easy to make them certain" (*a*).

In all agreements between authors and publishers the terms should be distinctly stated, and the respective rights of the parties clearly defined. The number of copies of which the edition is to consist should be declared, for otherwise a publisher might, if so disposed, print 20,000 as one edition (*b*).

Construction of the word "edition."

The meaning of the word "edition," and the construction to be placed upon it, were fully discussed in *Reade* v.

(*a*) *Per* Wood, V.C., in *Reade* v. *Bentley*, 4 K. & J. 656, 669.
(*b*) *Per* Wood, V.C., in *Reade* v. *Bentley*, 4 K. & J. 656, 669; 27 L. J. (Ch.) 254; *Sweet* v. *Cater*, 11 Sim. 572; 5 Jur. 68; *Stevens* v. *Benning*, 1 K. & J. 168; 6 D. M. & G. 223; *Benning* v. *Dove*, 5 C. & P. 427.

Bentley. It was argued that where a work had once been stereotyped, the term "edition" was no longer applicable; and that when a work is published in what are called "thousands," 20,000 or 30,000 being circulated, each thousand could not properly be called an "edition." Wood, V.C., however, thought that not merely in point of etymology, but having regard to what actually takes place in the publication of any work, an "edition" of a work was the putting of it forth before the public, and if this be done in batches at successive periods, each successive batch was a new edition; and the question whether the individual copies had been printed by means of movable type or by stereotype, did not seem to him to be material. If movable type were used, the type having been broken up, the new edition was prepared by setting-up the type afresh, printing afresh, advertising afresh, and repeating all the other necessary steps to obtain a new circulation of the work. In that case the contemplated break between the two editions was more complete, because, until the type was again set-up, nothing further could be done. It made no substantial difference as regards the meaning of the term "edition," whether the new "thousand" had been printed by a resetting of movable type, or by stereotype, or whether they have been printed at the same time with the former thousand or subsequently. A new "edition" is published whenever, having in his storehouse a certain number of copies, the publisher issues a fresh batch of them to the public. This, according to the practice of the trade, is done, as is well known, periodically. And if, after printing 20,000 copies, a publisher should think it expedient for the purpose of keeping up the price of the work, to issue them in batches of a thousand at a time, keeping the rest under lock and key, each successive issue would be a new "edition" in every sense of the word (*a*).

In many cases an advantage would accrue by a pub-

(*a*) *Per* Wood, V.C., in *Reade* v. *Bentley*, 4 K. & J. 656, 667. See *Blackwood* v. *Brewster*, 7 Dec. 1860; 23 Scss. Cas. 2nd series, 142.

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lisher so doing; for when an author sells the copyright of a work to a publisher for a certain specified time, the publisher has the right, after the expiration of that period, of selling copies of the work he has printed before the expiration of the time limited.

Right of the publisher to sell copies on hand prior to the expiration of his limited copyright.

This was decided in the important case of *Howitt* v. *Hall* (*a*). Mr. William Howitt applied for an injunction to restrain the defendants Messrs. Hall and Virtue, the publishers, from selling or otherwise disposing of any copies of an original work called 'A Boy's Adventures in the Wilds of Australia,' of which Mr. Howitt was the author and registered proprietor. It appeared by the affidavits that in the year 1854, a negotiation was entered into with the defendants by Mrs. Mary Howitt, the wife of the plaintiff, who was then in Australia, for the sale to them of the copyright of the work in question for four years, for a sum of £250. This negotiation, after some discussion as to the precise date from which the contract was to commence, resulted in an agreement being entered into on behalf of the plaintiff, which was afterwards confirmed on his return from Australia by the following memorandum signed by him :—

"Gentlemen,—I confirm the agreement entered into with you by Mrs. Howitt on the 14th of March, 1854, for the publication of 'A Boy's Adventures in Australia,' being a copyright of four years from that date.

"WILLIAM HOWITT."

On the same day the defendants sent for the plaintiff's signature, a receipt for the £250, "being the purchase-money, as agreed, for the copyright and sole right of sale for four years" of the work in question. In October, 1857, the work having then gone through two editions, the defendants contemplated issuing a third and cheap edition, and accordingly gave notice of their intention to Mr. Howitt, by whom it was revised previously to publica-

(*a*) 10 W. R. 381 : 6 L. T. (N.S.) 348.

tion. No further copies had been printed, and the term of four years expired in March, 1858. In February of 1862, the plaintiff, being about to bring out a uniform edition of the juvenile works of Mrs. Howitt and himself, and having, as he stated, only then for the first time discovered that the defendants were continuing to sell the work and to advertise it for sale, wrote to them complaining of this as an infringement of his copyright and a breach of contract, and asking for compensation. In reply to this application, the defendants insisted on their legal right to sell the remaining stock, as their own *bonâ fide* property, when and as they pleased; but at the same time they expressed their willingness to sell it by auction during the present month of March, so as not to stand in the way of the new edition. This suggestion, however, the plaintiff declined to accede to, and filed his bill praying for an account of the profits made by the defendants since March, 1858, and for an injunction. Vice-Chancellor Wood said, that the purchase of the copyright carried with it the right of printing and publishing, and the defendant was entitled to continue selling after the expiration of the four years' term the stock printed by him under his purchase. "The Copyright Acts were directed against unlawful printing; and when, as in this case, the defendant had acquired the right of lawfully printing the work, he was at liberty to sell at any time what he had so printed. The words 'sole right of sale' might or might not have been superfluous; but after the four years the right to print the work reverted to the author, who had taken care to secure himself in this respect. It had been suggested that the effect might be to destroy the copyright in the author altogether, as the publisher who had purchased the copyright for a limited period only might during that period print off copies enough to last for all time. A nice question might indeed arise as to the number of copies of which an edition might consist, but a publisher was not likely to incur the useless expense of printing copies enough to exhaust the demand for all time, and have them

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lying upon his hands unprofitably. Besides this, even if the effect of a sale for four years might operate in this way to deprive the author of all copyright in his work, the answer was that he had not guarded himself against such a contingency. If a manifest case of fraud upon the author were established, the court would know how to deal with it. But nothing of the sort was shewn. The defendants had acted quite *bonâ fide*, and were making a perfectly legitimate use of their contract, and the motion must be refused."

Accounts between authors and publishers.

As to accounts between authors and publishers, see *Barry* v. *Stevens* (*a*) and *Stiff* v. *Cassell* (*b*).

(*a*) 31 Beav. 258.

(*b*) 2 Jur. (N.S.) 348.

ADDENDUM.

THE following information has been published in the United States, showing by what means a copyright can there be secured.

Copyrights may be secured under the revised Act of Congress, which took effect on the 8th of July, 1870, by observing the following regulations:—

1. A printed copy of the title of the book, map, chart dramatic or musical composition, engraving, cut, print, photograph, chromo, or design for a work of the fine arts for which copyright is desired, must be sent by mail, addressed "Librarian of Congress, Copyright matter, Washington, D.C."

This must be done before publication of the book or other article.

2. A fee of 50 cents, for recording the title of each book or other article, must be inclosed with the title as above, and 50 cents in addition (or 1 dollar in all) for each certificate of copyright under seal of the Librarian of Congress, which will be transmitted by return mail.

3. Within ten days after publication of each book or other article, two complete copies of the best edition issued must be mailed to perfect the copyright, with the address, "Librarian of Congress, Copyright matter, Washington, D.C."

If the above direction is complied with, both books and titles will come free of postage, and postmasters will give receipt for the same if requested. Without the deposit copies above required, the copyright is void, and a penalty

of 25 dollars is incurred. No copy is required to be deposited elsewhere.

4. Copyrights recorded at a date prior to the 8th of July, 1870, in any district clerk's office, do not require re-entry at Washington. But one copy of each book or other article published since the 4th of March, 1865, is required to be deposited in the Library of Congress, if not already done. Without such deposit copyright is void.

5. No copyright is valid unless notice is given by inserting in the several copies of every edition published, on the title-page or the page following, if it be a book; or if a manuscript, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model of a sign intended to be perfected and completed as a work of the fine arts, by inscribing upon some portion of the face or front thereof, or the face of the substance on which the same is mounted, the following words, viz.: "Entered according to Act of Congress, in the year , by , in the office of the Librarian of Congress, at Washington."

6. Each copyright secures the exclusive liberty of publishing the book or article copyrighted for the term of twenty-eight years. At the end of that period the author or designer may secure a renewal for the further term of fourteen years, making forty-two years in all.

7. Any copyright is assignable in law by any instrument of writing; but such assignment must be recorded in the office of the Librarian of Congress within sixty days from its date. The fee for this record is fifteen cents for every 100 words, and ten cents. for every 100 words for a copy of the record of assignment.

8. In the case of books published in more than one volume, or of periodicals published in numbers, or of engravings, photographs, or other articles published with variations, a copyright must be taken out for each column of a book, or number of a periodical, or variety, as to size or inscription, or any other article.

9. To secure a copyright for a painting, statue, or model or design, intended to be perfected as a work of the fine arts, so as to prevent infringement by copying or vending such design, a definite description of such work of art must accompany the application for copyright, and a photograph of the same, at least as large as "cabinet size," should be mailed to the Librarian of Congress within ten days from the completion of the work.

10. In all cases where a copyright is desired for any article not a book, the applicant should state distinctly the title or description of the article in which he claims copyright.

11. Every applicant for a copyright must state distinctly in whose name the copyright is to be taken out, and whether title is claimed as author, designer or proprietor.

APPENDIX (A).

8 Anne, c. 19 (1709).

An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the Time therein mentioned.

Repealed by 5 & 6 Vict. c. 45, § 1.

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8 Geo. II. c. 13 (1735).

An Act for the Encouragement of the Arts of designing, engraving, and etching historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers during the Time therein mentioned.

Whereas divers persons have, by their own genius, industry, pains, and expense, invented and engraved, or worked in mezzotinto, or chiaro-oscuro, sets of historical and other prints, in hopes to have reaped the sole benefit of their labours: And whereas printsellers and other persons have of late, without the consent of the inventors, designers, and proprietors of such prints, frequently taken the liberty of copying, engraving, and publishing, or causing to be copied, engraved, and published, base copies of such works, designs, and prints, to the very great prejudice and detriment of the inventors, designers, and proprietors thereof: For remedy thereof, and for preventing such practices for the future, may it please Your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of June which shall be

After 24th June, 1735, the property of historical and other prints vested in the inventor for fourteen years.

in the year of our Lord one thousand seven hundred and thirty-five, every person who shall invent and design, engrave, etch, or work, in mezzotinto or chiaro-oscuro, or from his own works and invention shall cause to be designed and engraved, etched, or worked, in mezzotinto or chiaro-oscuro, any historical or other print or prints, shall have the sole right and liberty of printing and reprinting the same for the term of fourteen years, to commence from the day of the first publishing thereof, which shall be truly engraved with the name of the proprietor on each plate, and printed on every such print or prints; and that if any printseller or other person whatsoever, from and after the said twenty-fourth day of June one thousand seven hundred and thirty-five, within the time limited by this Act, shall engrave, etch, or work as aforesaid, or in any other manner copy and sell, or cause to be engraved, etched, or copied and sold, in the whole or in part, by varying, adding to, or diminishing from the main design, or shall print, reprint, or import for sale, or cause to be printed, reprinted, or imported for sale, any such print or prints, or any parts thereof, without the consent of the proprietor or proprietors thereof first had and obtained in writing signed by him or them respectively in the presence of two or more credible witnesses, or, knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors, shall publish, sell, or expose to sale, or otherwise or in any other manner dispose of, or cause to be published, sold, or exposed to sale, or otherwise or in any other manner disposed of, any such print or prints, without such consent first had and obtained as aforesaid, then such offender or offenders shall forfeit the plate or plates on which such print or prints are or shall be copied, and all and every sheet or sheets (being part of or whereon such print or prints are or shall be so copied or printed), to the proprietor or proprietors of such original print or prints, who shall forthwith destroy and damask the same; and further, that every such offender or offenders shall forfeit five shillings for every print which shall be found in his, her, or their custody, either printed or published, and exposed to sale or otherwise disposed of, contrary to the true intent and meaning of this Act, the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same, to be recovered in any of His Majesty's Courts of Record at West-

Proprietor's name to be affixed to each print.

Penalty on printsellers or others pirating the same.

minster, by action of debt, bill, plaint, or information, in which no wager of law, essoign, privilege, or protection, or more than one imparlance, shall be allowed.

Not to extend to purchasers of plates from the original proprietors.

II. Provided nevertheless, That it shall and may be lawful for any person or persons who shall hereafter purchase any plate or plates for printing from the original proprietors thereof to print and reprint from the said plates without incurring any of the penalties in this Act mentioned.

Limitation of actions for anything done in pursuance of Act.

General issue.

III. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever for doing or causing to be done anything in pursuance of this Act, the same shall be brought within the space of three months after so doing; and the defendant and defendants in such action or suit shall or may plead the general issue, and give the special matter in evidence; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs, for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law.

Limitation of actions for offences against this Act.

IV. Provided always, and be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons for any offence committed against this Act, the same shall be brought within the space of three months after the discovery of every such offence, and not afterwards, anything in this Act contained to the contrary notwithstanding.

V. Repealed by 30 & 31 Vict. c. 59.

Public Act.

VI. And be it further enacted by the authority aforesaid, That this Act shall be deemed, adjudged, and taken to be a Public Act, and be judicially taken notice of as such by all judges, justices, and other persons whatsoever, without specially pleading the same.

12 Geo. II. c. 36 (1739).

An Act for prohibiting the Importation of Books reprinted abroad, and first composed or written and printed in Great Britain; and for repealing so much of an Act made in the Eighth Year of the Reign of her late Majesty Queen Anne as empowers the limiting the Prices of Books.

Repealed by 30 & 31 Vict. c. 59.

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7 Geo. III. c. 38 (1766).

An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of King George the Second, for Encouragement of the Arts of designing, engraving, and etching historical and other Prints; and for vesting in, and securing to, Jane Hogarth, Widow, the Property in certain Prints.

Preamble, reciting Act 8 G. 2.

Whereas an Act of Parliament passed in the eighth year of the reign of His late Majesty King George the Second, intituled "An Act for the Encouragement of the Arts of designing, engraving, and etching historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers, during the Time therein mentioned," has been found ineffectual for the purposes thereby intended: Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the first day of January, one thousand seven hundred and sixty-seven, all and every person and persons who shall invent or design, engrave, etch, or work in mezzotinto or chiaro-oscuro, or, from his own work, design, or invention, shall cause or procure to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro, any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, shall have, and are hereby declared to have, the benefit and protection of the said Act and this Act, under the restrictions and limitations hereinafter mentioned.

The original inventors, designers, or engravers, &c., of historical and other prints, and such who shall cause prints to be done from works, &c., of their own invention,

II. And be it further enacted by the authority aforesaid, That from and after the said first day of January one thousand seven

and also such as shall engrave,

hundred and sixty-seven, all and every person and persons who shall engrave, etch, or work in mezzotinto or chiaro-oscuro, or cause to be engraved, etched, or worked, any print, taken from any picture, drawing, model, or sculpture, either ancient or modern, shall have, and are hereby declared to have, the benefit and protection of the said Act and this Act, for the term hereinafter mentioned, in like manner as if such print had been graved or drawn from the original design of such graver, etcher, or draftsman; and if any person shall engrave, print and publish, or import for sale, any copy of any such print, contrary to the true intent and meaning of this and the said former Act, every such person shall be liable to the penalties contained in the said Act, to be recovered as therein and hereinafter is mentioned.

&c., any print taken from any picture, drawing, model, or sculpture; are entitled to the benefit and protection of the recited and present Act; and those who shall engrave or import for sale, copies of such prints, are liable to penalties.

III. and IV. repealed by 30 & 31 Vict. c. 59.

V. And be it further enacted by the authority aforesaid, That all and every the penalties and penalty inflicted by the said Act, and extended, and meant to be extended, to the several cases comprised in this Act, shall and may be sued for and recovered in like manner, and under the like restrictions and limitations, as in and by the said Act is declared and appointed; and the plaintiff or common informer in every such action (in case such plaintiff or common informer shall recover any of the penalties incurred by this or the said former Act) shall recover the same, together with his full costs of suit. Provided also, that the party prosecuting shall commence his prosecution within the space of six calendar months after the offence committed.

Penalties may be sued for as by the recited Act is directed; and be recovered with full costs; provided the prosecution be commenced within six months after the fact.

VI. And be it further enacted by the authority aforesaid, That the sole right and liberty of printing and reprinting intended to be secured and protected by the said former Act and this Act, shall be extended, continued, and be vested in the respective proprietors, for the space of twenty-eight years, to commence from the day of the first publishing of any of the works respectively hereinbefore and in the said former Act mentioned.

The right intended to be secured by this and the former Act, vested in the proprietors for the term of twenty-eight years from the first publication.

VII. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, anything in pursuance of this Act, the same shall be brought within the space of six calendar months after the fact committed; and the defendant or defendants in any such action or

Limitation of actions.

General issue. suit shall or may plead the general issue, and give the special matter in evidence; and if, upon such action or suit, a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become non-suited, or discontinue his, her, or their action or actions, then the defendant or defendants shall Full costs. have and recover full costs; for the recovery whereof he shall have the same remedy as any other defendant or defendants, in any other case, hath or have by law.

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15 Geo. III. c. 53 (1775).

An Act for enabling the two Universities in England, the four Universities in Scotland, and the several Colleges of Eton, Westminster, and Winchester, to hold in perpetuity their Copyright in Books, given or bequeathed to the said Universities and Colleges for the Advancement of useful Learning and other Purposes of Education; and for amending so much of an Act of the Eighth Year of the Reign of Queen Anne as relates to the Delivery of Books to the Warehouse-keeper of the Stationers' Company, for the Use of the several Libraries therein mentioned.

Preamble. Whereas authors have heretofore bequeathed or given, and may hereafter bequeath or give, the copies of books composed by them, to or in trust for one of the two universities in that part of Great Britain called England, or to or in trust for some of the colleges or houses of learning within the same, or to or in trust for the four universities in Scotland, or to or in trust for the several colleges of Eton, Westminster, and Winchester, and in and by their several wills or other instruments of donation, have directed or may direct, that the profits arising from the printing and reprinting such books shall be applied or appropriated as a fund for the advancement of learning, and other beneficial purposes of education within the said universities and colleges aforesaid: And whereas such useful purposes will frequently be frustrated, unless the sole printing and reprinting of such books, the copies of which have been or shall be so bequeathed or given as aforesaid, be preserved and secured to the said universities, colleges, and houses of learning respectively in perpetuity: May it therefore please Your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent

of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said universities and colleges respectively shall, at their respective presses, have, for ever, the sole liberty of printing and reprinting all such books as shall at any time heretofore have been, or (having not been heretofore published or assigned) shall at any time hereafter be bequeathed, or otherwise given by the author or authors of the same respectively, or the representatives of such author or authors, to or in trust for the said universities, or to or in trust for any college or house of learning within the same, or to or in trust for the said four universities in Scotland, or to or in trust for the said colleges of Eton, Westminster, and Winchester, or any of them, for the purposes aforesaid, unless the same shall have been bequeathed or given, or shall hereafter be bequeathed or given, for any term of years, or other limited term, any law or usage to the contrary hereof in anywise notwithstanding.

Universities, &c., in England and Scotland to have for ever the sole right of printing, &c., such books as have been, or shall be, bequeathed to them,

unless the same have been, or shall be, given for a limited time.

II. And it is hereby further enacted, That if any bookseller, printer, or other person whatsoever, from and after the twenty-fourth day of June one thousand seven hundred and seventy-five, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such book or books; or, knowing the same to be so printed or reprinted, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books; then such offender or offenders shall forfeit such book or books, and all and every sheet or sheets, being part of such book or books, to the university, college, or house of learning respectively, to whom the copy of such book or books shall have been bequeathed or given as aforesaid, who shall forthwith damask and make waste paper of them; and further, that every such offender or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published or exposed to sale, contrary to the true intent and meaning of this Act; the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same; to be recovered in any of His Majesty's Courts of Record at Westminster, or in the Court of Session in Scotland, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, or protection, or more than one imparlance, shall be allowed.

After June 24, 1775, persons printing or selling such books shall forfeit the same, and also 1*d.* for every sheet;

one moiety to His Majesty, and the other to the prosecutor.

Nothing in this Act to extend to grant any exclusive right longer than such books are printed at the presses of the universities.

III. Provided nevertheless, That nothing in this Act shall extend to grant any exclusive right otherwise than so long as the books or copies belonging to the said universities or colleges are printed only at their own printing presses within the said universities or colleges respectively, and for their sole benefit and advantage; and that if any university or college shall delegate, grant, lease, or sell their copyrights, or exclusive rights of printing the books hereby granted, or any part thereof, or shall allow, permit, or authorise any person or persons, or bodies corporate, to print or reprint the same, that then the privileges hereby granted are to become void and of no effect, in the same manner as if this Act had not been made; but the said universities and colleges as aforesaid shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid, in like manner as any author or authors now may do under the provisions of the statute of the eighth year of Her Majesty Queen Anne.

Universities may sell copyrights in like manner as any author.

No person subject to penalties for printing, &c., books already bequeathed, unless they be entered before June 24, 1775.

IV. And whereas many persons may through ignorance offend against this Act, unless some provision be made whereby the property of every such book as is intended by this Act to be secured to the said universities, colleges, and houses of learning within the same, and to the said universities in Scotland, and to the respective colleges of Eton, Westminster, and Winchester, may be ascertained and known, be it therefore enacted by the authority aforesaid, That nothing in this Act contained shall be construed to extend to subject any bookseller, printer, or other person whatsoever, to the forfeitures or penalties herein mentioned, for or by reason of the printing or reprinting, importing or exposing to sale, any book or books, unless the title to the copy of such book or books, which has or have been already bequeathed or given to any of the said universities or colleges aforesaid, be entered in the register book of the Company of Stationers kept for that purpose, in such manner as hath been usual, on or before the twenty-fourth day of June, one thousand seven hundred and seventy-five; and of all and every such book or books as may or shall hereafter be bequeathed or given as aforesaid, be entered in such register within the space of two months after any such bequest or gift shall have come to the knowledge of the vice-chancellors of the said universities, or heads of houses and colleges of learning, or of the principal of any of the said four universities respectively; for every of

All books that may hereafter be bequeathed, must be entered within two months after such bequest shall be known.

which entries so to be made as aforesaid the sum of sixpence shall be paid, and no more; which said register book shall and may, at all seasonable and convenient times, be referred to and inspected by any bookseller, printer, or other person, without any fee or reward; and the clerk of the said company of Stationers shall, when and as often as thereunto required, give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding sixpence.

6d. to be paid for each entry in the register book, which may be inspected without fee.

Clerk to give a certificate, being paid 6d.

V. And be it further enacted, That if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries, or to give such certificate, being thereunto required by the agent of either of the said universities or colleges aforesaid, lawfully authorised for that purpose, then either of the said universities or colleges aforesaid, being the proprietor of such copyright or copyrights as aforesaid (notice being first given of such refusal by an advertisement in the Gazette), shall have the like benefit as if such entry or entries, certificate or certificates, had been duly made and given; and the clerk so refusing shall for every such offence forfeit twenty pounds to the proprietor or proprietors of every such copyright; to be recovered in any of His Majesty's Courts of Record at Westminster, or in the Court of Session in Scotland, by action of debt, bill, plaint, or information, in which no wager of law, essoin, privilege, protection, or more than one imparlance, shall be allowed.

If clerk refuse or neglect to make entry, &c.

Proprietor of such copyright to have like benefit as if such entry had been made, and the clerk shall forfeit 20l.

VI. and VII. repealed by 24 & 25 Vict. c. 101.

VIII. And be it further enacted by the authority aforesaid, That this Act shall be adjudged, deemed, and taken to be a Public Act; and shall be judicially taken notice of as such, by all judges, justices, and other persons whatsoever, without specially pleading the same.

Public Act.

17 Geo. III. c. 57 (1777).

An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases.

Recital of Acts 8 G. 2. and 7 G. 3.

Whereas an Act of Parliament passed in the eighth year of the reign of His late Majesty King George the Second, intituled "An Act for the Encouragement of the Arts of designing, engraving, and etching historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers, during the Time therein mentioned:" And whereas, by an Act of Parliament passed in the seventh year of the reign of His present Majesty, for amending and rendering more effectual the aforesaid Act, and for other purposes therein mentioned, it was (among other things) enacted, That from and after the first day of January one thousand seven hundred and sixty-seven, all and every person or persons who should engrave, etch, or work in mezzotinto or chiaro-oscuro, or cause to be engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture, either ancient or modern, should have and were thereby declared to have the benefit and protection of the said former Act and that Act, for the term thereinafter mentioned, in like manner as if such print had been graved or drawn from the original design of such graver, etcher, or draughtsman; and whereas the said Acts have not effectually answered the purposes for which they were intended, and it is necessary for the encouragement of artists, and for securing to them the property of and in their works, and for the advancement and improvement of the aforesaid arts, that such further provisions should be made as are hereinafter mentioned and contained: May it therefore please Your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of June, one thousand seven hundred and seventy-seven, if any engraver, etcher, print-seller, or other person shall, within the time limited by the aforesaid Acts, or either of them, engrave, etch, or work, or cause or procure to be engraved, etched, or worked, in mezzotinto or chiaro-oscuro, or otherwise, or in any other manner copy, in the whole or in

After June 24, 1777, if any engraver, &c., shall, within the time limited by the aforesaid Acts, engrave or etch, &c., any print, without the consent of the proprietor, he shall be liable to damages and double costs.

part, by varying, adding to, or diminishing from the main design, or shall print, reprint, or import for sale, or cause or procure to be printed, reprinted, or imported for sale, or shall publish, sell, or otherwise dispose of, or cause or procure to be published, sold, or otherwise disposed of, any copy or copies of any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, which hath or have been, or shall be engraved, etched, drawn, or designed, in any part of Great Britain, without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her, or them respectively, with his, her, or their own hand or hands, in the presence of and attested by two or more credible witnesses, then every such proprietor or proprietors shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with double costs* of suit.

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27 GEO. III. c. 38 (1787).

An Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors for a limited Time.

Repealed by 5 & 6 Vict. c. 100, § 1.

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29 GEO. III. c. 19 (1789).

An Act for continuing an Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors for a limited Time.

Repealed by 5 & 6 Vict. c. 100, § 1.

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* So much of this statute as relates to double costs is repealed by 24 & 25 Vict. c. 101.

34 Geo. III. c. 23 (1794).

An Act for amending and making perpetual an Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors for a limited Period.

Repealed by 5 & 6 Vict. c. 100, § 1.

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38 Geo. III. c. 71 (1798).

An Act for Encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned.

Repealed by 24 & 25 Vict. c. 101.

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41 Geo. III. c. 107 (1801).

An Act for the further Encouragement of Learning, in the United Kingdom of Great Britain and Ireland, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns, for the time therein mentioned.

Repealed by 5 & 6 Vict. c. 45, § 1.

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54 Geo. III. c. 56.

An Act to amend and render more effectual an Act of His present Majesty, for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned; and for giving further Encouragement to such Arts.

[18th May, 1814.]

38 G. 3, c. 71.

Whereas by an Act, passed in the thirty-eighth year of the reign of His present Majesty, intituled "An Act for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned," the sole right and property thereof were vested in the original proprietors, for a time therein specified: And whereas the provisions of the said Act having been found ineffectual for the purposes thereby intended, it is expedient to amend the same, and to make other provisions and regulations for the encouragement of artists, and to secure to them the profits of and in their works, and for the advancement

of the said arts: May it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, every person or persons who shall make or cause to be made any new and original sculpture, or model, or copy, or cast of the human figure or human figures, or of any bust or busts, or of any part or parts of the human figure, clothed in drapery or otherwise, or of any animal or animals, or of any part or parts of any animal combined with the human figure or otherwise, or of any subject being matter of invention in sculpture, or of any alto or basso-relievo representing any of the matters or things hereinbefore mentioned, or any cast from nature of the human figure, or of any part or parts of the human figure, or of any cast from nature of any animal, or of any part or parts of any animal, or of any such subject containing or representing any of the matters and things hereinbefore mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture, model, copy, and cast of the human figure or human figures, and of all and in every such bust or busts, and of all and in every such part or parts of the human figure, clothed in drapery or otherwise, and of all and in every such new and original sculpture, model, copy, and cast, representing any animal or animals, and of all and in every such work representing any part or parts of any animal combined with the human figure or otherwise, and of all and in every such new and original sculpture, model, copy, and cast of any subject, being matter of invention in sculpture, and of all and in every such new and original sculpture, model, copy, and cast in alto or basso-relievo, representing any of the matters or things hereinbefore mentioned, and of every such cast from nature, for the term of fourteen years from first putting forth or publishing the same: Provided, in all and in every case, the proprietor or proprietors do cause his, her, or their name or names, with the date, to be put on all and every such new and original sculpture, model, copy, or cast, and on every such cast from nature, before the same shall be put forth or published.

The sole right and property of all new and original sculpture, models, copies, and casts, vested in the proprietors for fourteen years.

II. And be it further enacted, That the sole right and property of all works, which have been put forth or published

Works published under

the recited Act, vested in the proprietors for fourteen years.

under the protection of the said recited Act, shall be extended, continued to and vested in the respective proprietors thereof for the term of fourteen years, to commence from the date when such last mentioned works respectively were put forth or published.

Persons putting forth pirated copies or pirated casts, may be prosecuted.

III. And be it further enacted, That if any person or persons shall, within such term of fourteen years, make or import, or cause to be made or imported, or exposed to sale, or otherwise disposed of, any pirated copy or pirated cast of any such new and original sculpture, or model, or copy, or cast of the human figure or human figures, or of any such bust or busts, or of any such part or parts of the human figure clothed in drapery or otherwise, or of any such work of any animal or animals, or of any such part or parts of any animal or animals combined with the human figure or otherwise, or of any such subject being matter of invention in sculpture, or of any such alto or basso-relievo representing any of the matters or things hereinbefore mentioned, or of any such cast from nature as aforesaid, whether such pirated copy or pirated cast be produced by moulding or copying from, or imitating in any way, any of the matters or things put forth or published under the protection of this Act, or of any works which have been put forth or published under the protection of the said recited Act, the right and property whereof is and are secured, extended, and protected by this Act, in any of the cases as aforesaid, to the detriment, damage, or loss of the original or respective proprietor or proprietors of any such works so pirated; then and in all such cases the said proprietor or proprietors, or their assignee or assignees, shall and may, by and in a special action upon the case to be brought against the person or persons so offending, receive such damages as a jury on a trial of such action shall give or assess, together with double costs of suit.

Damages and double costs.

Purchasers of copyright secured in the same.

IV. Provided nevertheless, That no person or persons who shall or may hereafter purchase the right or property of any new and original sculpture or model, or copy or cast, or of any cast from nature, or of any of the matters and things published under or protected by virtue of this Act, of the proprietor or proprietors, expressed in a deed in writing signed by him, her, or them respectively, with his, her, or their own hand or hands, in the presence of and attested by two or more credible witnesses, shall be subject to any action for copying, or casting, or

vending the same, anything contained in this Act to the contrary notwithstanding.

V. Provided always, and be it further enacted, That all actions to be brought as aforesaid, against any person or persons for any offence committed against this Act, shall be commenced within six calendar months next after the discovery of every such offence, and not afterwards. Limitation of actions.

VI. Provided always, and be it further enacted, That from and immediately after the expiration of the said term of fourteen years. the sole right of making and disposing of such new and original sculpture, or model, or copy, or cast of any of the matters or things hereinbefore mentioned, shall return to the person or persons who originally made or caused to be made the same, if he or they shall be then living, for the further term of fourteen years, excepting in the case or cases where such person or persons shall by sale or otherwise have divested himself, herself, or themselves, of such right of making or disposing of any new and original sculpture, or model, or copy, or cast of any of the matters or things hereinbefore mentioned, previous to the passing of this Act. An additional term of fourteen years, in case the maker of the original sculpture, &c., shall be living.

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54 Geo. III. c. 156 (1814).

An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books or their Assigns.

Repealed by 5 & 6 Vict. c. 45, § 1.

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3 Will. IV. c. 15.

An Act to amend the Laws relating to dramatic literary Property.

[10th June, 1833.]

WHEREAS by an Act passed in the fifty-fourth year of the reign of His late Majesty King George the Third, intituled "An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns," it was amongst other things provided and enacted, that from and after the passing of 54 G. 3, c. 156.

the said Act the author of any book or books composed, and not printed or published, or which should thereafter be composed and printed and published, and his assignee or assigns, should have the sole liberty of printing and reprinting such book or books for the full term of twenty-eight years, to commence from the day of first publishing the same, and also, if the author should be living at the end of that period, for the residue of his natural life: And whereas it is expedient to extend the provisions of the said Act: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

The author of any dramatic piece shall have as his property the sole liberty of representing it or causing it to be represented at any place of dramatic entertainment.

That from and after the passing of this Act the author of any tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment, composed, and not printed and published by the author thereof or his assignee, or which hereafter shall be composed, and not printed or published by the author thereof or his assignee, or the assignee of such author, shall have as his own property the sole liberty of representing, or causing to be represented, at any place or places of dramatic entertainment whatsoever, in any part of the United Kingdom of Great Britain and Ireland, in the Isles of Man, Jersey, and Guernsey, or in any part of the British dominions, any such production as aforesaid, not printed and published by the author thereof or his assignee, and shall be deemed and taken to be the proprietor thereof; and that the author of any such production, printed and published within ten years before the passing of this Act by the author thereof or his assignee, or which shall hereafter be so printed and published, or the assignee of such author, shall, from the time of passing this Act, or from the time of such publication respectively, until the end of twenty-eight years from the day of such first publication of the same, and also, if the author or authors, or the survivor of the authors, shall be living at the end of that period, during the residue of his natural life, have as his own property the sole liberty of representing, or causing to be represented, the same at any such place of dramatic entertainment as aforesaid, and shall be deemed and taken to be the proprietor thereof: Provided nevertheless, that nothing in this Act contained shall prejudice, alter, or affect the right or authority of any person to represent or cause to be represented, at any place or places of dramatic

Proviso as to cases where, previous to the passing of this Act, a consent has been given.

entertainment whatsoever, any such production as aforesaid, in all cases in which the author thereof or his assignee shall, previously to the passing of this Act, have given his consent to or authorized such representation, but that such sole liberty of the author or his assignee shall be subject to such right or authority.

Penalty on persons performing pieces contrary to this Act.

II. And be it further enacted, That if any person shall, during the continuance of such sole liberty as aforesaid, contrary to the intent of this Act, or right of the author or his assignee, represent or cause to be represented, without the consent in writing of the author or other proprietor first had and obtained, at any place of dramatic entertainment within the limits aforesaid, any such production as aforesaid, or any part thereof, every such offender shall be liable for each and every such representation to the payment of an amount not less than forty shillings, or to the full amount of the benefit or advantage arising from such representation, or the injury or loss sustained by the plaintiff therefrom, whichever shall be the greater damages, to the author or other proprietor of such production so represented contrary to the true intent and meaning of this Act; to be recovered, together with double costs of suit, by such author or other proprietors, in any court having jurisdiction in such cases in that part of the said United Kingdom or of the British dominions in which the offence shall be committed; and in every such proceeding where the sole liberty of such author or his assignee as aforesaid shall be subject to such right or authority as aforesaid, it shall be sufficient for the plaintiff to state that he has such sole liberty, without stating the same to be subject to such right or authority, or otherwise mentioning the same.

Limitation of actions.

III. Provided nevertheless, and be it further enacted, That all actions or proceedings for any offence or injury that shall be committed against this Act shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of no effect.

Explanation of words.

IV. And be it further enacted, That whenever authors, persons, offenders, or others are spoken of in this Act in the singular number or in the masculine gender, the same shall extend to any number of persons and to either sex.

5 & 6 WILL. IV. c. 65.

An Act for preventing the Publication of Lectures without Consent.
[9th September, 1835.]

WHEREAS printers, publishers, and other persons have frequently taken the liberty of printing and publishing lectures delivered upon divers subjects, without the consent of the authors of such lectures, or the persons delivering the same in public, to the great detriment of such authors and lecturers: Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of September one thousand eight hundred and thirty-five the author of any lecture or lectures, or the person to whom he hath sold or otherwise conveyed the copy thereof, in order to deliver the same in any school, seminary, institution, or other place, or for any other purpose, shall have the sole right and liberty of printing and publishing such lecture or lectures; and that if any person shall, by taking down the same in short-hand or otherwise in writing, or in any other way, obtain or make a copy of such lecture or lectures, and shall print or lithograph or otherwise copy and publish the same, or cause the same to be printed, lithographed, or otherwise copied and published, without leave of the author thereof, or of the person to whom the author thereof hath sold or otherwise conveyed the same, and every person who, knowing the same to have been printed or copied and published without such consent, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such lecture or lectures, shall forfeit such printed or otherwise copied lecture or lectures, or parts thereof, together with one penny for every sheet thereof which shall be found in his custody, either printed, lithographed, or copied, or printing, lithographing, or copying, published or exposed to sale, contrary to the true intent and meaning of this Act, the one moiety thereof to His Majesty, his heirs or successors, and the other moiety thereof to any person who shall sue for the same, to be recovered in any of His Majesty's Courts of Record in Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoign, privilege, or protection, or more than one imparlance, shall be allowed.

Authors of lectures, or their assigns, to have the sole right of publishing them.

Penalty on other persons publishing, &c., lectures without leave.

II. And be it further enacted, That any printer or publisher of any newspaper who shall, without such leave as aforesaid, print and publish in such newspaper any lecture or lectures, shall be deemed and taken to be a person printing and publishing without leave within the provisions of this Act, and liable to the aforesaid forfeitures and penalties in respect of such printing and publishing. Penalty on printers or publishers of newspapers publishing lectures without leave.

III. And be it further enacted, That no person allowed for certain fee and reward, or otherwise, to attend and be present at any lecture delivered in any place, shall be deemed and taken to be licensed or to have leave to print, copy, and publish such lectures only because of having leave to attend such lecture or lectures. Persons having leave to attend lectures not on that account licensed to publish them.

IV. Provided always, That nothing in this Act shall extend to prohibit any person from printing, copying, and publishing any lecture or lectures which have or shall have been printed and published with leave of the authors thereof or their assignees, and whereof the time hath or shall have expired within which the sole right to print and publish the same is given by an Act passed in the eighth year of the reign of Queen Anne, intituled "An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the Times therein mentioned," and by another Act passed in the fifty-fourth year of the reign of King George the Third, intituled "An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns," or to any lectures which have been printed or published before the passing of this Act. Act not to prohibit the publishing of lectures after expiration of the copyright. 8 Ann. c. 19. 54 G. 3, c. 156.

V. Provided further, That nothing in this Act shall extend to any lecture or lectures, or the printing, copying, or publishing any lecture or lectures, or parts thereof, of the delivering of which notice in writing shall not have been given to two justices living within five miles from the place where such lecture or lectures shall be delivered two days at the least before delivering the same, or to any lecture or lectures delivered in any university or public school or college, or on any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation; and that the law relating thereto shall remain the same as if this Act had not been passed. Act not to extend to lectures delivered in unlicensed places, &c.

6 & 7 Will. IV. c. 59.

An Act to extend the Protection of Copyright in Prints and Engravings to Ireland.

[13th August, 1836.]

17 G. 3. c. 57.

Whereas an Act was passed in the seventeenth year of the reign of His late Majesty King George the Third, intituled "An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases:" And whereas it is desirable to extend the provisions of the said Act to Ireland: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act all the provisions contained in the said recited Act of the seventeenth year of the reign of His late Majesty King George the Third, and of all the other Acts therein recited, shall be and the same are hereby extended to the United Kingdom of Great Britain and Ireland.

Provisions of recited Act extended to Ireland.

Penalty on engraving or publishing any print without consent of proprietor.

II. And be it further enacted, That from and after the passing of this Act, if any engraver, etcher, printseller, or other person shall, within the time limited by the aforesaid recited Acts, engrave, etch, or publish, or cause to be engraved, etched, or published, any engraving or print of any description whatever, either in whole or in part, which may have been or which shall hereafter be published in any part of Great Britain or Ireland, without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her, or them respectively, with his, her, or their own hand or hands, in the presence of and attested by two or more credible witnesses, then every such proprietor shall and may, by and in a separate action upon the case, to be brought against the person so offending in any court of law in Great Britain or Ireland, recover such damages as a jury on the trial of such action or on the execution of a writ of inquiry thereon shall give or assess, together with double costs of suit.

1 & 2 VICT. c. 59 (1838).

"*The International Copyright Act.*"

Repealed by 7 Vict. c. 12.

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2 VICT. c. 13 (1839).

An Act for extending the Copyright of Designs for Calico-Printing to Desigus for Printing other woven Fabrics.

Repealed by 5 & 6 Vict. c. 100. § 1.

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2 VICT. c. 17 (1839).

An Act to secure to Proprietors of Desigus for Articles of Manufacture the Copyright of such Desigus for a limited Time.

Repealed by 5 & 6 Vict. c. 100, § 1.

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5 & 6 VICT. c. 45.

An Act to amend the Law of Copyright.

[1st July, 1842.]

WHEREAS it is expedient to amend the law relating to copyright, and to afford greater encouragement to the production of literary works of lasting benefit to the world: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from the passing of this Act an Act passed in in the eighth year of Her Majesty Queen Anne, intituled "An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the Times therein mentioned;" and also an Act passed in the forty-first year of the reign of His Majesty King George the Third, intituled "An Act for the further Encouragement of Learning in the United Kindom of Great Britain and Ireland, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns, for the Time therein mentioned;" and also an Act passed in the fifty-fourth year of the reign of His Majesty King George the Third, intituled "An Act

Repeal of former Acts: 8 Anne, c 19.

41 G. 3, c. 107.

54 G. 3, c. 156.

to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns," be and the same are hereby repealed, except so far as the continuance of either of them may be necessary for carrying on or giving effect to any proceedings at law or in equity pending at the time of passing this Act, or for enforcing any cause of action or suit, or any right or contract, then subsisting.

Interpretation of Act.

II. And be it enacted, That in the construction of this Act the word "book" shall be construed to mean and include every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published; that the words "dramatic piece" shall be construed to mean and include every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment; that the word "copyright" shall be construed to mean the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied; that the words "personal representative" shall be construed to mean and include every executor, administrator, and next of kin entitled to administration; that the word "assigns" shall be construed to mean and include every person in whom the interest of an author in copyright shall be vested, whether derived from such author before or after the publication of any book, and whether acquired by sale, gift, bequest, or by operation of law, or otherwise; that the words "British Dominions" shall be construed to mean and include all parts of the United Kingdom of Great Britain and Ireland, the Islands of Jersey and Guernsey, all parts of the East and West Indies, and all the colonies, settlements, and possessions of the Crown which now are or hereafter may be acquired; and that whenever in this Act, in describing any person, matter, or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and to be applied to several persons as well as one person, and females as well as males, and several matters or things as well as one matter or thing, respectively, unless there shall be something in the subject or context repugnant to such construction.

Endurance of term of copyright in any book hereafter

III. And be it enacted, That the copyright in every book which shall after the passing of this Act be published in the lifetime of its author shall endure for the natural life of such

author, and for the further term of seven years, commencing at the time of his death, and shall be the property of such author and his assigns: Provided always, that if the said term of seven years shall expire before the end of forty-two years from the first publication of such book, the copyright shall in that case endure for such period of forty-two years; and that the copyright in every book which shall be published after the death of its author shall endure for the term of forty-two years from the first publication thereof, and shall be the property of the proprietor of the author's manuscript from which such book shall be first published, and his assigns.

to be published in the lifetime of the author;

if published after the author's death.

IV. And whereas it is just to extend the benefits of this Act to authors of books published before the passing thereof, and in which copyright still subsists, be it enacted, That the copyright which at the time of passing this Act shall subsist in any book theretofore published (except as herein-after mentioned) shall be extended and endure for the full term provided by this Act in cases of books thereafter published, and shall be the property of the person who at the time of passing of this Act shall be the proprietor of such copyright: Provided always, that in all cases in which such copyright shall belong in whole or in part to a publisher or other person who shall have acquired it for other consideration than that of natural love and affection, such copyright shall not be extended by this Act, but shall endure for the term which shall subsist therein at the time of passing of this Act, and no longer, unless the author of such book, if he shall be living, or the personal representative of such author, if he shall be dead, and the proprietor of such copyright, shall, before the expiration of such term, consent and agree to accept the benefits of this Act in respect of such book, and shall cause a minute of such consent in the form in that behalf given in the schedule to this Act annexed to be entered in the book of registry herein-after directed to be kept, in which case such copyright shall endure for the full term by this Act provided in cases of books to be published after the passing of this Act, and shall be the property of such person or persons as in such minute shall be expressed.

In cases of subsisting copyright, the term to be extended, except when it shall belong to an assignee for other consideration than natural love and affection; in which case it shall cease at the expiration of the present term, unless its extension be agreed to between the proprietor and the author.

V. And whereas it is expedient to provide against the suppression of books of importance to the public, be it enacted, That it shall be lawful for the judicial committee of Her

Judicial committee of the Privy Council may license the

republication of books which the proprietor refuses to republish after death of the author.

Majesty's Privy Council, on complaint made to them that the proprietor of the copyright in any book after the death of its author has refused to republish or to allow the republication of the same, and that by reason of such refusal such book may be withheld from the public, to grant a licence to such complainant to publish such book, in such manner and subject to such conditions as they may think fit, and that it shall be lawful for such complainant to publish such book according to such licence.

Copies of books published after the passing of this Act, and of all subsequent editions, to be delivered within certain times at the British Museum.

VI. And be it enacted, That a printed copy of the whole of every book which shall be published after the passing of this Act, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same shall be published, and also of any second or subsequent edition which shall be so published with any additions or alterations, whether the same shall be in letter-press, or in the maps, prints, or other engravings belonging thereto, and whether the first edition of such book shall have been published before or after the passing of this Act, and also of any second or subsequent edition of every book of which the first or some preceding edition shall not have been delivered for the use of the British Museum, bound, sewed, or stitched together, and upon the best paper on which the same shall be printed, shall, within one calendar month after the day on which any such book shall first be sold, published, or offered for sale within the bills of mortality, or within three calendar months if the same shall first be sold, published, or offered for sale in any other part of the United Kingdom, or within twelve calendar months after the same shall first be sold, published, or offered for sale in any other part of the British dominions, be delivered, on behalf of the publisher thereof, at the British Museum.

Mode of delivering at the British Museum.

VII. And be it enacted, That every copy of any book which under the provisions of this Act ought to be delivered as aforesaid shall be delivered at the British Museum between the hours of ten in the forenoon and four in the afternoon on any day except Sunday, Ash Wednesday, Good Friday, and Christmas Day, to one of the officers of the said museum, or to some person authorized by the trustees of the said museum to receive the same, and such officer or other person receiving such copy is hereby required to give a receipt in writing for the same, and such delivery shall, to all intents and purposes,

be deemed to be good and sufficient delivery under the provisions of this Act.

A copy of every book to be delivered within a month after demand to the officer of the Stationers' Company, for the following libraries: the Bodleian at Oxford, the Public Library at Cambridge, the Faculty of Advocates at Edinburgh, and that of Trinity College, Dublin.

VIII. And be it enacted, That a copy of the whole of every book, and of any second or subsequent edition of every book containing additions and alterations, together with all maps and prints belonging thereto, which after the passing of this Act shall be published, shall, on demand thereof in writing, left at the place of abode of the publisher thereof, at any time within twelve months next after the publication thereof, under the hand of the officer of the Company of Stationers who shall from time to time be appointed by the said company for the purposes of this Act, or under the hand of any other person thereto authorized by the persons or bodies politic and corporate, proprietors and managers of the libraries following, (*videlicet,*) the Bodleian Library at Oxford, the Public Library at Cambridge, the Library of the Faculty of Advocates at Edinburgh, the Library of the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, be delivered, upon the paper of which the largest number of copies of such book or edition shall be printed for sale, in the like condition as the copies prepared for sale by the publisher thereof respectively, within one month after demand made thereof in writing as aforesaid, to the said officer of the said Company of Stationers for the time being, which copies the said officer shall and he is hereby required to receive at the hall of the said company, for the use of the library for which such demand shall be made within such twelve months as aforesaid; and the said officer is hereby required to give a receipt in writing for the same, and within one month after any such book shall be so delivered to him as aforesaid to deliver the same for the use of such library.

Publishers may deliver the copies to the libraries, instead of at the Stationers' Company.

IX. Provided also, and be it enacted, That if any publisher shall be desirous of delivering the copy of such book as shall be demanded on behalf of any of the said libraries at such library, it shall be lawful for him to deliver the same at such library, free of expense, to such librarian or other person authorized to receive the same (who is hereby required in such case to receive and give a receipt in writing for the same), and such delivery shall to all intents and purposes of this Act be held as equivalent to a delivery to the said officer of the Stationers' Company.

Penalty for default in delivering copies for the use of the libraries.

X. And be it enacted, That if any publisher of any such book, or of any second or subsequent edition of any such book, shall neglect to deliver the same pursuant to this Act, he shall for every such default forfeit, besides the value of such copy of such book or edition which he ought to have delivered, a sum not exceeding five pounds, to be recovered by the librarian or other officer (properly authorized) of the library for the use whereof such copy should have been delivered, in a summary way, on conviction before two justices of the peace for the county or place where the publisher making default shall reside, or by action of debt or other proceeding of the like nature, at the suit of such librarian or other officer, in any court of record in the United Kingdom, in which action, if the plaintiff shall obtain a verdict, he shall recover his costs reasonably incurred, to be taxed as between attorney and client.

Book of registry to be kept at Stationers' Hall.

XI. And be it enacted, That a book of registry, wherein may be registered, as herein-after enacted, the proprietorship in the copyright of books, and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licences affecting such copyright, shall be kept at the hall of the Stationers' Company by the officer appointed by the said company for the purposes of this Act, and shall at all convenient times be open to the inspection of any person, on payment of one shilling for every entry which shall be searched for or inspected in the said book; and that such officer shall, whenever thereunto reasonably required, give a copy of any entry in such book, certified under his hand, and impressed with the stamp of the said company, to be provided by them for that purpose, and which they are hereby required to provide, to any person requiring the same, on payment to him of the sum of five shillings; and such copies so certified and impressed shall be received in evidence in all courts, and in all summary proceedings, and shall be *primâ facie* proof of the proprietorship or assignment of copyright or licence as therein expressed, but subject to be rebutted by other evidence, and in the case of dramatic or musical pieces shall be *primâ facie* proof of the right of representation or performance, subject to be rebutted as aforesaid.

Making a false entry in the

XII. And be it enacted, That if any person shall wilfully make or cause to be made any false entry in the registry book

of the Stationers' Company, or shall wilfully produce or cause to be tendered in evidence any paper falsely purporting to be a copy of any entry in the said book, he shall be guilty of an indictable misdemeanor, and shall be punished accordingly.

book of registry, a misdemeanor.

XIII. And be it enacted, That after the passing of this Act, it shall be lawful for the proprietor of copyright in any book heretofore published, or in any book hereafter to be published, to make entry in the registry book of the Stationers' Company of the title of such book, the time of the first publication thereof, the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright, in the form in that behalf given in the schedule to this Act annexed, upon payment of the sum of five shillings to the officer of the said company; and that it shall be lawful for every such registered proprietor to assign his interest, or any portion of his interest therein, by making entry in the said book of registry of such assignment, and of the name and place of abode of the assignee thereof, in the form given in that behalf in the said schedule, on payment of the like sum; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, without being subject to any stamp or duty, and shall be of the same force and effect as if such assignment had been made by deed.

Entries of copyright may be made in the book of registry.

XIV. And be it enacted, That if any person shall deem himself aggrieved by any entry made under colour of this Act in the said book of registry, it shall be lawful for such person to apply by motion to the Court of Queen's Bench, Court of Common Pleas, or Court of Exchequer, in term time, or to apply by summons to any judge of either of such courts in vacation, for an order that such entry may be expunged or varied; and that upon any such application by motion or summons to either of the said courts, or to a judge as aforesaid, such court or judge shall make such order for expunging, varying, or confirming such entry, either with or without costs, as to such court or judge shall seem just; and the officer appointed by the Stationers' Company for the purposes of this Act shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same according to the requisitions of such order.

Persons aggrieved by any entry in the book of registry may apply to a court of law in term, or judge in vacation, who may order such entry to be varied or expunged.

XV. And be it enacted, That if any person shall, in any part of the British dominions, after the passing of this Act,

Remedy for the piracy of books

by action on the case.

print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall import for sale or hire any such book, so having been unlawfully printed, from parts beyond the sea, or, knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose to sale or hire, or cause to be sold, published, or exposed to sale or hire, or shall have in his possession, for sale or hire, any such book so unlawfully printed or imported, without such consent as aforesaid, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright, to be brought in any court of record in that part of the British dominions in which the offence shall be committed: Provided always, that in Scotland such offender shall be liable to an action in the Court of Session in Scotland, which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there.

In actions for piracy the defendant to give notice of the objections to the plaintiff's title on which he means to rely.

XVI. And be it enacted, That after the passing of this Act, in any action brought within the British dominions against any person for printing any such book for sale, hire, or exportation, or for importing, selling, publishing, or exposing to sale or hire, or causing to be imported, sold, published, or exposed to sale or hire, any such book, the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action; and if the nature of his defence be, that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when and the place where such book was first published, otherwise the defendant in such action shall not at the trial or hearing of such action be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright

therein; and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objection stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the copyright therein, than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication with the title, time, and place specified in such notice.

No person except the proprietor, &c., shall import into the British dominions for sale or hire any book first composed, &c., within the United Kingdom, and reprinted elsewhere, under penalty of forfeiture thereof, and also of 10*l.* and double the value.

XVII. And be it enacted, That after the passing of this Act it shall not be lawful for any person, not being the proprietor of the copyright, or some person authorized by him, to import into any part of the United Kingdom, or into any other part of the British dominions, for sale or hire, any printed book first composed or written or printed and published in any part of the said United Kingdom, wherein there shall be copyright, and reprinted in any country or place whatsoever out of the British dominions; and if any person, not being such proprietor or person authorized as aforesaid, shall import or bring, or cause to be imported or brought, for sale or hire, any such printed book, into any part of the British dominions, contrary to the true intent and meaning of this Act, or shall knowingly sell, publish, or expose to sale or let to hire, or have in his possession for sale or hire, any such book, then every such book shall be forfeited, and shall be seized by any officer of customs or excise, and the same shall be destroyed by such officer; and every person so offending, being duly convicted thereof before two justices of the peace for the county or place in which such book shall be found, shall also for every such offence forfeit the sum of ten pounds, and double the value of every copy of such book which he shall so import or cause to be imported into any part of the British dominions, or shall knowingly sell, publish, or expose to sale, or let to hire, or shall cause to be sold, published, or exposed to sale or let to hire, or shall have in his possession for sale or hire, contrary to the true intent and meaning of this Act; five pounds to the use of such officer of customs or excise, and the remainder of the penalty to the use of the proprietor of the copyright in such book.

Books may be seized by officers of customs or excise.

As to the copyright in encyclopedias, periodicals, and works

XVIII. And be it enacted, That when any publisher or other person shall, before or at the time of the passing of this Act, have projected, conducted, and carried on, or shall hereafter

published in a series, reviews, or magazines.

project, conduct, and carry on, or be the proprietor of any encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any volumes, parts, essays, articles, or portions thereof, for publication in or as part of the same, and such work, volumes, parts, essays, articles, or portions shall have been or shall hereafter be composed under such employment, on the terms that the copyright therein shall belong to such proprietor, projector, publisher, or conductor, and paid for by such proprietor, projector, publisher, or conductor, the copyright in every such encyclopædia, review, magazine, periodical work, and work published in a series of books or parts, and in every volume, part, essay, article, and portion so composed and paid for, shall be the property of such proprietor, projector, publisher, or other conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by this Act; except only that in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature, after the term of twenty-eight years from the first publication thereof respectively the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act: Provided always, that during the term of twenty-eight years the said proprietor, projector, publisher, or conductor shall not publish any such essay, article, or portion separately or singly without the consent previously obtained of the author thereof, or his assigns: Provided also, that nothing herein contained shall alter or affect the right of any person who shall have been or who shall be so employed as aforesaid to publish any such his composition in a separate form, who by any contract, express or implied, may have reserved or may hereafter reserve to himself such right; but every author reserving, retaining, or having such right shall be entitled to the copyright in such composition when published in a separate form, according to this Act, without prejudice to the right of such proprietor, projector, publisher, or conductor as aforesaid.

Proviso for authors who have reserved the right of publishing their articles in a separate form.

Proprietors of encyclopædias, periodicals, and works published

XIX. And be it enacted, That the proprietor of the copyright in any encyclopædia, review, magazine, periodical work, or other work published in a series of books or parts shall be

entitled to all the benefits of the registration at Stationers' Hall under this Act, on entering in the said book of registry the title of such encyclopædia, review, periodical work, or other work, published in a series of books or parts, the time of the first publication of the first volume, number, or part thereof, or of the first number or volume first published after the passing of this Act in any such work which shall have been published heretofore, and the name and place of abode of the proprietor thereof, and of the publisher thereof, when such publisher shall not also be the proprietor thereof.

in a series, may enter at once at Stationers' Hall, and thereon have the benefit of the registration of the whole.

XX. And whereas an Act was passed in the third year of the reign of His late Majesty, to amend the law relating to dramatic literary property, and it is expedient to extend the term of the sole liberty of representing dramatic pieces given by that Act to the full time by this Act provided for the continuance of copyright: And whereas it is expedient to extend to musical compositions the benefits of that Act, and also of this Act, be it therefore enacted, That the provisions of the said Act of His late Majesty, and of this Act, shall apply to musical compositions, and that the sole liberty of representing or performing, or causing or permitting to be represented or performed, any dramatic piece or musical composition, shall endure and be the property of the author thereof, and his assigns, for the term in this Act provided for the duration of copyright in books; and the provisions herein-before enacted in respect of the property of such copyright, and of registering the same, shall apply to the liberty of representing or performing any dramatic piece or musical composition, as if the same were herein expressly re-enacted and applied thereto, save and except that the first public representation or performance of any dramatic piece or musical composition shall be deemed equivalent, in the construction of this Act, to the first publication of any book: Provided always, that in case of any dramatic piece, or musical composition in manuscript, it shall be sufficient for the person having the sole liberty of representing or performing, or causing to be represented or performed the same, to register only the title thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor thereof, and the time and place of its first representation or performance.

The provisions of 3 & 4 W. 4, c. 15, extended to musical compositions, and the term of copyright, as provided by this Act, applied to the liberty of representing dramatic pieces and musical compositions.

XXI. And be it enacted, That the person who shall at any

Proprietors of

right of dramatic representations shall have all the remedies given by 3 & 4 W. 4. c. 15.

time have the sole liberty of representing such dramatic piece or musical composition shall have and enjoy the remedies given and provided in the said Act of the third and fourth years of the reign of His late Majesty King William the Fourth, passed to amend the laws relating to dramatic literary property, during the whole of his interest therein, as fully as if the same were re-enacted in this Act.

Assignment of copyright of a dramatic piece not to convey the right of representation.

XXII. And be it enacted, That no assignment of the copyright of any book consisting of or containing a dramatic piece or musical composition shall be holden to convey to the assignee the right of representing or performing such dramatic piece or musical composition, unless an entry in the said registry book shall be made of such assignment, wherein shall be expressed the intention of the parties that such right should pass by such assignment.

Books pirated shall become the property of the proprietor of the copyright, and may be recovered by action.

XXIII. And be it enacted, That all copies of any book wherein there shall be copyright, and of which entry shall have been made in the said registry book, and which shall have been unlawfully printed or imported without the consent of the registered proprietor of such copyright, in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright, and who shall be registered as such; and such registered proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same, or damages for the detention thereof, in an action of detinue, from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of trover.

No proprietor of copyright commencing after this Act shall sue or proceed for any infringement before making entry in the book of registry.

XXIV. And be it enacted, That no proprietor of copyright in any book which shall be first published after the passing of this Act shall maintain any action or suit, at law or in equity, or any summary proceeding, in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made, in the book of registry of the Stationers' Company, of such book, pursuant to this Act: Provided always, that the omission to make such entry shall not affect the copyright in any book, but only the right to sue or proceed in respect of the infringement thereof as aforesaid: Provided also, that nothing herein contained shall prejudice the remedies which the proprietor of the sole liberty of representing any dramatic piece shall have by virtue of the Act passed in the third year of the reign of His late Majesty King

Proviso for dramatic pieces.

William the Fourth, to amend the laws relating to dramatic literary property, or of this Act, although no entry shall be made in the book of registry aforesaid.

Copyright shall be personal property.

XXV. And be it enacted, That all copyright shall be deemed personal property, and shall be transmissible by bequest, or, in case of intestacy, shall be subject to the same law of distribution as other personal property, and in Scotland shall be deemed to be personal and moveable estate.

General issue.

XXVI. And be it enacted, That if any action or suit shall be commenced or brought against any person or persons whomsoever for doing or causing to be done anything in pursuance of this Act, the defendant or defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff shall become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath; and that all actions, suits, bills, indictments, or informations for any offence that shall be committed against this Act shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of none effect; provided that such limitation of time shall not extend or be construed to extend to any actions, suits, or other proceedings which under the authority of this Act shall or may be brought, sued, or commenced for or in respect of any copies of books to be delivered for the use of the British Museum, or of any one of the four libraries hereinbefore mentioned.

Limitation of actions; not to extend to actions, &c., in respect of the delivery of books.

Saving the rights of the universities, and the colleges of Eton, Westminster, and Winchester.

XXVII. Provided always, and be it enacted, That nothing in this Act contained shall affect or alter the rights of the two universities of Oxford and Cambridge, the colleges or houses of learning within the same, the four universities in Scotland, the college of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, and the several colleges of Eton, Westminster, and Winchester, in any copyrights heretofore and now vested or hereafter to be vested in such universities and colleges respectively, anything to the contrary herein contained notwithstanding.

Saving all subsisting rights, contracts, and engagements.

XXVIII. Provided also, and be it enacted, That nothing in this Act contained shall affect, alter, or vary any right subsisting at the time of passing this Act, except as herein expressly

enacted; and all contracts, agreements, and obligations made and entered into before the passing of this Act, and all remedies relating thereto, shall remain in full force, anything herein contained to the contrary notwithstanding.

Extent of the Act.

XXIX. And be it enacted, That this Act shall extend to the United Kingdom of Great Britain and Ireland, and to every part of the British dominions.

Act may be amended this Session.

XXX. And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present session of parliament.

Schedule to which the preceding Act refers.

No. 1.

Form of Minute of Consent to be entered at Stationers Hall.

We, the undersigned, *A.B.* of the Author of a certain Book, intituled *Y.Z.* [*or* the personal Representative of the Author, *as the Case may be*], and *C.D.* of do hereby certify, That we have consented and agreed to accept the Benefits of the Act passed in the Fifth Year of the Reign of Her Majesty Queen Victoria, Cap. , for the Extension of the Term of Copyright therein provided by the said Act, and hereby declare that such extended Term of Copyright therein is the Property of the said *A.B.* or *C.D.*

Dated this day of 18 .

(Signed) *A.B.*
C.D.

Witness

To the Registering Officer appointed by the Stationers Company.

No. 2.

Form of requiring Entry *of* Proprietorship.

I, *A.B.* of do hereby certify, That I am the Proprietor of the Copyright of a Book, intituled *Y.Z.*, and I hereby require you to make entry in the Register Book of the Stationers Company of my Proprietorship of such Copyright, according to the Particulars underwritten.

Title of Book.	Name of Publisher, and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
Y.Z.		*A.B.*	

Dated this day of 18 .

Witness, *C.D.* (Signed) *A.B.*

No. 3.

ORIGINAL ENTRY of PROPRIETORSHIP of COPYRIGHT of a BOOK.

Time of making the Entry.	Title of Book.	Name of the Publisher and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
	Y.Z.	*A.B.*	*C.D.*	

No. 4.

FORM of CONCURRENCE of the PARTY assigning in my BOOK previously registered.

I, *A.B.* of being the assigner of the Copyright of the Book hereunder described, do hereby require you to make entry of the Assignment of the Copyright therein.

Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
Y.Z.	*A.B.*	*C.D.*

Dated this day of 18 .

(Signed) *A.B.*

No. 5.

FORM of ENTRY of ASSIGNMENT of COPYRIGHT in any BOOK previously registered.

Date of Entry.	Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
	[*Set out the Title of the Book, and refer to the Page of the Registry Book in which the original Entry of the Copyright thereof is made.*]	*A.B.*	*C.D.*

5 & 6 Vict. c. 47 (1842).

An Act to amend the Laws relating to the Customs.

Repealed by 7 & 8 Vict. c. 73.

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5 & 6 Vict. c. 100.

An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture.

[10th August, 1842.]

WHEREAS by the several Acts mentioned in the Schedule (A.) to this Act annexed there was granted, in respect of the woven fabrics therein mentioned, the sole right to use any new and original pattern for printing the same during the period of three calendar months: And whereas by the Act mentioned in the Schedule (B.) to this Act annexed there was granted, in respect of all articles except lace, and except the articles within the meaning of the Acts hereinbefore referred to, the sole right of using any new and original design, for certain purposes, during the respective periods therein mentioned; but forasmuch as the protection afforded by the said Acts in respect of the application of designs to certain articles of manufacture is insufficient, it is expedient to extend the same, but upon the conditions hereinafter expressed: Now for that purpose, and for the purpose of consolidating the provisions of the said Acts, be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That this Act shall come into operation on the first day of September one thousand eight hundred and forty-two, and that thereupon all the said Acts mentioned in the said Schedules (A.) and (B.) to this Act annexed shall be and they are hereby repealed.

Commencement of Act and repeal of former Acts.

II. Provided always, and be it enacted, That notwithstanding such repeal of the said Acts every copyright in force under the same shall continue in force till the expiration of such copyright; and with regard to all offences or injuries committed against any such copyright before this Act shall come into operation, every penalty imposed and every remedy given by the said Acts, in relation to any such offence or injury, shall be

Proviso as to existing copyrights.

applicable as if such Acts had not been repealed; but with regard to such offences or injuries committed against any such copyright after this Act shall come into operation, every penalty imposed and every remedy given by this Act in relation to any such offence or injury shall be applicable as if such copyright had been conferred by this Act.

Grant of copyright.

III. And with regard to any new and original design (except for sculpture and other things within the provisions of the several Acts mentioned in the Schedule (C.) to this Act annexed), whether such design be applicable to the ornamenting of any article of manufacture, or of any substance, artificial or natural, or partly artificial and partly natural, and that whether such design be so applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means such design may be so applicable, whether by printing, or by painting, or by embroidery, or by weaving, or by sewing, or by modelling, or by casting, or by embossing, or by engraving, or by staining, or by any other means whatsoever, manual, mechanical, or chemical, separate or combined, be it enacted, That the proprietor of every such design, not previously published, either within the United Kingdom of Great Britain and Ireland or elsewhere, shall have the sole right to apply the same to any articles of manufacture, or to any such substances as aforesaid, provided the same be done within the United Kingdom of Great Britain and Ireland, for the respective terms hereinafter mentioned, such respective terms to be computed from the time of such design being registered according to this Act: (that is to say),

In respect of the application of any such design to ornamenting any article of manufacture contained in the first, second, third, fourth, fifth, sixth, eighth, or eleventh of the classes following, for the term of three years:

In respect of the application of any such design to ornamenting any article of manufacture contained in the seventh, ninth, or tenth of the classes following, for the term of nine calendar months:

In respect of the application of any such design to ornamenting any article of manufacture or substance contained in the twelfth or thirteenth of the classes following, for the term of twelve calendar months:

Class 1.—Articles of manufacture composed wholly or chiefly of any metal or mixed metals:
Class 2.—Articles of manufacture composed wholly or chiefly of wood:
Class 3.—Articles of manufacture composed wholly or chiefly of glass:
Class 4.—Articles of manufacture composed wholly or chiefly of earthenware:
Class 5.—Paper-hangings:
Class 6.—Carpets:
Class 7.—Shawls, if the design be applied solely by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics:
Class 8.—Shawls not comprised in class 7:
Class 9.—Yarn, thread, or warp, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced:
Class 10.—Woven fabrics composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics; excepting the articles included in class 11:
Class 11.—Woven fabrics composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, such woven fabrics being or coming within the description technically called furniture, and the repeat of the design whereof shall be more than twelve inches by eight inches:
Class 12.—Woven fabrics not comprised in any preceding class:
Class 13.—Lace, and any article of manufacture or substance not comprised in any preceding class.

Conditions of copyright.

IV. Provided always, and be it enacted, That no person shall be entitled to the benefit of this Act, with regard to any design in respect of the application thereof to ornamenting any article

of manufacture, or any such substance, unless such design have before publication thereof been registered according to this Act, and unless at the time of such registration such design have been registered in respect of the application thereof to some or one of the articles of manufacture or substances comprised in the above-mentioned classes, by specifying the number of the class in respect of which such registration is made, and unless the name of such person shall be registered according to this Act as a proprietor of such design, and unless after publication of such design every such article of manufacture, or such substance to which the same shall be so applied, published by him, hath thereon, if the article of manufacture be a woven fabric for printing, at one end thereof, or if of any other kind or such substance as aforesaid, at the end or edge thereof, or other convenient place thereon, the letters "Rd," together with such number or letter, or number and letter, and in such form as shall correspond with the date of the registration of such design according to the registry of designs in that behalf; and such marks may be put on any such article of manufacture or such substance, either by making the same in or on the material itself of which such article or such substance shall consist, or by attaching thereto a label containing such marks.

Registration.

Marks denoting a registered design.

V. And be it enacted, That the author of any such new and original design shall be considered the proprietor thereof, unless he have executed the work on behalf of another person for a good or a valuable consideration, in which case such person shall be considered the proprietor, and shall be entitled to be registered in the place of the author; and every person acquiring for a good or a valuable consideration a new and original design, or the right to apply the same to ornamenting any one or more articles of manufacture, or any one or more such substances as aforesaid, either exclusively of any other person or otherwise, and also every person upon whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise.

The term "proprietor" explained.

VI. And be it enacted, That every person purchasing or otherwise acquiring the right to the entire or partial use of any such design may enter his title in the register hereby provided, and any writing purporting to be a transfer of such design, and

Transfer of copyright, and register thereof.

signed by the proprietor thereof, shall operate as an effectual transfer; and the registrar shall, on request, and the production of such writing, or, in the case of acquiring such right by any other mode than that of purchase, on the production of any evidence to the satisfaction of the registrar, insert the name of the new proprietor in the register; and the following may be the form of such transfer, and of such request to the registrar:

Form of Transfer, and Authority to register.

"I *A.B.*, author [*or* proprietor] of design, No. having transferred my right thereto, [*or, if such transfer be partial,*] so far as regards the ornamenting of [*describe the articles of manufacture or substances, or the locality, with respect to which the right is transferred,*] to *B.C.* of do hereby authorize you to insert his name on the register of designs accordingly."

Form of Request to register.

"I *B.C.*, the person mentioned in the above transfer, do request you to register my name and property in the said design as entitled [*if to the entire use*] to the entire use of such design, [*or, if to the partial use,*] to the partial use of such design, so far as regards the application thereof [*describe the articles of manufacture, or the locality, in relation to which the right is transferred*]."

But if such request to register be made by any person to whom any such design shall devolve otherwise than by transfer, such request may be in the following form:

"I *C.D.*, in whom is vested by [*state bankruptcy or otherwise*] the design, No. [*or, if such devolution be of a partial right,* so far as regards the application thereof] to [*describe the articles of manufacture or substance, or the locality, in relation to which the right has devolved*]."

Piracy of designs.

VII. And for preventing the piracy of registered designs, be it enacted, That during the existence of any such right to the entire or partial use of any such design no person shall either do or cause to be done any of the following acts with regard to any articles of manufacture, or substances, in respect of which the copyright of such design shall be in force, without the licence

or consent in writing of the registered proprietor thereof; (that is to say),

No person shall apply any such design, or any fraudulent imitation thereof, for the purpose of sale, to the ornamenting of any article of manufacture, or any substance, artificial or natural, or partly artificial and partly natural:

No person shall publish, sell, or expose for sale any article of manufacture, or any substance to which such design, or any fraudulent imitation thereof, shall have been so applied, after having received, either verbally or in writing, or otherwise, from any source other than the proprietor of such design, knowledge that his consent has not been given to such application, or after having been served with or had left at his premises a written notice signed by such proprietor or his agent to the same effect.

Recovery of penalties for piracy.

VIII. And be it enacted, That if any person commit any such act he shall for every offence forfeit a sum not less than five pounds and not exceeding thirty pounds to the proprietor of the design in respect of whose right such offence has been committed; and such proprietor may recover such penalty as follows:

In England, either by an action of debt or on the case against the party offending, or by summary proceeding before two justices having jurisdiction where the party offending resides; and if such proprietor proceed by such summary proceeding, any justice of the peace acting for the county, riding, division, city, or borough where the party offending resides, and not being concerned either in the sale or manufacture of the article of manufacture, or in the design, to which such summary proceeding relates, may issue a summons requiring such party to appear on a day and at a time and place to be named in such summons, such time not being less than eight days from the date thereof; and every such summons shall be served on the party offending, either in person or at his usual place of abode; and either upon the appearance or upon the default to appear of the party offending, any two or more of such justices may proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party offending, or upon the

oath or affirmation of one or more credible witnesses, which such justices are hereby authorized to administer, may convict the offender in a penalty of not less than five pounds or more than thirty pounds, as aforesaid, for each offence, as to such justices doth seem fit; but the aggregate amount of penalties for offences in respect of any one design committed by any one person, up to the time at which any of the proceedings herein mentioned shall be instituted, shall not exceed the sum of one hundred pounds; and if the amount of such penalty or of such penalties, and the costs attending the conviction, so assessed by such justices, be not forthwith paid, the amount of the penalty or of the penalties, and of the costs, together with the costs of the distress and sale, shall be levied by distress and sale of the goods and chattels of the offender, wherever the same happen to be in England; and the justices before whom the party has been convicted, or, on proof of the conviction, any two justices acting for any county, riding, division, city, or borough in England, where goods and chattels of the person offending happen to be, may grant a warrant for such distress and sale; and the overplus, if any, shall be returned to the owner of the goods and chattels, on demand; and every information and conviction which shall be respectively laid or made in such summary proceeding before two justices under this Act may be drawn or made out in the following forms respectively, or to the effect thereof, *mutatis mutandis*, as the case may require:

Form of Information.

"BE it remembered, that on the at in the county of *A.B.* of in the county of [*or C.D.* of in the county of at the instance and on the behalf of *A.B.* of in the county of] cometh before us and two of Her Majesty's justices of the peace in and for the county of , and giveth us to understand that the said *A.B.* before and at the time when the offence hereinafter mentioned was committed, was the proprietor of a new and original design for [*here describe the design*], and that within

twelve calendar months last past, to wit, on the
at in the county of *E.F.* of
in the county of did [*here describe the offence*],
contrary to the form of the Act passed in the
year of the reign of Her present Majesty, intituled 'An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture.'"

Form of Conviction.

"BE it remembered, that on the day of
in the year of our Lord at
in the county of *E.F.* of in the
county aforesaid is convicted before us and
two of Her Majesty's justices of the peace for
the said county, for that he the said *E.F.* on the
day of in the year at
in the county of did [*here describe the offence*]
contrary to the form of the statute in that case made and provided; and we the said justices do adjudge that the said *E.F.* for his offence aforesaid hath forfeited the sum
of to the said *A.B.*"

In Scotland, by action before the Court of Session in ordinary form, or by summary action before the sheriff of the county where the offence may be committed or the offender resides, who, upon proof of the offence or offences, either by confession of the party offending or by the oath or affirmation of one or more credible witnesses, shall convict the offender and find him liable in the penalty or penalties aforesaid, as also in expenses; and it shall be lawful for the sheriff, in pronouncing such judgment for the penalty or penalties and costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding: Provided always, that it shall be lawful to the sheriff, in the event of his dismissing the action, and assoilzieing the defender, to find the complainer liable in expenses; and any judgment so to be pronounced by the sheriff in such summary application shall be final

and conclusive, and not subject to review by advocation, suspension, reduction, or otherwise:

In Ireland, either by action in a superior court of law at Dublin, or by civil bill in the Civil Bill Court of the county or place where the offence was committed.

Proviso as to action for damages.

IX. Provided always, and be it enacted, That, notwithstanding the remedies hereby given for the recovery of any such penalty as aforesaid, it shall be lawful for the proprietor in respect of whose right such penalty shall have been incurred (if he shall elect to do so) to bring such action as he may be entitled to for the recovery of any damages which he shall have sustained, either by the application of any such design or of a fraudulent imitation thereof, for the purpose of sale, to any articles of manufacture or substances, or by the publication, sale, or exposure to sale, as aforesaid, by any person, of any article or substance to which such design or any fraudulent imitation thereof shall have been so applied, such person knowing that the proprietor of such design had not given his consent to such application.

Registration may in some cases be cancelled or amended.

X. And be it enacted, That in any suit in equity which may be instituted by the proprietor of any design or the person lawfully entitled thereto, relative to such design, if it shall appear to the satisfaction of the judge having cognisance of such suit that the design has been registered in the name of a person not being the proprietor or lawfully entitled thereto, it shall be competent for such judge, in his discretion, by a decree or order in such suit to direct either that such registration be cancelled (in which case the same shall thenceforth be wholly void), or that the name of the proprietor of such design, or other person lawfully entitled thereto, be substituted in the register for the name of such wrongful proprietor or claimant, in like manner as is hereinbefore directed in case of the transfer of a design, and to make such order respecting the costs of such cancellation or substitution, and of all proceedings to procure and effect the same, as he shall think fit; and the registrar is hereby authorized and required, upon being served with an official copy of such decree or order, and upon payment of the proper fee, to comply with the tenour of such decree or order, and either cancel such registration or substitute such new name, as the case may be.

XI. And be it enacted, That unless a design applied to ornamenting any article of manufacture or any such substance as aforesaid be so registered as aforesaid, and unless such design so registered shall have been applied to the ornamenting such article or substance within the United Kingdom of Great Britain and Ireland, and also after the copyright of such design in relation to such article or substance shall have expired, it shall be unlawful to put on any such article or such substance, in the manner hereinbefore required with respect to articles or substances whereto shall be applied a registered design, the marks hereinbefore required to be so applied, or any marks corresponding therewith or similar thereto; and if any person shall so unlawfully apply any such marks, or shall publish, sell, or expose for sale any article of manufacture, or any substance with any such marks so unlawfully applied, knowing that any such marks have been unlawfully applied, he shall forfeit for every such offence a sum not exceeding five pounds, which may be recovered by any person proceeding for the same by any of the ways hereinbefore directed with respect to penalties for pirating any such design.

Penalty for wrongfully using marks denoting a registered design.

XII. And be it enacted, That no action or other proceeding for any offence or injury under this Act shall be brought after the expiration of twelve calendar months from the commission of the offence; and in every such action or other proceeding the party who shall prevail shall recover his full costs of suit or of such other proceeding.

Limitation of actions.

Costs.

XIII. And be it enacted, That in the case of any summary proceeding before any two justices in England, such justices are hereby authorized to award payment of costs to the party prevailing, and to grant a warrant for enforcing payment thereof against the summoning party, if unsuccessful, in the like manner as is hereinbefore provided for recovering any penalty with costs against any offender under this Act.

Justices may order payment of costs in cases of summary proceeding.

XIV. And for the purpose of registering designs for articles of manufacture, in order to obtain the protection of this Act, be it enacted, That the Lords of the Committee of Privy Council for the consideration of all matters of trade and plantations may appoint a person to be a registrar of designs for ornamenting articles of manufacture, and, if the Lords of the said Committee see fit, a deputy registrar, clerks, and other necessary officers and servants; and such registrar, deputy registrar,

Registrar, &c., of designs to be appointed.

clerks, officers, and servants, shall hold their offices during the pleasure of the Lords of the said Committee; and the Commissioners of the Treasury may from time to time fix the salary or remuneration of such registrar, deputy registrar, clerks, officers, and servants; and, subject to the provisions of this Act, the Lords of the said Committee may make rules for regulating the execution of the duties of the office of the said registrar; and such registrar shall have a seal of office.

Registrar's duties.

XV. And be it enacted, That the said registrar shall not register any design in respect of any application thereof to ornamenting any articles of manufacture or substances, unless he be furnished, in respect of each such application, with two copies, drawings, or prints of such design, accompanied with the name of every person who shall claim to be proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode or place of carrying on his business, or other place of address, and the number of the class in respect of which such registration is made; and the registrar shall register all such copies, drawings, or prints, from time to time successively as they are received by him for that purpose; and on every such copy, drawing, or print he shall affix a number corresponding to such succession; and he shall retain one copy, drawing, or print, which he shall file in his office, and the other he shall return to the person by whom the same has been forwarded to him; and in order to give ready access to the copies of designs so registered, he shall class such copies of designs, and keep a proper index of each class.

Certificate of registration of design.

XVI. And be it enacted, That upon every copy, drawing, or print of an original design so returned to the person registering as aforesaid, or attached thereto, and upon every copy, drawing, or print thereof received for the purpose of such registration, or of the transfer of such design being certified thereon or attached thereto, the registrar shall certify under his hand that the design has been so registered, the date of such registration, and the name of the registered proprietor, or the style or title of the firm under which such proprietor may be trading, with his place of abode or place of carrying on his business, or other place of address, and also the number of such design, together with such number or letter, or number and letter, and in such form as shall be employed by him to denote or correspond with the date of such registration; and such certificate made on every such

original design, or on such copy thereof, and purporting to be signed by the registrar or deputy registrar, and purporting to have the seal of office of such registrar affixed thereto, shall, in the absence of evidence to the contrary, be sufficient proof, as follows:

Of the design, and of the name of the proprietor therein mentioned, having been duly registered; and

Of the commencement of the period of registry; and

Of the person named therein as proprietor being the proprietor; and

Of the originality of the design; and

Of the provisions of this Act, and of any rule under which the certificate appears to be made, having been complied with:

And any such writing purporting to be such certificate shall, in the absence of evidence to the contrary, be received as evidence, without proof of the handwriting of the signature thereto, or of the seal of office affixed thereto, or of the person signing the same being the registrar or deputy registrar.

Inspection of registered designs.

XVII. And be it enacted, That every person shall be at liberty to inspect any design whereof the copyright shall have expired, paying only such fee as shall be appointed by virtue of this Act in that behalf; but with regard to designs whereof the copyright shall not have expired, no such design shall be open to inspection, except by a proprietor of such design, or by any person authorized by him in writing, or by any person specially authorized by the registrar, and then only in the presence of such registrar or in the presence of some person holding an appointment under this Act, and not so as to take a copy of any such design or of any part thereof, nor without paying for every such inspection such fee as aforesaid: Provided always, that it shall be lawful for the said registrar to give to any person applying to him, and producing a particular design, together with the registration mark thereof, or producing such registration mark only, a certificate stating whether of such design there be any copyright existing, and if there be, in respect to what particular article of manufacture or substance such copyright exists, and the term of such copyright, and the date of registration, and also the name and address of the registered proprietor thereof.

Application of

XVIII. And be it enacted, That the Commisioners of the

fees of registration.

Treasury shall from time to time fix fees to be paid for the services to be performed by the registrar, as they shall deem requisite, to defray the expenses of the said office, and the salaries or other remuneration of the said registrar, and of any other persons employed under him, with the sanction of the Commissioners of the Treasury, in the execution of this Act; and the balance, if any, shall be carried to the Consolidated Fund of the United Kingdom, and be paid accordingly into the receipt of Her Majesty's Exchequer at Westminster; and the Commissioners of the Treasury may regulate the manner in which such fees are to be received, and in which they are to be kept, and in which they are to be accounted for, and they may also remit or dispense with the payment of such fees in any cases where they may think it expedient so to do: Provided always, that the fee for registering a design to be applied to any woven fabric mentioned or comprised in classes 7, 9 or 10, shall not exceed the sum of one shilling; that the fee for registering a design to be applied to a paper-hanging shall not exceed the sum of ten shillings; and that the fee to be received by the registrar for giving a certificate relative to the existence or expiration of any copyright in any design printed on any woven fabric, yarn, thread, or warp, or printed, embossed, or worked on any paper-hanging, to any person exhibiting a piece end of a registered pattern, with the registration mark thereon, shall not exceed the sum of two shillings and sixpence.

Penalty for extortion.

XIX. And be it enacted, That if either the registrar or any person employed under him either demand or receive any gratuity or reward, whether in money or otherwise, except the salary or remuneration authorized by the Commissioners of the Treasury, he shall forfeit for every such offence fifty pounds to any person suing for the same by action of debt in the Court of Exchequer at Westminster; and he shall also be liable to be either suspended or dismissed from his office, and rendered incapable of holding any situation in the said office, as the Commissioners of the Treasury see fit.

Interpretation of Act.

XX. And for the interpretation of this Act, be it enacted, That the following terms and expressions, so far as they are not repugnant to the context of this Act, shall be construed as follows: (that is to say,) the expression "Commissioners of the Treasury" shall mean the Lord High Treasurer for the time being, or the Commissioners of Her Majesty's Treasury for the

time being, or any three or more of them; and the singular number shall include the plural as well as the singular number; and the masculine gender shall include the feminine gender as well as the masculine gender.

XXI. And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present session of Parliament. Alteration of Act.

NOTE.—So much of this Act as relates to the appointment of a registrar of designs, and other officers, as well as the fixing of the salaries for the payment of the same, repealed by 6 & 7 Vict. c. 65, § 7.

SCHEDULES REFERRED TO BY THE FOREGOING ACT.

SCHEDULE (A).

DATE OF ACTS.	TITLE.
27 Geo. 3. c. 38. (1787.)	An Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors for a limited Time.
29 Geo. 3. c. 19. (1789.)	An Act for continuing an Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors for a limited Time.
34 Geo. 3. c. 23. (1794.)	An Act for amending and making perpetual an Act for the Encouragement of the Arts of designing and printing Linens, Cottons, Calicoes, and Muslins, by vesting the Properties thereof in the Designers, Printers, and Proprietors for a limited Time.
2 Vict. c. 13. (1839.)	An Act for extending the Copyright of Designs for Calico Printing to Designs for printing other woven Fabrics.

SCHEDULE (B).

DATE OF ACT.	TITLE.
2 Vict. c. 17. (1839.)	An Act to secure to Proprietors of Designs for Articles of Manufacture the Copyright of such Designs for a limited Time.

SCHEDULE (C).

DATE OF ACTS.	TITLE.
38 Geo. 3. c. 71. (1798.)	An Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned.
54 Geo. 3. c. 56. (1814.)	An Act to amend and render more effectual an Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned, and for giving further Encouragement to such Arts.

6 & 7 VICT. c. 65.

An Act to amend the Laws relating to the Copyright of Designs.

[22nd August, 1843.]

5 & 6 Vict. c. 100.

WHEREAS by an Act passed in the fifth and sixth years of the reign of Her present Majesty, intituled "An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture," there was granted to the proprietor of any new and original design, with the exceptions therein mentioned, the sole right to apply the same to the ornamenting of any article of manufacture or any such substance as therein described during the respective periods therein mentioned: And whereas it is expedient to extend the protection afforded by the said Act to such designs hereinafter mentioned, not being of an ornamental character, as are not included therein: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That this Act shall come into operation on the first day of September, One thousand eight hundred and forty-three.

Commencement of Act.

Grant of copyright.

II. And with regard to any new or original design for any article of manufacture having reference to some purpose of utility, so far as such design shall be for the shape or configuration of such article, and that whether it be for the whole of such shape or configuration, or only for a part thereof, be it enacted, That the proprietor of such design not previously published within the United Kingdom of Great Britain and Ireland or elsewhere, shall have the sole right to apply such

design to any article, or make or sell any article according to such design, for the term of three years, to be computed from the time of such design being registered according to this Act: Provided always, that this enactment shall not extend to such designs as are within the provisions of the said Act, or of two other Acts passed respectively in the thirty-eighth and fifty-fourth years of the reign of His late Majesty King George the Third, and intituled respectively "An Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned," and "An Act to amend and render more effectual an Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned." Proviso. 38 G. 3, c. 71. 54 G. 3, c. 56

III. Provided always, and be it enacted, That no person shall be entitled to the benefit of this Act unless such design have before publication thereof been registered according to this Act, and unless the name of such person shall be registered according to this Act as a proprietor of such design, and unless after publication of such design every article of manufacture made by him according to such design, or on which such design is used, hath thereon the word "registered," with the date of registration. Conditions of copyright.

IV. And be it enacted, That unless a design applied to any article of manufacture be registered either as aforesaid or according to the provisions of the said first-mentioned Act, and also after the copyright of such design shall have expired, it shall be unlawful to put on any such article the word "registered," or to advertise the same for sale as a registered article; and if any person shall so unlawfully publish, sell, or expose or advertise for sale any such article of manufacture, he shall forfeit for every such offence a sum not exceeding five pounds nor less than one pound, which may be recovered by any person proceeding for the same by any of the remedies hereby given for the recovery of penalties for pirating any such design. Penalty for wrongfully using marks denoting a registered design.

V. And be it enacted, That all such articles of manufacture as are commonly known by the name of floor-cloths or oil-cloths shall henceforth be considered as included in class six in the said first-mentioned Act in that behalf mentioned, and be registered accordingly. Floor or oil-cloths included in class six.

VI. And be it enacted, That all and every the clauses and provisions contained in the said first-mentioned Act, so far as Certain provisions of 5 & 6

Vict. c. 100, to apply to this Act.

they are not repugnant to the provisions contained in this Act, relating respectively to the explanation of the term proprietor, to the transfer of designs, to the piracy of designs, to the mode of recovering penalties, to actions for damages, to cancelling and amending registrations, to the limitation of actions, to the awarding of costs, to the certificate of registration, to the fixing and application of fees of registration, and to the penalty for extortion, shall be applied and extended to this present Act as fully and effectually, and to all intents and purposes, as if the said several clauses and provisoes had been particularly repeated and re-enacted in the body of this Act.

Appointment of registrar, &c.

VII. And be it enacted, That so much of the said first-mentioned Act as relates to the appointment of a registrar of designs for ornamenting articles of manufacture, and other officers, as well as to the fixing of the salaries for the payment of the same, shall be and the same is hereby repealed; and for the purpose of carrying into effect the provisions as well of this Act as of the said first-mentioned Act, the Lords of the Committee of the Privy Council for the consideration of all matters of trade and plantations may appoint a person to be registrar of designs for articles of manufacture, and, if the Lords of the said Committee see fit, an assistant registrar and other necessary officers and servants; and such registrar, assistant registrar, officers, and servants shall hold their offices during the pleasure of the Lords of the said Committee; and such registrar shall have a seal of office; and the Commissioners of Her Majesty's Treasury may from time to time fix the salary or other remuneration of such registrar, assistant registrar, and other officers and servants; and all the provisions contained in the said first-mentioned Act, and not hereby repealed, relating to the registrar, deputy registrar, clerks, and other officers and servants thereby appointed and therein named, shall be construed and held to apply respectively to the registrar, assistant registrar, and other officers and servants to be appointed under this Act.

Registrar's duties.

VIII. And be it enacted, That the said registrar shall not register any design for the shape or configuration of any article of manufacture as aforesaid, unless he be furnished with two exactly similar drawings or prints of such design, with such description in writing as may be necessary to render the same intelligible according to the judgment of the said registrar,

together with the title of the said design and the name of every person who shall claim to be proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode, or place of carrying on business, or other place of address; and every such drawing or print, together with the title and description of such design, and the name and address of the proprietor aforesaid, shall be on one sheet of paper or parchment, and on the same side thereof; and the size of the said sheet shall not exceed twenty-four inches by fifteen inches; and there shall be left on one of the said sheets a blank space on the same side on which are the said drawings, title, description, name, and address, of the size of six inches by four inches, for the certificate herein mentioned; and the said drawings or prints shall be made on a proper geometric scale; and the said description shall set forth such part or parts of the said design (if any) as shall not be new or original; and the said registrar shall register all such drawings or prints from time to time as they are received by him for that purpose; and on every such drawing or print he shall affix a number corresponding to the order of succession in the register, and he shall retain one drawing or print which he shall file at his office, and the other he shall return to the person by whom the same has been forwarded to him; and in order to give a ready access to the designs so registered, he shall keep a proper index of the titles thereof. Drawings.

Discretionary power as to registry vested in the registrar.

IX. And be it enacted, That if any design be brought to the said registrar to be registered under the said first-mentioned Act, and it shall appear to him that the same ought to be registered under this present Act, it shall be lawful for the said registrar to refuse to register such design otherwise than under the present Act and in the manner hereby provided; and if it shall appear to the said registrar that the design brought to be registered under the said first-mentioned Act or this Act is not intended to be applied to any article of manufacture, but only to some label, wrapper, or other covering in which such article might be exposed for sale, or that such design is contrary to public morality or order, it shall be lawful for the said registrar in his discretion wholly to refuse to register such design: Provided always, that the Lords of the said Committee of Privy Council may, on representation made to them by the proprietor of any design so wholly refused to be registered as aforesaid, if Proviso.

they shall see fit, direct the said registrar to register such design, whereupon and in such case the said registrar shall be and is hereby required to register the same accordingly.

Inspection of index of titles of designs, &c.

X. And be it enacted, That every person shall be at liberty to inspect the index of the titles of the designs, not being ornamental designs registered under this Act, and to take copies from the same, paying only such fees as shall be appointed by virtue of this Act in that behalf; and every person shall be at liberty to inspect any such design, and to take copies thereof, paying such fee as aforesaid; but no design whereof the copyright shall not have expired shall be open to inspection except in the presence of such registrar, or in the presence of some person holding an appointment under this Act, and not so as to take a copy of such design, nor without paying such fee as aforesaid.

Interpretation of Act.

XI. And, for the interpretation of this Act, be it enacted, That the following terms and expressions, so far as they are not repugnant to the context of this Act, shall be construed as follows: (that is to say,) the expression "Commissioners of the Treasury" shall mean the Lord High Treasurer for the time being, or the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the time being, or any three or more of them; and the singular number shall include the plural as well as the singular number; and the masculine gender shall include the feminine gender as well as the masculine gender.

Alteration of Act.

XII. And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present session of Parliament.

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7 & 8 Vict. c. 12.

An Act to amend the Law relating to International Copyright.

[10th May, 1844.]

1 & 2 Vict. c. 59.

WHEREAS by an Act passed in the session of Parliament held in the first and second years of the reign of Her present Majesty, intituled "An Act for securing to Authors in certain Cases the Benefit of international Copyright" (and which Act is hereinafter, for the sake of perspicuity, designated as "The International Copyright Act"), Her Majesty was empowered by Order

in Council to direct that the authors of books which should after a future time, to be specified in such Order in Council, be published in any foreign country, to be specified in such Order in Council, and their executors, administrators, and assigns, should have the sole liberty of printing and reprinting such books within the British dominions for such term as Her Majesty should by such Order in Council direct, not exceeding the term which authors, being British subjects, were then (that is to say, at the time of passing the said Act,) entitled to in respect of books first published in the United Kingdom; and the said Act contains divers enactments securing to authors and their representatives the copyright in the books to which any such Order in Council should extend: And whereas an Act was passed in the session of Parliament held in the fifth and sixth years of the reign of Her present Majesty, intituled "An Act to amend the Law of Copyright" (and which Act is hereinafter, for the sake of perspicuity, designated as "The Copyright Amendment Act"), repealing various Acts therein mentioned relating to the copyright of printed books, and extending, defining, and securing to authors and their representatives the copyright of books: And whereas an Act was passed in the session of Parliament held in the third and fourth years of the reign of His late Majesty King William the Fourth, intituled "An Act to amend the Laws relating to dramatic literary Property" (and which Act is hereinafter, for the sake of perspicuity, designated as "The dramatic literary Property Act"), whereby the sole liberty of representing or causing to be represented any dramatic piece in any place of dramatic entertainment in any part of the British dominions, which should be composed and not printed or published by the author thereof or his assignee, was secured to such author or his assignee; and by the said Act it was enacted, that the author of any such production which should thereafter be printed and published, or his assignee, should have the like sole liberty of representation until the end of twenty-eight years from the first publication thereof: And whereas by the said "Copyright Amendment Act" the provisions of the said "Dramatic literary Property Act" and of the said "Copyright Amendment Act" were made applicable to musical compositions; and it was thereby also enacted, that the sole liberty of representing or performing, or causing or permitting to be represented or performed, in any part of the British

5 & 6 Vict. c. 45.

3 & 4 W. 4, c. 15.

dominions, any dramatic piece or musical composition, should endure and be the property of the author thereof and his assigns for the term in the said "Copyright Amendment Act" provided for the duration of the copyright in books, and that the provisions therein enacted in respect of the property of such copyright should apply to the liberty of representing or performing any dramatic piece or musical composition: And whereas under or by virtue of the four several Acts next hereinafter mentioned, (that is to say,) an Act passed in the eighth year of the reign of
8 G. 2. c. 13. His late Majesty King George the Second, intituled "An Act for the Encouragement of the Arts of designing, engraving, and etching historical and other Prints, by vesting the Properties thereof in the Inventors or Engravers during the Time therein mentioned;" an Act passed in the seventh year of His late
7 G. 3. c. 38. Majesty King George the Third, intituled "An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of King George the Second, for Encouragement of the Arts of designing, engraving, and etching historical and other Prints; and for vesting in and securing to Jane Hogarth, Widow, the Property in certain Prints;" an Act passed in the seventeenth year of the reign of His late Majesty King George
17 G. 3. c. 57. the Third, intituled "An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases;" and an Act passed in the session of Parliament held in the sixth and seventh years of the reign of His late Majesty King William
6 & 7 W. 4. c. 59. the Fourth, intituled "An Act to extend the Protection of Copyright in Prints and Engravings to Ireland;" (and which said four several Acts are hereinafter, for the sake of perspicuity, designated as "The Engraving Copyright Acts;") every person who invents or designs, engraves, etches, or works in mezzotinto or chiaro-oscuro, or from his own work, design, or invention causes or procures to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, and every person who engraves, etches, or works in mezzotinto or chiaro-oscuro, or causes to be engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture, either ancient or modern, notwithstanding such print shall not have been graven or drawn from the original design of

such graver, etcher, or draftsman, is entitled to the copyright of such print for the term of twenty-eight years from the first publishing thereof; and by the said several engraving copyright Acts it is provided that the name of the proprietor shall be truly engraved on each plate, and printed on every such print, and remedies are provided for the infringement of such copyright: And whereas under and by virtue of an Act passed in the thirty-eighth year of the reign of His late Majesty King George the Third, intituled "An Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned;" and of an Act passed in the fifty-fourth year of the reign of His late Majesty King George the Third, intituled "An Act to amend and render more effectual an Act of His present Majesty, for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned, and for giving further Encouragement to such Arts," (and which said Acts are, for the sake of perspicuity, hereinafter designated as "The Sculpture Copyright Acts,") every person who makes or causes to be made any new and original sculpture, or model or copy or cast of the human figure, any bust or part of the human figure clothed in drapery or otherwise, any animal or part of any animal combined with the human figure or otherwise, any subject, being matter of invention in sculpture, any alto or basso-relievo, representing any of the matters aforesaid, or any cast from nature of the human figure or part thereof, or of any animal or part thereof, or of any such subject representing any of the matters aforesaid, whether separate or combined, is entitled to the copyright in such new and original sculpture, model, copy, and cast, for fourteen years from first putting forth and publishing the same, and for an additional period of fourteen years in case the original maker is living at the end of the first period; and by the said Acts it is provided that the name of the proprietor, with the date of the publication thereof, is to be put on all such sculptures, models, copies, and casts, and remedies are provided for the infringement of such copyright: And whereas the powers vested in Her Majesty by the said "International Copyright Act" are insufficient to enable Her Majesty to confer upon authors of books first published in foreign countries copyright of the like duration, and with the like remedies for the infringement thereof, which are conferred and provided by the said "Copyright Amendment Act" with respect

38 G. 3, c. 71.

54 G. 3, c. 56.

to authors of books first published in the British dominions; and the said "International Copyright Act" does not empower Her Majesty to confer any exclusive right of representing or performing dramatic pieces or musical compositions first published in foreign countries upon the authors thereof, nor to extend the privilege of copyright to prints and sculpture first published abroad; and it is expedient to vest increased powers in Her Majesty in this respect, and for that purpose to repeal the said "International Copyright Act," and to give such other powers to Her Majesty, and to make such further provisions, as are hereinafter contained: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lord's spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said recited Act herein designated as the "International Copyright Act" shall be and the same is hereby repealed.

Repeal of International Copyright Act.

II. And be it enacted, That it shall be lawful for Her Majesty, by any Order of Her Majesty in Council, to direct that, as respects all or any particular class or classes of the following works, (namely,) books, prints, articles of sculpture, and other works of art, to be defined in such order, which shall after a future time, to be specified in such order, be first published in any foreign country to be named in such order, the authors, inventors, designers, engravers, and makers thereof respectively, their respective executors, administrators, and assigns, shall have the privilege of copyright therein during such period or respective periods as shall be defined in such order, not exceeding, however, as to any of the above-mentioned works, the term of copyright which authors, inventors, designers, engravers, and makers of the like works respectively first published in the United Kingdom may be then entitled to under the hereinbefore recited Acts respectively, or under any Acts which may hereafter be passed in that behalf.

Her Majesty, by Order in Council, may direct that authors, &c., of works first published in foreign countries shall have copyright therein within Her Majesty's dominions.

III. And be it enacted, That in case any such order shall apply to books, all and singular the enactments of the said "Copyright Amendment Act," and of any other Act for the time being in force with relation to the copyright in books first published in this country, shall, from and after the time so to be specified in that behalf in such order, and subject to such limitation as to the duration of the copyright as shall be therein contained, apply to and be in force in respect of the books to

If the order applies to books, the copyright law as to books first published in this country shall apply to the books to which the order relates, with certain exceptions.

which such Order shall extend, and which shall have been registered as hereinafter is provided, in such and the same manner as if such books were first published in the United Kingdom, save and except such of the said enactments, or such parts thereof, as shall be excepted in such order, and save and except such of the said enactments as relate to the delivery of copies of books at the British Museum, and to or for the use of the other libraries mentioned in the said "Copyright Amendment Act."

IV. And be it enacted, That in case any such order shall apply to prints, articles of sculpture, or to any such other works of art as aforesaid, all and singular the enactments of the said "Engraving Copyright Acts," and the said "Sculpture Copyright Acts," or of any other Act for the time being in force with relation to the copyright in prints or articles of sculpture first published in this country, and of any Act for the time being in force with relation to the copyright in any similar works of art first published in this country, shall, from and after the time so to be specified in that behalf in such order, and subject to such limitation as to the duration of the copyright as shall be therein contained respectively, apply to and be in force in respect of the prints, articles of sculpture, and other works of art to which such order shall extend, and which shall have been registered as hereinafter is provided, in such and the same manner as if such articles and other works of art were first published in the United Kingdom, save and except such of the said enactments or such parts thereof as shall be excepted in such order.

If the order applies to prints, sculptures, &c., the copyright law as to prints or sculptures first published in this country shall apply to the prints, sculptures, &c., to which such order relates.

V. And be it enacted, That it shall be lawful for Her Majesty, by any Order of Her Majesty in Council, to direct that the authors of dramatic pieces and musical compositions which shall after a future time, to be specified in such order, be first publicly represented or performed in any foreign country to be named in such order, shall have the sole liberty of representing or performing in any part of the British dominions such dramatic pieces or musical compositions during such period as shall be defined in such order, not exceeding the period during which authors of dramatic pieces and musical compositions first publicly represented or performed in the United Kingdom may for the time be entitled by law to the sole liberty of representing and performing the same; and from and after the time so specified in any such last-mentioned order the enactments of the said

Her Majesty may, by Order in Council, direct that authors and composers of dramatic pieces and musical compositions first publicly represented and performed in foreign countries shall have similar rights in the British dominions.

"Dramatic literary Property Act," and of the said "Copyright Amendment Act," and of any other Act for the time being in force with relation to the liberty of publicly representing and performing dramatic pieces or musical compositions, shall, subject to such limitation as to the duration of the right conferred by any such order as shall be therein contained, apply to and be in force in respect of the dramatic pieces and musical compositions to which such order shall extend, and which shall have been registered as hereinafter is provided, in such and the same manner as if such dramatic pieces and musical compositions had been first publicly represented and performed in the British dominions, save and except such of the said enactments or such parts thereof as shall be excepted in such order.

Particulars to be observed as to registry and to delivery of copies.

VI. Provided always, and be it enacted, That no author of any book, dramatic piece or musical composition, or his executors, administrators, or assigns, and no inventor, designer, or engraver of any print, or maker of any article of sculpture, or other work of art, his executors, administrators, or assigns, shall be entitled to the benefit of this Act, or of any Order in Council to be issued in pursuance thereof, unless, within a time or times to be in that behalf prescribed in each such Order in Council, such book, dramatic piece, musical composition, print, article of sculpture, or other work of art, shall have been so registered, and such copy thereof shall have been so delivered as hereinafter is mentioned; (that is to say,) as regards such book, and also such dramatic piece or musical composition, (in the event of the same having been printed,) the title to the copy thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the copyright thereof, the time and place of the first publication, representation, or performance thereof, as the case may be, in the foreign country named in the Order in Council under which the benefits of this Act shall be claimed, shall be entered in the register book of the Company of Stationers in London, and one printed copy of the whole of such book, and of such dramatic piece or musical composition, in the event of the same having been printed, and of every volume thereof, upon the best paper upon which the largest number or impression of the book, dramatic piece, or musical composition shall have been printed for sale, together with all maps and prints relating thereto, shall be delivered to the officer of the Company of Stationers at the hall of the said

company; and as regards dramatic pieces and musical compositions in manuscript, the title to the same, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the right of representing or performing the same, and the time and place of the first representation or performance thereof in the country named in the Order in Council under which the benefit of the Act shall be claimed, shall be entered in the said register book of the said Company of Stationers in London; and as regards prints, the title thereof, the name and place of abode of the inventor, designer, or engraver thereof, the name of the proprietor of the copyright therein, and the time and place of the first publication thereof in the foreign country named in the Order in Council under which the benefits of the Act shall be claimed, shall be entered in the said register book of the said Company of Stationers in London, and a copy of such print, upon the best paper upon which the largest number or impressions of the print shall have been printed for sale, shall be delivered to the officer of the Company of Stationers at the hall of the said company; and as regards any such article of sculpture, or any such other work of art as aforesaid, a descriptive title thereof, the name and place of abode of the maker thereof, the name of the proprietor of the copyright therein, and the time and place of its first publication in the foreign country named in the Order in Council under which the benefit of this Act shall be claimed, shall be entered in the said register book of the said Company of Stationers in London; and the officer of the said Company of Stationers receiving such copies so to be delivered as aforesaid shall give a receipt in writing for the same, and such delivery shall to all intents and purposes be a sufficient delivery under the provisions of this Act.

In case of books published anonymously, the name of the publisher to be sufficient.

VII. Provided always, and be it enacted, That if a book be published anonymously, it shall be sufficient to insert in the entry thereof in such register book the name and place of abode of the first publisher thereof, instead of the name and place of abode of the author thereof, together with a declaration that such entry is made either on behalf of the author or on behalf of such first publisher, as the case may require.

The provisions of the Copyright Amendment Act as

VIII. And be it enacted, That the several enactments in the said "Copyright Amendment Act" contained with relation to keeping the said register book, and the inspection thereof, the

regards entries in the register book of the Company of Stationers, &c., to apply to entries under this Act.

searches therein, and the delivery of certified and stamped copies thereof, the reception of such copies in evidence, the making of false entries in the said book, and the production in evidence of papers falsely purporting to be copies of entries in the said book, the applications to the courts and judges by persons aggrieved by entries in the said book, and the expunging and varying such entries, shall apply to the books, dramatic pieces, and musical compositions, prints, articles of sculpture, and other works of art, to which any Order in Council issued in pursuance of this Act shall extend, and to the entries and assignments of copyright and proprietorship therein, in such and the same manner as if such enactments were here expressly enacted in relation thereto, save and except that the forms of entry prescribed by the said "Copyright Amendment Act" may be varied to meet the circumstances of the case, and that the sum to be demanded by the officer of the said Company of Stationers for making any entry required by this Act shall be one shilling only.

As to expunging or varying entry grounded in wrongful first publication.

IX. And be it enacted, That every entry made in pursuance of this Act of a first publication shall be *primâ facie* proof of a rightful first publication; but if there be a wrongful first publication, and any party have availed himself thereof to obtain an entry of a spurious work, no order for expunging or varying such entry shall be made unless it be proved to the satisfaction of the court or of the judge taking cognizance of the application for expunging or varying such entry, first, with respect to a wrongful publication in a country to which the author or first publisher does not belong, and in regard to which there does not subsist with this country any treaty of international copyright, that the party making the application was the author or first publisher, as the case requires; second, with respect to a wrongful first publication either in the country where a rightful first publication has taken place, or in regard to which there subsists with this country a treaty of international copyright, that a court of competent jurisdiction in any such country where such wrongful first publication has taken place has given judgment in favour of the right of the party claiming to be the author or first publisher.

Copies of books wherein copyright is subsisting under this

X. And be it enacted, That all copies of books wherein there shall be any subsisting copyright under or by virtue of this Act, or of any Order in Council made in pursuance thereof, printed

or reprinted in any foreign country except that in which such books were first published, shall be and the same are hereby absolutely prohibited to be imported into any part of the British dominions, except by or with the consent of the registered proprietor of the copyright thereof, or his agent authorized in writing, and if imported contrary to this prohibition the same and the importers thereof shall be subject to the enactments in force relating to goods prohibited to be imported by any Act relating to the customs; and as respects any such copies so prohibited to be imported, and also as respects any copies unlawfully printed in any place whatsoever of any books wherein there shall be any such subsisting copyright as aforesaid, any person who shall in any part of the British dominions import such prohibited or unlawfully printed copies, or who, knowing such copies to be so unlawfully imported or unlawfully printed, shall sell, publish, or expose to sale or hire, or shall cause to be sold, published, or exposed to sale or hire, or have in his possession for sale or hire, any such copies so unlawfully imported or unlawfully printed, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright, to be brought and prosecuted in the same courts and in the same manner, and with the like restrictions upon the proceedings of the defendant, as are respectively prescribed in the said "Copyright Amendment Act" with relation to actions thereby authorized to be brought by proprietors of copyright against persons importing or selling books unlawfully printed in the British dominions.

Act printed in foreign countries other than those wherein the book was first published prohibited to be imported.

XI. And be it enacted, That the said officer of the said Company of Stationers shall receive at the hall of the said company every book, volume, or print so to be delivered as aforesaid, and within one calendar month after receiving such book, volume, or print, shall deposit the same in the library of the British Museum.

Officer of Stationers' Company to deposit books, &c., in the British Museum.

XII. Provided always, and be it enacted, That it shall not be requisite to deliver to the said officer of the said Stationers' Company any printed copy of the second or of any subsequent edition of any book or books so delivered as aforesaid, unless the same shall contain additions or alterations.

Second or subsequent editions.

XIII. And be it enacted, That the respective terms to be specified by such Orders in Council respectively for the continuance of the privilege to be granted in respect of works to be

Orders in Council may specify different periods for different

foreign countries and for different classes of works.

first published in foreign countries may be different for works first published in different foreign countries and for different classes of such works; and that the times to be prescribed for the entries to be made in the register book of the Stationers' Company, and for the deliveries of the books and other articles to the said officer of the Stationers' Company, as hereinbefore is mentioned, may be different for different foreign countries and for different classes of books or other articles.

No Order in Council to have any effect unless it states that reciprocal protection is secured.

XIV. Provided always, and be it enacted, That no such order in Council shall have any effect unless it shall be therein stated, as the ground for issuing the same, that due protection has been secured by the foreign power so named in such Order in Council for the benefit of parties interested in works first published in the dominions of Her Majesty similar to those comprised in such order.

Orders in Council to be published in Gazette, and to have same effect as this Act.

XV. And be it enacted, That every Order in Council to be made under the authority of this Act shall as soon as may be after the making thereof by Her Majesty in Council be published in the *London Gazette*, and from the time of such publication shall have the same effect as if every part thereof were included in this Act.

Orders in Council to be laid before Parliament.

XVI. And be it enacted, That a copy of every Order of Her Majesty in Council made under this Act shall be laid before both Houses of Parliament within six weeks after issuing the same, if Parliament be then sitting, and if not, then within six weeks after the commencement of the then next session of Parliament.

Orders in Council may be revoked.

XVII. And be it enacted, That it shall be lawful for Her Majesty by an Order in Council from time to time to revoke or alter any Order in Council previously made under the authority of this Act, but nevertheless without prejudice to any rights acquired previously to such revocation or alteration.

Translations.

XVIII. Provided always, and be it enacted, That nothing in this Act contained shall be construed to prevent the printing, publication, or sale of any translation of any book the author whereof and his assigns may be entitled to the benefit of this Act.*

Authors of works first published in foreign coun-

XIX. And be it enacted, That neither the author of any book, nor the author or composer of any dramatic piece or musical composition, nor the inventor, designer, or engraver of

* This section is repealed so far as it is inconsistent with the provisions contained in 15 & 16 Vict. c. 12.

any print, nor the maker of any article of sculpture, or of such other work of art as aforesaid, which shall after the passing of this Act be first published out of Her Majesty's dominions, shall have any copyright therein respectively, or any exclusive right to the public representation or performance thereof, otherwise than such (if any) as he may become entitled to under this Act. tries not entitled to copyright except under this Act.

XX. And be it enacted, That in the construction of this Act the word "book" shall be construed to include "volume," "pamphlet," "sheet of letter-press," "sheet of music," "map," "chart," or "plan;" and the expression "articles of sculpture," shall mean all such sculptures, models, copies, and casts as are described in the said Sculpture Copyright Acts, and in respect of which the privileges of copyright are thereby conferred; and the words "printing" and "re-printing" shall include engraving and any other method of multiplying copies; and the expression "Her Majesty" shall include the heirs and successors of Her Majesty; and the expressions "Order of Her Majesty in Council," "Order in Council," and "Order," shall respectfully mean Order of Her Majesty acting by and with the advice of Her Majesty's most honourable Privy Council; and the expression "officer of the Company of Stationers," shall mean the officer appointed by the said Company of Stationers for the purposes of the said Copyright Amendment Act; and in describing any persons or things any word importing the plural number shall mean also one person or thing, and any word importing the singular number shall include several persons or things, and any word importing the masculine shall include also the feminine gender; unless in any of such cases there shall be something in the subject or context repugnant to such construction. Interpretation clause.

XXI. And be it enacted, That this Act may be amended or repealed by any Act to be passed in this present session of Parliament. Act may be repealed this session.

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7 & 8 Vict. c. 73 (1844).

An Act to reduce, under certain Circumstances, the Duties payable upon Books and Engravings.

Repealed by 9 & 10 Vict. c. 58, § 1.

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8 & 9 Vict. c. 93 (1845).

An Act to regulate the Trade of British Possessions abroad.

Repealed by 16 & 17 Vict. c. 100, § 358.

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9 & 10 Vict. c. 58 (1846).

An Act to amend an Act of the seventh and eighth Years of Her present Majesty, for reducing, under certain Circumstances, the Duties payable upon Books and Engravings.

Repealed by 24 & 25 Vict. c. 101.

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10 & 11 Vict. c. 95.

An Act to amend the Law relating to the Protection in the Colonies of Works entitled to Copyright in the United Kingdom

[22nd July 1847.]

WHEREAS by an Act passed in the session of Parliament holden in the fifth and sixth years of Her present Majesty, intituled "An Act to amend the Law of Copyright," it is amongst other things enacted, that it shall not be lawful for any person not being the proprietor of the copyright, or some person authorized by him, to import into any part of the United Kingdom, or into any other part of the British dominions, for sale or hire, any printed book first composed or written or printed or published in any part of the United Kingdom wherein there shall be copyright, and reprinted in any country or place whatsoever out of the British dominions: And whereas by an Act passed in the session of Parliament holden in the eighth and ninth years of the reign of Her present Majesty, intituled "An Act to regulate the trade of the British possessions abroad," books wherein the copyright is subsisting, first composed or written or printed in the United Kingdom, and printed or reprinted in any other country, are absolutely prohibited to be imported into the British possessions abroad: And whereas by the said last-recited Act it is enacted, that all laws, bye-laws, usages, or customs in practice, or endeavoured or pretended to be in force or practice in any of the British possessions in America, which are in anywise repugnant to the said Act or to any Act of Parliament made or to be made

5 & 6 Vict. c. 45.

8 & 9 Vict. c. 93.

in the United Kingdom, so far as such Act shall relate to and mention the said possessions, are and shall be null and void to all intents and purposes whatsoever: Now be it enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in case the legislature or proper legislative authorities in any British possession shall be disposed to make due provision for securing or protecting the rights of British authors in such possession, and shall pass an Act or make an ordinance for that purpose, and shall transmit the same in the proper manner, to the Secretary of State, in order that it may be submitted to Her Majesty, and in case Her Majesty shall be of opinion that such Act or ordinance is sufficient for the purpose of securing to British authors reasonable protection within such possession, it shall be lawful for Her Majesty, if she think fit so to do, to express Her royal approval of such Act or ordinance, and thereupon to issue an Order in Council declaring that so long as the provisions of such Act or ordinance continue in force within such colony the prohibitions contained in the aforesaid Acts, and hereinbefore recited, and any prohibitions contained in the said Acts or in any other Acts against the importing, selling, letting out to hire, exposing for sale or hire, or possessing foreign reprints of books first composed, written, printed, or published in the United Kingdom, and entitled to copyright therein, shall be suspended so far as regards such colony; and thereupon such Act or ordinance shall come into operation, except so far as may be otherwise provided therein, or as may be otherwise directed by such Order in Council, anything in the said last-recited Act or in any other Act to the contrary notwithstanding.

Her Majesty may suspend in certain cases the prohibitions against the admission of pirated books into the colonies in certain cases.

II. And be it enacted, That every such Order in Council shall, within one week after the issuing thereof, be published in the *London Gazette*, and that a copy thereof, and of every such colonial Act or ordinance so approved as aforesaid by Her Majesty, shall be laid before both Houses of Parliament within six weeks after the issuing of such order, if Parliament be then sitting, or if Parliament be not then sitting, then within six weeks after the opening of the next session of Parliament.

Orders in Council to be published in *Gazette*.

Orders in Council and the Colonial Acts or ordinances to be laid before Parliament.

III. And be it enacted, This Act may be amended or repealed by any Act to be passed in the present session of Parliament.

Act may be amended, &c.

13 & 14 Vict. c. 104.

An Act to extend and amend the Acts relating to the Copyright of Designs.

[14th August, 1850.]

WHEREAS it is expedient to extend and amend the Acts relating to the copyright of designs: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same:

Certain designs may be registered provisionally for one year.

I. That the registrar of designs, upon application by or on behalf of the proprietor of any design, not previously published within the United Kingdom of Great Britain and Ireland or elsewhere, and which may be registered under the Designs Act, 1842, or under the Designs Act, 1843, for the provisional registration of such design, under this Act, and upon being furnished with such copy, drawing, print, or description in writing or in print as in the judgment of the said registrar shall be sufficient to identify the particular design in respect of which such registration is desired, and the name of the person claiming to be proprietor, together with his place of abode or business, or other place of address, or the style or title of the firm under which he may be trading, shall register such design in such manner and form as shall from time to time be prescribed or approved by the Board of Trade; and any design so registered shall be deemed "provisionally registered," and the registration thereof shall continue in force for the term of one year from the time of the same being registered as aforesaid; and the said registrar shall certify, under his hand and seal of office, in such form as the said board shall direct or approve, that the design has been provisionally registered, the date of such registration, and the name of the registered proprietor, together with his place of abode or business, or other place of address.

Benefits conferred by provisional registration.

II. That the proprietor of any design which shall have been provisionally registered shall, during the continuance of such registration, have the sole right and property in such design; and the penalties and provisions of the said Designs Act, 1842, for preventing the piracy of designs, shall extend to the Acts

matters, and things next hereinafter enumerated, as fully as if those penalties and provisions had been re-enacted in this Act, and expressly extended to such Acts, matters, and things respectively; that is to say,

1. To the application of any provisionally registered design, or any fraudulent imitation thereof, to any articles of manufacture or to any substance:
2. To the publication, sale, or exposure for sale of any article of manufacture or any substance to which any provisionally registered design shall have been applied.

The exhibition of provisionally registered designs in certain places not to defeat copyright, &c.

III. That during the continuance of such provisional registration neither such registration nor the exhibition or exposure of any design provisionally registered, or of any article to which any such design may have been or be intended to be applied, in any place, whether public or private, in which articles are not sold or exposed or exhibited for sale, and to which the public are not admitted gratuitously, or in any place which shall have been previously certified by the Board of Trade to be a place of public exhibition within the meaning of this Act, nor the publication of any account or description of any provisionally registered design exhibited or exposed or intended to be exhibited or exposed in any such place of exhibition or exposure in any catalogue, paper, newspaper, periodical, or otherwise, shall prevent the proprietor thereof from registering any such design under the said Designs Acts at any time during the continuance of the provisional registration, in the same manner and as fully and effectually as if no such registration, exhibition, exposure, or publication had been made; provided that every article to which any such design shall be applied, and which shall be exhibited or exposed by or with the licence or consent of the proprietor of such design, shall have thereon or attached thereto the words "provisionally registered," with the date of registration.

Sale of articles to which provisionally registered designs, &c., have been applied to defeat copyright, but design itself may be sold.

IV. That if during the continuance of such provisional registration the proprietor of any design provisionally registered shall sell, expose, or offer for sale any article, substance, or thing to which any such design has been applied, such provisional registration shall be deemed to have been null and void immediately before any such sale, offer, or exposure shall have been first made; but nothing herein contained shall be construed

to hinder or prevent such proprietor from selling or transferring the right and property in any such design.

Extension of period of provisional registration by Board of Trade.

V. That the Board of Trade may by order in writing with respect to any particular class of designs, or any particular design, extend the period for which any design may be provisionally registered under this Act, for such term not exceeding the additional term of six months as to the said board may seem fit; and whenever any such order shall be made, the same shall be registered in the office for the registration of designs, and during the extended term the protection and benefits conferred by this Act in case of provisional registration shall continue as fully as if the original term of one year had not expired.

Registration of sculpture, models, &c.

VI. That the registrar of designs, upon application by or on behalf of the proprietor of any sculpture, model, copy, or cast within the protection of the Sculpture Copyright Acts, and upon being furnished with such copy, drawing, print, or description, in writing or in print, as in the judgment of the said registrar shall be sufficient to identify the particular sculpture, model, copy, or cast in respect of which registration is desired, and the name of the person claiming to be proprietor, together with his place of abode or business or other place of address, or the name, style, or title of the firm under which he may be trading, shall register such sculpture, model, copy, or cast in such manner and form as shall from time to time be prescribed or approved by the Board of Trade for the whole or any part of the term during which copyright in such sculpture, model, copy, or cast may or shall exist under the Sculpture Copyright Acts; and whenever any such registration shall be made, the said registrar shall certify under his hand and seal of office, in such form as the said board shall direct or approve, the fact of such registration, and the date of the same, and the name of the registered proprietor, or the style or title of the firm under which such proprietor may be trading, together with his place of abode or business or other place of address.

Benefits conferred by registration of sculpture, &c.

VII. That if any person shall, during the continuance of the copyright in any sculpture, model, copy, or cast which shall have been so registered as aforesaid, make, import, or cause to be made, imported, exposed for sale, or otherwise disposed of, any pirated copy or pirated cast of any such sculpture, model, copy, or cast, in such manner and under such circumstances as would entitle the proprietor to a special action on the case under the

Sculpture Copyright Acts, the person so offending shall forfeit for every such offence a sum not less than five pounds and not exceeding thirty pounds to the proprietor of the sculpture, model, copy, or cast whereof the copyright shall have been infringed; and for the recovery of any such penalty the proprietor of the sculpture, model, copy, or cast which shall have been so pirated shall have and be entitled to the same remedies as are provided for the recovery of penalties incurred under the Designs Act, 1842: Provided always, that the proprietor of any sculpture, model, copy, or cast which shall be registered under this Act shall not be entitled to the benefit of this Act, unless every copy or cast of such sculpture, model, copy, or cast which shall be published by him after such registration shall be marked with the word "registered," and with the date of registration.

Designs for ornamenting ivory, &c., may be registered under Designs Act, 1842, for three years.

VIII. That designs for the ornamenting of ivory, bone, papier maché, and other solid substances not already comprised in the classes numbered 1, 2, or 3 in the Designs Act, 1842, shall be deemed and taken to be comprised within the class numbered 4 in that Act, and such designs shall be so registered accordingly.

Board of Trade may extend copyright in ornamental designs.

IX. That the Board of Trade may from time to time order that the copyright of any class of designs or any particular design registered or which may be registered under the Designs Act, 1842, may be extended for such term, not exceeding the additional term of three years, as the said board may think fit, and the said board shall have power to revoke or alter any such order as may from time to time appear necessary; and whenever any order shall be made by the said board under this provision, the same shall be registered in the office for the registration of designs; and during the extended term the protection and benefits conferred by the said Designs Acts shall continue as fully as if the original term had not expired.

Regulations for the registration of designs may be made by Board of Trade.

X. That the Board of Trade may from time to time make, alter, and revoke rules and regulations with respect to the mode of registration, and the documents and other matters and particulars to be furnished by persons affecting registration and provisional registration under the said Acts and this Act: Provided always, that all such rules and regulations shall be published in the *London Gazette*, and shall forthwith upon the issuing thereof be laid before Parliament, if Parliament be sitting, and if

Parliament be not sitting, then within fourteen days after the commencement of the then next session; and such rules and regulations, or any of them, shall be published or notified by the registrar of designs in such other manner as the Board of Trade shall think fit to direct.

Registrar of designs may dispense with drawings, &c., in certain cases.

XI. That if in any case in which the registration of a design is required to be made under either of the said Designs Acts it shall appear to the registrar that copies, drawings, or prints as required by those Acts cannot be furnished, or that it is unreasonable or unnecessary to require the same, the said registrar may dispense with such copies, drawings, or prints, and may allow in lieu thereof such specification or description in writing or in print as may be sufficient to identify and render intelligible the design in respect of which registration is desired; and whenever registration shall be so made in the absence of such copies, drawings, or prints, the registration shall be as valid and effectual to all intents and purposes as if such copies, drawings, or prints had been furnished.

Public books and documents in the Designs Office not to be removed without judge's order.

XII. That in order to prevent the frequent and unnecessary removal of the public books and documents in the office for the registration of designs, no book or document in the said office shall be removed for the purpose of being produced in any court or before any justice of the peace, without a special order of a judge of the Court of Chancery, or of one of Her Majesty's Superior Courts of Law, first had and obtained by the party who shall desire the production of the same.

Judges may order copies of documents to be furnished to be given in evidence.

XIII. That if application shall be made to a judge of any of Her Majesty's Courts of Law at Westminster by any person desiring to obtain a copy of any registration, entry, drawing, print, or document, of which such person is not entitled as of right to have a copy, for the purpose of being used in evidence in any cause, or otherwise howsoever, and if such judge shall be satisfied that such copy is *bonâ fide* intended for such purpose as aforesaid, such judge shall order the registrar of designs to deliver such copy to the party applying, and the registrar of designs shall, upon payment for the same of such fee or fees as may be fixed according to the provisions of the said Designs Act in this behalf, deliver such copy accordingly.

Copies of documents delivered by the registrar to be sealed, and to be evidence.

XIV. That every copy of any registration, entry, drawing, print, or document delivered by the registrar of designs to any person requiring the same shall be signed by the said registrar,

and sealed with his seal of office; and every document sealed with the said seal purporting to be a copy of any registration, entry, drawing, print, or document shall be deemed to be a true copy of such registration, entry, drawing, print, or document, and shall, without further proof, be received in evidence before all courts in like manner and to the same extent and effect as the original book, registration, entry, drawing, print, or document would or might be received if tendered in evidence, as well for the purpose of proving the contents, purport, and effect of such book, registration, entry, drawing, print, or document, as also proving the same to be a book, registration, entry, drawing, print, or document of or belonging to the said office, and in the custody of the registrar of designs.

Certain provision of Designs Acts, 1842 and 1843, extended to this Act.

XV. That the several provisions contained in the said Designs Acts (so far as they are not repugnant to the provisions of this Act) relating to the transfer of designs, to cancelling and amending registration, to the refusal of registration in certain cases, to the mode of recovering penalties, to the awarding and recovery of costs, to actions for damages, to the limitation of actions, to the certificate of registration, to penalties for wrongfully using marks, to the fixing and application of fees for registration, and to the penalty for extortion, shall apply to the registration, provisional registration, and transfer of designs, sculptures, models, copies, and casts, and to the designs, sculptures, models, copies, and casts entitled to protection under this Act, and to matters under this Act, as fully and effectually as if those provisions had been re-enacted in this Act with respect to designs, sculptures, models, copies, and casts registered and provisionally registered under this Act; and the forms contained in the Designs Act, 1842, may for the purposes of this Act be varied so as to meet the circumstances of the case.

Interpretation of terms.

XVI. That in the interpretation of this Act the following terms and expressions shall have the meanings hereinafter assigned to them, unless such meanings shall be repugnant to or inconsistent with the context or subject-matter: that is to say,

The expression "Designs Act, 1842," shall mean an Act passed in the sixth year of the reign of Her present Majesty, intituled "An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture;"

The expression "Designs Act, 1843," shall mean an Act passed in the seventh year of Her present Majesty, intituled "An Act to amend the Laws relating to the Copyright of Designs:"

The expression "Sculpture Copyright Acts" shall mean two Acts passed respectively in the thirty-eighth and fifty-fourth years of the reign of King George the Third, and intituled respectively "An Act for encouraging the Art of making new Models and Casts of Busts and other Things herein mentioned," and "An Act to amend and render more effectual an Act for encouraging the Art of making new Models and Casts of Busts and other Things therein mentioned:"

The expression "the Board of Trade" shall mean the Lords of the Committee of Privy Council for the consideration of all matters of trade and plantations:

The expression "Registrar of Designs" shall mean the registrar or assistant registrar of designs for articles of manufacture:

The expression "Proprietor" shall be construed according to the interpretation of that word in the said Designs Act, 1842:

And words in the singular number shall include the plural, and words applicable to males shall include females.

Short Title.

XVII. That in citing this Act in other Acts of Parliament, and in any instrument, document, or proceeding, it shall be sufficient to use the words and figures following, that is to say, "The Designs Act, 1850."

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14 Vict. c. 8 (1851).

An Act to extend the Provisions of the "Designs Act, 1850," and to give Protection from Piracy to Persons exhibiting new Inventions in the Exhibition of the Works of Industry of all Nations, in One thousand eight hundred and fifty-one.

Spent.

15 & 16 VICT. C. 12.

An Act to enable Her Majesty to carry into effect a Convention with France on the Subject of Copyright; to extend and explain the International Copyright Acts; and to explain the Acts relating to Copyright in Engravings.

[28th May, 1825.]

WHEREAS an Act was passed in the seventh year of the reign of Her present Majesty, intituled "An Act to amend the Law relating to International Copyright," hereinafter called "The International Copyright Act:" And whereas a convention has lately been concluded between Her Majesty and the French Republic, for extending in each country the enjoyment of copyright in works of literature and the fine arts first published in the other, and for certain reductions of duties now levied on books, prints, and musical works published in France: And whereas certain of the stipulations on the part of Her Majesty contained in the said treaty require the authority of Parliament: And whereas it is expedient that such authority should be given, and that Her Majesty should be enabled to make similar stipulations in any treaty on the subject of copyright which may hereafter be concluded with any foreign power: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

7 & 8 Vict. c. 12.

Translations.

I. The eighteenth section of the said Act of the seventh year of Her present Majesty, chapter twelve, shall be repealed, so far as the same is inconsistent with the provisions hereinafter contained.

Partial repeal of 7 & 8 Vict. c. 12, § 18.

II. Her Majesty may, by Order in Council, direct that the authors of books which are, after a future time, to be specified in such order, published in any foreign country, to be named in such order, their executors, administrators, and assigns, shall, subject to the provisions hereinafter contained or referred to, be empowered to prevent the publication in the British dominions of any translations of such books not authorized by them, for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorized translations of such books hereinafter mentioned are respectively first published, and in the case of books published in parts, not extending as to each part beyond the expiration of

Her Majesty may by Order in Council direct that the authors of books published in foreign countries may for a limited time prevent unauthorized translations.

five years from the time at which the authorized translation of such part is first published.

Thereupon the law of copyright shall extend to prevent such translations.

III. Subject to any provisions or qualifications contained in such order, and to the provisions herein contained or referred to, the laws and enactments for the time being in force for the purpose of preventing the infringement of copyright in books published in the British dominions shall be applied for the purpose of preventing the publication of translations of the books to which such order extends which are not sanctioned by the authors of such books, except only such parts of the said enactments as relate to the delivery of copies of books for the use of the British Museum, and for the use of the other libraries therein referred to.

Her Majesty may by Order in Council direct that the authors of dramatic works represented in foreign countries may for a limited time prevent unauthorized translations.

IV. Her Majesty may, by Order in Council, direct that authors of dramatic pieces which are, after a future time, to be specified in such order, first publicly represented in any foreign country, to be named in such order, their executors, administrators, and assigns, shall, subject to the provisions hereinafter mentioned or referred to, be empowered to prevent the representation in the British dominions of any translation of such dramatic pieces not authorized by them, for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorized translations of such dramatic pieces hereinafter mentioned are first published or publicly represented.

Thereupon the law for protecting the representation of such pieces shall extend to prevent unauthorized translations.

V. Subject to any provisions or qualifications contained in such last-mentioned order, and to the provisions hereinafter contained or referred to, the laws and enactments for the time being in force for ensuring to the author of any dramatic piece first publicly represented in the British dominions the sole liberty of representing the same shall be applied for the purpose of preventing the representation of any translations of the dramatic pieces to which such last-mentioned order extends which are not sanctioned by the authors thereof.

Adaptations, &c., of dramatic pieces to the English stage not prevented.

VI. Nothing herein contained shall be so construed as to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country.

All articles in newspapers, &c., relating to politics may be

VII. Notwithstanding anything in the said International Copyright Act or in this Act contained, any article of political discussion which has been published in any newspaper or

periodical in a foreign country may, if the source from which the same is taken be acknowledged, be republished or translated in any newspaper or periodical in this country; and any article relating to any other subject which has been so published as aforesaid may, if the source from which the same is taken be acknowledged, be republished or translated in like manner, unless the author has signified his intention of preserving the copyright therein, and the right of translating the same, in some conspicuous part of the newspaper or periodical in which the same was first published, in which case the same shall, without the formalities required by the next following section, receive the same protection as is by virtue of the International Copyright Act or this Act extended to books.

republished or translated; and also all similar articles on any subject, unless the author has notified his intention to reserve the right.

VIII. No author, or his executors, administrators, or assigns, shall be entitled to the benefit of this Act, or of any Order in Council issued in pursuance thereof, in respect of the translation of any book or dramatic piece, if the following requisitions are not complied with: (that is to say,)

No author to be entitled to benefit of this Act without complying with the requisitions herein specified.

1. The original work from which the translation is to be made must be registered and a copy thereof deposited in the United Kingdom in the manner required for original works by the said International Copyright Act, within three calendar months of its first publication in the foreign country.
2. The author must notify on the title-page of the original work, or if it is published in parts, on the title-page of the first part, or if there is no title-page, on some conspicuous part of the work, that it is his intention to reserve the right of translating it:
3. The translation sanctioned by the author, or a part thereof, must be published, either in the country mentioned in the Order in Council by virtue of which it is to be protected or in the British dominions, not later than one year after the registration and deposit in the United Kingdom of the original work, and the whole of such translation must be published within three years of such registration and deposit:
4. Such translation must be registered and a copy thereof deposited in the United Kingdom within a time to be mentioned in that behalf in the order by which it is pro-

tected, and in the manner provided by the said International Copyright Act for the registration and deposit of original works:

5. In the case of books published in parts, each part of the original work must be registered and deposited in this country in the manner required by the said International Copyright within three months after the first publication thereof in the foreign country:

6. In the case of dramatic pieces the translation sanctioned by the author must be published within three calendar months of the registration of the original work:

7. The above requisitions shall apply to articles originally published in newspapers or periodicals if the same be afterwards published in a separate form, but shall not apply to such articles as originally published.

Pirated copies prohibited to be imported except with consent of proprietor.

IX. All copies of any works of literature or art wherein there is any subsisting copyright by virtue of the International Copyright Act and this Act, or of any Order in Council made in pursuance of such Acts or either of them, and which are printed, reprinted, or made in any foreign country except that in which such work shall be first published, and all unauthorized translations of any book or dramatic piece the publication or public representation in the British dominions of translations whereof not authorized as in this Act mentioned shall for the time being be prevented under any Order in Council made in pursuance of this Act, are hereby absolutely prohibited to be imported into any part of the British dominions, except by or with the consent of the registered proprietor of the copyright of such work or of such book or piece, or his agent authorized in writing; and the provision of the Act of the sixth year of Her Majesty "to amend the Law of Copyright," for the forfeiture, seizure, and destruction of any printed book first published in the United Kingdom wherein there shall be copyright, and reprinted in any country out of the British dominions, and imported into any part of the British dominions by any person not being the proprietor of the copyright, or a person authorized by such proprietor, shall extend and be applicable to all copies of any works of literature and art, and to all translations the importation whereof into any part of the British dominions is prohibited under this Act.

Provisions of 5 & 6 Vict. c. 45, as to forfeiture, &c., of pirated works, &c., to extend to works prohibited to be imported under this Act.

X. The provisions hereinbefore contained shall be incorporated with the International Copyright Act, and shall be read and construed therewith as one Act.

Foregoing provisions and 7 & 8 Vict. c. 12, to be read as one Act.

XI. And whereas Her Majesty has already, by Order in Council under the said International Copyright Act, given effect to certain stipulations contained in the said convention with the French Republic; and it is expedient that the remainder of the stipulations on the part of Her Majesty in the said convention contained should take effect from the passing of this Act without any further Order in Council: During the continuance of the said convention, and so long as the Order in Council already made under the said International Copyright Act remains in force, the provisions hereinbefore contained shall apply to the said convention, and to translations of books and dramatic pieces which are, after the passing of this Act, published or represented in France, in the same manner as if Her Majesty had issued Her Order in Council in pursuance of this Act for giving effect to such convention, and had therein directed that such translations should be protected as hereinbefore mentioned for a period of five years from the date of the first publication or public representation thereof respectively, and as if a period of three months from the publication of such translation were the time mentioned in such Order as the time within which the same must be registered and a copy thereof deposited in the United Kingdom.

French translations to be protected as hereinbefore mentioned, without further Order in Council.

Reduction of Duties.

XII. And whereas an Act was passed in the tenth year of Her present Majesty, intituled "An Act to amend an Act of the seventh and eighth Years of Her present Majesty, for reducing, under certain Circumstances, the Duties payable upon Books and Engravings:" And whereas by the said convention with the French Republic it was stipulated that the duties on books, prints, and drawings published in the territories of the French Republic should be reduced to the amounts specified in the schedule to the said Act of the tenth year of Her present Majesty, chapter fifty-eight: And whereas Her Majesty has, in pursuance of the said convention, and in exercise of the powers given by the said Act, by Order in Council declared that such duties shall be reduced accordingly: And whereas by the said convention it was further stipulated that the said rates of duty should not be raised during the continuance of the said convention; and that if during the continuance of the said convention

Recital of 9 & 10 Vict. c. 58.

any reduction of those rates should be made in favour of books, prints, or drawings published in any other country, such reduction shall be at the same time extended to similar articles published in France: And whereas doubts are entertained whether such last-mentioned stipulations can be carried into effect without the authority of Parliament: Be it enacted, That the said rates of duty so reduced as aforesaid shall not be raised during the continuance of the said convention; and that if during the continuance of the said convention any further reduction of such rates is made in favour of books, prints, or drawings published in any other foreign country, Her Majesty may, by Order in Council, declare that such reduction shall be extended to similar articles published in France; such order to be made and published in the same manner and to be subject to the same provisions as orders made in pursuance of the said Act of the tenth year of Her present Majesty, chapter fifty-eight.

Rates of duty not to be raised during continuance of treaty, and if further reduction is made for other countries it may be extended to France.

XIII. And whereas doubts have arisen as to the construction of the schedule of the Act of the tenth year of Her present Majesty, chapter fifty-eight:

It is hereby declared, That for the purposes of the said Act every work published in the country of export, of which part has been originally produced in the United Kingdom, shall be deemed to be and be subject to the duty payable on "Works originally produced in the United Kingdom, and republished in the country of export," although it contains also original matter not produced in the United Kingdom, unless it shall be proved to the satisfaction of the Commissioners of Her Majesty's Customs by the importer, consignee, or other person entering the same that such original matter is at least equal to the part of the work produced in the United Kingdom, in which case the work shall be subject only to the duty on "Works not originally produced in the United Kingdom."

For removal of doubts as to construction of schedule to 9 & 10 Vict. c. 58.

Lithographs, &c.

Recital of 8 G. 2, c. 13. 7 G. 3, c. 38. 17 G. 3, c. 57. 6 & 7 W. 4, c. 59.

XIV. And whereas by the four several Acts of Parliament following: (that is to say,) an Act of the eighth year of the reign of King George the Second, chapter thirteen; an Act of the seventh year of the reign of King George the Third, chapter thirty-eight: an Act of the seventeenth year of the reign of King George the Third, chapter fifty-seven; and an Act of the seventh year of King William the Fourth, chapter fifty-nine, provision is made for securing to every person who invents, or designs, engraves, etches, or works in mezzotinto or chiaro-oscuro, or

from his own work, design, or invention, causes or procures to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro, any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, and to every person who engraves, etches, or works in mezzotinto or chiaro-oscuro, or causes to be engraved, etched, or worked any print taken from any picture, drawing, model, or sculpture, notwithstanding such print has not been graven or drawn from his own original design, certain copyrights therein defined: And whereas doubts are entertained whether the provisions of the said Acts extend to lithographs and certain other impressions, and it is expedient to remove such doubts:

It is hereby declared, That the provisions of the said Acts are intended to include prints taken by lithography, or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely, and the said Acts shall be construed accordingly.

For removal of doubts as to the provisions of the said Acts including lithographs, prints, &c.

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16 & 17 VICT. c. 107, 1853.

An Act to amend and consolidate the Laws relating to the Customs of the United Kingdom and of the Isle of Man, and certain Laws relating to the Trade and Navigation and the British Possessions.

XLIV. If any goods enumerated or described in the following table of Prohibitions and Restrictions as "Goods absolutely prohibited to be imported" shall be imported or brought into the United Kingdom, or if any goods enumerated or described in such tables as "goods prohibited to be imported except in transit, and subject to such regulations and restrictions as the Commissioners of the Treasury may direct, and duly reported as goods in transit accordingly," shall be imported into the United Kingdom, except in transit, in accordance with such regulations and restrictions, and so reported as aforesaid, or if any goods enumerated or described in such table as "goods subject to certain restrictions on importation," shall be imported or brought into the United Kingdom contrary to the prohibitions or restrictions contained in such table in respect thereof, then, and in every such case, such goods shall be forfeited, and shall be destroyed or otherwise disposed of as the Commissioners of Customs may direct.

Prohibitions and restrictions.

A Table of Prohibitions and Restrictions inwards.

Goods absolutely prohibited to be imported

[*Inter alia.*]

Books wherein the copyright shall be first subsisting, first composed, or written, or printed, in the United Kingdom, and printed or reprinted in any other country, as to which the proprietor of such copyright or his agent shall have given to the Commissioners of Customs a notice in writing that such copyright subsists, such notice also stating when such copyright will expire.

Printed lists of prohibited books to be exposed at the customs houses.

XLVI. The Commissioners of Customs shall cause to be made, and to be publicly exposed, at the several ports in the United Kingdom, and in Her Majesty's possessions abroad, printed lists of all books wherein the copyright shall be subsisting, and as to which the proprietor of such copyright, or his agent, shall have given notice in writing to the said commissioners that such copyright exists, stating in such notice when such copyright expires.

Foreign reprints of books under copyright prohibited.

CLX. Any books wherein the copyright shall be subsisting, first composed or written or printed in the United Kingdom, and printed or reprinted in any other country, shall be and are hereby absolutely prohibited to be imported into the British possessions abroad: Provided always, that no such books shall be prohibited to be imported as aforesaid unless the proprietor of such copyright, or his agent, shall have given notice in writing to the Commissioners of Customs that such copyright subsists, and in such notice shall have stated when the copyright will expire; and the said commissioners shall cause to be made and to be publicly exposed at the several ports in the British possessions abroad, from time to time, printed lists of books respecting which such notice shall have been duly given, and all books imported contrary thereto shall be forfeited; but nothing herein contained shall be taken to prevent Her Majesty from exercising the powers vested in her by the tenth and eleventh Victoria, chapter ninety-five, intituled "An Act to amend the Law relating to the Protection in the Colonies of Works entitled to Copyright in the United Kingdom," to suspend in certain cases such prohibition.

See 18 & 19 Vict. c. 97, § 8.

18 & 19 VICT. c. 96, 1855.

An Act to consolidate certain Acts, and otherwise amend the Laws of the Customs, and an Act to regulate the Office of the Receipt of Her Majesty's Exchequer at Westminster.

Persons complaining of prohibition of books in copyright lists may appeal to a judge in chambers.

XXXIX. If any person shall have cause to complain of the insertion of any book in the lists required by the 46th and 160th sections of "The Customs Consolidation Act, 1853," to be published by the Commissioners of Customs, it shall be lawful for any judge at chambers, on the application of the person so complaining, to issue a summons calling upon the person upon whose notice such book shall have been so inserted to appear before such judge, at a time to be appointed in such summons, to show cause why such book shall not be expunged from such lists, and such judge shall at the time so appointed proceed to hear and determine upon the matter of such summons, and make his order thereon in writing; and upon service of such order, or a certified copy thereof, upon the Commissioners of Customs, or their secretary for the time being, the said commissioners shall expunge such book from the list, or retain the same therein, according to the tenor of such order; and in case such book shall be expunged from such lists the same shall not be deemed to be prohibited under the Table of Prohibitions and Restrictions Inwards contained in the 44th section of the said Act. If at the time appointed in any such summons the person so summoned shall not appear before such judge, then upon proof by affidavit that such summons, or a true copy thereof, has been personally served upon or left at the last known or usual place of abode of the person so summoned, or in case the person to whom such summons was directed and his place of abode cannot be found, that due diligence has been used to ascertain the same, such judge shall be at liberty to proceed *ex parte* to hear and determine the matter; but if either party be dissatisfied with such order he may apply to the superior court of which such judge is a member to revise such order, and make such further order thereon as such court may see fit.

Declaration of truth of notice of copyright.

XL. From and after the passing of this Act no book shall be inserted in any list published by the Commissioners of Customs, under the 46th and 160th sections of "The Customs Consolidation Act, 1853," until the person giving the notice thereby required shall have made and subscribed a declaration before the collector

of the customs or any justice of the peace, at some port or place in the United Kingdom, that the contents of such notice are true: Provided always, that nothing in this Act contained shall prevent, prejudice, or affect any proceeding at law or in equity which any party, aggrieved by reason of the insertion of any book in any such list in pursuance of any such notice, or upon the removal of any book from such list pursuant to any such order as aforesaid, or by reason of any declaration to be made under the authority of this Act being false, might or would otherwise have against any party giving such notice, or obtaining any such order, or making such false declaration as aforesaid.

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21 & 22 Vict. c. 70.

An Act to amend the Act of the fifth and sixth Years of Her present Majesty, to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture.

[2nd August, 1858.]

5 & 6 Vict. c. 100.

Whereas by an Act passed in the fifth and sixth years of the reign of Her present Majesty, intituled "An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture," hereinafter called "The Copyright of Designs Act, 1842," there was granted to the proprietor of any new and original design in respect of the application of any such design to ornamenting any article of manufacture contained in the tenth class therein mentioned, with the exceptions therein mentioned, the sole right to apply the same to any articles of manufacture, or any such substances as therein mentioned, for the term of nine calendar months, to be computed from the time of such design being registered according to the said Act: And whereas it is expedient that the term of copyright, in respect of the application of designs to the ornamenting of articles of manufacture comprised in the said tenth class, should be extended, and that some of the provisions of the said Act should be altered, and that further provision should be made for the prevention of piracy, and for the protection of copyright in designs under the Acts in the schedule hereto annexed, and hereinafter called "The Copyright of Designs Acts:" Be it therefore enacted by the Queen's most

excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: that is to say,

Short title.

I. In citing this Act for any purpose whatsoever it shall be sufficient to use the expression "The Copyright of Designs Act, 1858."

Copyright of Designs Acts and this Act to be as one.

II. The said Copyright of Designs Acts and this Act shall be construed together as one Act.

Extension of term of copyright as to the tenth class mentioned in 5 & 6 Vict. c. 100.

III. In respect of the application of any new and original design for ornamenting any article of manufacture contained in the tenth class mentioned in "The Copyright of Designs Act, 1842," the term of copyright shall be three years, to be computed from the time of such design being registered, in pursuance of the provisions of "The Copyright of Designs Acts," and of this Act: Provided nevertheless, that the term of such copyright shall expire on the thirty-first of December, in the second year after the year in which such design was registered, whatever may be the day of such registration.

Copyright not to be prejudiced if articles marked.

IV. Nothing in the fourth section of "The Copyright of Designs Act, 1842," shall extend or be construed to extend to deprive the proprietor of any new and original design applied to ornamenting any article of manufacture contained in the said tenth class of the benefits of "The Copyright of Designs Acts" or of this Act: Provided there shall have been printed on such articles at each end of the original piece thereof the name and address of such proprietor, and the word "Registered," together with the years for which such design was registered.

Pattern may be registered.

V. And be it declared, That the registration of any pattern or portion of an article of manufacture to which a design is applied, instead or in lieu of a copy, drawing, print, specification, or description in writing, shall be as valid and effectual to all intents and purposes as if such copy, drawing, print, specification, or description in writing had been furnished to the registrar under "The Copyright of Designs Acts."

Proprietor to give the number and date of registration.

VI. The proprietor of such extended copyright shall, on application by or on behalf of any person producing or vending any article of manufacture so marked, give the number and the date of the registration of any article of manufacture so marked; and any proprietor so applied to who shall not give the number and date of such registration shall be subject to a

penalty of ten pounds, to be recovered by the applicant, with full costs of suit, in any court of competent jurisdiction.

Penalty on issuing articles not so marked.

VII. Any person who shall wilfully apply any mark of registration to any article of manufacture in respect whereof the application of the design thereto shall not have been registered, or after the term of copyright shall have expired, or who shall, during the term of copyright, without the authority of the proprietor of any registered design, wilfully apply the mark printed on the piece of any article of manufacture, or who shall knowingly sell or issue any article of manufacture to which such mark has been wilfully and without due authority applied, shall be subject to a penalty of ten pounds, to be recovered by the proprietor of such design, with full costs of suit, in any court of competent jurisdiction.

Proceedings for prevention of piracy may be instituted in the County Courts.

VIII. Notwithstanding anything in "The Copyright of Designs Acts," it shall be lawful for the proprietor of copyright in any design under "The Copyright of Designs Acts" or this Act to institute proceedings in the county court of the district within which the piracy is alleged to have been committed, for the recovery of damages which he may have sustained by reason of such piracy: Provided always, that in any such proceedings the plaintiff shall deliver with his plaint a statement of particulars as to the date and title or other description of the registration whereof the copyright is alleged to be pirated, and as to the alleged piracy; and the defendant, if he intends at the trial to rely as a defence on any objection to such copyright, or to the title of the proprietor therein, shall give notice in the manner provided in the seventy-sixth section of the Act of the ninth and tenth Victoria, chapter ninety-five, of his intention to rely on such special defence, and shall state in such notice the date of publication and other particulars of any designs whereof prior publication is alleged, or of any objection to such copyright, or to the title of the proprietor to such copyright; and it shall be lawful for the judge of the county court, at the instance of the defendant or plaintiff respectively, to require any statement or notice so delivered by the plaintiff or of the defendant respectively to be amended in such manner as the said judge may think fit.

The proceedings of County Courts Acts

IX. The provisions of an Act of the ninth and tenth Victoria, chapter ninety-five, and of the twelfth and thirteenth Victoria, chapter one hundred, as to proceedings in any plaint, and as to

appeal, and as to writs of prohibition, shall, so far as they are not inconsistent with or repugnant to the provisions of this Act, be applicable to any proceedings for piracy of copyright of designs under the said Copyright of Designs Acts or this Act. applicable to proceedings for piracy of designs.

SCHEDULE REFERRED TO IN THE FOREGOING ACT.

5 & 6 Vict. c. 100. [10 Aug. 1842.]	An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture.
6 & 7 Vict. c. 65. [22 Aug. 1843.]	An Act to amend the Laws relating to the Copyright of Designs.
13 & 14 Vict. c. 104. [14 Aug. 1850.]	An Act to extend and amend the Acts relating to the Copyright of Designs.
14 Vict. c. 8. [11 April, 1851.]	An Act to extend the Provisions of the Designs Act, 1850, and to give Protection from Piracy to Persons exhibiting new Inventions in the Exhibition of the Works of Industry of all Nations in One thousand eight hundred and fifty-one.

24 & 25 VICT. c. 73.

An Act to amend the Law relating to the Copyright of Designs.

[6th August, 1861.]

WHEREAS by an Act passed in the session holden in the fifth and sixth years of the reign of Her present Majesty, chapter one hundred, intituled "An Act to consolidate and amend the Laws relating to the Copyright of Designs for ornamenting Articles of Manufacture," it was enacted, that the proprietor of every such design as therein mentioned, not previously published either within the United Kingdom of Great Britain and Ireland or elsewhere, should have the sole right to apply the same to any articles of manufacture, or to any such substances as therein mentioned, provided the same were done within the United Kingdom of Great Britain and Ireland, for the respective terms therein mentioned, and should have such copyright in such designs as therein provided: And whereas divers Acts have since been passed extending or amending the said recited Acts: And whereas it is expedient that the provisions of the said recited Act, and of all Acts extending or amending the same, should apply to designs, and to the application of such designs, within the meaning of the said Acts, whether such 5 & 6 Vict. c. 100.

application be effected within the United Kingdom or elsewhere: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

5 & 6 Vict. c. 100, and other Acts relating to copyright of designs, extended.

1. That the said recited Act, and all Acts extending or amending the same, shall be construed as if the words "provided the same be done within the United Kingdom of Great Britain and Ireland" had not been contained in the said recited Act; and the said recited Act, and all Acts extending or amending the same, shall apply to every such design as therein referred to, whether the application thereof be done within the United Kingdom or elsewhere, and whether the inventor or proprietor of such design be or be not a subject of Her Majesty.

Application of Acts.

2. That the said several Acts shall not be construed to apply to the subjects of Her Majesty only.

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25 & 26 Vict. c. 68.

An Act for amending the Law relating to Copyright in Works of the Fine Arts, and for repressing the Commission of Fraud in the Production and Sale of such Works.

[29th July, 1862.]

Whereas by law, as now established, the authors of paintings, drawings, and photographs have no copyright in such their works, and it is expedient that the law should in that respect be amended: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Copyright in works hereafter made or sold to vest in the author for his life and for seven years after his death.

I. The author, being a British subject or resident within the dominions of the Crown, of every original painting, drawing, and photograph which shall be or shall have been made either in the British dominions or elsewhere, and which shall not have been sold or disposed of before the commencement of this Act, and his assigns, shall have the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing, and the design thereof, or such photograph, and the negative thereof, by any means and of any size, for the term of the natural life of such author and seven years after his death;

provided that when any painting or drawing, or the negative of any photograph, shall for the first time after the passing of this Act be sold or disposed of, or shall be made or executed for or on behalf of any other person for a good or a valuable consideration, the person so selling or disposing of or making or executing the same shall not retain the copyright thereof, unless it be expressly reserved to him by agreement in writing, signed, at or before the time of such sale or disposition, by the vendee or assignee of such painting or drawing, or of such negative of a photograph, or by the person for or on whose behalf the same shall be so made or executed, but the copyright shall belong to the vendee or assignee of such painting or drawing, or of such negative of a photograph, or to the person for or on whose behalf the same shall have been made or executed; nor shall the vendee or assignee thereof be entitled to any such copyright, unless, at or before the time of such sale or disposition, an agreement in writing, signed by the person so selling or disposing of the same, or by his agent duly authorised, shall have been made to that effect.

Copyright not to prevent the representation of the same subjects in other works.

II. Nothing herein contained shall prejudice the right of any person to copy or use any work in which there shall be no copyright, or to represent any scene or object, notwithstanding that there may be copyright in some representation of such scene or object.

Assignments, licences, &c., to be in writing.

III. All copyright under this Act shall be deemed personal or moveable estate, and shall be assignable at law, and every assignment thereof, and every licence to use or copy by any means or process the design or work which shall be the subject of such copyright, shall be made by some note or memorandum in writing, to be signed by the proprietor of the copyright, or by his agent appointed for that purpose in writing.

Register of proprietors of copyright in paintings, drawings, and photographs to be kept at Stationers' Hall as in 5 & 6 Vict. c. 45.

IV. There shall be kept at the hall of the Stationers' Company, by the officer appointed by the said company for the purposes of the Act passed in the sixth year of Her present Majesty, intituled "An Act to amend the Law of Copyright," a book or books, entitled "The Register of Proprietors of Copyright in Paintings, Drawings, and Photographs," wherein shall be entered a memorandum of every copyright to which any person shall be entitled under this Act, and also of every subsequent assignment of any such copyright; and such memorandum shall contain a statement of the date of such agreement or assignment,

and of the names of the parties thereto, and of the name and place of abode of the person in whom such copyright shall be vested by virtue thereof, and of the name and place of abode of the author of the work in which there shall be such copyright, together with a short description of the nature and subject of such work, and in addition thereto, if the person registering shall so desire, a sketch, outline, or photograph of the said work; and no proprietor of any such copyright shall be entitled to the benefit of this Act until such registration, and no action shall be sustainable nor any penalty be recoverable in respect of anything done before registration.

Certain enactments of 5 & 6 Vict. c. 45 to apply to the books to be kept under this Act.

V. The several enactments in the said Act of the sixth year of Her present Majesty contained, with relation to keeping the register book thereby required, and the inspection thereof, the searches therein, and the delivery of certified and stamped copies thereof, the reception of such copies in evidence, the making of false entries in the said book, and the production in evidence of papers falsely purporting to be copies of entries in the said book, the application to the courts and judges by persons aggrieved by entries in the said book, and the expunging and varying such entries, shall apply to the book or books to be kept by virtue of this Act, and to the entries and assignments of copyright and proprietorship therein under this Act, in such and the same manner as if such enactments were here expressly enacted in relation thereto, save and except that the forms of entry prescribed by the said Act of the sixth year of Her present Majesty may be varied to meet the circumstances of the case, and that the sum to be demanded by the officer of the said company of stationers for making any entry required by this Act shall be one shilling only.

Penalties on infringement of copyright.

VI. If the author of any painting, drawing, or photograph in which there shall be subsisting copyright, after having sold or disposed of such copyright, or if any other person, not being the proprietor for the time being of copyright in any painting, drawing, or photograph, shall, without the consent of such proprietor, repeat, copy, colourably imitate, or otherwise multiply for sale, hire, exhibition, or distribution, or cause or procure to be repeated, copied, colourably imitated, or otherwise multiplied for sale, hire, exhibition, or distribution, any such work or the design thereof, or, knowing that any such repetition, copy, or other imitation has been unlawfully made, shall import into any

part of the United Kingdom, or sell, publish, let to hire, exhibit, or distribute, or offer for sale, hire, exhibition, or distribution, or cause or procure to be imported, sold, published, let to hire, distributed, or offered for sale, hire, exhibition, or distribution, any repetition, copy, or imitation of the said work, or of the design thereof, made without such consent as aforesaid, such person for every such offence shall forfeit to the proprietor of the copyright for the time being a sum not exceeding ten pounds; and all such repetitions, copies, and imitations made without such consent as aforesaid, and all negatives of photographs made for the purpose of obtaining such copies, shall be forfeited to the proprietor of the copyright.

Penalties on fraudulent productions and sales.

VII. No person shall do or cause to be done any or either of the following acts: that is to say,

First, no person shall fraudulently sign or otherwise affix, or fraudulently cause to be signed or otherwise affixed, to or upon any painting, drawing, or photograph, or the negative thereof, any name, initials, or monogram:

Secondly, no person shall fraudulently sell, publish, exhibit, or dispose of, or offer for sale, exhibition, or distribution, any painting, drawing, or photograph, or negative of a photograph, having thereon the name, initials, or monogram of a person who did not execute or make such work:

Thirdly, no person shall fraudulently utter, dispose of, or put off, or cause to be uttered or disposed of, any copy or colourable imitation of any painting, drawing, or photograph, or negative of a photograph, whether there shall be subsisting copyright therein or not, as having been made or executed by the author or maker of the original work from which such copy or imitation shall have been taken:

Fourthly, where the author or maker of any painting, drawing, or photograph, or negative of a photograph, made either before or after the passing of this Act, shall have sold or otherwise parted with the possession of such work, if any alteration shall afterwards be made therein by any other person, by addition or otherwise, no person shall be at liberty, during the life of the author or maker of such work, without his consent, to make or knowingly to sell or publish or offer for sale, such work or any copies of such

work so altered as aforesaid, or of any part thereof, as or for the unaltered work of such author or maker:

Penalties. Every offender under this section shall, upon conviction, forfeit to the person aggrieved a sum not exceeding ten pounds, or not exceeding double the full price, if any, at which all such copies, engravings, imitations, or altered works shall have been sold or offered for sale; and all such copies, engravings, imitations, or altered works shall be forfeited to the person, or the assigns or legal representatives of the person, whose name, initials, or monogram shall be so fraudulently signed or affixed thereto, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid: Provided always, that the penalties imposed by this section shall not be incurred unless the person whose name, initials, or monogram shall be so fraudulently signed or affixed, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid, shall have been living at or within twenty years next before the time when the offence may have been committed.

Recovery of pecuniary penalties: VIII. All pecuniary penalties which shall be incurred, and all such unlawful copies, imitations, and all other effects and things as shall have been forfeited by offenders, pursuant to this Act, and pursuant to any Act for the protection of copyright engravings, may be recovered by the person hereinbefore and in any such Act as aforesaid empowered to recover the same respectively, and hereinafter called the complainant or the complainer, as follows:

In England and Ireland: In England and Ireland, either by action against the party offending, or by summary proceeding before any two justices having jurisdiction where the party offending resides:

In Scotland. In Scotland, by action before the Court of Session in ordinary form, or by summary action before the sheriff of the county where the offence may be committed or the offender resides, who, upon proof of the offence or offences, either by confession of the party offending, or by the oath or affirmation of one or more credible witnesses, shall convict the offender, and find him liable to the penalty or penalties aforesaid, as also in expenses; and it shall be lawful for the sheriff, in pronouncing such judgment for the penalty or penalties and

costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding: Provided always, that it shall be lawful to the sheriff, in the event of his dismissing the action and assoilzieing the defender, to find the complainer liable in expenses, and any judgment so to be pronounced by the sheriff in such summary application shall be final and conclusive, and not subject to review by advocation, suspension, reduction, or otherwise.

Superior Courts of Record in which any action is pending may make an order for an injunction, inspection, or account.

IX. In any action in any of Her Majesty's superior Courts of Record at Westminster and in Dublin for the infringement of any such copyright as aforesaid, it shall be lawful for the court in which such action is pending, if the court be then sitting, or if the court be not sitting then for a judge of such court, on the application of the plaintiff or defendant respectively, to make such order for an injunction, inspection, or account, and to give such direction respecting such action, injunction, inspection, and account, and the proceedings therein respectively, as to such court or judge may seem fit.

Importation of pirated works prohibited.

X. All repetitions, copies, or imitations of paintings, drawings, or photographs, wherein or in the design whereof there shall be subsisting copyright under this Act, and all repetitions, copies, and imitations of the design of any such painting or drawing, or of the negative of any such photograph, which, contrary to the provisions of this Act, shall have been made in any foreign state, or in any part of the British dominions, are hereby absolutely prohibited to be imported into any part of the United Kingdom, except by or with the consent of the proprietor of the copyright thereof, or his agent authorized in writing; and if the proprietor of any such copyright, or his agent, shall declare that any goods imported are repetitions, copies, or imitations of any such painting, drawing, or photograph, or of the negative of any such photograph, and so prohibited as aforesaid, then such goods may be detained by the officers of Her Majesty's Customs.

Application in such cases of Customs Acts.

Saving of right to bring action for damages.

XI. If the author of any painting, drawing, or photograph, in which there shall be subsisting copyright, after having sold or otherwise disposed of such copyright, or if any other person, not being the proprietor for the time being of such copyright, shall, without the consent of such proprietor, repeat, copy, colourably

imitate, or otherwise multiply, or cause or procure to be repeated, copied, colourably imitated, or otherwise multiplied, for sale, hire, exhibition, or distribution, any such work or the design thereof, or the negative of any such photograph, or shall import or cause to be imported into any part of the United Kingdom, or sell, publish, let to hire, exhibit, or distribute, or offer for sale, hire, exhibition, or distribution, or cause or procure to be sold, published, let to hire, exhibited, or distributed, or offered for sale, hire, exhibition, or distribution, any repetition, copy, or imitation of such work, or the design thereof, or the negative of any such photograph, made without such consent as aforesaid, then every such proprietor, in addition to the remedies hereby given for the recovery of any such penalties, and forfeiture of any such things as aforesaid, may recover damages by and in a special action on the case, to be brought against the person so offending, and may in such action recover and enforce the delivery to him of all unlawful repetitions, copies, and imitations, and negatives of photographs, or may recover damages for the retention or conversion thereof: Provided that nothing herein contained, nor any proceeding, conviction, or judgment, for any act hereby forbidden, shall affect any remedy which any person aggrieved by such act may be entitled to either at law or in equity.

Provisions of 7 & 8 Vict. c. 12 to be considered as included in this Act.

XII. This Act shall be considered as including the provisions of the Act passed in the session of Parliament held in the seventh and eighth years of Her present Majesty, intituled "An Act to amend the Law relating to International Copyright," in the same manner as if such provisions were part of this Act.

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32 & 33 Vict. c. 24.

An Act to repeal certain Enactments relating to Newspapers, Pamphlets, and other Publications, and to Printers, Typefounders, and Reading Rooms.

[12th July, 1869.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The Acts and parts of Acts described in the first schedule to this Act are hereby repealed, but the provisions of the said Acts which are set out in the second schedule to this Act shall continue in force in the same manner as if they were enacted in the body of this Act; and this Act shall not affect the validity or invalidity of anything already done or suffered, or any right or title already acquired or accrued, or any remedy or proceeding in respect thereof, and all such remedies and proceedings may be had and continued in the same manner as if this Act had not passed. Acts and parts of Acts in first schedule repealed, except as in second schedule.

2. This Act may be cited as "The Newspapers, Printers, and Reading Rooms Repeal Act, 1869." Short title.

FIRST SCHEDULE.

DATE OF ACT.	TITLE OF ACT, AND PART REPEALED.
36 Geo. 3, c. 8.	An Act for the more effectually preventing seditious meetings and assemblies.
39 Geo. 3, c. 79, in part.	An Act for the more effectual suppression of societies established for seditious and treasonable purposes, and for better preventing treasonable and seditious practices – – In part, namely,—sections fifteen to thirty-three, both inclusive, and so much of sections thirty-four to thirty-nine as relates to the above-mentioned sections.
51 Geo. 3, c. 65.	An Act to explain and amend an Act passed in the thirty-ninth year of His Majesty's reign, intituled "An Act for the more effectual suppression of societies established for seditious and treasonable purposes, and for better preventing treasonable and seditious practices," so far as respects certain penalties on printers and publishers.
55 Geo. 3, c. 101, in part.	An Act to regulate the collection of stamp duties and matters in respect of which licences may be granted by the Commissioner of Stamps in Ireland – In part, namely, section thirteen.
60 Geo. 3 & 1 Geo. 4, c. 9.	An Act to subject certain publications to the duties of stamps upon newspapers, and to make other regulations for restraining the abuses arising from the publication of blasphemous and seditious libels.

DATE OF ACT.	TITLE OF ACT, AND PART REPEALED.	
11 Geo. 4 & 1 Will. 4, c. 73.	An Act to repeal so much of an Act of the sixtieth year of His late Majesty King George the Third, for the more effectual prevention and punishment of blasphemous and seditious libels, as relates to the sentence of banishment for the second offence, and to provide some further remedy against the abuse of publishing libels.	
6 & 7 Will. 4, c. 76, in part.	An Act to reduce the duties on newspapers, and to amend the laws relating to the duties on newspapers and advertisements - -	In part, namely,— Except sections one to four (both inclusive), sections thirty-four and thirty-five, and the schedule.
2 & 3 Vict. c. 12.	An Act to amend an Act of the thirty-ninth year of King George the Third, for the more effectual suppression of societies established for seditious and treasonable purposes, and for preventing treasonable and seditious practices, and to put an end to certain proceedings now pending under the said Act.	
5 & 6 Vict. c. 82, in part.	An Act to assimilate the stamp duties in Great Britain and Ireland, and to make regulations for collecting and managing the same until the tenth day of October, One thousand eight hundred and forty-five - -	In part, namely,— The following words in section twenty: "and also licence to any person to keep any printing presses and types for printing in Ireland."
9 & 10 Vict. c. 33, in part.	An Act to amend the laws relating to corresponding societies and the licensing of lecture rooms - -	In part, namely,— So far as it relates to any proceedings under the enactments repealed by this schedule.
16 & 17 Vict. c. 59 in part.	An Act to repeal certain stamp duties and to grant others in lieu thereof, to amend the laws relating to stamp duties, and to make perpetual certain stamp duties in Ireland -	In part, namely,— So much of section twenty as makes perpetual the provisions of 5 & 6 Vict. c. 82 repealed by this Act.

SECOND SCHEDULE.

The enactments in this Schedule, with the exception of sect. 19 of 6 & 7 Will. 4. c. 76, do not apply to Ireland.

39 Geo. 3. c. 79. Section 28.

Nothing in this Act contained shall extend or be construed to extend to any papers printed by the authority and for the use of either House of Parliament. — Not to extend to papers printed by authority of Parliament.

Section 29.

Every person who shall print any paper for hire, reward, gain, or profit, shall carefully preserve and keep one copy (at least) of every paper so printed by him or her, on which he or she shall write, or cause to be written or printed, in fair and legible characters, the name and place of abode of the person or persons by whom he or she shall be employed to print the same; and every person printing any paper for hire, reward, gain, or profit who shall omit or neglect to write, or cause to be written or printed as aforesaid, the name and place of his or her employer on one of such printed papers, or to keep or preserve the same for the space of six calendar months next after the printing thereof, or to produce and show the same to any justice of the peace who within the said space of six calendar months shall require to see the same, shall for every such omission, neglect, or refusal forfeit and lose the sum of twenty pounds. — Printers to keep a copy of every paper they print, and write thereon the name and abode of their employer. Penalty of 20*l.* for neglect or refusing to produce the copy within six months.

Section 31.

Nothing herein contained shall extend to the impression of any engraving, or to the printing by letter-press of the name, or the name and address, or business or profession, of any person, and the articles in which he deals, or to any papers for the sale of estates or goods by auction or otherwise. — *Not to extend* to impressions of engravings or the printing names and addresses.

Section 34.

No person shall be prosecuted or sued for any penalty imposed by this Act, unless such prosecution shall be commenced, or such action shall be brought, within three calendar months next after such penalty shall have been incurred. — Prosecutions to be commenced within three months after penalty is incurred.

Part of Section 35.

And any pecuniary penalty imposed by this Act, and not exceeding the sum of twenty pounds, shall and may be recovered before any justice or justices of the peace for the county, stewartry, riding, division, city, town, or place, in which the same shall be incurred, or the person having incurred the same shall happen to be, in a summary way. — Recovery of penalties.

Section 36.

All pecuniary penalties hereinbefore imposed by this Act shall, when recovered in a summary way before any justice, be applied and disposed of in manner hereinafter mentioned; that is to say, one moiety thereof to the informer before any justice, and the other moiety thereof to His Majesty, his heirs and successors. — Application of penalties.

SECOND SCHEDULE—*continued.*

51 Geo. 3. c. 65. Section 3.

Name and residence of printers not required to be put to bank notes, bills, &c., or to any paper printed by authority of any public board or public office.

Nothing in the said Act of the thirty-ninth year of King George the Third, chapter seventy-nine, or in this Act contained shall extend or be construed to extend to require the name and residence of the printer to be printed upon any bank note, or bank post bill of the Governor and Company of the Bank of England, upon any bill of exchange, or promissory note, or upon any bond or other security for payment of money, or upon any bill of lading, policy of insurance, letter of attorney, deed, or agreement, or upon any transfer or assignment of any public stocks, funds, or other securities, or upon any transfer or assignment of the stocks of any public corporation or company authorized or sanctioned by Act of Parliament, or upon any dividend warrant of or for any such public or other stocks, funds, or securities, or upon any receipt for money or goods, or upon any proceeding in any court of law or equity, or in any inferior court, warrant, order, or other papers printed by the authority of any public board or public officer in the execution of the duties of their respective offices, notwithstanding the whole or any part of the said several securities, instruments, proceedings, matters, and things aforesaid shall have been or shall be printed.

6 & 7 Will. 4. c. 76. Section 19.

Discovery of proprietors, printers, or publishers of newspapers may be enforced by bill, &c.

If any person shall file any bill in any court for the discovery of the name of any person concerned as printer, publisher, or proprietor of any newspaper, or of any matters relative to the printing or publishing of any newspaper, in order the more effectually to bring or carry on any suit or action for damages alleged to have been sustained by reason of any slanderous or libellous matter contained in any such newspaper respecting such person, it shall not be lawful for the defendant to plead or demur to such bill, but such defendant shall be compellable to make the discovery required: Provided always, that such discovery shall not be made use of as evidence or otherwise in any proceeding against the defendant, save only in that proceeding for which the discovery is made.

2 & 3 Vict. c. 12. Section 2.

Penalty upon printers for not printing their name and residence on every paper or book, and on persons publishing the same.

Every person who shall print any paper or book whatsoever which shall be meant to be published or dispersed, and who shall not print upon the front of every such paper, if the same shall be printed on one side only, or upon the first or last leaf of every paper or book which shall consist of more than one leaf, in legible characters, his or her name and usual place of abode or business, and every person who shall publish or disperse, or assist in publishing or dispersing, any printed paper or book on which the name and place of abode of the person printing the same shall not be printed as aforesaid, shall for every copy of such paper so printed by him or her forfeit a sum not more than five pounds: Provided always, that nothing herein contained shall be construed to impose any penalty upon any person for printing any paper excepted out of the operation of the said Act of the thirty-ninth year of King George the Third chapter seventy-nine, either in the said Act or by any Act made for the amendment thereof.

SECOND SCHEDULE—*continued.*

Section 3.

In the case of books or papers printed at the University Press of Oxford or the Pitt Press of Cambridge, the printer, instead of printing his name thereon, shall print the following words: "Printed at the University Press, Oxford," or "The Pitt Press, Cambridge," as the case may be.

As to books or papers printed at the University presses.

Section 4.

Provided always, that it shall not be lawful for any person or persons whatsoever to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information in any of Her Majesty's courts, or before any justice or justices of the peace, against any person or persons for the recovery of any fine, penalty, or forfeiture made or incurred or which may hereafter be incurred under the provisions of this Act, unless the same be commenced, prosecuted, entered, or filed in the name of Her Majesty's Attorney-General or Solicitor-General in that part of Great Britain called England, or Her Majesty's Advocate for Scotland (as the case may be respectively); and if any action, bill, plaint, or information shall be commenced, prosecuted, or filed in the name or names of any other person or persons than is or are in that behalf before mentioned, the same and every proceeding thereupon had are hereby declared and the same shall be null and void to all intents and purposes.

No actions for penalties to be commenced except in the name of the Attorney or Solicitor General in England or the Queen's Advocate in Scotland.

9 & 10 Vict. c. 33. Section 1.

It shall not be lawful for any person or persons to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, or information in any of Her Majesty's courts, or before any justice or justices of the peace, against any person or persons for the recovery of any fine which may hereafter be incurred under the provisions of the Act of the thirty-ninth year of King George the Third, chapter seventy-nine, set out in this Act unless the same be commenced, prosecuted, entered, or filed in the name of Her Majesty's Attorney-General or Solicitor-General in England or Her Majesty's Advocate in Scotland; and every action, bill, plaint, or information which shall be commenced, prosecuted, entered, or filed in the name or names of any other person or persons than is in that behalf before mentioned, and every proceeding thereupon had, shall be null and void to all intents and purposes.

Proceedings shall not be commenced unless in the name of the law officers of the Crown.

(B.)

Her Majesty's Orders in Council consequent upon the Arrangement and Settlement of an International Copyright Treaty with Prussia. (Similar orders were issued on the adjustment of the convention with Brunswick, 24th April, 1847, with Hanover, 30th October, 1847, with the Thuringian Union, 10th August, 1847, &c.)

At the Court at Osborne House, Isle of Wight, the 27th day of August, 1846.

Present—

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS a treaty has been concluded between Her Majesty and His Majesty the King of Prussia, whereby due protection has been secured within the Prussian dominions for the authors of books, dramatic works, or musical compositions, and the inventors, designers, or engravers of prints, and articles of sculpture, and the authors, inventors, designers, or engravers of any other works whatsoever of literature and the fine arts, in which the laws of Great Britain and of Prussia do now, or may hereafter, give their respective subjects the privileges of copyright, and for the lawful representatives or assigns of such authors, inventors, designers, or engravers, with regard to any such works first published within the dominions of Her Majesty.

Now, therefore, Her Majesty, by and with the advice and consent of Her Privy Council, and by virtue of the authority committed to Her by an Act, passed in the session of Parliament holden in the seventh and eighth years of her reign, intituled "An Act to amend the Law relating to International Copyright," doth order, and it is hereby ordered, that, from and after the first day of September, one thousand eight hundred and forty-six, the authors, inventors, designers, engravers, and makers of any of the following works (that is to say), books, prints, articles of sculpture, dramatic works, musical compositions, and any other works of literature and the fine arts, in which the laws of Great Britain give to British subjects the privilege of copyright, and the executors, administrators, and assigns of such authors, inventors, designers, engravers, and makers respectively, shall, as respects works first published

within the dominions of Prussia, after the said first day of September, one thousand eight hundred and forty-six, have the privilege of copyright therein for a period equal to the term of copyright which authors, inventors, designers, engravers, and makers of the like works respectively, first published in the United Kingdom, are by law intitled to; provided such books, dramatic pieces, musical compositions, prints, articles of sculpture, or other works of art, have been registered, and copies thereof have been delivered, according to the requirements of the said recited Act, within twelve months after the first publication thereof in any part of the Prussian dominions. And it is hereby further ordered, that the authors of dramatic pieces and musical compositions, which shall, after the said first day of September, one thousand eight hundred and forty-six, be first publicly represented or performed within the dominions of Prussia shall have the sole liberty of representing or performing in any part of the British dominions such dramatic pieces or musical compositions, during a period equal to the period during which authors of dramatic pieces and musical compositions first publicly represented or performed in the United Kingdom are entitled by law to the sole liberty of representing or performing the same; provided such dramatic pieces, or musical compositions, have been registered, and copies thereof have been delivered according to the requirements of the said recited Act, within twelve calendar months after the time of their being first represented or performed in any part of the Prussian dominions.

And the Right Honourable the Lords Commissioners of Her Majesty's Treasury are to give the necessary orders herein accordingly.

(Signed)

C. C. GREVILLE.

At the Court at Osborne House, Isle of Wight, the 27th day of August, 1846.

Present—

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by an Act passed in the present session of Parliament, intituled "An Act to amend an Act of the seventh and eighth years of Her present Majesty, for reducing, under certain circum-

stances, the duties payable upon Books and Engravings," it is enacted, that whenever Her Majesty has, by virtue of any authority vested in her for that purpose, declared that the authors, inventors, designers, engravers, or makers of any books, prints, or other works of art, first published in any foreign country or countries, shall have the privilege of copyright therein, it shall be lawful for Her Majesty, if she thinks fit, from time to time, by any Order in Council, to declare that from and after a day to be named in such Order, in lieu of the customs, from time to time payable, on the importation into the United Kingdom of books, prints, and drawings, there shall be payable only such duties of customs as are mentioned in the said Act.

And whereas Her Majesty hath this day, by virtue of the authority vested in Her for that purpose, declared that the authors, inventors, designers, engravers, and makers of books, prints, and certain other works of art, first published within the dominions of Prussia, shall have the privilege of copyright therein.

Now, therefore, Her Majesty, by and with the advice and consent of Her Privy Council, and in virtue of the authority committed to her by the said recited Act, doth order, and it is hereby ordered, that, from and after the first day of September, one thousand eight hundred and forty-six, in lieu of the duties now payable upon books, prints, and drawings, published at any place within the dominion of Prussia, there shall be payable only the duties of customs following (that is to say):

On books originally produced in the United Kingdom, and republished at any place within the dominions of Prussia, a duty of two pounds ten shillings per hundred-weight. On prints or drawings, plain or coloured, published at any place within the dominions of Prussia:

	s.	*d.*
Single, each	0	$0\frac{1}{2}$
Bound or sewn, the dozen . . .	0	$1\frac{1}{2}$

And the Right Honourable the Lords Commissioners of Her Majesty's Treasury are to give the necessary orders herein accordingly.

(Signed)

C. C. Greville.

(C.)

DIRECTIONS ISSUED BY THE BOARD OF TRADE FOR REGISTRATION OF DESIGNS.

ORNAMENTAL DESIGNS.

Directions for registering and searching.

PERSONS proposing to register a design for ornamenting an article of manufacture, must bring or send to the Designs Office:—

1. TWO EXACTLY SIMILAR *copies*, *drawings* (or *tracings*), NOT IN PENCIL, *photographs*, or *prints* thereof, with the proper fees.
2. THE NAME AND ADDRESS of the proprietor or proprietors, or the title of the firm under which he or they may be trading, together with their place of abode, or place of carrying on business, *distinctly written or printed.*
3. THE NUMBER of the class in respect of which such registration is intended to be made, except it be for sculpture.

The aforesaid *copies* may consist of portions of the manufactured articles (*except carpets, oil-cloths, and woollen shawls*), when such can conveniently be done (as in the case of *paper-hangings, calico prints, &c.*), which, as well as the *drawings* or *tracings* (which must be fixed), or *prints* of the design, to be furnished when the article is of such a nature as not to admit of being pasted in a book, *must*, whether coloured or not, *be facsimiles of each other.*

Should paper-hangings or furnitures exceed 42 inches in length by 23 inches in breadth, drawings will be required, but they must not exceed these dimensions.

Applications for registering may be made in the following form:—

Application to register.

(Blank Forms may be obtained at the Office.)

C.D. Works, 187

You are hereby requested to register, provisionally * the accompanying ornamental designs (*in Class* 1, [2, 3, 4, &c.,]) (*or for sculpture*)† in the name of (‡ *A. B. of , of* ,) or, (*A. B. of , and C. D. of , &c., trading under the style or firm of B. D. & Co., of , of , of* ,) who claim to be the proprietors thereof, and to return the same (*if sent by post*), directed to , (*if brought by hand*) to the bearer of the official acknowledgment for the same.

To the Registrar of Designs, Designs Office, London. (Signed) B. D. & Co., by J. F.

The person bringing a design must take an acknowledgment for it,

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* If not provisionally, strike out the word "provisionally."

† Here insert "for sculpture," if for sculpture, or the class or classes.

‡ Insert here the name and address of the proprietor, in the form in which it is to be entered on the certificate.

which will be delivered to him on payment of the proper fees. This acknowledgment must be produced on application for the certified copy, which will be returned in exchange for the same.

A design may be registered in respect of one or more of the above classes, according as it is intended to be employed in one or more species of manufacture, but a separate fee must be paid, and two exactly similar copies supplied, on account of each separate class, and all such registrations must be made at the same time.

After the design has been registered, one of the two copies, drawings (or tracings), or prints, will be filed at the office, and the other returned to the proprietor, with a certificate annexed, on which will appear the *mark to be placed* on each article of manufacture to which the design shall have been applied.

If the design is for an article registered under Class 10, no mark is required, but there must be printed on such article, at each end of the original piece thereof, the name and address of the proprietor, and the word "registered," together with the years for which the design is registered.

If the design is for sculpture, no mark is required to be placed thereon after registration, but merely the word "registered" and the date of registration.

If the design is for provisional registration, no mark is required to be placed thereon after registration, but merely the words "provisionally registered" and the date of registration.

Any person who shall put the registration mark on any design not registered, or after the copyright thereof has expired, *is liable to forfeit for every such offence* £5.

Transfers.

In case of the transfer of a design, registered, whether provisionally or completely, the certified copy thereof must be transmitted to the registrar, together with the fee and forms of application (which may be procured at the office), properly filled up and signed. The transfer will then be registered and the certified copy returned.

Extension of Copyright.

The copyright may be extended in certain cases in provisional registration, for a term not exceeding the additional term of six months, and in complete registration for a term not exceeding the additional term of three years, as the Board of Trade may think fit.

In case of extension, the certified copy, together with the proper fee, should be delivered at the Designs Office for registration, *prior to the expiration of the existing copyright.*

Searches.

All designs of which the copyright has expired may be inspected at the Designs Office, on the payment of the proper fee; but *no* design, the copyright of which is existing, is in general open to inspection. Any person, however, may, by application at the office, and on production of the registration mark, except in Class X., of any particular design, be

furnished with a certificate of search, stating whether the copyright be in existence, and in respect to what particular article of manufacture it exists: also, the term of such copyright and the date of registration, and the name and address of the registered proprietor thereof.

Any party may also, on the production of a piece of the manufactured article with the pattern thereon, together with the registration mark, be informed whether such pattern, supposed to be registered, is really so or not.

As this mark is not applied to a provisionally registered design, *or to articles registered under Class X.* certificates of search for such designs will be given on production of the design, or a copy or drawing thereof, with the number and date of registration.

Persons bringing designs to be registered, on delivering them, must compare such designs together, count them, and see that the name and address and number of class is correctly written, and examine their certificates previous to leaving the office, to see that the name, &c., is correctly entered, as no error can afterwards be rectified.

An acknowledgment of its receipt will be delivered, on payment of the fees, to the person bringing a design, and *no* certified copy of a design will be returned, except to the bearer of this acknowledgment, which must be produced on application at the office for the certified copy, and given in exchange for the same.

All communications for the registration of designs may be made either through the General Post Office, directed to "The Registrar of Designs, Designs Office, London, S.W.," or by any other mode of conveyance; and provided the carriage be paid, and the proper fees, or a Post Office Order for the amount, payable at the Post Office, Charing Cross, to J. H. Bowen, Esq., be inclosed, the designs will be duly registered, and the certified copies returned to the proprietors free of expense.

Postage-stamps, orders upon bankers or other persons, country and Scotch bank-notes, and light gold, cannot be received in payment of fees.

The Designs Office, No. 1, Whitehall, S.W., is open every day, between the hours of 10 in the morning and 4 in the afternoon, during which time inquiries and searches may be made. Designs and transfers are registered from 11 until 3.

Directions for registering designs for articles of utility may be procured at the office.

By Order of the Registrar.

ORNAMENTAL.

Copyright of Designs for ornamenting Articles of Manufacture.

By provisional registration under the Designs Act, 1850 (13 & 14 Vict. c. 104), a copyright of one year (which may be further extended for six months by order of the Board of Trade) is given to the author or proprietor of original designs for *ornamenting* any article of manufacture or substance. During such terms the proprietor of the design may sell the right to apply the same to an article of manufacture, but must not,

under the penalty of nullifying the copyright, sell any article with the design applied thereto until after complete registration, *which must be effected prior to the expiration of the provisional registration.*

By complete registration under the Designs Act, 1842 (5 & 6 Vict. c. 100), a copyright or property is given to the author or proprietor of any new or original design for ornamenting any article of manufacture or substance for the various terms specified in the following classes, which terms may be extended under special circumstances.

Under the Designs Act, 1858 (21 & 22 Vict. c. 70), a copyright is given for articles in Class 10, for a term of 3 *years*, subject to the proviso therein contained.

Class.	Article.	Copyright.	Registration Fees. £	s.
1.	Articles composed wholly or chiefly of metal	5 years	1	0
2.	Articles do. do. do. wood	3 „	1	0
3.	Articles do. do. do. glass	3 „	1	0
4.	Articles do. do. do. earthenware, bone, papier-maché or other solid substances not comprised in Classes 1, 2, and 3.	3 „	1	0
5.	Paper-hangings	3 „	0	10
6.	Carpets, floor-cloths, and oil-cloths	3 „	1	0
7.	Shawls (patterns printed, &c., &c.)	9 months	0	1
	Do. do. do. extended term of	9 months	0	6
	Do. do. do. for the whole term of	18 months	0	7
8.	Shawls (not comprised in Class 7)	3 years	1	0
9.	Yarn, thread or warp (printed, &c., &c.) . . .	9 months	0	1
10.	Woven fabrics (patterns printed, &c., &c.), except those included in Class 11	3 years	0	1
11.	Woven fabrics, technically called furnitures (patterns printed, &c., &c.), the repeat of the pattern exceeding 12 inches by 8 inches.	3 „	0	5
12.	Woven fabrics (not comprised in any preceding class)	12 months	0	5
	Do. do. extended term of	1 year	0	8
	Do. do. extended term of	2 years	0	16
	Do. do. whole term of	3 „	1	0
13.	Lace and other articles (not comprised in any preceding class)	12 months	0	5

Table of Fees.

Provisional Registration.

Registration in all classes, one year	1s. each design.
Transfer	5 „
Certifying former registration (*to proprietor of design*)	1 „
Cancellation or substitution (*according to decree, or order in Chancery*)	5 „

Complete Registration.

Registering Designs.	Copyright.	Fee. £	s.
Class 1	5 years each design	1	0
„ 2	3 ditto „	1	0
„ 3	3 ditto „	1	0
„ 4	3 ditto „	1	0
„ 5	3 ditto „	0	10
„ 6	3 ditto „	1	0
„ 7	9 months „	0	1
„ „ extended term of	9 ditto „	0	6
„ „ whole term of	18 months „	0	7
„ 8	3 years „	1	0
„ 9	9 months „	0	1
„ 10	3 years „	0	1
„ 11	3 ditto „	0	5
„ 12	12 months „	0	5
„ „ extended term of	1 year „	0	8
„ „ do do	2 years „	0	16
„ „ whole term of	3 years „	1	0
„ 13	12 months „	0	5
In all the 13 classes (*copyright not extended*)	„	7	0
In Classes 1, 2, 3, and 4, inclusive, do.	„	5	0
In Classes 5 to 13, inclusive, do.	„	3	0

Registration of Sculpture:—

	Fee. £	s.
Each design	5	0

Complete Registration and Registration of Sculpture:—

Transfer	Same as registration fee, but for sculpture, each design	1	0
Certifying former registration (*to proprietor*)			
Cancellation or substitution (*according to decree or order in Chancery*) . .			

Inspections, &c., of Provisional and Complete Registrations and Sculpture:—

Search	0	2
Inspection of all the designs of which the copyright has expired, each quarter or part of quarter of an hour, each class	0	1
Taking copies of expired designs, each hour or part of an hour, each copy	0	1
Taking copies of unexpired designs, (*according to Judge's order,*) for each hour or part of an hour, each copy . .	0	2

Office copies of a design will be charged for according to the nature of the design.

By the Design Act of 1850, a protection of a nature similar to that granted for designs for ornamenting articles of manufacture by the Act

of 1842, is granted to sculptures, models, copies, or casts of the whole or part of the human figure, or of animals, for the term or unexpired part of the term, during which copyright in such sculpture, models, copies, or casts may or shall exist under the Sculpture Copyright Acts, and the fee for registering the same is £5.

To obtain this protection it is necessary—

1st. That the design *should not have been published*, either within the United Kingdom of Great Britain and Ireland, or elsewhere, previous to its registration.

2nd. That after provisional registration, every copy of the design *should have thereon, or attached thereto*, the words "provisionally registered," and the date of registration.

3rd. That after complete registration, every article of manufacture published by the proprietor thereof, to which such design shall have been applied, *should have thereon, or attached thereto*, a particular MARK, which will be exhibited on the certificate of registration.

4th. That after registration of sculpture every copy thereof *should have thereon, or attached thereto*, the word "registered," and the date of registration.

These conditions being observed, the right of the proprietor is protected from piracy by a penalty of from £5 to £30 for each offence, each individual illegal publication or sale of a design constituting a separate offence. This penalty may be recovered by the aggrieved party either by action in the superior or county courts, or by a summary proceeding before two magistrates.

If a design be executed by the author on behalf of another person, for a valuable consideration, the latter is entitled to be registered as the proprietor thereof; and any person purchasing either the exclusive or partial right to use the design, is in the same way equally entitled to be registered; and for the purpose of facilitating the transfer thereof a short form (copies of which may be procured at the Designs Office) is given in the Act.

USEFUL.

COPYRIGHT OF DESIGNS FOR ARTICLES OF UTILITY.

By PROVISIONAL registration under the Designs Act, 1850 (13 & 14 Vict. c. 104), a copyright for one year (which may be further extended for six months by order of the Board of Trade), is given to the author or proprietor of any new or original design *for the* SHAPE *or* CONFIGURATION *either of the whole or of part of any article of manufacture, such* SHAPE *or* CONFIGURATION *having reference to some* PURPOSE *of* UTILITY, whether such article be made in metal or any other substance. During such terms the proprietor of the design may sell the right to apply the same to an article of manufacture, *but must not under the penalty of nullifying the copyright, sell any article with the design applied thereto until after complete regis-*

tration, which must be effected prior to the expiration of the provisional registration.

By COMPLETE registration under the Designs Act, 1843 (6 & 7 Vict. c. 65), a copyright of THREE YEARS is given to the author or proprietor of *any* NEW or original design *for the* SHAPE *or* CONFIGURATION *either of the whole or of part of any article of manufacture, such* SHAPE *or* CONFIGURATION *having reference to some* PURPOSE *of* UTILITY, whether such article be made in metal or any other substance.

To obtain this protection it is necessary—

1st. That the design should *not have been published* either within the United Kingdom of Great Britain and Ireland, or elsewhere, previous to its registration.

2nd. That after registration, or provisional registration, every article of manufacture made according to such design, or to which such design is applied, should have upon it the word, "REGISTERED," or "PROVISIONALLY REGISTERED," *with the date of registration.*

In case of piracy of a design so registered, the same remedies are given, and the same penalties imposed (from £5 to £30 for each offence), as under the Ornamental Designs Act, 1842 (5 & 6 Vict. c. 100), and all the provisions contained in the latter Act relating to the transfer of *ornamental* designs, in case of purchase or devolution of a copyright, are made applicable to those *useful* designs registered under these Acts.

In addition to this a *penalty of not more than £5 nor less than £1 is imposed* upon all persons marking, selling, or advertising for sale any article as "registered," unless the design for such article has been registered under one of the *above-mentioned Acts.*

Directions for registering.

PERSONS proposing to register a design for purposes of utility, must bring or send to the Designs Office TWO EXACTLY SIMILAR drawings or prints thereof, made on a proper geometric scale, marked with letters, figures, or colours, to be referred to as hereinafter mentioned, together with the following

Particulars.

1st. THE TITLE of the design.

2nd. THE NAME AND ADDRESS of the proprietor or proprietors, or the title of the firm under which he or they may be trading, together with their place of abode, or place of carrying on business, *distinctly written or printed.*

3rd. A STATEMENT in the following form, viz., "*The purpose of utility to which the shape or configuration of (the new parts of) this design has reference is, &c., &c.*

4th. A DESCRIPTION to render the same intelligible, distinguishing the several parts of the design by reference to letters, figures, or colours.

NOTE.—No description of the parts of the drawings which are old will be admitted, except such as may be absolutely necessary to render the purpose of utility of the shape of the new parts intelligible.

5th. A SHORT AND DISTINCT STATEMENT of such part or parts (if any) as shall not be new or original, as regards the shape or configuration thereof, which must be in the following form, viz.:—(if the whole design is new, state)—"*The whole of this design is new in so far as regards the shape or configuration thereof.*" (If there are any old parts state)—"*The parts of this design which are not new or original, as regards the shape or configuration thereof, are those marked (A B C, &c.), or coloured (blue, green, &c.).*

NOTE.—The above particulars must be given in the aforesaid order under their several heads, and in distinct and separate paragraphs, which must be strictly confined to what is here required to be contained in each.

Specimen Form.

(Title of the Design.)

.....

(Name of the Proprietor.)

.....

(Address of the Proprietor.)

.....

(The drawing to be inserted here.)

(Statement of Utility.)

The purpose of utility to which the shape or configuration of (the new parts of) this design has reference is .....

(Description.)

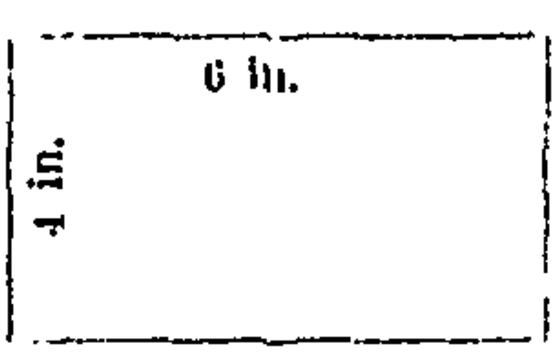
(If the whole design is new, state:)

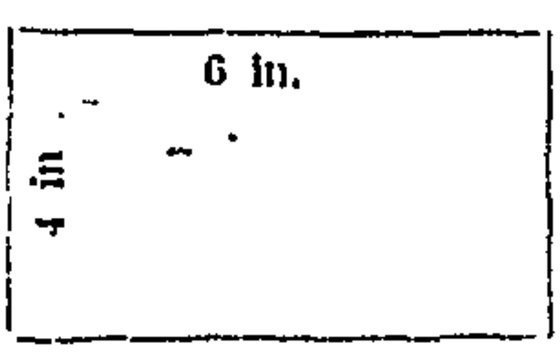
The whole of this design is new in so far as regards the shape or configuration thereof.

(If there are any old parts, state:)

The parts of this design which are not new or original as regards the shape or configuration thereof, are those marked, &c., &c.

21 inches.





15 inches.

Each drawing or print, together with the whole of the above particulars, must be drawn, written, or printed on one side of a sheet of paper or parchment, not exceeding in size 24 inches by 15 inches; and on one of the said sheets, on the same side on which are the said drawings and particulars, there must be left two blank spaces, each of the size of 6 inches by 4 inches, for the certificates of registration.

The above regulations, which have been made by the Board of Trade, must be strictly complied with.

Notice.

Parties are strongly recommended to read the Act before determining to register their designs, in order that they may be satisfied as to the nature, extent, and comprehensiveness of the protection afforded by it; and further, that they come within the meaning and scope of the Acts, *of which facts the registration will not constitute any guarantee.*

TABLE OF FEES.

Provisional Registration.	Fee. £. s.
Registering design	10
Certifying former registration (*to proprietor of design*)	5
Registering and certifying transfer	10
Cancellation or Substitution (*according to decree or order in Chancery*)	5
Extension of copyright	10

Complete Registration.	Stamp. £	Fee. £	Total. £
Registering design	5	5	10
Certifying former registration (*to proprietor of design*)	5	1	6
Registering and certifying transfer	5	1	6
Cancellation or substitution (*according to decree or order in Chancery*)	–	1	1

Inspections, &c., of Provisional and Complete Registrations.	Fee. s.
Inspecting register, index of titles and names, for each quarter or part of quarter of an hour	1
Inspecting designs, unexpired copyright, each design	2
Inspecting designs, expired copyright, each volume	1
Inspecting the register of inventions, under the "Protection of Inventions Act, 1851"	1
Taking copies of designs, unexpired copyright (*according to judge's order*), for each hour or part of an hour, each copy	2
Taking copies of designs, expired copyright, each copy	1

(ditto ditto ditto)

Office copies of a design will be charged for according to the nature of the design.

As the Designs Acts, 1843 (6 & 7 Vict. c. 65) and 1850 (13 & 14 Vict. c. 104), give protection only to the *shape or configuration* of articles of utility (and not to any *mechanical action, principle, contrivance, application,* or *adaptation* [except in so far as these may be dependent upon, and inseparable from, the shape or configuration], *or to the material of which the article may be composed*), no design will be registered, the description of, or statement respecting which, shall contain any wording suggestive of the registration being for any such mechanical action, principle, contrivance, application, or adaptation, or for the material of which the article may be composed.

With this exception and those mentioned in the Act, 1843, Clause IX., *all* designs, the drawings and descriptions of which are properly prepared and made out, will, on payment of the proper fee, be registered *without reference to the nature or extent of the copyright sought to be thereby acquired*; as proprietors of designs must use their own discretion in judging whether or not the design proposed for registration be for the shape or configuration of an article of utility coming within the meaning and scope of the Acts above mentioned.

After the design has been registered, one of the drawings will be filed at the office, and the other returned to the proprietor duly stamped and certified.

Parties bringing designs to this office before half-past 12 o'clock, will be informed after 3 o'clock the same day, whether they are approved of; and if so, they will be registered the following day; and provided the fee has been paid before half-past 1 o'clock on such day, the certified copies will be ready for delivery after 3 o'clock on that subsequent.

An acknowledgment of its receipt will be delivered, on payment of the fees, to the person bringing a design, and no certified copy of a design will be returned, except to the bearer of this acknowledgment, which must be produced on application at the office for the certified copy, and given in exchange for the same.

Transfers.

In case of the *transfer* of a COMPLETLY REGISTERED DESIGN, a copy thereof [or the certified copy, provided there is space sufficient thereon for the certificate], made on one sheet of paper, with a blank space left for the certificate, must be transmitted to the registrar, together with the *forms* of application (which may be procured at the office), properly filled up and signed; the transfer will then be registered, and the certified copy returned.

For the transfer of a design provisionally registered, a new copy will not be required, but the certified copy must be transmitted to the registrar with the above mentioned *forms*.

Extension of Copyright.

The copyright may be extended in certain cases in PROVISIONAL REGISTRATION, for a term not exceeding the additional term of six months, as the Board of Trade may think fit.

In case of extension, the certified copy, together with the proper fee, should be transmitted to the Designs Office for registration, *prior to the expiration of the existing copyright*.

Persons bringing designs to be registered, ON delivering their designs, and ON examining their certificates, previous to leaving the office, *must see that the titles, names, &c., are correct, as no error can afterwards be rectified.*

Searches.

An index of the titles and names of the proprietors of all the registered designs for articles of utility is kept at the Designs Office, and may be inspected by any person, and extracts made from it.

Designs, the copyright of which is *expired*, may be inspected and copied at the office.

Designs, the copyright of which is *unexpired*, may also be inspected, *but not copied*, except according to a judge's order.

ALL COMMUNICATIONS FOR THE REGISTRATION OF DESIGNS, either for ornamental or useful purposes, may be made either through the General Post, directed to "The Registrar of Designs, Designs Office, London, S.W.," or by any other mode of conveyance; and provided the carriage be paid, and the proper fees, or a Post Office Order for the amount, payable at the Post Office, Charing Cross, to J. H. Bowen, Esq., be inclosed, the designs will be duly registered, and the certified copies returned to the proprietor, free of expense.

Postage-stamps, orders upon bankers or other persons, Scotch and country bank-notes, and light gold, cannot be received in payment of fees.

The Designs Office, No. 1, Whitehall, S.W., is open every day, between the hours of 10 in the morning and 4 in the afternoon, during which time inquiries and searches may be made. Designs and transfers are registered from 11 until 3.

Directions for registering ornamental designs may also be procured at the office.

By Order of the Registrar.

(D.)

SHORT FORMS OF AGREEMENTS BETWEEN AUTHORS AND PUBLISHERS.

No. 1.—Agreement for Sale of Copyright in a Work.

MEMORANDUM OF AGREEMENT made the day of 187 . Between A. B. of , of the one part, and C. D. and E. F. (hereinafter called D. & F.), publishers, of the other part.

1. The said A. B. agrees to write and edit a work to be entitled , to prepare the same for the press, together with a full and comprehensive Index and Table of Cases and Contents to the same, by the day of to correct the proof-sheets, and to sell and assign all his copyright and interest in the said work to the said D. & F., their executors, administrators, and assigns, for the sum of money hereinafter mentioned.

2. The said D. & F., for themselves, their executors, administrators, and assigns, agree to print and publish and bear all the charges of printing and publishing the said work, and to pay to the said A. B., for his copyright and interest in the said work, the sum of pounds, on the day of publication of the said work.

3. The said A. B. to have copies of the said work free of charge.

In witness whereof the said parties have hereunto set their hands the day and year first above written.

No. 2.—Half-profit Agreement between Author and Publisher.

MEMORANDUM OF AGREEMENT made the day of 187 . Between A. B. of , of the one part, and C. D. of , publisher, of the other part.

1. It is agreed that the said C. D. shall, at his own expense and risk, print and publish a work entitled , and, after deducting from the produce of the sale thereof the charges for printing, paper, advertisements, embellishments (if any), and other incidental expenses, including the allowance of per cent on the gross amount of the sale for commission and risk of bad debts, the profits remaining of every edition that shall be printed of the work shall be divided into two equal parts, one moiety to be paid to the said A. B., and the other moiety to be retained by the said C. D.

2. The books sold shall be accounted for at the trade sale price, reckoning 25 copies as 24, unless it be thought advisable to dispose of any copies, or of the remainder, at a lower price, which shall be left to the judgment and discretion of the said C. D.

3. It is understood between the aforesaid parties, that copies of the said book are to be presented to the said A. B. free of charge.* *In witness, &c.*

* See a similar agreement: *Reade* v. *Bentley*, 3 K. & J. 271.

No. 3.—*Another Form of Agreement.*

MEMORANDUM OF AGREEMENT made the day of 187 . Between A. B., of , the author of , of the one part, and C. D. & E. F. (hereinafter called D. & F.), publishers, of the other part.

1. The said A. B. shall fully prepare the whole of the said book for the press, on or before the day of , and shall correct the proof-sheets, and superintend the printing thereof.

2. The said D. & F. shall direct the mode of printing the said book, and shall bear and pay all the charges thereof, and of publishing the same (except as hereinafter mentioned), and shall take all the risk of the publication on themselves.

3. The said D. & F. shall, out of the produce of the sale of the said book, in the first instance, be refunded all the cost and expenses which they shall have incurred respecting the said book, after which the profits shall be equally divided between the said A. B. and D. & F.

4. The accounts shall be made up at the end of every year, and the profits, if any, be then divided.

5. The said D. & F. shall account for all the copies which they shall sell of the said book at the wholesale bookseller's price, deducting therefrom a commission of , they taking the risk of the credit which they shall give on the same.

6. The alterations and corrections in the proof-sheets and revises, which shall exceed the charge of per sheet, shall be borne and paid by the said A. B., and shall be deducted out of his share of the profits.

7. In case all the copies of the said books shall have been sold off, and a second or any subsequent edition of the said book be required by the public, the said A. B. shall make all necessary alterations and additions thereto, and the said D. & F. shall print and publish the said second and every subsequent edition of the said book on the above conditions.

8. In case all the copies of any edition of the said work shall not be sold off within years, after the time of publication, the said D. & F. shall be at full liberty to dispose of the remaining copies, so unsold, either by public auction or private contract, or in such manner as they may deem most advisable, so that the account may be finally settled and closed.* *In witness, &c.*

* See *Stevens* v. *Benning*, 6 D. M. & G. 223.

No. 4.—Licence to print one Edition of a Work.

MEMORANDUM OF AGREEMENT made the day of 187 . Between A. B., of , of the one part, and C. D. of , of the other part.

1. Whereas the said A. B. has in preparation a work, to be called

. *Now this agreement witnesseth:* that the said A. B., for the consideration hereinafter expressed, doth hereby authorize the said C. D. to print, publish, and sell an edition of copies of the said work, the said A. B. hereby reserving to himself the general copyright in the said

work. And the said A. B., in consideration of the payments hereinafter agreed to be made by the said C. D., doth hereby agree with the said C. D. that he will furnish to the printer, to be employed by him, a fair copy of the said work, and will superintend the printing, and correct the proofs thereof in the usual manner, and that he will register his title under the "Literary Copyright Act, 1842," and will not authorize any person to print, publish, or sell, and will not himself print, publish, or sell, any other copies until the whole of the said copies have been disposed of by the said C. D, provided the said copies are sold within years from the date hereof. *And* the said C. D., in consideration of the aforesaid authority and agreement, doth hereby agree with the said A. B. that he will pay him, the said A. B., the sum of for each and every copy of the said copies, payable half-yearly, as fast as the said copies shall be sold, or otherwise disposed of, he rendering to the said A. B. an account of sales of the said work, at the expiration of every six months from the day of the first publication, until the whole shall be sold, and that he will also give to the said A. B. copies of the said work, bound, and free of charge, as soon as conveniently may be done, after the manuscript copy has been furnished by the said A. B. And the said C. D., in consideration also of the aforesaid authority and agreement, doth further agree with the said A. B., that he will not print, publish, or sell any more than the said copies, until authorized by the said A. B., or his legal representatives, it being clearly understood that the licence herein contained extends only to one edition of the number above specified. *In witness*, &c.

No. 5.—Limited Assignment by an Author of a new Edition of his Work.

A. B. of having prepared a new edition of , and C. D. of , being desirous of purchasing the same, it is agreed that copies of the work shall be printed in type and page corresponding with , at the sole cost of the said C. D., and the said C. D. shall pay to the said A. B for the said edition, the sum of . The work to be divided into volumes, and to be sold to the public, for in boards; but should the said work exceed sheets, or pages, a proportionate increase is to be made in the charge to the public, and a proportionate addition made to the consideration to be paid by C. D. to A. B. copies in boards to be delivered to the said A. B. free from all charge or expense.*

* See *Sweet* v. *Cater* 11 Sim. 572.

No. 6.—Agreement to enlarge a second Edition of a Book, and correct Proof of same.

This Agreement, made the day of 187 . Between A. B. of , of the one part, and C. D., of , of the other part.

Witnesseth, that the said A. B., in consideration of the sum of , agrees to examine, correct, and enlarge the work known as , to furnish additional manuscript matter for the second edition of the work, and to

enlarge the index, and make it full and complete. *It is agreed* that the new edition of the work shall be of the same sized page as the present work, and contain an equal amount of matter on each page, and that the additional matter furnished shall enlarge the work not less than pages, and shall be furnished to the said C. D. at not less than pages per day, commencing on the instant. *And* the said A. B. is to examine and to correct the proof-sheets so soon as they shall be furnished, and to complete the index within a reasonable time after the whole signatures of the text shall be ready for him for that purpose. *And* the said C. D. on his part agrees to print the said work as the matter shall be supplied, to provide the said A. B. with a copy of the work, by signatures, as each signature shall be worked off, for the purpose of arranging the index; to furnish the said A. B. bound copies of the work, as soon as they can be conveniently furnished, and to pay the said A. B. the sum of on the day the last proof-sheet is corrected for the press. *In witness, &c.*

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