THE LAW

OF

ARTISTIC COPYRICHT.

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OF

ARTISTIC COPYRIGHT,

INCLUDING COPYRIGHT IN

PAINTINGS, DRAWINGS, PHOTOGRAPHS, ENGRAVINGS, SCULPTURE AND DESIGNS.

WITH AN

APPENDIX OF STATUTES

AND

COLLECTION OF PRECEDENTS.

BY

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PREFACE.

In few branches of the Law is the need for the amendment and codification of statutes more apparent than in that relating to artistic copyright. The majority of the statutes on the subject are ill-drawn and verbose, occasionally they are almost unintelligible, while in some instances the result of their provisions, when grasped, is so startling and arbitrary that it is difficult to refrain from styling it absurd.

It is scarcely to be wondered at, therefore, that there are many misconceptions prevalent among artists with regard to their rights. For instance, it is seldom understood that if a painting or drawing is sold without a written agreement signed as required by the Fine Art Copyright Act, 1862 (*a*), the copyright is entirely lost —a result probably never intended by the Legislature, but the necessary consequence of what has been enacted. An eminent Academician appears to have recently fallen into this trap, and, having sold his picture without a written agreement as to the copyright, finds to his disgust that the purchaser is reproducing it far and wide as an advertisement for soap—a treatment which he is powerless to resist, the copyright being gone. To prevent this

(*a*) See *infra*, p. 14.

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absurd result, it has been suggested that conditions of sale, reserving to the artists the copyright in pictures sold, should always be inserted in catalogues at exhibitions; but even if it were proved that a contract to purchase had proceeded upon the basis of such a condition, yet (unless it had been signed by the purchaser) there would be no "agreement signed by the purchaser at or before the sale," which is what the Act requires, and consequently there would be no copyright in any one.

I have endeavoured in this treatise to explain as shortly and simply as the subject allowed, the rights of authors of artistic works of every description; at the same time references have been given to the various authorities to render the book of use to the Profession. The Acts themselves are set out in an Appendix. Full references to the various Reports will be found in the Table of Cases.

There has hitherto been a dearth of precedents relating to artistic copyright; it is hoped that the collection now offered may meet the requirements of artist, art publisher, and lawyer.

I have to express my indebtedness to The Fine Art Society of 148 New Bond Street, for the loan of several agreements belonging to them, which have been of great use to me in the preparation of the precedents.

R. W.

3 New Square, Lincoln's Inn.
July, 1889.

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ARTISTIC COPYRIGHT.

CHAPTER I.

THE RIGHTS OF AUTHORS, INDEPENDENTLY OF STATUTES.

COPYRIGHT is the exclusive right of multiplying copies of a published work. It was at one time a matter of much controversy, whether or not authors were entitled to such a right at Common Law prior to the statutory enactments on the subject. Into this vexed question it is not proposed to enter; for at the present time it must be taken to be settled law that the right as thus defined, if not the creature of statute, is now entirely dependent on it (*a*).

Apart from the statutes, however, the author of a work of literature or art has a qualified property in his production. He is entitled to keep it wholly for his private use and pleasure, and to withhold it altogether, or so far as he may please, from the knowledge of others; and the Court will interfere by injunction to protect him from any invasion of this right (*b*). Lord Cottenham states the law in the following terms:—"The property of an author or composer of any work, whether of literature, art, or science, in such work unpublished, and kept for his private use or pleasure, cannot be disputed after the many decisions in which that proposition has been

(*a*) *Jeffreys* v. *Boosey*, 4 H. L. C. 815, *per* Lord Cranworth, at p. 954; *Tuck* v. *Priester*, 19 Q. B. Div. 629; 56 L. J. Q. B. 553; 36 W. R. 93.

(*b*) *Prince Albert* v. *Strange*, 1 M. & G. 25, 46.

affirmed or assumed. I say assumed, because in many 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 the letter; in the case of dramatic composition, how far the permitting performances; and in the case of Mr. Abernethy's lectures (*c*), how far the delivery of the lecture had deprived the author of any part of his original right and property: questions which could not have arisen if there had not been such original right or property." (*d*)

If the author chooses to communicate his work to others, he may limit the number of persons to whom it is imparted, and impose such restrictions as he pleases upon the use of it; the fulfilment of the annexed conditions he may enforce, and for their breach he may claim compensation. When, however, he makes his composition public, he ceases to retain the exclusive right which he had before; he is no longer entitled to prevent the whole world from using his work by multiplying copies, and cannot confine the use of it to those whom he specially permits. He has not a property in his composition which extends universally, wherever and whenever that composition may be found to exist (*e*). Such a right, as against all the world, is a monopoly which can only rest on statutory enactment. The author's right, apart from statute, is only a personal right, against persons to whom

(*c*) See *Abernethy* v. *Hutchinson*, 3 L. J. Ch. 209, 1 H. & T. 28; see also *Caird* v. *Sime*, 12 App. Ca. 326.

(*d*) *Prince Albert* v. *Strange*, 1 M. & G. 25, 42; 18 L. J. Ch. 120.

(*e*) See *Jeffreys* v. *Boosey*, 4 H. L. C. 815, *per* Lord Brougham, at p. 962.

he has communicated an unpublished work (or against persons privy to the breach of faith), to enforce the conditions under which the communication was made (*f*).

This personal right has long been recognised. Thus, where the representatives of the Earl of Clarendon sought to restrain the printing or publishing of Lord Clarendon's History, and the defendants alleged that Lord Clarendon had given to the defendant G.'s father a MS. copy of the history that he might take a copy thereof and make use of the same as he should think fit, an injunction was granted which the Lord Keeper (Lord Henley) refused to dissolve, on the ground that Lord Clarendon, when he gave a copy of his work to G.'s father, did not intend that he should have the profit of multiplying it in print (*g*).

The publication in a magazine of a wood engraving of a picture with an article describing the picture itself is not a publication of the picture or an abandonment of the artist's right to keep his work private (*h*).

The interference of the Court for the protection of the author of an unpublished work is explained on two grounds:

First, that of property; the matter or thing of which another has obtained knowledge being the exclusive property of the owner, he has a right to the protection of the Court to prevent any use being made of what is exclusively his property (*i*).

(*f*) *Per* Lord Cottenham, *Prince Albert* v. *Strange*, 1 M. & G. 25, 46.

(*g*) *Duke of Queensberry* v. *Shebbeare* (1758), 2 Eden, 329, and see also 4 Burr. 2330, 2397.

(*h*) *Turner* v. *Robinson*, 10 Ir. Ch. 510.

(*i*) Per Lord Cottenham, *Prince Albert* v. *Strange*, 1 M. & G. 25, 46; *Southey* v. *Sherwood*, 2 Mer. 435 at p. 439.

The fact that the relief is founded in part on the ground of property is important for this reason, namely, that there can be no property in a libellous or immoral publication (*k*); and therefore, where the work is of such a character that the author would, on the ground of public policy, be unable to obtain damages for the invasion of his property, the Court will also refuse him the benefit of an injunction. On this ground Lord Eldon refused to restrain the unauthorized publication of one of Southey's poems until the plaintiff had established his title at law, it being contended that by reason of the libellous tendency of the work there could be no property in it (*l*).

Secondly, the Court interferes on the ground of breach of confidence or contract (*m*), and enforces the obligation not only against the persons actually committing the breach, but also against third persons taking advantage of such wrong-doing (*n*), on the ground that if a person obtains information which he could not have had except from a person guilty of a breach of contract in communicating it, he cannot be permitted to avail himself of that breach of contract (*o*). The principle on which the Court

(*k*) *Stockdale* v. *Onwhyn*, 5 B. & C. 173; 7 D. & R. 625; 2 C. & P. 163; cf. *Fores* v. *Johnes*, 4 Esp. 97; *Du Bost* v. *Beresford*, 2 Camp. 511.

(*l*) *Southey* v. *Sherwood*, 2 Mer. 435.

(*m*) *Per* Lord Cottenham, *Prince Albert* v. *Strange*, 1 M. & G. 25, 45.

(*n*) Such third persons if innocent may have a remedy by action for damages against their vendors as in *Duke of Queensberry* v. *Shebbeare*, 2 Eden 329, *ante*, in which case the defendant Shebbeare subsequently recovered large damages against the defendant Gwynne for misrepresenting that he was entitled to print the work. See 4 Burr. pp. 2330, 2397.

(*o*) *Per* Wigram, V.C., *Tipping* v. *Clarke*, 2 Ha. 383 at p. 393; and see also *per* Erle, J., in *Jeffreys* v. *Boosey*, 4 H. L. C. 815 at p. 867, cited *inf.*, p. 11.

acts is well illustrated by *Morison* v. *Moat* (*p*), which, though not a case of a literary or artistic work, well distinguishes this personal right against individuals from the exclusive right as against all the world. In that case an injunction was granted restraining the defendant from making use of the secret of compounding a medicine (not protected by patent) with which he had become acquainted by the breach of confidence of his father, to whom the secret had been entrusted. It was contended that as the plaintiff had no exclusive right by patent or otherwise, no injunction could be granted to restrain the defendant from using the secret. Vice-Chancellor Turner, in his judgment, said (*q*):—"The true question is whether, under the circumstances of this case, the Court ought to interfere by injunction, upon the ground of breach of faith or contract. That the Court has exercised jurisdiction in cases of this nature does not, I think, admit of any question. Different grounds have indeed been assigned for the exercise of that jurisdiction. In some cases it has been referred to property, in others to contract, and in others, again, it has been treated as founded upon trust or confidence—meaning, as I conceive, that the Court fastens the obligation upon the conscience of the party, and enforces it against him in the same manner as it enforces against a party to whom a benefit is given the obligation of performing a promise on the faith of which the benefit has been conferred; but upon whatever grounds the jurisdiction is founded, the authorities leave no doubt as to the exercise of it. . . . It was much pressed in argument, on the part of the defendant, that the effect of granting an injunction in such a case as the present would be to give the plaintiffs a better right than that of a patentee; . . . but what

(*p*) 9 Ha. 241. (*q*) *Ib.*, pp. 255, 258.

we have to deal with here is not the right of the plaintiffs against the world, but their right against the defendant. It may well be that the plaintiffs have no title against the world in general, and may yet have a good title against this defendant."

On this ground, where a picture was exhibited, under conditions which precluded copying, for the purpose of obtaining subscribers for an intended engraving, and the defendant, availing himself of the knowledge so obtained, arranged in his own studio a group which bore an exact resemblance to the picture, and took photographs of it for the stereoscope (coloured so as to correspond with the picture), the Court restrained the publication of these photographs irrespective of the question whether there was copyright in the original (*r*).

The protection afforded in the case of unpublished artistic works extends to restraining the publication of a catalogue or description of such works founded upon information improperly obtained. In *Prince Albert* v. *Strange* (*s*) the Queen and the plaintiff had occasionally, for their amusement, made drawings and etchings, impressions of which (for the most part made by means of a private press kept for that purpose) had been placed in some of the private apartments only at Windsor, and a very few copies had also been given to personal friends. The plates themselves had ordinarily been kept under lock; but some of the plates had been entrusted to a Mr. Brown for the purpose of printing off impressions. The defendants, Strange and Judge, and others, having in some manner obtained some of the impressions, had formed a collection

(*r*) *Turner* v. *Robinson*, 10 Ir. Ch. 510.
(*s*) 1 M. & G. 25.

of the etchings, of which they had compiled a catalogue. Brown had employed a man named Middleton; and it was alleged that Middleton, without Brown's knowledge, had taken impressions for himself which he had sold to Judge. The evidence showed that, except on the occasion of some of the plates being sent to Brown, none of them had been out of the custody of Her Majesty or the plaintiff, and no such collection could have been formed except by impressions surreptitiously and improperly obtained; and that the exhibition of such etchings, however obtained, was without the sanction and against the wishes of her Majesty and the plaintiff. An injunction was granted restraining the defendants from exhibiting the etchings, and from making engravings or copies of them, and from publishing or parting with them, and from selling, publishing, or printing the descriptive catalogue, or any work purporting to be a catalogue of the etchings. The defendant Strange moved to set aside the injunction so far as it restrained him from printing the catalogue, or any work purporting to be a catalogue, of the said etchings; but his application was refused, both by Vice-Chancellor Knight-Bruce and Lord Cottenham, L.C. The latter, after dealing with an author's common law rights in his composition, and stating that the publication of a catalogue or a description was an invasion of such right, the effect of it being to make public what the author was entitled to withhold altogether, added that a breach of trust, confidence, or contract, would of itself entitle the plaintiff to an injunction, and that upon the plaintiff's evidence it was clear that the collection could not have been made except by means of etchings surreptitiously and improperly obtained—a case to which no answer was made, the defendant saying only that he did

not at the time believe that the etchings had been improperly obtained, but not suggesting any mode by which they could have been properly obtained, so as to entitle the possessor to use them for publication.

The foregoing cases show that the granting of an injunction in cases coming within these principles is *entirely independent* of the *existence* or non-existence of any copyright in the proper sense of the term; so that the author of a work who, through non-compliance with the conditions laid down by the statute 25 & 26 Vict. c. 68, cannot enforce his statutory copyright, may still be entitled to the aid of the Court by injunction against persons who by breach of confidence or contract have obtained or are making improper use of copies of his work (*t*).

If, therefore, a picture is entrusted to a person for a particular purpose, the Court will prevent other or improper use being made of it. Thus, in *Mayall* v. *Higbey* (*u*), the plaintiff being the proprietor of a number of photographs, had lent them to T., the proprietor of an illustrated paper, for the purpose of their being engraved and published with that paper. T. became bankrupt, and his assignees sold the photographs to the defendant, who took a number of copies of them, some of which he sold. The action was brought for wrongful detention of the originals, and for an injunction to restrain the sale of the copies, and it was held that the plaintiff was entitled to recover the originals or their value, and to an injunction to restrain the sale of any copies.

Where impressions of a work have been improperly

(*t*) *Tuck* v. *Priester*, 19 Q. B. D. 629.
(*u*) 6 L. T. N. S. 362; 10 W. R. 631.

obtained, and the material on which they are taken is substantially worthless, except for that in which the owner of the material has no property (*i.e.*, the impressions), the Court will make an order for their destruction (*x*).

Where a person is employed by another to make copies of a work, it is an implied term of the contract that he will not make any for himself, and this term the Court will enforce. Thus, in *Tuck* v. *Priester* (*y*), the plaintiffs, who were art publishers in London, and had purchased the copyright of a water-colour drawing, in 1884 sent to the defendant at Berlin a written order to make two thousand copies of the drawing for them. The defendant executed the order, and also, without their knowledge or consent, made a number of other copies for himself, and imported some of these copies into England. On the 21st of January, 1886, the plaintiffs for the first time registered their copyright in the drawing under the Act 25 & 26 Vict. c. 68, and after the registration the defendant sold in England some of the copies which he had made before the registration. The plaintiffs claimed an injunction and damages on the ground of the breach of contract, and also an injunction, damages and penalties, under the statute. The Court of Appeal (Lord Esher, M.R., Lindley, L.J., and Lopes, L.J.), though differing as to the plaintiffs' rights under the statute, were agreed that the plaintiffs, whether they had any statutory copyright or not, were entitled to an injunction and damages. Lindley, L.J., said :—"It appears to me that the relation of the plaintiffs

(*x*) *Prince Albert* v. *Strange*, 2 De G. & Sm. 652, 716; 13 Jur. 507; and see *Hole* v. *Bradbury*, 12 Ch. D. 886, 48 L. J. Ch. 673, 28 W. R. 39, 41 L. T. 250.

(*y*) 19 Q. B. D. 629; 36 W. R. 93; 56 L. J. Q. B. 553; 57 L. T. N. S. 110.

and the defendants was such that, whether the plaintiffs had any copyright or not, the defendant has done that which renders him liable to an injunction. He was employed by the plaintiffs to make a certain number of copies of the picture, and that employment carried with it the necessary implication that the defendant was not to make more copies for himself, or to sell the additional copies in this country in competition with his employer. Such conduct on his part is a gross breach of contract and a gross breach of faith, and in my judgment clearly entitles the plaintiffs to an injunction, whether they have a copyright in the picture or not."

So where a photographer takes a negative for the purpose of supplying copies for value, it is an implied term of the contract that he shall not use the negative for any other purpose, and he may be restrained from doing so. Thus, in *Pollard* v. *The Photographic Company* (*z*), the defendants, who had been employed for value by the plaintiff's wife to take her photograph, were restrained from selling copies of the photograph without her consent, or exhibiting it as an advertisement. The requirements of the Act 25 & 26 Vict. c. 68 had not been complied with, so that the plaintiffs could not enforce their copyright under that Act. In the absence of any evidence as to what passed when the photograph was taken, the Court assumed that there were no special terms or conditions agreed on. North, J., said :—"The question is whether a photographer who has been employed by a customer to take his or her portrait is justified in striking off copies of such photograph for his own use, and selling and disposing of them, or publicly exhibiting them by way of advertisement or otherwise, without the authority

(*z*) 40 Ch. Div. 345; 37 W. R. 266; 58 L. J. Ch. 251.

of such customer, either express or implied. I say 'express or implied,' because a photographer is frequently allowed, on his own request, to take a photograph of a person under circumstances in which a subsequent sale by him must have been in the contemplation of both parties, though not actually mentioned. To the question thus put my answer is in the negative, that a photographer is not justified in so doing. . . . In my opinion, the photographer who uses the negative to produce other copies for his own use, without authority, is abusing the power confidentially placed in his hands merely for the purpose of supplying the customer; and further, I hold that the bargain between the customer and photographer includes by implication an agreement that the prints taken from the negative are to be appropriated to the use of the customer only."

The Court will interfere to protect the invasion of an author's exclusive right in an unpublished work, although the breach of contract or confidence occurs abroad. Thus, in *Jeffreys* v. *Boosey* (*a*), in answer to the question put to the judges, Erle, J., speaking of the rights of an author before publication, said:—"He may prevent publication; he may require back the copies wrongfully made; he may sue for damages if any are sustained. Also, if the wrongful copies were published abroad, and the books were imported for sale without knowledge of the wrong, still the author's right to his composition would be recognized against the importer, and such sale would be stopped." And on this principle an injunction was granted restraining the sale in England of copies made improperly, and in breach of

(*a*) 4 H. L. C. 815, at p. 867.

contract at Berlin (*b*). The Court would not, of course, interfere to restrain breaches of contracts out of the jurisdiction, at all events unless the offending party was within the jurisdiction (*c*).

Conversely, the Court would interfere to protect an alien resident abroad, though such a person might not be entitled to copyright, properly so called. Thus Erle, J., after the remarks already quoted, continues (*d*), "These rights would be enforced for an alien as well as for a native author, in case his private writings were copied wrongfully abroad and published here, it being a personal right resting on principles common to all nations who read, and analagous to the right of an alien to prohibit the publication here of words defamatory of his character, while residing abroad, which was recognized in *Pisani* v. *Lawson* (*e*)."

(*b*) *Tuck* v. *Priester*, 19 Q. B. Div. 629, and *u. s.*

(*c*) R. S. C., Ord. xi., r. 1.

(*d*) 4 H. L. C. 815, 867; c.f. also *per* Wightman, J., 4 H. L. C., p. 885, and *per* Jervis, C.J., *ib.*, p. 944.

(*e*) 6 Bing. N. C. 90, 8 Scott, 182.

CHAPTER II.

COPYRIGHT IN PAINTINGS, DRAWINGS AND PHOTOGRAPHS.

In the previous chapter we have considered what are the rights of the author of an artistic work at Common Law independently of statutes—namely, that he is entitled as against particular persons to be protected from invasion of his property, brought about by means of breach of trust, confidence, or contract. We have now to consider his right as against all the world to the exclusive multiplication for profit of his published work, and to this right alone is the term "copyright" properly applicable. This right, whether originally created by statute or not, is now entirely regulated by it (*a*).

In the case of paintings, drawings and photographs, the artist's right depends upon the statute 25 & 26 Vict. c. 68 (*b*).

(A.) Who Entitled to Copyright.

By sect. 1 of the Act, copyright (*c*) is given to the author (*d*) of every original painting, drawing or photograph (*e*), made either in the British dominions or

(*a*) *Jeffreys* v. *Boosey*, 4 H. L. C. 815, *per* Lord Cranworth, at p. 954.

(*b*) For the Statute at length see Appendix, p. 101.

(*c*) As to the nature and extent of the right, see *infra*, p. 21.

(*d*) As to who is the "author" of a photograph, see *infra*, p. 16.

(*e*) A photograph of a picture or of an engraving is an original photograph within the meaning of the Act (*Graves' Case*, L. R. 4 Q. B. 715).

elsewhere, and to his assigns, for the term of his life, and seven years after his death, subject to the following conditions:—

(i.) The author must be a British subject, or resident within the dominions of the Crown (*f*).

(ii.) When any painting or drawing, or the negative of a photograph is for the first time sold or disposed of, the person so selling or disposing of the same will not retain the copyright, unless it be expressly reserved to him by agreement in writing, signed at or before the time of such sale or disposition by the purchaser of the painting, drawing or negative; and the purchaser will not be entitled to the 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, has been made to that effect (*g*).

(iii.) When a painting, drawing, or the negative of a photograph is executed for any other person for valuable consideration, the person executing the same will not retain the copyright unless it be expressly reserved to him by agreement in writing signed by the person for whom the same is executed; but in the absence of such agreement the copyright will belong to the person for whom the same has been executed.

(iv.) Before the copyright can be enforced it must be registered (*h*).

(*f*) As to the period of the residence, see *infra*, p. 19.

(*g*) For forms of agreements, see Appendix, p. 177.

(*h*) Sect. 2. See *infra*, p. 28, as to the rights of the author before registration.

The complicated and somewhat contradictory provisions of the section lead to the surprising result that if a painting or drawing, or the negative of a photograph (unless executed on commission) is sold for the first time without such a written agreement as is required by the section, neither artist nor purchaser being entitled to copyright, the right is for ever lost, and the whole world is at liberty to copy the work!

In the case, however, of a painting, drawing or negative executed on commission, in the absence of such written agreement as is required by the section, the copyright passes to the person on whose behalf the work is executed.

It is not always easy to decide what amounts to the sale of a picture, so as to deprive the author of his copyright therein. Suppose the author of a drawing subsequently produces copies of it for a customer for the purpose of being used as trade labels, does this amount to a sale of the drawing, and entitle the customer to have similar labels produced elsewhere without the consent of the author?

The question arose in *Levi* v. *Champion* (*i*). At the suggestion of the plaintiff, who was a chromo-lithographer, an artist in his employ had produced a drawing, in illustration of Bottom's speech to Mustardseed in "A Midsummer Night's Dream" (Act 3, Sc. 1). This drawing was submitted to the defendants, who were mustard manufacturers, as an appropriate advertisement, and remained some time in their possession. After negotiations they ordered 250,000 coloured copies on a reduced scale (a slight alteration being introduced at their suggestion) as labels for their mustard-tins. A second

(*i*) 3 Times L. R. 286.

issue of the labels was printed for the defendants by the plaintiff at a later date, but the defendants subsequently employed another printer to do the work, and the plaintiff then commenced the action to restrain the defendants from infringing his registered copyright in the picture. It appeared in the evidence that in the negotiations for fixing the price of the first issue, the defendants agreed to pay a higher price on account of the original outlay in paying the artist, buying materials and preparing stones, and reducing the picture to a size suitable for labels; and that the second issue was charged at a lower rate, partly on account of inferior quality. Kekewich, J., decided on these facts that this amounted to a sale of the picture, and that consequently under the Act the plaintiff was not entitled to the copyright. The defendants abandoned the contention set up by them in their counter-claim, that they were themselves entitled to the copyright. The further question, whether the defendants were entitled to the stones which had been prepared by the plaintiff for printing the labels, was not decided. It would seem that if, as would usually be the case, the cost of these was taken into consideration in fixing the price of the labels, they became the property of the defendants (*k*).

The Act is partly retrospective, that is to say, it applies to works executed, but not sold or disposed of, before the commencement of the Act (the 29th of July, 1862) (*l*).

Who is "the Author?"—In regard to paintings and drawings, no difficulty occurs in determining who is the

(*k*) And cf. *Hole* v. *Bradbury*, 12 Ch. Div. 886.
(*l*) 25 & 26 Vict. c. 68, s. 1.

author. In regard to photographs the case is not so simple, but it has been decided that out of the various persons who may be employed in the different processes of its production, the author is the person who has actually arranged the sitters in position, or otherwise composed the picture (*m*).

In *Nottage* v. *Jackson* (*n*) the plaintiffs were in business as photographers, but did not take photographs themselves. At the suggestion of one of their managers, who thought that it would sell well, a photograph of the Australian cricketers was taken, without charge, by one of the artists in the firm's employ, the negatives being subsequently developed and printed by others. The plaintiffs registered themselves under their individual names as authors of the photograph and proprietors of the copyright. The registration was impugned, on the ground that they were not the authors of the photograph or proprietors of the copyright. The Court of Appeal (Brett, M.R., Cotton and Bowen, L.JJ.), held that they were not the authors of the photograph. Brett, M.R., after stating that they could not be the authors of a negative taken when they were not present, and that it was difficult to say who, out of the various persons employed in its production, was the author, added, "The nearest I can come to is that it is the person who effectively is, as near as he can be, the cause of the picture which is produced—that is, the person who has superintended the arrangement, who has actually formed the picture by putting the people into position, and arranging the place in which the people are to be—the man who is the effective cause of that. Although he may only have done it by standing in the room and

(*m*) *Nottage* v. *Jackson*, 11 Q. B. Div. 627.

(*n*) *u. s.*

giving orders about it, still it is his mind and act, as far as anybody's mind and act are concerned, which is the effective cause of the picture such as it is when it is produced." Cotton, L.J., stated as his opinion that "'author' involves originating, making, producing, as the inventive or master mind, the thing which is to be protected, whether it be a drawing, or a painting, or a photograph" (*o*).

It does not follow, however, that because an assistant is the "author," he is therefore entitled to the copyright. On the contrary, unless the work is one executed for valuable consideration on commission (in which case the copyright would belong to the customer), the copyright vests in the employer; for when the "author" of a work is a person employed at a salary, then (where no consideration is paid by the sitter) the copyright in the work vests in the employer, as being made "for and on his behalf for valuable consideration," *i.e.*, the salary paid by him to his employé. Accordingly, in the case of *Nottage* v. *Jackson* (*p*), Brett, M.R., though holding with the rest of the Court that the plaintiffs were not the "authors" of a photograph actually executed by their assistants, held that they were rightly registered as proprietors of the copyright (*q*).

Where, therefore, a sitting is given to a photographer without payment, the copyright vests in the employer, and the sitter cannot restrain the sale of the photograph. Where, however, a sitter pays value to the employer, it

(*o*) 11 Q. B. D. p. 635. See also on the general question of authorship, *per* Jervis, C. J., in *Shepherd* v. *Conquest*, 17 C. B. 427, at p. 443; *Barfield* v. *Nicholson*, 2 Sim. & St. 1.

(*p*) 11 Q. B. D. 627, *ante*, p. 17.

(*q*) The other members of the Court did not deal with the point, it not being necessary to the decision.

appears that the sitter is the person "for and on whose behalf" the photograph is "executed for valuable consideration," and the copyright, apart from any agreement to the contrary, vests in the sitter, who will be entitled, when he has fulfilled the requirements of the Act, to restrain the multiplication and sale of copies. It appears that the negative continues to be the property of the artist, and that the sitter is not entitled to have it handed over to him. The photographer may, however, apart from any question of copyright, be restrained, on the ground of implied contract, from printing copies except for the customer, and from exhibiting copies in the window (*r*).

One of the conditions of copyright (as has been already stated) is that the author must be a British subject, or resident within the dominions of the Crown. It is not altogether clear what residence is required, or at what date it must take place. In *Jefferys* v. *Boosey* (*s*), where the House of Lords decided that an alien was not entitled to the benefit of the Copyright Act 1845 (which contained no express provision on the point), in respect of a musical work published in England while he was resident abroad, Lord Cranworth, after stating that the Legislature must *primâ facie* be taken to legislate only for its subjects, including under that word all persons who are within the Queen's dominions, and who thus owe to her a temporary allegiance, and that a foreigner resident here, and composing and publishing a book here, was an author within the meaning of that statute, added, "I go further: I think that if a foreigner, having composed, but not

(*r*) *Pollard* v. *The Photographic Company*, 40 Ch. D. 345; 37 W. R. 256; *ante*, p. 10.

(*s*) 4 H. L. C. 815, at p. 955.

having published, a work abroad, were to come to this country, and the week or day after his arrival were to print and publish it here, he would be within the protection of the statute. . . . 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—if 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."

It has been laid down, on the other hand, by Lord Esher, M.R., with regard to paintings, drawings, and negatives, that no time being mentioned from which the right is to begin, it will begin from the time of the execution of the work (*t*). If this is so, it seems to follow that this is the period at which the residence must be ascertained. The Act, however, expressly gives copyright in works not executed within the British dominions —a fact which points to the residence required being at some date other than that of the execution of the work (*e.g.*, the time of publication, which was held by Lord Cranworth to be the crucial period in the case of a literary work (*u*)), otherwise the provision giving copyright in works not executed within the British dominions would have no application except in the case of works by British subjects.

Between these conflicting views it is difficult to come to a decision, but (bearing in mind that there can be no

(*t*) *Tuck* v. *Priester*, 19 Q. B. Div. 629, at p. 636.
(*u*) 4 H. L. C. 815, 955.

copyright in a work of art first published out of Her Majesty's dominions, except under the International Copyright Act (*v*)) the most probable interpretation of the section appears to be that the residence required is residence at the time of the publication of the work, and that the condition is satisfied if at that period the author is within the dominions of the Crown, though only temporarily there, and not ordinarily so resident (*x*).

If the time of publication is the date at which the residence has to be ascertained, the exhibition of the work at the Royal Academy, or any other gallery, would probably be a publication for this purpose (*y*).

(B.) Nature of the Right.

The copyright given by the Act is "the sole and exclusive right of copying, engraving, reproducing, and multiplying the painting and drawing, and the design thereof, or the photograph and the negative thereof, by any means and of any size." Where an artist, therefore, has parted with the copyright in a picture, or has painted a picture on commission, and the copyright, not being reserved, has passed to the purchaser, he may not paint a replica; but where the picture is not painted on commission, and has been sold without agreement as to the copyright, the copyright is gone, and a replica may be painted. Doubts have been suggested whether sketches or studies made for a copyright picture can be again used or sold. It would be wise, therefore, in any agreement for transferring the copyright in a picture to

(*v*) 7 & 8 Vict. c. 12, s. 19 (which is incorporated by sect. 12 of this Act).

(*x*) As to the rights of aliens not resident in British dominions within the meaning of this Act, see *infra*, chap. IX., p. 84.

(*y*) See *per* Brady, L.C., *Turner* v. *Robinson*, 10 Ir. Ch. 510, 516.

a purchaser to reserve the right to use or dispose of the studies (*z*).

It is provided by sect. 2 that "nothing contained in the Act is to 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." Although it is unlawful to copy the representation, whether painting, drawing, or photograph, the proprietor of the copyright has no rights in the scene or object which form the subject-matter of his work, and cannot prevent others from making independent representations of it, and such independent representations are no infringement of his copyright (*a*). But where the owner of the copyright in two pictures and also in the engravings of them was the same, it was held that the sale of copies made from the engravings was an infringement of the copyright in the pictures (*b*), Blackburn, J., observing that "when 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; for if, in the result, that which is copied be an imitation of the picture, then it is immaterial whether it be arrived at directly or by intermediate steps" (*c*). Had the copyright in the painting and in the engraving been in different hands, it is by no means clear that the proprietor of the copyright in the painting could have complained of the copies as infringements (*d*).

Under the Engraving Copyright Acts, Shadwell, V.C.,

(*z*) For forms of agreements, see Appendix, *infra*, p. 178.

(*a*) *Per* Blackburn, J., in *Graves' Case*, L. R. 4 Q. B. 715, 723; but see *Turner* v. *Robinson*, 10 Ir. Ch. 510, *ante* p. 6.

(*b*) *Ex parte Beal*, L. R. 3 Q. B. 387. (*c*) *Ibid.*, p. 394. (*d*) *Ibid.*

refused an injunction to restrain the exhibition of a copy of an engraving, made on a larger scale on canvas, in colours and with dioramic effect, on the ground that such a copy was not a print within the meaning of those Acts (*e*); but, as in the case of paintings and drawings, the copyright is the "exclusive right of multiplying such painting or drawing, and the design thereof, by any means and of any size," such a copy would appear to be an infringement of the copyright given by this Act.

(C.) Duration of the Right.

The copyright is given for "the term of the natural life of such author, and seven years after his death."

Joint Authorship.—The Act does not seem to have contemplated joint authorship. Copyright is given during the natural life of the author. The section does not say "during the natural life of the author or authors," but if there were two authors the copyright would probably be held to extend during their joint lives and the life of the survivor (*f*).

(D.) Assignments.

All copyright under the Act is to be deemed personal estate, and to be assignable at law (*g*).

Every assignment and every license to use or copy, by any means or process, the design or work which is the subject of copyright, must 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 (*g*).

(*e*) *Martin* v. *Wright*, 6 Sim. 297.

(*f*) *Per* Bowen, L. J., *Nottage* v. *Jackson*, 11 Q. B. Div. 627, at p. 637.

(*g*) Sect. 3; *Strahan* v. *Graham*, 16 L. T. (N.S.) 87; 17 L. T. (N.S.) 457. See also *infra* pp. 37, 41, 52.

When the owner of copyright in a painting assigns the right of producing an engraving of a particular size, he retains and can assign the right of copying the picture by other means, or by engravings of other sizes, and the assignee of the right of copying a painting in a particular way cannot complain of such copies unless he can show that they were made from his copy, and not direct from the original (*h*), but such a limited assignee has sufficient interest in the copyright of the original to maintain an action for damages against persons infringing that copyright by copies made by the process of which he is assignee (*i*).

The purchase of the right to engrave a photograph for the purpose of illustrating articles in a magazine does not (unless expressly so agreed) entitle the purchaser to use the engravings when the articles are republished in separate form (*k*).

Where the owner of a picture and the proprietor of the copyright are not the same person, although the proprietor of the copyright is entitled to restrain other persons from making copies of the picture, it does not follow that he will be able to make them himself; for he is not necessarily entitled to have access to the picture for the purpose of copying it; and unless an agreement on the point has been made on the sale of the picture, he will have to arrange with the owner of the picture for access to enable him to make his copy.

(*h*) *Lucas* v. *Cooke*, 13 Ch. Div. 872; 28 W. R. 439; 42 L. T. 180.

(*i*) *Tuck* v. *Canton*, 51 L. J. Q. B. 363. As to what registration is necessary to enable an assignee to sue, see *infra*, p. 28.

(*k*) *Strahan* v. *Graham*, 16 L. T. N. S. 87; 17 L. T. N. S. 457.

CHAPTER III.

COPYRIGHT IN PAINTINGS, DRAWINGS, AND PHOTOGRAPHS (CONTINUED).

(E.) REGISTRATION.

As a condition precedent to obtaining the benefit of the Act, it is necessary that its requirements as to registration should be observed.

A memorandum of every copyright to which any person is entitled under the Act, and also of every subsequent assignment (*a*) of any such copyright must be entered in the Register of Proprietors of Copyright in Paintings, Drawings and Photographs at Stationers' Hall; and no proprietor of any copyright under the Act is entitled to the benefit of the Act (*b*) until registration, and no action is sustainable, nor any penalty recoverable, in respect of anything done before registration (*c*).

Requisites of Registration.

To satisfy the requirements of the Act, the memoran-

(*a*) The registration of an assignment may be sufficient although the original proprietor was never on the register, and prior assignments have never been registered (*Graves' Case*, L. R. 4 Q. B. 715), see *infra*, p. 28. A mere license need not be registered (*Tuck* v. *Canton*, 51 L. J. Q. B. 363), see *infra*, p. 30.

(*b*) As to the meaning of this provision, see *infra*, p. 28.

(*c*) 25 & 26 Vict. c. 68, s. 4.

dum must contain a statement of the following particulars:—

(i.) The date of the agreement required by the Act (*d*) or of the assignment under which the proprietor claims.
(ii.) The names of the parties thereto.
(iii.) The name and place of abode of the person in whom the copyright is vested by virtue thereof.
(iv.) The name and place of abode of the author (*e*) of the work; and
(v.) A short description of the nature and subject of the work.

If these requirements are not fulfilled, as, for instance, if the name of the author is not correctly stated, the section is not complied with, and proceedings founded on the Act cannot be maintained (*f*).

The importance of requiring the name of the author to be stated arises from the fact that the copyright endures during his life and seven years after his death.

Minuteness of description.—The description of the nature and the subject of the work need not be so precise as to inform persons, who have never heard or known of the picture, what it is they have not to copy;

(*d*) *Ante*, pp. 14, 23.

(*e*) The "author" of the negative of a photograph is the assistant who actually takes it (*Nottage* v. *Jackson*, 11 Q. B. Div. 633). His name and place of abode must ordinarily be unknown to the sitter, who will therefore be unable to register the particulars required by the Act, and accordingly, although he may be entitled to the copyright, will be deprived of the benefit of the Act. As to his rights independently of the Act, see *Pollard* v. *Photographic Company*, 40 Ch. Div. 345, *ante*, p. 10.

(*f*) *Nottage* v. *Jackson*, *u. s.*; *Wooderson* v. *Raphael Tuck*, W. N. (1887) 209; 32 Sol. J. 45.

but the object of the legislature 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. It will be sufficient to describe the picture by some conventional name, and the particulars of the subject need not be given in detail. It is in all cases a question of fact whether the description is sufficient to point out the picture registered (*g*). A picture, representing an officer in a railway carriage, taking leave of a lady, was held to be sufficiently described by the title "Ordered on Foreign Service" (*h*); and two pictures by Sir J. Millais, one representing a child sitting in a pew in church, with her eyes open, apparently listening, and the other representing the same child in church, asleep, were held to be sufficiently described by the names "My First Sermon," and "My Second Sermon" (*i*); but doubts were suggested whether Sir E. Landseer's picture of a Newfoundland dog would have been sufficiently registered under the description of "A Distinguished Member of the Humane Society," or whether the same artist's picture, representing a bullfinch and a pair of squirrels, and entitled "A Piper and a Pair of Nutcrackers," would be accurately pointed out by the name alone (*k*); but the Court, in a subsequent case, without deciding whether the description was sufficient or not, declined to expunge the entry of the latter, upon the application of a person who had been convicted of infringing the copyright therein (*l*).

Where the title of the picture registered alone would not indicate the subject matter of the picture in such a

(*g*) *Per* Blackburn, J., *ex parte Beal*, L. R. 3 Q. B. 387, 393.
(*h*) *Ibid.* (*i*) *Ibid.* (*k*) *Ibid.*
(*l*) *Graves' Case*, L. R. 4 Q. B. 715.

way as to enable a person to say whether or not the registration applies to the picture he is about to copy, it would be advisable to add to the memorandum a sketch or outline of the work (*m*), which the section enables to be done in all cases.

The fee chargeable for making the entry is one shilling (*n*).

The "benefit of the Act" to which the proprietor of the copyright is not to be entitled until registration, is not the copyright itself, but the right to sue. "The copyright exists from the moment when the work is made; from the moment of registration the proprietor can sue in respect of a breach of it; but he can only recover in respect of a breach committed after registration"(*o*). The sale, after registration, of a copy made before registration without the consent of the proprietor, is a breach, in respect of which the proprietor can sue for damages (*p*).

Registration of Assignments—The proprietor, before he has registered, is subject only to this disadvantage, that he cannot, until he has done so, become entitled to the benefit of the statute; but he is capable of transferring his copyright as he can transfer any other property (*q*). Accordingly, if the last assignment of copyright has been duly registered, the assignee may sue for infringement, although the original proprietor was never on the register, and prior assignments have not

(*m*) *Per* Blackburn, J., L. R. 3 Q. B. 293.
(*n*) Sect. 5, *infra*, p. 103.
(*o*) *Per* Lord Esher, M. R., 19 Q. B. Div. 636.
(*p*) *Tuck* v. *Priester*, 19 Q. B. Div. 636.
(*q*) *Graves' Case*, L. R. 4 Q. B. 715, 724.

been registered (*r*). Thus in *Graves' Case* (*s*), the copyright in two pictures, "My First Sermon" and "My Second Sermon," painted by Sir J. Millais, had been assigned by him to Agnew & Folds, and by them to Moore, McQueen & Co., by whom they were assigned to Graves. The last assignment was registered, but there was no entry of the assignment to Moore, McQueen & Co. by the persons previously entitled to the copyright. Similarly, the copyright in a picture by Sir E. Landseer had been assigned to Flatow, and by him to Graves; and the last assignment alone had been registered. The Court held that it was unnecessary that all the prior assignments should be registered, the object of registration being to enable any one to trace the proprietorship of the copyright, which was sufficiently done by the registration of the last assignment.

A question may arise as to who is the person entitled to sue for the penalties, where the proprietor of registered copyright has assigned it, and piracies have been committed subsequent to the assignment but prior to the registration of the assignment. It would seem that the original proprietor could have no right to sue for penalties, as after the assignment he would have no interest in the copyright; and it may be doubted whether the assignee could recover for anything done prior to his perfecting his title by registration. The point does not seem ever to have arisen, though it has been decided that the assignee of a copyright cannot sue in respect of offences under the Act committed prior to the assignment to himself (*t*).

(*r*) *Graves' Case*, L. R. 4 Q. B. 715, 724; 39 L. J. Q. B. 31.
(*s*) *u. s.*
(*t*) *Dupuy* v. *Dilkes*, 18 L. J. Ch. 682, see *infra*, p. 36.

Licenses need not be registered.—It has been held that the provisions of the Act requiring the registration of assignments of copyright apply only to an assignment of the whole copyright, and that a person to whom the sole right of reproducing a picture by a particular process (*e.g.*, by colour printing) has been assigned, is only a licensee, and can maintain proceedings against other persons reproducing the picture in colours, even though the assignment to him has not been registered (*u*). Such a licensee has sufficient interest in the copyright of the original picture to maintain an action for damages against persons infringing that copyright by publications made by the process of which he is licensee (*x*).

The mode in which the register is to be kept is regulated by sect. 5, which incorporates the provisions of 5 & 6 Vict. c. 45, sects. 11, 12, and 14 (*y*), in reference to inspection, searches, delivery of copies, and their reception in evidence, false entries, papers falsely purporting to be copies, application by persons aggrieved by entries, and the expunging and varying of entries. The effect of the provisions so incorporated is given below:—

Inspection.—The register may be inspected at any time on payment of one shilling for every entry searched for or inspected (*z*).

Copies of Entries.—A copy of any entry, certified and stamped, is to be furnished to any person requiring it, on payment of five shillings; such copy is to be received as

(*u*) *Tuck* v. *Canton*, 51 L. J. Q. B. 363; 30 W. R. Dig. 52.
(*x*) *Ibid.*
(*y*) *Infra*, p. 108.
(*z*) 5 & 6 Vict. c. 45, s. 11.

evidence in all Courts, and will be *primâ facie* proof (but subject to be rebutted) of the proprietorship, assignment or license therein mentioned (*a*).

Expunging Entries.—A person aggrieved by an entry may apply to the Queen's Bench Division of the High Court of Justice for an order that such entry may be expunged or varied (*b*).

A person is not a "person aggrieved" within the meaning of the Statute unless he can show that the entry is inconsistent with some right that he sets up in himself (*c*) or some other person; or that the entry would really interfere with some intended action on his part (*d*). Therefore, where on a charge against W., under the Acts, of infringing G.'s copyright, certified copies of entries had been given and accepted in evidence to prove G.'s title, and W., who had been convicted on this evidence, subsequently applied to the Court to expunge the entries on the ground that the registration was not in accordance with the Act, but did not claim any title in himself, the Court held that he was not "a person aggrieved" by the entry more than any other member of the public, since the entry was only *primâ facie* evidence of the proprietorship of copyright, and it was the applicant's own fault if he did not rebut the *primâ facie* evidence which the entry afforded (*e*).

In *Ex parte Davidson* (*f*), where an action was pending

(*a*) 5 & 6 Vict. c. 45, s. 11.
(*b*) *Ibid*, s. 13.
(*c*) *Ex parte Bastow*, 14 C. B. 631; *ex parte Hutchins*, 4 Q. B. D. 90, 483.
(*d*) *Per* Hannen, J., in *Graves' Case*, L. R. 4 Q. B., 724.
(*e*) *Graves' Case*, *u. s.*
(*f*) 2 E. & B. 577.

by C., the registered proprietor, against D. for infringement of his copyright, and D. obtained a rule to expunge or vary the entry on the ground that the persons stated to be the authors were not so in fact, though he did not claim any copyright in himself, the Court directed an issue, on the trial of which the entries were not to be used, to determine the question. But this case appears to be overruled, so far as it decides that such an applicant is a person aggrieved (*g*), and doubts have been suggested whether the Court has power to direct an issue (*h*). It was laid down, however, by Lord Blackburn in *Graves' Case* (*i*), that if the applicant has some substantial objection going to the merits of the registered proprietor's title, the Court may direct an issue, or have the question otherwise disposed of, or, if they think this the proper course, may set aside or expunge the entry (*k*). If an entry is once expunged, there is no power to restore it (*l*).

(*g*) *Ex parte Davidson*, 18 C. B. 297; 25 L. J. C. P. 237, *Graves' Case*, *u. s.*; but see *Chappell v. Purday*, 12 M. & W. 303.

(*h*) *Ex parte Davidson*, 18 C. B. 297.

(*i*) *u. s.*

(*k*) As was done in *ex parte Hutchins*, 4 Q. B. Div. 90, 483; *ex parte Bastow*, 14 C. B. 631.

(*l*) *Per* Parke, B., *Chappell* v. *Purday*, 12 M. & W. 303, 306; *per* Lord Campbell, C.J., *Ex parte Davidson*, 2 Ell. and B., 578.

CHAPTER IV.

PAINTINGS, DRAWINGS, AND PHOTOGRAPHS (CONTINUED).

(F.) REMEDIES FOR INFRINGEMENT.

If the requirements of the Act have been complied with, the Act gives two remedies by which the proprietor of copyright may vindicate his right against infringers, namely:—

(i.) Proceedings for recovery of penalties; and
(ii.) Action for damages (*a*).

These remedies may be pursued concurrently, but the language of sect. 6, which imposes the penalties, differs from that of sect. 11, which regulates the remedy by action for damages, and in many cases an action for damages will lie, though no penalties would be recoverable.

I. *Penalties.*

Penalties may be recovered in the following cases:—

(i.) If, during the subsistence of the copyright in a work, the author, after having sold or disposed of such copyright, or any other person (not being the proprietor for the time being of the copyright) without the consent of the proprietor (*b*) repeats,

(*a*) In addition, he may obtain forfeiture of the pirate copies, and an injunction. See *infra*, p. 38.

(*b*) See *infra*, p. 37.

copies, colourably imitates, or otherwise multiplies the work or the design thereof for sale, hire, exhibition, or distribution, or causes the work or design thereof to be so repeated, copied, colourably imitated, or otherwise multiplied.

It will be observed, first, that to constitute an offence under this head, the copy must be made for sale, hire, exhibition, or distribution—the mere copying for personal gratification would not subject the copyist to penalties; secondly, that if the copying is for any of these purposes the offence is committed, although there may be no guilty intent; if a person copies a picture after obtaining permission from someone who pretended to be, but was not in fact, owner of the copyright, he will yet be liable to conviction, and to a nominal penalty (*c*). Where the copyright in a picture has passed to a purchaser (whether by express contract or by the operation of the Act), the artist will be liable to penalties if he paints a replica, and doubts have been suggested whether he can again use or sell the studies he made for the work.

(ii.) If any person imports into any part of the United Kingdom, or sells, publishes, lets to hire, exhibits or distributes, or offers for sale, hire, exhibition or distribution, or causes to be sold, &c., or so offered for sale, &c., any repetition, copy, or imitation of a work, or the design thereof, made without the consent of the proprietor of the copyright (*d*), *knowing that such repetition, copy, or imitation has been unlawfully made.*

(*c*) *Per* Blackburn, J., *ex parte Beal*, L. R. 3 Q. B. 387, 392.
(*d*) See *infra*, p. 37.

Guilty knowledge is the essence of an offence under this head. A copy made without consent abroad where there is no copyright, is not "unlawfully made" within the meaning of the section, so as to subject the importer or seller to penalties, though he might be liable to an action for damages (*e*). In *Tuck* v. *Priester*, the plaintiffs having entrusted a drawing to the defendant in Germany to produce certain copies for them, the defendant, in breach of confidence, made other copies for himself, which he imported into England. Subsequently to the importation the plaintiffs registered their copyright. After the registration the defendants sold in England the copies so made. It was held by Lord Esher, M.R., and Lindley, L.J., that the plaintiffs were not entitled to penalties in respect of the copies so sold, on the ground that production in a foreign country of a copy of a work in which the statute only gave copyright in England, might reasonably be said not to be unlawful, and, if so, the sale of such a copy in England was not a sale of a copy "unlawfully made," and they declined in a penal section to construe the word "unlawfully" as equivalent to "without consent." Lindley, L.J., added (*f*), that if the plaintiffs had a copyright in Germany under the International Copyright Acts and Treaties, he was disposed to think that the copies imported or sold would have been copies which he knew were "unlawfully made." It seems to follow from this decision and the reasons given, that if a person, in the United Kingdom or anywhere else where the work is copyright, repeats or copies a copyright work, even prior to registration, and such copies after the registration are sold by some one with

(*e*) *Tuck* v. *Priester*, 19 Q. B. Div. 636.
(*f*) *Ib.*, p. 645.

knowledge of the facts, the proprietor of the copyright can recover penalties in respect of such sales.

Amount of penalty.—The Act imposes a penalty of not exceeding £10 for every offence (*g*).

Although there may be one contract for the sale of numerous copies, yet the sale of each copy is an offence, and if ten copies are sold at one time ten penalties are incurred (*h*).

The person entitled to penalties.—The person to recover the penalties is the "proprietor of the copyright for the time being." It is clear, therefore, that the person to whom a copyright has been assigned cannot sue for penalties for offences committed prior to the assignment (*i*). Whether he could sue for offences subsequent to the assignment, but prior to the registration of his title, may be doubted.

In *Dupuy* v. *Dilkes* (*k*) the plaintiffs became entitled to the copyright in a picture on the 27th of October, 1877, and their title was registered on the 13th of February, 1878. Prior to the 27th of October, 1877, the defendants had copied the picture on an almanac; this copy was alleged to have been made with the authority of the then proprietor. In November, 1877, the plaintiff's agent purchased one hundred copies of the almanac. No other

(*g*) Sect. 5.
(*h*) *Ex parte Real*, L. R. 3 Q. B. 387.
(*i*) See *Dupuy* v. *Dilkes*, 48 L. J. Chy. 682, *ante* p. 29.
(*k*) 48 L. J. Ch. 682. The head note of the case runs: "*Semble*, a registered proprietor cannot sue for offences committed when an earlier proprietor was on the register," but the case does not seem to be an authority for this proposition, but only for the narrower one that a registered proprietor cannot sue in respect of offences committed prior to the assignment to himself.

copies were subsequently sold or made, the stones for making the prints having been destroyed prior to the assignment to the plaintiffs. The plaintiffs brought an action for an injunction to restrain the multiplication for sale of the picture, and for penalties for such multiplication. It was held that the plaintiffs were not entitled to sue in respect of repetitions made before they became proprietors of the copyright—since such repetitions might have been made with the knowledge of the former owner—and the plaintiff's whole case being in respect of unlawful repetitions, and it being clear on the facts that no repetitions had been made since the assignment to the plaintiffs, their action was dismissed, Hall, V.-C., remarking that, even if the claim had gone to selling, as distinguished from repeating, it seemed to him under the circumstances not a case in which penalties could be given. It will be observed in this case, that there was no evidence whether the prints were or were not unlawful as against the owner of the copyright at the time they were made, and the sale took place before the registration of the plaintiffs' title. If they were originally made without the consent of the then proprietor of the copyright, and had been sold subsequently to the registration of the plaintiffs' title, it seems that the plaintiffs could have recovered penalties in respect of such sales (*l*).

Formalities of Consent.—It will be observed that an offence is committed by copying the work "*without the consent of the proprietor*"; it seems, though it is not quite clear, that such consent must be in writing. By sect. 3 it is enacted that "every license to use or copy by any means or process the design or work, shall be

(*l*) *Tuck* v. *Priester*, 19 Q. B. Div. 629.

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." It would no doubt be a strong thing in construing a penal section to introduce the words "in writing" when they are not actually expressed; but, on the other hand, unless this is done, it does not appear how effect can be given to sect. 3 (*m*). Whatever may be the true construction of the Act, it would always be advisable to obtain a written consent.

Forfeiture of Copies.

The pirate copies are to be forfeited to the proprietor of the copyright (sect. 5). This provision is, however, of little avail, as no power of search is given. Where the proceedings for recovery of penalties are before justices or a magistrate under sect. 8 (*n*), there seems to be no power to compel the pirated copies to be delivered up on oath. Where the penalties are sued for by action, the extent of the piracy may, perhaps, be ascertained by discovery, but the general rule is that a plaintiff will not be allowed to interrogate a defendant to show that he has subjected himself to penalties (*o*), and cannot obtain discovery of documents (*p*); where, however, the penalty is really imposed as a payment by way of damages, it being difficult to ascertain the precise amount of injury, interrogatories have been allowed (*q*), and in actions in the

(*m*) See also *inf.*, p. 52, and cases there cited in note (*m*).
(*n*) *Infra*, p. 39.
(*o*) *Martin* v. *Treacher*, 16 Q. B. Div. 505.
(*p*) *Ibid.*, *Whiteley* v. *Barley*, 56 L. J. Q. B. 312; *Jones* v. *Jones*, W. N. (1889), p. 19; 37 W. R. 479.
(*q*) *Adams* v. *Batley* and *Cole* v. *Francis*, 18 Q. B. Div. 625.

High Court the Act (sec. 9) expressly enables the Court to give inspection.

Procedure for Recovery of Penalties.

All pecuniary penalties incurred, and all unlawful copies, imitations, and other things forfeited by offenders, may be recovered as follows (*r*) :—

In England and Ireland—either by action against the party offending, or by summary proceeding before any two justices having jurisdiction where the offending party resides (*s*).

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.

Formerly, a court of summary jurisdiction in England could make an immediate order for the imprisonment of the offender in default of payment of the penalties (*t*), but now no order for imprisonment can be made, unless it appears to the Court that the offender has no goods whereon to levy a distress, or that the proceeds of a levy will be insufficient, or that the levy of a distress will be

(*r*) Sect. 8.

(*s*) A stipendiary magistrate in the Metropolitan Police District (2 & 3 Vict. c. 71, s. 14), and the Lord Mayor of the City of London, or any alderman of the city for the time being sitting at the Mansion House or Guildhall Justice-rooms (11 & 12 Vict. c. 43, ss. 29 & 34), and every stipendiary magistrate, appointed for any city, town, liberty, borough, place, or district, sitting at a police court or other place appointed in that behalf (21 & 22 Vict. c. 73, s. 1) may exercise alone the jurisdiction of two justices.

(*t*) 28 & 29 Vict. c. 127, now repealed; 32 & 33 Vict. c. 62, s. 4.

more injurious to himself or his family than imprisonment (*u*).

Where an offender is imprisoned he would not be entitled to his release upon filing a petition in bankruptcy (*x*), but after electing to have the offender imprisoned the complainant could not recover the penalty or prove for it in bankruptcy (*y*).

II. *Action for Damages.*

In addition to the remedy for infringement by the recovery of penalties, the proprietor for the time being of the copyright in a work may bring an action for damages in any of the following cases (*yy*) :—

(i.) If any person during the subsistence of the copyright without the consent of the proprietor repeats, copies, colourably imitates, or otherwise multiplies the work or design thereof, for sale, hire, exhibition or distribution, or causes the same to be repeated, copied, &c., for such purposes.

(ii.) If any person imports or causes to be imported into any part of the United Kingdom, or sells, publishes, lets to hire, exhibits or distributes, or offers for sale, hire, exhibition or distribution, or causes or procures to be sold, published, let to hire, exhibited or distributed, or offered for sale, hire, &c., any repetition, copy, or imitation of the work or the design thereof, made without the consent of the proprietor for the time being of the copyright.

(*u*) 42 & 43 Vict. c. 49, s. 21.
(*x*) *Ex parte Graves*, L. R. 3 Ch. 642.
(*y*) *Per* Page Wood, V.C., *ib.*, p. 645.
(*yy*) 25 & 26 Vict. c. 68, s. 11.

The consent must, it seems, be in writing (*z*).

Under the second head, persons importing, selling, or exhibiting copies made without consent will be liable in damages, although not aware that they were infringing any rights, and no notice need be given before the commencement of an action (*a*).

Licensees may Sue.—The right to recover damages is given by Section 11 to the proprietor for the time being of the copyright. There is, however, a proviso at the end which preserves any remedy which any person aggrieved may be entitled to at law or in equity. It has been held that a licensee to whom the sole right of reproducing a picture by a particular process—*e.g.*, by colour-printing—has been assigned, though not an assignee of the copyright, has sufficient interest in the copyright of the original picture to maintain an action for damages against persons infringing that copyright by publications made by the process of which he is licensee (*b*).

The importation into the United Kingdom of copies made abroad is prohibited by sect. 10.

(*z*) S. 3; *Strahan* v. *Graham*, 16 L. T. (N.S.), 87; 18 L.T. (N.S.), 457, and see *ante*, pp. 23 and 37, and *inf.*, p. 52.

(*a*) *Cooper* v. *Whittingham*, 15 Ch. Div. 501; Cf. *West* v. *Francis*, 5 B. & A. 737; *Gambart* v. *Sumner*, 5 H. & N. 5.

(*b*) *Tuck* v. *Canton*, 51 L. J. Q. B. 363; 30 W. R. Dig. 52.

CHAPTER V.

FRAUDULENT PRODUCTIONS AND SALES.

THOUGH not, strictly speaking, a question of copyright, it will not be irrelevant to consider the rights and remedies of artists in respect of spurious copies passed off as their original work.

At common law the fraudulent imitation of an artist's signature upon a spurious painting is not by itself a punishable offence.

If, however, a person knowingly sells, as an original, a copy of a picture with the painter's name imitated upon it, and by means of the imitated name knowingly and fraudulently induces another to buy and pay for the picture as a genuine work of the artist, he may be indicted for a cheat by means of a false token, but not for forgery, because the crime of forgery must be committed with *reference to some document or writing* (*a*).

Under the Copyright Act 1862 (*b*) the following acts have been rendered unlawful and punishable by penalties, that is to say:—

(i.) To fraudulently sign, affix, or fraudulently cause to be signed or affixed to or upon any painting, drawing, or photograph, or the negative thereof, any name, initials, or monogram.

(*a*) *Reg.* v. *Closs*, Dears & B. C. C. 460; 3 Jur. N. S. 1309; 27 L. J. M. C. 54.

(*b*) 25 & 26 Vict. c. 68, s. 7.

(ii.) To fraudulently sell or exhibit or offer for sale or exhibition 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.

(iii.) To fraudulently utter or dispose 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.

(iv.) Where the author of any painting, drawing, or photograph has sold or parted with the possession of such work, and any alteration has afterwards been made by any other person, by addition or otherwise, it is unlawful during the lifetime of the author, without his consent to make or knowingly to sell, publish, or offer for sale, such work or any copies of such work so altered, or of any part thereof as or for the unaltered work of such author.

Penalties.—The offender forfeits to the person aggrieved a sum not exceeding £10, or not exceeding double the full price, if any, at which all such copies, engravings, imitations, or altered works have been sold or offered for sale; and the copies, &c., are forfeited to the person (or his representatives) whose name, &c., has been fraudulently signed.

No penalty is recoverable under this section unless the person whose name, &c., has been fraudulently signed was living *at or within twenty years next before* the time when the offence was committed.

The penalties may be recovered either by action or summarily before two justices, or a magistrate having the jurisdiction of two justices (*c*).

In *Martin* v. *Wright* (*d*) an injunction to restrain the exhibition of a copy as the work of the artist who painted the original, was refused on the ground that the misrepresentation was only a sort of libel, the publication of which the Court would not prevent. Such a case would now seem to come within the third of the above headings, unless it be held that the word "utter" is restricted by transactions *ejusdem generis* with sales, and the difference between the language employed in this and the preceding division is in favour of this view.

(*c*) 25 & 26 Vict. c. 68, s. 8. See *ante*, p. 39.

(*d*) 6 Sim. 297.

CHAPTER VI.

ENGRAVINGS, ETCHINGS, &c.

THE rights of authors of engravings, etchings, or prints depend on the combined effect of the statutes 8 Geo. II., c. 13, 7 Geo. III., c. 38, 17 Geo. III., c. 57, and 6 & 7 Will. IV., c. 59, which extends the operation of the earlier Acts to Ireland; there being also as to lithographs the statute 15 & 16 Vict. c. 12, s. 14.

I. TERM OF COPYRIGHT.

The authors of works which comply with the requirements of these Acts (*a*) are entitled to the sole right of printing and reprinting such works for the term of twenty-eight years (*b*), to commence from the day of the first publishing thereof.

II. PERSONS ENTITLED TO THE RIGHT.

The right is given to—

1. Any person who engraves or etches a print from his own original drawing or design (*c*).

2. Any person who causes a print to be engraved or

(*a*) See *infra*, p. 48.

(*b*) Originally fourteen years under 8 Geo. II., c. 13, but extended by 7 Geo. III. c. 38, s. 7.

(*c*) 8 Geo. II. c. 13; 7 Geo. III. c. 38, s. 1.

etched from his own original drawing or design (*d*).

3. Any person who engraves, etches, or causes to be engraved or etched, a print taken from any picture, drawing, model, or sculpture, whether ancient or modern (*e*).

A person may be entitled to copyright as the person who has invented and designed a work, although he may be unable himself to execute it. Thus, where the plaintiff projected a bird's-eye view of Paris and its fortifications during the siege, and furnished an artist with a map and a rough sketch which he had made, and gave him constant information as to the earthworks as they were thrown up, and from these materials the artist executed the lithograph, it was held that the plaintiff was the inventor and designer of the work (*f*).

III. Classes of Prints Protected.

Prints taken by lithography, or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely, are protected by the Acts (*g*). Christmas cards may accordingly be so protected if the necessary conditions are fulfilled.

The Acts protect not only works of imagination, but prints that are reproductions of things already in nature, *e.g.*, representations of medicinal plants (*h*).

(*d*) 8 Geo. II. c. 13; 7 Geo. III. c. 38, s. 1.
(*e*) 7 Geo. III. c. 38, s. 2.
(*f*) *Stannard* v. *Harrison*, 24 L. T. N. S. 570.
(*g*) 15 & 16 Vict. c. 12, s. 14.
(*h*) *Blackwell* v. *Harper*, 2 Atk. 93.

Maps.

Maps were included within the protection of the Acts, but it is now necessary to register them as literary works, under 5 & 6 Vict. c. 45, s. 13, before any proceedings on account of infringement can be taken (*i*). This can be done at any time, even after the infringement complained of, so long as it is before the commencement of the proceedings (*k*). Whether it is still necessary to comply with the requirements of the Engravings Acts may be doubted (*l*).

Foreign Prints.

It has been held that prints struck off abroad from plates engraved abroad, though published in England before any publication took place abroad, are not protected by the Acts, on the ground that the object of the legislature, as expressed in 17 Geo. III., c. 57, which must be read into the earlier Acts, was to protect those works only which were designed, engraved, or worked in Great Britain (*m*). Prints engraved in Ireland were brought within the protection of the Acts by 6 & 7 Will. IV., c. 59.

(*i*) 5 & 6 Vict. c. 45, s. 24; *Stannard* v. *Lee*, L. R. 6 Ch. 346; 40 L. J. Ch. 489; 19 W. R. 615; 24 L. T. N. S. 459; but see also *Stannard* v. *Harrison*, 19 W. R. 811, 24 L. T. N. S. 570.

(*k*) *Goubaud* v. *Wallace*, 36 L. T. 704; 25 W. R. 604, where the registration was made on the same day as the issue of the writ.

(*l*) See and compare the cases cited in note (*i*).

(*m*) *Page* v. *Townsend*, 5 Sim. 395. As to the protection now afforded to foreign prints under the International Copyright Acts, see *infra*, Ch. IX., p. 84.

IV. Conditions under which Copyright is given.

No registration is necessary, but the Act, 8 Geo. II. c. 13, requires "the day of the first publishing thereof" to be "truly engraved with the name of the proprietor on each plate, and printed on every such print or prints."

It is now settled that compliance with these requirements is a condition precedent to copyright under any of the Acts, and in the case of engravings published separately (*n*), neither penalties (*o*) nor damages (*p*) can be recovered unless these conditions are satisfied.

"*Name of the Proprietor.*"—It is sufficient if the name of the proprietor is on the plate and print, and it is not necessary that the designation "proprietor" should be added to his name. Accordingly, "Elizabeth Blackwell, *sculpsit et delineavit*," Mrs. Blackwell being the proprietor (*q*); "Newton, *del.*, 1st May, 1826, Gladwin, *sculp.*," Newton being in fact the proprietor (*r*); and "London: Published by Henry Graves & Co., May 1st, 1861, Printsellers to the Queen," the sole proprietor being Henry Graves (*s*), have been held to be a sufficient compliance with this requirement of the Act; and if the print bears the trading name of the firm to which it belongs, although it does not show the names of all the partners in the firm, it is a sufficient designation of the

(*n*) As to engravings in book form, see *infra*, p. 49.

(*o*) *Newton* v. *Cowie*, 4 Bing. 234, 244; *Sayer* v. *Dicey*, 3 Wils. 60.

(*p*) *Newton* v. *Cowie*, *u. s.*; *Brooks* v. *Cock*, 3 A. & E. 138; *Harrison* v. *Hogg*, 2 Ves. jun. 323; *Thompson* v. *Symonds*, 5 T. R. 45; *Blackwell* v. *Harper*, 2 Atk. 93, *contra*, not followed.

(*q*) *Blackwell* v. *Harper*, 2 Atk. 92.

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

(*s*) *Graves* v. *Ashford*, L. R. 2 C. P. 410.

proprietors, as it enables parties to know to whom to apply for information (*t*).

Changes of Proprietorship need not appear.—The name required by the Act to be on the print is the name of the proprietor at the time of publication; and it is not necessary or right that the names of subsequent proprietors should be placed upon it either in addition to, or substitution for, that of the original proprietor (*u*).

"*The Day of first Publishing.*"—The requirements of the Statute are not satisfied by a statement of the year or of the month of publication, but the day, month, and year must all be given (*x*).

Evidence of Compliance.—The production of a print taken from the original plate is sufficient evidence of compliance with the requirements of the Act, without production of the plate itself (*y*); otherwise, after the destruction of the plate, it would be impossible to sue for infringements.

Engravings in Book Form.

Although engravings, intended for separate publication, are not protected by these Acts unless the above-mentioned requirements are complied with; yet where a number of illustrations are put together and published in book form —whether with or without letterpress—they constitute "a book" within the meaning of 5 & 6 Vict. c. 45, and the proprietor will be entitled to copyright therein as such (a right which he can enforce after registering his

(*t*) *Rock* v. *Lazarus*, 15 Eq. 104.

(*u*) *Thompson* v. *Symonds*, 5 T. R. 41, *per* Buller, J., at p. 45.

(*x*) *Sayer* v. *Dicey*, 3 Wil. 60; *Mathieson* v. *Harrod*, L. R. 7 Eq. 270.

(*y*) *Thompson* v. *Symonds*, 5 T. R. 41.

title under that Act (*z*)), although the date of publication and the name of the proprietor do not appear on the engravings (*a*). Thus, woodcuts published in a volume with stories in which there was no copyright (*b*), cartoons in "Punch" (*c*), a collection of lithographic sketches of monumental designs compiled from photographs of tombstones in different cemeteries (*d*), and prints, from original drawings, of articles of furniture in an upholsterer's catalogue (*e*), have been held entitled to be protected as books or parts of a book.

In such a case, as there is not copyright in each engraving, but in the book as a whole, it would often be a difficult question to decide what extent of copying would amount to a piracy, though under some circumstances the copying of a single engraving might amount to an infringement of the copyright in the work (*f*). Where, therefore, the engravings in a book are valuable as works of art, it would be advisable that they should all comply with the requirements of the Engraving Copyright Act.

(*z*) This can be done at any time before the commencement of the proceedings, *Goubaud* v. *Wallace*, 36 L. T. 704, 25 W. R. 604.

(*a*) *Bogue* v. *Houlston*, 5 De G. & Sm. 267; *Grace* v. *Newman*, L. R. 19 Eq. 623; *Maple* v. *Junior Army and Navy Stores*, 21 Ch. Div. 369, 380.

(*b*) *Bogue* v. *Houlston*, *u. s.*, and see *per* Jessel, M.R., 21 Ch. Div. 380.

(*c*) *Bradbury* v. *Hotten*, L. R. 8 Ex. 1, 21 W. R. 126, 42 L. J. Ex. 28, 27 L. T. 450.

(*d*) *Grace* v. *Newman*, *u. s.*

(*e*) *Maple* v. *Junior Army and Navy Stores*, *u. s.*

(*f*) *Bradbury* v. *Hotten*, L. R. 8 Ex. 1, and *u. s.*, *per* Kelly, C.B.

V. Remedies for Infringement.

The remedies for infringement are—

(i.) By proceedings for penalties.
(ii.) By action for damages.

These remedies may be pursued concurrently.

(i.) *Penalties.*

Penalties may be recovered in the following cases (*g*):

(*α.*) If, during the subsistence of the copyright in a print, any person engraves, etches, or otherwise copies such print in whole or in part, *and sells such copies*, or prints or imports the same or any part thereof for sale without the consent of the proprietor in writing, signed by him in the presence of two witnesses (*h*).

(*β.*) If any person, without such consent (*i*), publishes, sells, or exposes to sale any copy of such print, knowing that such copy has been so printed without the consent of the proprietor.

It will be observed that no penalty is incurred by mere copying—the copy must be sold, or intended for sale; and importation is no offence unless for the purpose of sale. On the other hand, the sale of pirate copies is no offence unless with the knowledge that they were made without the consent of the proprietor. In all these cases the proprietor must have recourse to his action for damages (*k*).

(*g*) 8 Geo. II., c. 13, s. 1.
(*h*) As to the consent required, see *infra* p. 52.
(*i*) See *infra*, p. 52. (*k*) See *infra*, *p.* 54.

Consent must be in Writing.—The consent required by the Act is "a consent in writing signed in the presence of two witnesses;" and any permission lacking these formalities will, it is conceived, be insufficient. A person who has given a verbal permission is not estopped from suing for penalties, because estoppel only arises from a representation as to existing facts, and not from an agreement or statement of intention (*l*). Accordingly, unless the defendant has been led to believe that he has a written consent signed in the presence of two witnesses, estoppel or acquiescence will be no defence (*m*); and, unless the plaintiff had in fact agreed to give a written consent, it would not be open to the defendant to counter-claim for damages for breach of contract.

From the language of the section it seems that the consent must be signed by the proprietor himself, and that signature by an agent will not be sufficient (*n*)—differing, in this respect, from the consent required by the Dramatic Copyright Acts (*o*).

The onus of proof is on the defendant to show that he had the required consent, not on the plaintiff to show the absence of such consent, for the subject matter of the allegation is one peculiarly within the knowledge of the defendant, and the proof therefore rests with him (*p*).

(*l*) *Pickard* v. *Sears*, 6 A. & E., 475; *Jorden* v. *Money*, 5 H. L. C. 185, *per* Lord Cranworth; *Maddison* v. *Alderson*, 8 App. Ca. 467, *per* Lord Selborne at p. 473.

(*m*) *Latour* v. *Bland*, 2 Stark. 382; *Shepherd* v. *Conquest*, 17 C. B. 427; 25 L. J. C. P. 127; 4 W. R. 283; *Eaton* v. *Lake*, 20 Q. B. Div. 378, 36 W. R. 277; and see *per* Maule, J., *Morton* v. *Copeland*, 16 C. B. 517, 24 L. J. C. P. 169.

(*n*) Cf. *Hyde* v. *Johnson*, 2 Bing. N. C. 776.

(*o*) *Morton* v *Copeland*, 16 C. B. 517; 24 L. J. C. P. 169.

(*p*) *Ibid.*, *Apothecaries Co.* v. *Bentley*, Ry. & M. 159; *R.* v. *Turner*, 5 M. & S. 206; Taylor's Ev., par. 348.

Exceptions.—No penalty is recoverable in respect of prints made from the plates by persons who have purchased them for the purpose from the original proprietors (*q*), nor in respect of any print made from the original plate, although such print may have been made in breach of contract (*r*).

Amount of Penalties.—The offender is to forfeit five shillings for every print found in his custody or otherwise disposed of, and the plates and prints are to be forfeited to the proprietor of the copyright, to be destroyed.

One half of the penalty is to go to the Crown, and the other to the person who sues for the same (*s*).

Procedure for Recovery of Penalties.—These penalties and the forfeited plates and prints may be recovered summarily in the manner provided by 25 & 26 Vict. c. 68 (*t*).

They may be recovered by any person, whether proprietor of copyright or not (*u*).

Time within which Proceedings must be taken.—Proceedings might formerly be taken within three months of the discovery of the offence; but must now be commenced within six months after the offence is committed (*x*).

(*q*) 8 Geo. II. c. 13, s. 2.
(*r*) *Murray* v. *Heath*, 1 B. & Ad. 804.
(*s*) 8 Geo. II. c. 13, s. 1; 7 Geo. III. c. 38, s. 5.
(*t*) Sect. 8, *ante* p. 39, *infra*, p. 105.
(*u*) 8 Geo. II. c. 13, s. 1; 7 Geo. III. c. 38, s. 5.
(*x*) 7 Geo. III. c. 38, s. 6.

(ii.) *Action for Damages.*

In addition to the penalties so given (which may be recovered either by the proprietor of the copyright or by a common informer), the proprietor of the copyright may, under 17 Geo. III. c. 57, bring an action for damages in the following cases:

(*a.*) If any person, during the subsistence of the copyright, engraves, etches, or otherwise copies his print in whole or in part, without the consent of the proprietor in writing, signed by him in the presence of and attested by two witnesses (*y*), *or*

(*β.*) Prints, reprints, or imports for sale (*z*), or publishes, sells, or otherwise disposes of, any copy of his print without such consent (*a*).

Under this Act a person importing for sale, publishing, or selling spurious copies of an engraving, is liable to an action for damages, although he acts innocently without notice of the piracy (*b*), and no notice need be given before the commencement of the action (*c*). The limitation of six months within which proceedings must be taken does not apply to actions for damages (*cc*).

VI. What Copies are Infringements.

It remains to consider what productions are copies within the meaning of these enactments. To ascertain

(*y*) See *ante*, p. 52, as to the formalities of the consent.

(*z*) *Cooper* v. *Whittingham*, 15 Ch. Div. 501.

(*a*) See *ante*, p. 52, as to the formalities of the consent.

(*b*) *West* v. *Francis*, 5 B. & A. 737; *Gambart* v. *Sumner*, 5 H. & N. 5; 29 L. J. Ex. 98.

(*c*) *Cooper* v. *Whittingham*, *u. s.*

(*cc*) *Graves* v. *Mercer*, 16 W. R. 790.

this the case where the engraver's work is entirely original must be distinguished from that in which he is only translating another's design into black and white. In the former case it would seem that the design is protected (*d*); in the latter case protection is afforded only to that which is the engraver's meritorious work, *i.e.*, the skill by which he translates into black and white the effects produced by colour or other means in the original. As James, L.J., expressed it in *Dicks* v. *Brooks* (*e*), "The Act 8 Geo. II. c. 13 gave a protection, not to a mere engraver, but to a man of genius, who, by his industry, pains, and expense, invented a design, 'or engraved, etched, or worked, or from his own work and invention caused to be designed and engraved, etched, or worked,' and so on, 'any historical print.' Those words were intended to give protection for the genius exhibited in the invention of the design, and the protection was commensurate with the invention and design. That Act was afterwards extended to embrace the case of persons engraving from something which was not the design of the engraver. Now it appears to me that the protection given by subsequent Acts to the mere engraver was intended to be, and was, commensurate with that which the engraver did, that the engraver did not acquire against anybody in the world, any right to that which was the work of the original painter, did not acquire any right to the grouping or composition, because that was not his work but the work of the original painter. . . . The art of

(*d*) See, however, *Dicks* v. *Brooks* (15 Ch. Div. 22, 38), where Bramwell, L.J., expressed his doubt whether the statutes were not intended to protect the artist's skill as an engraver only, and not as a draughtsman.

(*e*) *Ibid.* p. 34.

the engraver is often of the very highest character—as in the print before me. . . . That art or skill was the thing which, as I believe, was intended to be protected by the Acts of Parliament."

In *Newton* v. *Cowie* (*f*) the engraving, which was held to be protected by the Act, was made on a reduced scale from a drawing of a machine on the specification of a patent. Best, C.J., who delivered the considered judgment of the Court, said: "The engraver, although a copyist, produces the resemblance by means very different from those employed by the painter or draughtsman from whom he copies—means which require great labour and talent. The engraver produces his effects by the management of light and shade. . . 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. 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 do not avail yourself of my labour, who have been to the picture and have executed the engraving.'"

Copies, therefore, made from the original picture are no infringement of the copyright in an engraving made from it. Thus, where the plaintiff who had purchased the right of engraving two pictures, employed T. to execute the engravings, and T., after completing the plaintiff's engravings, made two sketches from the original pictures

(*f*) 4 Bing. 231.

for himself, and from these sketches subsequently made two prints for the defendant, who published them in his magazine, it was held that these prints, being made from the original picture, were no infringement of the copyright in the plaintiff's engraving (*g*).

So when the owner of copyright in a painting assigns the right of producing an engraving of one size, he retains and can assign the right of copying the picture by other means or by engravings of other sizes, and the assignee of the right of copying a painting in a particular way cannot complain of such copies unless he can show that they were made from his copy, and not from the original (*h*); but it has been held that such a limited assignee has sufficient interest in the copyright of the original picture to maintain an action for damages against persons infringing that copyright by publications made by the process of which he is sole assignee (*i*).

Although an engraver of another's design is entitled to prevent others availing themselves of his labours, it does not follow that every copy based on his work is necessarily an infringement of his copyright. The Acts will apply to any copy of his work that can come into competition with the sale of the engraving, but not to anything which (though, strictly speaking, copied from the engraving) is intended for an entirely distinct purpose, and cannot enter into competition with it (*k*).

Thus it has been held that a photograph of an engraving is an infringement of the copyright in the latter, and

(*g*) *De Berenger* v. *Wheble*, 2 Stark. 548.
(*h*) *Lucas* v. *Cooke*, 13 Ch. Div. 872.
(*i*) *Tuck* v. *Canton*, 51 L. J. Q. B. 363.
(*k*) *Dicks* v. *Brooks*, 15 Ch. Div. 22.

that the Acts apply to any mode of copying, whether known at the time or subsequently discovered (*l*).

On the other hand, it has been held that the copyright of a print is not infringed by an enlarged copy made in colour on canvas and exhibited as a diorama (*m*).

So, where the defendant was the proprietor of the copyright in an engraving of Millais' picture, "The Huguenot," but not the owner of the picture, and the plaintiff issued a pattern for wool-work consisting of the figures in the picture, it was held that such pattern, which consisted of a mosaic built up of small coloured squares, and appeared to have been made by help of the engraving, was yet no infringement of the copyright in the engraving (*n*). James, L.J., after dealing with the question of what was intended to be protected by the Act (*o*), said: "I am of opinion, as a matter of fact, that the wool pattern is not a copy, is not a piratical imitation, is not a copy with colourable variations of the defendants' engraving. The alleged copy is not a thing intended as a print in the ordinary sense of the word. It was in-

(*l*) *Gambart* v. *Ball*, 14 C. B. N. S. 306; 32 L. J. C. P. 106; approved in *Graves* v. *Ashford*, L. R. 2 C. P. 410. With regard to lithographs it would be natural to expect that, as by 15 & 16 Vict. c. 12 s. 14, it is declared that the provisions of the Acts are intended to include prints taken by lithography or other processes, so conversely a lithograph would be an infringement of the copyright in an engraving. Baggallay, L.J., in *Dicks* v. *Brooks* (15 Ch. Div. 22, 36), seems to have thought the question was arguable whether a chromo-lithograph could be treated as such a copy of an engraving as was prohibited by the statute, and that the decision would depend on whether the lithograph was executed with such skill as to be likely to compete with the engraving.

(*m*) *Martin* v. *Wright*, 6 Sim. 297.

(*n*) *Dicks* v. *Brooks*, 15 Ch. Div. 22, 49 L. J. Ch. 812, 43 L. T. 71, 29 W. R. 87.

(*o*) See his remarks cited, *ante*, p. 55.

tended to be printed, and was printed, as a pattern for Berlin wool, not put forward in any way fraudulently or as a sham, but really in truth intended solely for that purpose. Now I am of opinion that whatever may be the similarities between the one and the other, the attempt, not to reproduce the print, but to produce something which has some distant resemblance to the print, not by anything in the nature of the engraver's work, but by what I may call a mosaic of coloured parallelograms, is not in any sense of the word a piratical imitation of the print. Nobody would ever take it to be the print, nobody would ever buy it instead of the print; nobody would ever suppose that it was, to use the language of the first Act, a base copy of the print. It is a work of a different class, intended for a different purpose, and, in my opinion, no more calculated to injure the print *quâ* print, or the reputation of the engraver, or the commercial value of the engraving in the hands of the proprietor, than if the same group were reproduced from the same engraving by waxwork at Madame Tussaud's, or in a plaster of Paris cast, or in painting on porcelain. I cannot conceive that such a reproduction of the subject in tapestry or Berlin wool, or upon china or in earthenware, is within the meaning of the Act of Parliament." Baggallay, L.J., in the same case, said it was perfectly clear that the words of the Act could not have been intended to apply to a lady copying a print, or part of a print, upon a china plate, or to a person who, for his own amusement, makes an etching, drawing, or water-colour sketch from an engraving.

Extent of Copying.—The words of the statute 17 Geo. III. c. 57, are: "If any person shall copy in the whole, or in

part, by varying, adding to, or diminishing from the main design." The question in each case is whether the work complained of is substantially a copy of the copyright work. It is immaterial whether the copy is of the same size (*p*) as the original, or enlarged or diminished (*q*).

The provisions of the Acts do not apply to prints taken from a lawful original plate. Thus, where the plaintiff had employed the defendant Heath to engrave plates from original drawings, and Heath engraved them and also took a number of proof impressions, which he kept for himself, and which were subsequently, on his bankruptcy, sold by his assignees, it was held that no action would lie *under the statutes* against Heath or his assignees, though Heath might be liable to an action for his breach of contract (*r*); and it seems that the plaintiff would be entitled to an injunction in such a case (*s*).

VII. Assignments.

There is no express provision requiring the assignment of copyright in an engraving to be in writing, but inasmuch as a licence is required to be in writing attested by two witnesses it is a natural conclusion that an assignment which confers a higher right must be evidenced in the same manner (*t*). An assignee of the copyright may maintain an action against a person who subsequently to the assignment pirates the engraving (*u*).

(*p*) *Moore* v. *Clarke*, 9 M. & W. 692.
(*q*) *Gambart* v. *Ball*, 14 C. B. N. S. 306.
(*r*) *Murray* v. *Heath*, 1 B. & Ad. 804.
(*s*) *Mayall* v. *Higbey*, 6 L. T. N. S. 362, *ante* p. 8.
(*t*) It was so decided under 8 Anne, c. 19, *Power* v. *Walker*, 8 M. & S. 7; *Davidson* v. *Bohn*, 6 C. B. 456; *Jefferys* v. *Boosey*, 4 H. L. C. 815, per L. St. Leonards at pp. 994, 995.
(*u*) *Thompson* v. *Symonds*, 5 T. R. 41.

CHAPTER VII.

SCULPTURE.

THE first statute, giving protection to sculpture, was passed in 1778 (*a*). It proved ineffectual for the purpose, since it was held that it was no offence under it to *sell* a pirated cast of a bust if the piracy had any addition to or diminution from the original, nor to *make* a pirated cast if it was a perfect facsimile of the original (*b*).

This statute was accordingly superseded, in 1814, by the present Act (54 Geo. III. c. 56).

I. IN WHAT THERE IS COPYRIGHT.

Under this Act every person who makes or causes to be made—

(i.) Any new and original sculpture, or model, or copy or cast of the human figure, or of any animal or of parts thereof, or of any subject being matter of invention in sculpture, or

(ii.) Any alto or basso-relievo representing any of such matters, or

(iii.) Any cast from nature of any of such matters,

is entitled to the sole right and property therein for the term provided by this Act.

There seems nothing in the Act to protect a copy from the antique.

(*a*) 38 Geo. III. c. 71. (*b*) *Gahagan* v. *Cooper*, 3 Camp. 111.

II. Duration of the Right.

The right is given for fourteen years from first putting forth or publishing the protected works (*c*). Exhibition in a gallery, notwithstanding that there may be restrictions on copying, would be a publication within the meaning of the Act (*d*).

If the author is alive at the expiration of the fourteen years, the right returns to him for a further period of fourteen years (*e*). It does not appear that the legislature intended to protect artists against their own acts, and a conveyance to a purchaser (duly executed as required by sect. 4), by the proprietor of "all his interest in the copyright" in a work would, it seems, pass to the purchaser this contingent copyright (*f*).

III. Conditions on which Copyright depends.

The right is subject to the condition that, "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 (*g*).

No Registration is required.—Formerly articles of sculpture could be registered under the Designs Act, 1850 (13 & 14 Vict. c. 104, sect. 6), and penalties for infringement recovered in a summary manner. That Act has been

(*c*) 54 Geo. III. c. 56, sect. 1.

(*d*) *Turner* v. *Robinson*, 10 Ir. Ch. 510, 516.

(*e*) Sect. 6.

(*f*) *Carnan* v. *Bowles*, 2 Bro. C. C. 80; decided on 8 Anne, c. 19, s. 11, the words of which are the same.

(*g*) 54 Geo. III. c. 56, s. 1.

repealed, and designs for sculpture or other things protected under 54 Geo. III. c. 56, are excluded from the operation of the Patents, Designs, and Trade Marks Act, 1883 (*h*).

IV. Remedy for Infringement.

The remedy for infringement is by action for damages (*i*), which must be commenced within six months of the discovery of the offence (*k*).

It is an infringement of the copyright given by the Act if any person makes or imports, or causes to be made or imported, or exposed for sale, any pirated copy or pirated cast of a protected work, whether such pirated copy 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 the Act (*l*).

A photograph or an engraving appears not to be a copy or an imitation within the meaning of the Act, and consequently no infringement. Such reproductions, therefore, could only be restrained on the ground of some breach of confidence or contract (*m*).

Exception in favour of Purchasers.—No person who purchases the right or property of any work protected by the Act by a deed in writing signed by the proprietor in the presence of and attested by two witnesses, will be subject to any action for copying, casting, or vending the same (*n*). All assignments should conform with these requirements.

(*h*) 46 & 47 Vict. c. 57, sect. 60, *inf.* p. 127.
(*i*) 54 Geo. III. c. 56, s. 3.
(*k*) Sect. 5. (*l*) Sect. 3.
(*m*) See *ante*, chap. I. (*n*) Sect. 4.

CHAPTER VIII.

Designs.

The registered proprietor (*a*) of a design registered under the Patents, Designs and Trade Marks Act, 1883, is entitled to copyright therein for five years, dating from the day on which the application for registration is received (*b*).

I. *Classes of Designs to which the Act Applies.*

For the purposes of the Act a design means "any design applicable to any article of manufacture, or to any substance, artificial or natural, or partly artificial and partly natural, whether the design is 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 it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical or chemical, separate or combined, not being a design for a sculpture or other thing within the protection of the Sculpture Copyright Act, 1814" (*c*).

Some articles (*e.g.*, Christmas cards) might be entitled to protection, either under this or the Engravings Acts (*d*).

(*a*) As to the persons entitled to register as proprietor, see *infra*, p. 69.

(*b*) 46 & 47 Vict. c. 57, s. 50 (1); *Designs Rules*, r. 21.

(*c*) Sect. 60.

(*d*) *Ante*, p. 46. The drawings from which they are made would be protected under 25 & 26 Vict. c. 68, *ante*, p. 13.

A design may be the subject of registration, though it depict an article incomplete in itself, but which is intended to be used in combination with and as part of another article of manufacture, *e.g.*, the door of a kitchen range (*e*).

To entitle a design to be registered, it must be

(i.) New or original, and
(ii.) Not previously published in the United Kingdom (*f*).

(i.) "*New or Original.*"

A new combination of old patterns may be a new and original design (*g*), but it has been said the combination must constitute one design, and not a multiplicity of designs (*h*), and a design for a double card-basket, formed by the combination of two baskets admittedly old in design, was held not entitled to protection (*i*).

The registration of a combination would, in any event only protect the pattern as a whole, and not the component parts, and there can be no infringement without reproduction of the whole design (*k*), but there may be a reproduction of the whole design, notwithstanding small variations in particular points of it (*l*).

A design, however, is not a proper subject of registra-

(*e*) *Hunter, Walker & Co.* v. *Falkirk Iron Co.*, 14 C. of S. Cas. 1072 (Sc.); 24 Scot. L. R. 751.

(*f*) S. 47 (1).

(*g*) *Harrison* v. *Taylor* (Ex. Ch.) 4 H. & N. 815; 5 Jur. (N.S.) 1219; 29 L. J. Ex. 3.

(*h*) *Norton* v. *Nicholls*, 1 Ell. & Ell. 761; 5 Jur. (N.S.) 1203; 7 W. R. 420; 27 L. J. Q. B. 225; 33 L. T. 131, and see *Mulloney* v. *Stevens*, 10 L. T. (N.S.) 190.

(*i*) *Lazarus* v. *Charles*, 16 Eq. 117; 42 L. J. Ch. 507.

(*k*) *Mc Crea* v. *Holdsworth*, L. R. 1 Q. B. 264, 269; L. R. 2 H. L. 388; Cf. *Mulloney* v. *Stevens*, 10 L. T. (N.S.) 190.

(*l*) *McCrea* v. *Holdsworth*, L. R. 6 Ch. 419; 23 L. T. (N.S.) 441.

tion unless there is a clearly marked difference involving substantial novelty between it and any design previously in use. Therefore, where the plaintiffs registered a collar combining three characteristics, which it was admitted had existed independently in other collars, but were said to have been never previously combined, and it appeared that these characteristics had appeared in combination before, though in proportions different to those in which they appeared in the registered design, the registration was ordered to be expunged (*m*); and it is doubtful whether any design for an article in such common use as a shirt-collar could be sufficiently novel to justify its registration (*n*). Similarly, a design for a scarf or tie, there being no substantial difference between it and a previous tie except the introduction of a pleat, was held not capable of registration, since to allow it to be registered would be to hold that the difference of a few stitches constituted a proper subject for registration (*o*).

It was held under the former Act that the portrait of a well-known public character applied to articles of earthenware could not be a new or original design (*p*).

A design already registered in respect of goods in one class cannot be registered as new or original in respect of goods in other classes (*pp.*)

(ii.) "*Not Previously Published in the United Kingdom.*"

The disclosure of a design to a partner, or any necessary agent confidentially, is not a publication. Where the

(*m*) *Le May* v. *Welch*, 28 Ch. Div. 24; 33 W. R. 33; 54 L. J. Ch. 279; 51 L. T. (N.S.) 867.
(*n*) *Ibid.*
(*o*) *Smith* v. *Hope Bros.*, 6 R. P. C. 200, Stirling, J.
(*p*) *Adams* v. *Clementson*, 12 Ch. Div. 714; 27 W. R. 379.
(*pp*) *Re Read and Gresswell's Design*, 33 Sol. J. 609.

inventor of a design (who was a foreign manufacturer) showed it to his sole agent in the United Kingdom, and he in turn showed it two customers, who gave orders (whether to be executed before or after registration did not appear), it was held that there had been a publication (*q*), though the disclosure to the agent would not have been such, since he had an interest in the sale of the design (*r*).

The exhibition and publication of a design at an International or industrial exhibition, if the requirements of the Act in such case have been complied with, will not invalidate a subsequent registration (*s*).

II. *Conditions under which Protection is given.*

(i.) The design must be registered (*t*).

(ii.) The design must at the time of registration be a new or original design not previously published in the United Kingdom (*u*).

(iii.) Before delivery on sale of any articles to which the design has been applied, the proprietor must (if exact representations or specimens were not furnished on the application for registration) (*x*) furnish to the comptroller three exact representations or specimens of the design, and if he fail to do so the comptroller may erase his name from the register, and thereupon his copyright will cease (*y*).

(*q*) *Blank* v. *Footman*, 39 Ch. Div. 678; 36 W. R. 921; 57 L. J. Ch. 909; 59 L. T. 567; *Hunt* v. *Stevens*, W. N. 1878, p. 79.

(*r*) *Blank* v. *Footman*, *u. s.*, and see *Humpherson* v. *Syer*, 4 Rep. Pat. Cas. 407.

(*s*) See sect. 57, and D. R. r. 36.

(*t*) S. 50.

(*u*) See *ante*, pp. 65, 66.

(*x*) See *infra*, p. 71.

(*y*) S. 50 (2), D. R. r. 9.

(iv.) Before delivery on sale of any articles to which the design has been applied (*z*), the proprietor must cause each such article to be marked with the prescribed mark (*a*), and if he fails to do so the copyright in the design will cease, unless he shows that he took all proper steps to ensure the marking of the article (*b*).

"*Each such article.*"—He must mark each piece sold. If he sells it in small pieces, whether for patterns or for use, he must mark each small piece or pattern (*c*), if in large pieces only, he need mark only the large pieces (*d*). A butter-dish and cover were held to be sufficiently marked by marking the dish, as they together only constituted one article (*e*).

The corresponding provision of the former Act was held to apply even where the unmarked articles were manufactured and sold abroad (*f*), but under the policy of the present Act this decision does not seem to apply.

(*z*) This does not include a book containing copies of registered designs, and such a book does not require to be marked. Cf. *Branchardiere* v. *Elvery* 4 Ex. 380; 18 L. J. Ex. 381.

(*a*) That is to say in Classes 1 to 12 with the abbreviation "Rd.," and the number appearing on the certificate of registration and in Classes 13 and 14 with the abbreviation "Regd." (D. R. 32). The mark may be affixed in any convenient manner, as by tying on a label or printing the mark on the packet in which the article is (*Blank* v. *Footman*, 39 Ch. D. 685, and *u. s.*).

(*b*) S. 51.

(*c*) *Heywood* v. *Potter*, 1 Ell. & Bl. 439; 22 L. J. Q. B. 133; 17 Jur. 528.

(*d*) *Blank* v. *Footman*, 39 Ch. Div. 685 and *u. s.*

(*e*) *Fielding* v. *Hawley*, 48 L. T. (N.S.) 639.

(*f*) *Sarazin* v. *Hamel*, No. 2, 32 Beav. 151; 11 W. R. 326; 32 L. J. Ch. 380; 7 L. T. (N.S.) 660; 9 Jur. (N.S.) 192.

"*All proper steps.*"—Where the proprietor of a registered design instructed the manufacturer, who made for him the articles to which the design was applied, to stamp the proper mark upon them, and furnished him with a die for the purpose, but the manufacturer by inadvertence used an old die, and marked some of the articles with a mark which belonged to another design registered by the same proprietor (the copyright of which had expired), both marks containing the letters Rd. in a prominent position, it was held that the proprietor had not forfeited his copyright, by selling some of the articles so wrongly marked without observing the error, but was protected by the saving clause as having taken "all proper steps to ensure the marking" (*g*). If the words of the Act are to be construed literally, the decision would have been the same, even if the articles had not been marked at all.

(v.) The design, if used in manufacture in any foreign country, must be used in this country within six months of the registration in this country, otherwise the copyright in the design will cease (*h*).

III. *Persons Entitled to Register* (*i*).

For the purposes of the Act any of the following persons is to be considered proprietor, and may register as such (*k*):—

(i.) The author and inventor of a new design, unless he has been employed to execute the work on

(*g*) *Wittman* v. *Oppenheim*, 27 Ch. Div. 260.

(*h*) S. 54.

(*i*) See also *infra*, p. 81, as to the rights of proprietors of foreign designs.

(*k*) S. 61.

behalf of another person for good or valuable consideration (*l*).

(ii.) Where the work is executed on behalf of another person for a good or valuable consideration, the person on whose behalf it is executed (*l*).

(iii.) Every person acquiring for good or valuable consideration a new and original design, or the right (whether exclusive or not) to apply the same to any article or substance; and

(iv.) Every person on whom the property in such design or such right to the application thereof may devolve;

but the persons included under the heads (iii.) and (iv.) will only be proprietors in respect of and to the extent of the rights so acquired (*m*).

A body corporate may be registered as proprietor by its corporate name (*n*).

It seems that a person who has a *partial* assignment of the design, or an assignment of the right to apply it for the whole period of protection, or a licensee who has the right to make articles in accordance with the design for the whole or a limited term may register (*o*); but an agreement assigning an exclusive right to sell, unless it confers a right to manufacture the articles to which the

(*l*) Where a person who is engaged in business has a person in his employ who in the course of his employment makes a design which is new or original, the design will become the property of his master by virtue of the relation which exists between them, and the master will be entitled to register the design, *per* Malins, V.C., *Lazarus* v. *Charles*, 16 Eq. 117, 123.

(*m*) S. 61, *infra*, p. 127.

(*n*) D. R. r. 27.

(*o*) *Jewitt* v. *Eckhardt*, 8 Ch. Div. 404, 409; *re Guilerman's Registered Designs*, 55 L. J. Ch. 309, at p. 310.

design is applicable does not entitle the assignee to register (*p*).

It may be doubted whether an assignment or license is intended to be registered before the registration by the original proprietor; if such registration is effected, it would seem that the proprietor would be entitled to have the register rectified under sect. 90 (*q*).

No notice of any trust may be entered on the register (*qq*).

IV. *Mode of Registration.*

The application may be by any person claiming to be the proprietor, or by an agent on his behalf (*r*). It must be in the prescribed form, and must with the prescribed fee be left at the Patents Office (Designs Branch), or be sent by prepaid letter addressed to the comptroller (*s*). It must contain a statement of the nature of the design, and the class or classes of goods in which the applicant desires that the design be registered (*t*).

It must be accompanied either—

(i.) By a sketch or drawing (*u*), or

(ii.) By three exactly similar drawings, photographs, or tracings of the design, or

(iii.) By three specimens of the design,

and in describing the nature of the design must state whether it is applicable for the pattern, or for the shape

(*p*) *Jewitt* v. *Eckhardt*, 8 Ch. Div. 404; *re Guiterman's Registered Designs*, 55 L. J. Ch. 309; Cf. *Lazarus* v. *Charles*, 16 Eq. 117.

(*q*) See *Jewitt* v. *Eckhardt*, 8 Ch. Div. 404, 410.

(*qq*) S. 85.

(*r*) S. 47 (1); D. R., r. 6.

(*s*) S. 47 (2), D. R. 7.

(*t*) S. 47 (3). For list of classes, see *infra*, p. 147.

(*u*) In any event three exact representations must be furnished before any of the articles are sold. S. 50 (2), *ante*, p. 67.

or configuration of the design, and the means by which it is applicable (*x*). Sketches, drawings and tracings must be fixed, and specimens will not be accepted unless suitable for pasting into books (*y*).

The same design may be registered in more than one class (*z*). In case of doubt as to the class, the comptroller may decide (*a*). The comptroller may, if he thinks fit, refuse to register a design, but the applicant is entitled to be heard before a decision is pronounced (*b*). The decision of the comptroller is subject to appeal to the Board of Trade, but their decision will be final (*c*). Where registration is refused on the ground of identity with a design already registered, the applicant for registration is entitled to inspect such design (*d*).

Upon registration a certificate will be granted, which may be replaced if lost or destroyed (*e*).

V. *Protection Given.*

The registered proprietor is entitled to copyright for five years from the date of registration (*f*).

Copyright is defined "as the exclusive right to apply a design to any article of manufacture, or to any substance artificial or natural, or partly artificial and partly natural,

(*x*) S. 48 (1); D. R., r. 9.
(*y*) S. 48 (2); D. R., r. 9.
(*z*) S. 47 (4).
(*a*) S. 47 (5).
(*b*) Ss. 47 (6), and 94; D. R., rr. 13, 14.
(*c*) S. 47 (6) and (7), *re Trade Mark "Normal,"* 35 Ch. Div. 231, 234. As to mode of appeal, see D. R., 16–20.
(*d*) S. 52 (1); 51 & 52 Vict. c. 50, s. 6, *infra*, p. 124.
(*e*) S. 49.
(*f*) S. 50 (1). See *ante*, pp. 67, 68, 69, as to certain events in which his right ceases.

in the class or classes in which the design is registered" (*g*).

During the existence of copyright in a design it is unlawful for any person:

(i.) Without the licence or written consent of the registered proprietor to apply or cause to be applied (*h*) such design or any fraudulent or obvious imitation thereof (*i*), in the class or classes of goods in which such design is registered, for purposes of sale to any article of manufacture or to any such substance as aforesaid (*k*).

(ii.) To publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof (*i*) shall have been so applied, knowing that the same has been so applied without the consent of the registered proprietor (*l*).

Any person who acts in contravention of the above prohibition, is liable to forfeit to the registered proprietor sum not exceeding £50 for every offence (*m*), but not exceeding in all the sum of £100 in respect of any one design (*n*). Such sum may be recovered as a debt by action in any court of competent jurisdiction. Where the

(*g*) S. 60.

(*h*) See *Mallet* v. *Howitt*, W. N. (1879), p. 107.

(*i*) See *infra*, p. 76.

(*k*) S. 58; 51 & 52 Vict. c. 50, s. 7. Manufacture within the period, although without intention of selling within the period, is a piracy. *MacRae* v. *Holdsworth*, 2 De G. & Sm. 496; 12 Jur. 820.

(*l*) S. 58 (*b*).

(*m*) S. 58.

(*n*) 51 & 52 Vict. c. 50, s. 7.

plaintiffs proved a single purchase of one hundred tiles one fine of £50 was imposed (*o*).

Under the foregoing provisions it has been said that to render a retail seller liable it must be shown that before he sold the articles complained of, he had sufficient information of the plaintiff's registered design to enable him to judge what it was the plaintiff claimed (*p*); but this seems to go beyond the words of the Act. Under the former Act notice was expressly required to be in writing (*q*).

The publication and sale of a book containing registered designs, with or without a notice that persons wishing to manufacture them for the purpose of sale must have the inventor's permission, does not amount to a license to purchasers of the book to sell articles to which the design has been applied, though it may amount to a license to copy the designs for private use (*r*).

The registered proprietor may (if he elects to do so) bring an action for the recovery of any damages arising either (*α*) from the application of the design, or of any fraudulent or obvious imitation thereof, for the purpose of sale to any article of manufacture or substance, or (*β*) from the publication, sale, or exposure for sale by any person of any article or substance to which such design or such imitation thereof has been so applied, such person knowing that the proprietor had not given his consent to such application (*s*).

(*o*) *Sherwood* v. *Decorative Tile Co.*, 4 Rep. Pat. Cas. 207.

(*p*) *Smith* v. *Lewis, Roberts & Co.*, 5 Rep. Pat. Cas. 611 (Bristowe, V.C.).

(*q*) 5 & 6 Vict. c. c., s. 7; *Norton* v. *Nicholls*, 1 Ell. & Ell. 761, and *a. s.*

(*r*) *Branchardiere* v. *Elvery*, 4 Ex. 380; 18 L. J. Ex. 381.

(*s*) S. 59.

What is protected.

This of course depends on what is the novelty in the registered design upon which the right to registration is based, and whether the design is claimed as applicable "for the pattern or for the shape, or configuration, or for the ornament, or for two or more of such purposes" (*t*).

The purpose for which a design was registered may be proved by evidence when any question arises, primarily that of the person registering, but tested by that of persons acquainted with the business in the articles to which the design relates, and the statement of the applicant at the time of registration on the subject will, if necessary, be looked at (*u*).

If a design, combining a new shape and a new ornament, is registered in respect of shape only, there will be nothing to prevent others from applying the ornament to goods in the same class if of a different shape or a different character (*x*). But, if a design be registered for shape, a variation in the ornament will not prevent an imitation from being an infringement (*y*).

Though the Act gives protection only to the pattern or to the shape or configuration, or both, as the case may be, the effect of such protection may be indirectly to protect a mechanical contrivance that might have been the subject of a patent (*z*).

(*t*) 46 & 47 Vict. c. 57, s. 60, *ante*, p. 64.

(*u*) *Hunter, Walker & Co.* v. *Falkirk Iron Co.*, 14 C. of S. Cas. 1072; 24 Scot. L. Rep. 751.

(*x*) Cf. *per* Jessel, M. R., *Barran* v. *Lomas*, 28 W. R. 973.

(*y*) *Hunter, Walker & Co.* v. *Hecla Iron Co.*, 15 C. of S. Cas. 660, *infra* p. 78.

(*z*) *Hunter, Walker & Co.* v. *Falkirk Iron Co.*, 14 C. of S. Cas. 1072 (Sc.).

As has already been observed (*a*), where the registered design is a combination of parts which are common property, the registration protects the pattern as a whole and not the component parts, and there will be no infringement without reproduction of the whole design (*b*), but there may be a reproduction of the whole design, notwithstanding small variations in particular points of it (*c*).

Colour.—Colour cannot be the subject matter of design, but the Court may look at the application of the design and the nature of the fabrics to which it is to be applied, and see how it is worked out in point of practice (*d*).

"*Fraudulent and obvious imitation.*"

Some discussion has arisen as to the meaning of the words "fraudulent and obvious imitation." It has been laid down in one case that the Act does not prohibit imitation; a design being open to such great varieties, a fair imitation—that is to say, something to which the *idea* of the original design has been applied—is not prohibited; and that "fraudulent imitation" is imitation with knowledge; conscious imitation, the man who imitates having the design before him, and knowingly and wilfully imitating, and his imitation not being sufficiently original to be protected as a fair imitation (*e*); and it has been said that it is permissible to

(*a*) *Ante*, p. 65.

(*b*) *McCrea* v. *Holdsworth*, L. R. 1 Q. B. 264, 269; L. R. 2 H. L. 380, 388; Cf. *Mulloney* v. *Stevens*, 10 L. T. (N.S.) 190.

(*c*) *McCrea* v. *Holdsworth*, L. R. 6 Ch. 419; 23 L. T. (N.S.) 444; *Thom* v. *Syddall*, 26 L. T. (N.S.) 15; 20 W. R. 291.

(*d*) *Grafton* v. *Watson*, 50 L. T. (N.S.) 420, 423.

(*e*) *Barran* v. *Lomas*, 28 W. R. 973, *per* Jessel, M. R.

imitate a registered design if the result differs, as a whole, from the registered design—is, in fact, substantially a new design (*f*).

"Obvious" does not mean obvious, at a glance, to the uneducated and unskilled eye, but obvious to a judge or jury, with the assistance of experts—persons conversant with the particular trade; and the test is not merely to look at the two designs side by side (though that is one element of comparison), but consideration should also be given to what would be the effect supposing they were seen at different times, or looked at a little distance off (*g*). Accordingly, where the plaintiffs registered a design, producing on calico a particular effect, familiar in silk and velvet, and the defendants prepared a design which, in general arrangement, resembled the plaintiffs' and produced a similar effect, though there were variations in detail (*e.g.* where the plaintiffs' design had acorns and sprays, the defendants substituted mangostenes and sprays closely resembling the plaintiffs' in contour), Chitty, J., held that, the resemblance being so close as to make it impossible to distinguish the one from the other by memory alone, and there being coincidences between the two designs, which would have been strange but for the fact that the defendants' designer had had the plaintiffs' design before him, the defendants' design was *primâ facie* an "obvious imitation" of the plaintiffs', and granted an injunction till the trial. The defendants in this case had, in fact, put the plaintiffs' design before their draughtsman, and instructed him to produce the effect (which was the fashion then in vogue), but not to copy the plaintiffs' design. Cotton, L.J., in the Court of Appeal,

(*f*) *Thom* v. *Syddall*, 26 L. T. (N.S.) 15, *per* Wickens, V.C.
(*g*) *Grafton* v. *Watson*, 50 L. T. (N.S.) 420.

where this decision was affirmed (*h*), said: "If a man, knowing that the pattern is a registered design, goes and imitates it, and does that without any sufficient invention on his own part, that would be a fraudulent imitation, if it is an imitation. There may be an imitation which is unconscious—that is to say not an imitation in the sense of copying—producing the same effects without knowing of the registered design; but when the registered design is known, then if there is imitation the burden of proving that the registered design was not copied is, to my mind, thrown on the person who produces the pattern like that which is imitated."

Where a design was registered, the application being for "a range door, with moulding on the top, moulding forming front of range, shape to be registered," and the drawing showed a moulding on the front of the door fitting into the moulding on the front of the range and flush with it; and the evidence showed that the merit of the design lay in attaching the moulding to the door instead of to the fire cover, as had been done previously in convertible kitchen ranges, it was held that another design, in which the moulding (which was of a different outline) on the door overlapped the moulding on the front of the range, was an obvious imitation of the registered design (*i*).

Costs.—An innocent infringer of a registered design must pay the costs of a motion for an injunction to restrain him from infringing, although the plaintiff has given him no notice of the infringement before serving him with the writ in the action, the plaintiff being under no obligation

(*h*) 51 L. T. (N.S.) 141.

(*i*) *Hunter Walker & Co.* v. *Hecla Iron Co.*, 15 C. of S. Cas. 660; 25 Scot. L. R. 491; 5 Rep. Pap. Cas. 71, 365.

to give any notice before commencing his action (*k*). But if the defendant does not himself apply the design, but is only a retailer of the pirated articles, it is necessary to show that, before selling, he had notice that they were an infringement of the plaintiff's design, otherwise he will not be liable at all (*l*).

VI. *Assignments and Licenses.*

Assignments and transmissions of interest in registered designs ought to be entered on the register (*m*). But where the design is registered there seems nothing to prevent an assignee bringing an action for infringement without having registered his assignment (*n*). It seems that a licence to use a registered design ought to be in writing (*o*).

VII. *Rectification of Register.*

The Court (*p*) may, on the application of any person aggrieved

(*a.*) by the omission, without sufficient cause, of the name of any person or of any other particulars from the register, or

(*β.*) by any entry made therein without sufficient cause, make an order for making, expunging, or varying the

(*k*) *Wittman* v. *Oppenheim*, 27 Ch. Div. 260, 32 W. R. 767; 54 L. J. Ch. 56; 50 L. T. (N.S.) 713; following *Upman* v. *Forester*, 24 Ch. Div. 231; 32 W. R. 28; 52 L. J. Ch. 946; 49 L. T. (N.S.) 122.

(*l*) *Halsey* v. *Brotherhood*, 15 Ch. D. 514, 517; *Smith* v. *Lewis, Roberts & Co.*, 5 Rep. Pat. Cas. 611.

(*m*) Ss. 55 (1), 87. As to mode of registration, see D. R. 22–27.

(*n*) *Ihlee* v. *Henshaw*, 31 Ch. D. 323. As to registration of assignments, see also *ante*, p. 71, and *Jewitt* v. *Eckhardt*, 8 Ch. D. 404, 410.

(*o*) S. 58 (*a*).

(*p*) See ss. 117 and 112*a*.

entry, and make such order as to the costs of the proceedings as it may think fit (*q*). The Court may decide any question necessary or expedient to decide for the rectification of the register, or may direct an issue, and may award damages to the party aggrieved (*r*).

Where an agent not the owner of the designs had been registered as proprietor, and on the application of a person against whom he had commenced an action for penalties, the registration was cancelled, the Court declined to direct the insertion of the name of the real owner (*s*). This might, no doubt, have been done if the application for rectification had been by the owner of the design.

The comptroller may, on request in writing, correct any clerical error in or in connection with an application for registration of a design, or in the name, style, or address of a registered proprietor (*t*), or permit an applicant to amend his application by omitting any particular goods or classes of goods with which he has desired the design to be registered (*u*).

VIII. *Inspection of Registered Designs.*

During the existence of copyright therein a design will not (save in the case already mentioned) (*x*), be open to inspection, except by the proprietor or a person authorized in writing by the proprietor, or a person authorized by the comptroller, or by the Court.

When the copyright ceased, the design will be open to inspection, and copies may be taken (*y*).

(*q*) S. 90 (1); 51 & 52 Vict. c. 50, s. 23. (*r*) S. 90 (2).
(*s*) *Re Guiterman's Registered Designs*, 55 L. J. Ch. 309.
(*t*) S. 91 (*a*) (*b*).
(*u*) *Ibid.*, sub-sec. (*d*); 51 & 52 Vict. c. 50, s. 24.
(*x*) *Ante*, p. 72. (*y*) S. 52.

IX. *Evidence.*

The register is *primâ facie* evidence of matters directed to be entered therein (*z*); it is open to the inspection of the public; and sealed and certified copies of any entry may be obtained (*a*), such copies are to be admitted in evidence without proof or production of the originals (*b*).

A certificate, purporting to be under the hand of the comptroller as to any entry, matter, or thing, which he is authorized to make or do, is *primâ facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone (*c*).

X. *Offences.*

Any person who describes any design applied to any article sold by him as registered, which is not so, is liable for every offence, on summary conviction, to a fine not exceeding £5; a person is deemed to represent that a design is registered if he sells the article with the word "registered" (or any word or words expressing or implying that registration has been obtained for the article), stamped, engraved, or impressed on, or otherwise applied to the article (*d*).

XI. *Rights of Proprietors of Foreign or Colonial Designs.*

Foreign Designs.—Section 103 of the Act enables Orders in Council to be issued, declaring the provisions of that

(*z*) S. 55 (1) (2). (*a*) S. 88. (*b*) S. 89. (*c*) S. 96.
(*d*) S. 105. It seems that it might be an offence under the above section to continue the sale of articles with the word 'registered' on them after the expiration of the copyright, see *Cheavin* v. *Walker*, 5 Ch. Div. 850, 863.

section applicable to foreign states specified in such order.

Any person who has applied for protection for any design in any such state will be then entitled to registration of his design in priority to other applicants, provided that his application is made within four months from his applying for protection in such foreign state. Compliance with this last condition seems imperative (*e*); and if it be not complied with (even though no order was in force within the time limited), and the design has been published in the United Kingdom the right of registration will be gone. The registration will have the same date as the date of the protection in such foreign state; the proprietor will not, however, be entitled to recover damages for infringements happening prior to the date of the actual registration of his design in this country.

The exhibition or use of the design in the United Kingdom or the Isle of Man during the four months, or the publication of a description or representation of the design, will not invalidate the registration (*f*).

Orders are now in force under the section as to the following States (*g*):—

Belgium, Brazil, France, Guatemala, Italy, Mexico (*h*), Netherlands, and their East Indian Colonies, Paraguay and Uruguay, Portugal, Servia, Spain, Sweden and Norway, Switzerland, Tunis.

Colonial Designs.—Under sect. 104, Orders in Council

(*e*) See *re Application by Californian Fig Syrup Co.*, W. N. (1888) p. 248; 6 R. Pat. Cas. 126.

(*f*) S. 103 (2).

(*g*) For a complete list of the orders, see *infra*, p. 148.

(*h*) Order drafted, but not yet issued.

may be issued, applying the above-mentioned provisions, with such variations or additions, if any, as may be thought proper to British possessions.

An Order in Council will take effect from the date mentioned in it as if its provisions had been contained in the Act (*i*).

(*i*) S. 104 (2). The only order at present made relates to Queensland, *infra*, p. 148.

CHAPTER IX.

International Copyright.

No one can obtain any copyright in any print, article of sculpture, or other work of art (*a*), first published out of Her Majesty's dominions, except such (if any) as he may become entitled to under the International Copyright Acts, 1844 to 1886 (*b*).

I. Power to make Orders.

Under these Acts Her Majesty may, by order in Council (*c*), direct that the author, &c., of books, prints, articles of sculpture (*d*), and other works of art, which shall, after a time specified in such order (*e*) be first published in a foreign country, shall have the privilege of copyright therein during the periods mentioned in such order, not exceeding, however, the term of copyright which authors of the like works respectively first published in

(*a*) Including paintings, drawings, and photographs (25 & 26 Vict. c. 68, s. 12).

(*b*) 7 & 8 Vict. c. 12, s. 19.

(*c*) Orders have to be published in the *London Gazette* (7 & 8 Vict. c. 12, s. 15), and laid before both Houses of Parliament within six weeks after their issue, if Parliament be then sitting, and if not, then within six weeks of the commencement of the next session (*Ibid.*, s. 16).

(*d*) "Articles of sculpture" are all sculptures, models, copies, and casts, described in the Sculpture Copyright Acts (*Ibid.*, s. 20).

(*e*) Formerly the time must have been future, now the order may be retrospective (49 & 50 Vict. c. 33, s. 6), *infra.*, pp. 88, 160.

the United Kingdom may be then entitled to (*f*). Different periods may be specified for the duration of copyright for different countries and classes of works (*g*); but an order cannot, in any case, confer on any person any greater right or longer term of copyright in any work than that enjoyed in the foreign country in which such work was first produced (*h*).

Before making an order, such protection as may be deemed sufficient must have been secured in the foreign country for the works of authors first produced in the United Kingdom (*i*).

An order may extend to all the several foreign countries named or described therein; it may exclude or limit the rights conferred by the International Copyright Acts in the case of authors (*k*) who are not subjects or citizens of the foreign countries named in that or some other order, and in such case if the author of a literary or artistic work (*l*) first produced in one of those foreign countries is not a British subject, nor a subject or citizen of any of the foreign countries so named, the publisher of such work, unless the order otherwise provides, is, for the purpose of any legal proceedings in the United Kingdom for protecting any copyright in such work, to be deemed to be entitled

(*f*) 7 & 8 Vict. c. 12, s. 2.

(*g*) *Ibid.*, s. 13.

(*h*) 49 & 50 Vict. c. 33, s. 2 (3).

(*i*) 49 & 50 Vict. c. 33, s. 4 (2).

(*k*) The expression "author" means the author, inventor, designer, engraver, or maker of any literary or artistic work, and includes any person claiming through the author (49 & 50 Vict. c. 33, s. 11).

(*l*) The expression "literary and artistic work" means every book, print, lithograph, article of sculpture ... painting, drawing, photograph, and other work of literature and art to which the Copyright Acts or the International Copyright Acts, as the case requires, extend (*Ibid.*).

to such copyright as if he were the author, but without prejudice to the rights of such author and publisher as between themselves (*m*).

An order may provide for determining the country in which a literary or artistic work first produced simultaneously in two or more countries, is to be deemed, for the purpose of copyright, to have been first produced (*n*). Where a work produced simultaneously in the United Kingdom, and in some foreign country or countries is, by virtue of an order, deemed, for the purpose of copyright, to be first produced in one of the said foreign countries, and not in the United Kingdom, the copyright in the United Kingdom shall be such only as exists by virtue of production in the said foreign country, and shall not be such as would have been acquired if the work had been first produced in the United Kingdom (*o*).

Orders may from time to time be made, revoking or altering any order previously made; but any such order shall not affect prejudicially any rights acquired or accrued at the date of such order coming into operation, and shall provide for the protection of such rights (*p*).

Evidence of Foreign Copyright.—The existence or proprietorship of the copyright of any work first produced in a foreign country may be proved by an extract from a register, or a certificate, or other document, authenticated by the official seal of a Minister of State of such country,

(*m*) 49 & 50 Vict. c. 33, s. 2.

(*n*) *Ibid.*, sect. 3 (1). For the purpose of this section, "country" means the United Kingdom, and a country to which an order under the Acts applies.

(*o*) *Ibid.*, sect. 3 (2).

(*p*) 49 & 50 Vict. c. 33, s. 10.

cr by the official seal or the signature of a British diplomatic or consular officer acting there (*q*).

II. Effect of Orders when made.

Where any such order applies to prints, articles of sculpture, or other works of art as aforesaid, the enactments of the Engraving Copyright Acts, and the Sculpture Copyright Act for the time being, and of any Act for the time being in force with relation to the copyright in any similar works of art first published in England, will (except so far as otherwise provided in the order), after the time specified in such order, and subject to any limitation as to the duration of the copyright contained in the order, apply to the prints, articles of sculpture, and other works of art to which such order extends, in the same manner as if such articles and other works of art were first published in the United Kingdom (*r*).

Retrospective operation of Orders.—Orders made under the Acts have in part a retrospective operation, and "the author and publisher of any literary or artistic work, first produced *before the date at which such order comes into operation*, is entitled to the same rights and remedies as if the said order had applied to the said foreign country at the date of the said production: Provided that where any person has before the date of the publication of an Order in Council lawfully produced any work in the United Kingdom, nothing shall diminish or prejudice any rights or interests arising from or in connection with

(*q*) 49 & 50 Vict. c. 33, s. 7.

(*r*) 7 & 8 Vict. c. 12, s. 4. Under this section the right was conditional on the fulfilment of the requirements as to registration contained in sect. 6, but this is now superseded, see *infra*, pp. 88, 89.

such production which are subsisting and valuable at the said date" (*s*).

Whether a production in the United Kingdom is lawful must depend on whether the proprietors of the original had complied with the requirements of the orders in force at that date (*t*).

Colonies.—An order may be declared not to apply to a British possession, but in default of such declaration will apply to every British possession as if it were part of the United Kingdom (*u*).

Registration.—Prior to the Act of 1886, in order to entitle a foreign work to copyright, it was necessary that within the time prescribed by the order (*x*), the following requirements should be complied with (*y*): that is to say, *as regards prints*—that 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, should be entered at Stationers' Hall, and a copy of such print upon the best (*sic*). paper, upon which the largest number *or* impressions of the print should have been printed for sale, should be delivered to the officer of the Company at Stationers' Hall; *as regards any article of sculpture, or any other work of art*,—that a descriptive title thereof, the name and

(*s*) 49 & 50 Vict. c. 33, s. 6.

(*t*) See *infra* '*Registration*,' and Appendix, p. 167.

(*u*) 49 & 50 Vict. c. 33, s. 9.

(*x*) The orders may specify different periods for registration and delivery of copies for different countries and classes of works (7 & 8 Vict. c. 12, s. 13).

(*y*) 7 & 8 Vict. c. 12, s. 6.

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 should be entered at Stationers' Hall (*z*).

These provisions are, however, practically superseded by 49 & 50 Vict. c. 33, s. 4 (1), which provides that where an order respecting any foreign country is made under the Acts, the above provisions with respect to the registry and delivery of copies of works shall not apply to works produced in such country, *except so far as provided by the order*. The order of the 28th of November, 1887 (*a*), which now regulates the status of works published in the countries parties to the Copyright Union, is silent on the subject, consequently the above provisions do not apply to works first published within those countries.

The proprietors of foreign engravings are not, however, absolved from the necessity of complying with the requirements of the Engraving Acts, since all the enactments of those Acts, except such as are excepted in the order, are to apply to the prints to which such order extends (*b*) Prints, therefore, in the absence of such exception, must bear the name of the proprietor, and the date of the first publication thereof (*c*). No such exception is contained in the order of the 28th of November, 1887 (*d*); on the contrary, the right given by that order to foreign publications is the same right of copyright as if the work had been first produced in the United Kingdom, which

(*z*) The Act contains provisions for expunging entries wrongfully made (ss. 8 & 9, *infra*, p. 154).

(*a*) See Appendix, *infra*, p. 168.

(*b*) 7 & 8 Vict. c. 12, s. 4.

(*c*) *Avanzo* v. *Mudie*, 10 Ex. 203.

(*d*) *Infra*, p. 181.

would, of course, be conditional on compliance with the provisions of the respective Acts regulating copyright in the United Kingdom.

Similarly, it is apprehended that foreign statuary must bear the name of the proprietor, with the date, as required by 54 Geo. III. c. 56 (*e*), and foreign paintings, drawings, and photographs, must be duly registered under 25 & 26 Vict. c. 68, s. 4 (*f*), or they will not be entitled to protection.

III. Provisions of Existing Orders.

The rights of authors whose works are first produced in Belgium, France, Germany, Hayti, Italy, Spain, Switzerland, Tunis, and the Grand Duchy of Luxemburg (*g*), are now regulated by the order of the 28th of November, 1887 (*h*).

Under this order the author of a literary or artistic work first produced in one of the above countries has, throughout Her Majesty's dominions, the same copyright therein as if the work had been first produced in the United Kingdom, and for the same period, provided that he shall not have any greater right or longer term of copyright therein than that which he enjoys in the country in which the work is first produced (*i*). If the author is not a subject or citizen of any of the said countries, he will not be entitled to take proceedings in Her Majesty's dominions for protecting such copyright,

(*e*) *Ante*, p. 62.
(*f*) *Ante*, p. 25.
(*g*) By order dated the 10th of Aug., 1888, *infra*, p. 168.
(*h*) The full text of this order will be found, *infra*, p. 168.
(*i*) Para. 3, *infra*, p. 169. The works need not be registered under 7 & 8 Vict. c. 12, s. 6, but must comply with the requirements of the English Copyright Acts, see *ante*, p. 89.

but such proceedings must be taken by the publisher (*k*). A work produced simultaneously in two or more countries of the Union is to be deemed first produced in that country in which the term of copyright in the work is shortest (*l*).

(*k*) Para. 4.

(*l*) Para. 5. If a work produced simultaneously in the United Kingdom and a foreign country is under this order deemed to be first produced in the foreign country, the copyright obtained will be only that which exists by virtue of the production in the foreign country (49 & 50 Vict. c. 33, s. 3 (2), *ante*, p. 86).

CHAPTER X.

Colonial Copyright.

I. *Copyright in the United Kingdom in Works produced in British Possessions.*

The rights enjoyed in the United Kingdom by the authors of works produced in the Colonies, and those enjoyed in the Colonies by the authors of similar works in the United Kingdom, are not identical, the former being dependent on the enactments of the Imperial Legislature, and the latter on the enactments of the respective Colonial Legislatures (*a*).

Authors of paintings, drawings, and photographs, resident in the Colonies have always enjoyed the benefit of the Fine Arts Copyright Act, 1862 (*b*), but engravings and sculpture have been without protection until the passing of the International Copyright Act, 1886, which provides (*c*) that, subject to the provisions to be mentioned, the Copyright Acts shall apply to a literary or artistic work first produced in a British possession, in like manner as they apply to a work first produced in the United Kingdom, provided that the enactments respecting the registry of the copyright in such work shall not apply if the law of such possession provides for the registration of such copyright.

(*a*) See further, as to this statement of the law, *infra*, p. 93 n. (*h*).
(*b*) 25 & 26 Vict. c. 68, *ante*, p. 14.
(*c*) 49 & 50 Vict. c. 33, s. 8.

Where a register of copyright in *books* is kept under the authority of the government of a British possession, the contents of the register may be proved by an extract certified as required by the Act (*d*). This provision would appear only to apply to the registration of works other than books, if such registration is contained in a register *of books*.

Where, before the passing of the Act of 1886, an Act or Ordinance had been passed in any British possession respecting copyright in any literary or artistic works, an Order in Council may be made modifying the Copyright Acts and the International Copyright Act, 1886, so far as they apply to such British possession and to literary and artistic works first produced therein (*e*).

II. *Copyright in British Possessions in Works published in the United Kingdom.*

The International Copyright Act, 1886, provides that nothing in the Copyright Acts or in that Act is to prevent the passing in a British possession of any Act or Ordinance respecting the copyright within the limits of such possession of works first produced in that possession (*f*). None of the Acts relating to Artistic Copyright, except the International Copyright Act, 1886 (which gives copyright throughout the British dominions to works published in any foreign countries named in orders made thereunder (*g*)), give any copyright out of the United Kingdom (*h*) and therefore there seems nothing to prevent

(*d*) *Ibid.*, s. 8 (2).
(*e*) *Ibid.*, s. 8 (3). No such order appears to have been issued.
(*f*) *Ibid.*, s. 8 (4).
(*g*) Sect. 9, *ante*, p. 88.
(*h*) If this is a correct statement of the law (which it is submitted

British possessions passing Acts dealing with the rights within such possessions of the authors of works first produced in the United Kingdom, and these rights (if any) appear in fact entirely dependent on such Colonial Acts.

A short *résumé* is given of the statutory provisions in force in the principal Colonies.

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it is) English artists are at a disadvantage as compared with colonial and foreign artists. It should be noted, however, that the conclusions arrived at appear to be in conflict with the Report of the Royal Commission on Copyright, 1878, which states (Para. 52) that copyright in the United Kingdom extends to every part of the British dominions. Upon examination, however, of the evidence on which this paragraph is founded it appears clear that it is directed only to literary copyright, as to which the statement is correct, since the Act, 5 & 6 Vict. c. 45, expressly extends to every part of the British dominions (s. 29); whereas none of the Acts relating to artistic copyright contain any similar provision. The Fine Art Copyright Act, 1862, does, it is true, refer to the British dominions, giving copyright in all works made in the British dominions or elsewhere (sec. 1), but there is nothing to suggest that the copyright is to extend throughout the British dominions, and the provisions of secs. 8 and 10 providing for the recovery of the penalties in England, Scotland, and Ireland, and forbidding the importation into the United Kingdom of copies made in any part of the British dominions, point to a contrary intention. On the other hand, sec. 8 of the International Copyright Act, 1886, favours the view that the Copyright Acts extend to the Colonies, but there seems nothing in the Acts themselves to satisfy the ordinary rule of construction that "no Act of Parliament made after a colony is founded is construed to extend to it, without express words showing the intention of the legislature to be that it shall do so" (*per* Lord Mansfield, *R.* v. *Vaughan*, 4 Burr. 2500, cf. 2 P. Wms., 75, Case 15); and, on the other hand, a colony does not carry with it statutes passed prior to its settlement unless "applicable to the condition of an infant colony" (Black. Com., vol. i., p. 108). It is stated in Shortt's "Law of Literature and Art" (2nd edit., p. 235) that the Acts relating to copyright in works of fine art apply to all the British dominions, but no reason or authority is given for this conclusion.

I. Canada.

The rights in Canada of works of art are regulated by the Canadian Copyright Act, 1875, which is set out in the schedule to 38 & 39 Vict. c. 53 of the Imperial Legislature.

Who Entitled to Copyright.

Any person domiciled in any part of the British possessions, or being a citizen of any country having an International Copyright Treaty with the United Kingdom, who is the author of any book . . . or of any original painting, drawing, statue, sculpture, or photograph, or who invents, designs, etches, engraves, or causes to be engraved, etched, or made *from his own design* any print or engraving, and the legal representatives of such person have the sole right and liberty of printing, publishing, reproducing, and vending such literary . . . or artistic works or compositions in whole or in part . . . for the term of twenty-eight years from the time of recording the copyright thereof in the manner directed (sect. 4), subject, however, to the conditions mentioned below.

If at the expiration of the said term of twenty-eight years the author, or any of the authors, where the work has been originally composed and made by more than one person, be still living, or being dead has left a widow or a child or children living, the same exclusive right is continued to such author, or if dead, then to such widow and child or children (as the case may be) for the further term of fourteen years, provided that within one year after the expiration of the first term the title of the work is again recorded, and all other regulations required to be observed in regard to original copyrights are complied

with in respect to such renewed copyright (sect. 5). The renewal must be gazetted within two months (sect. 6).

In order to entitle an author to the benefit of copyright under this Act, the following conditions must be complied with.

Conditions on which Copyright depends.

1. Such literary and artistic works must be printed and published or reprinted or republished in Canada, or in the case of works of art must be produced or reproduced in Canada, whether so published or produced for the first time or contemporaneously with or subsequently to the publication or production elsewhere (sect. 4 (2)).

2. In the case of a book, photograph, print, cut or engraving, two copies must be deposited at the office of the Minister of Agriculture; and in the case of paintings, drawings, statuary, and sculpture, a written description of such works must be furnished to the Minister of Agriculture (sect. 7).

3. Information must be given of the copyright being secured, in the case of a print, cut, engraving, or photograph, by having impressed on the face thereof, or if a volume of engravings or photographs, upon the title-page or frontispiece thereof, the following words: "Entered according to Act of Parliament of Canada, in the year , by A. B., in the office of the Minister of Agriculture." As regards paintings, drawings, statuary, and sculpture, the signature of the artist is deemed sufficient notice (sect. 9).

4. Whenever the author of a literary . . . or artistic work or composition which may be the subject of copyright has executed the same for another person, or has sold the same to another person for due consideration,

such author will not be entitled to obtain or retain the proprietorship of such copyright, which is by the said transaction virtually transferred to the purchaser, who may avail himself of such privilege, unless a reserve of the said privilege is specially made by the author or artist in a deed duly executed (sect. 16).

Limitation of Copyright.

Where a work in which there is subsisting copyright in the United Kingdom is, subsequently to its publication in the United Kingdom, reprinted in Canada, any person who prior to the entry of such work upon the register has imported foreign reprints is entitled to dispose of such reprints by sale or otherwise (sect. 15).

Interim Copyright.

Pending the publication or republication in Canada of a literary or artistic work, the author may secure interim copyright (*i.e.*, for one month from the date of the original publication elsewhere) by depositing a copy of the title or a designation of the work intended for publication or republication in Canada. The author must publish the registration of this interim copyright in the *Canada Gazette* (sect. 10). Where interim copyright is secured, the work must be published in Canada within one month of its original publication elsewhere under a maximum penalty of 100 dollars (sect. 17 (2)).

Piracy.

Offenders forfeit the plate and every sheet copied, and are liable to a penalty from ten cents to a dollar for every sheet—half to the proprietor and half to the Crown.

(II.) Victoria.

Copyright in Victoria is regulated by the Copyright Act of 1869, which is not, however, to be deemed to affect the law of copyright as applicable to the Colony by any Imperial statute then in force. The provisions of the Act are, with slight variations, in the same words as 25 & 26 Vict. c. 68. The Colonial Act, however, applies to statuary and engravings.

Works to which Protection is given.

Copyright is given to the authors being British subjects or resident in Victoria, of every new and original painting, drawing, work of sculpture, engraving, and photograph made in Victoria. There is a proviso in the same words as that in 25 & 26 Vict. c. 68, s. 1 (*a*), by which, when works not executed on commission are sold for the first time, unless there be an agreement in writing, neither purchaser nor seller is entitled to copyright. This does not apply to the sale of photographs taken from a negative, but only when the negative itself is sold (sect. 36).

Duration of Copyright.

As regards paintings, drawings, works of sculpture, and engravings, protection is given for fourteen years; as regards photographs and negatives, for three years (sect. 36).

Registration.

Particulars of works of art must be registered in Victoria. Failure to register does not affect the copyright, but no proceedings can be taken for anything done prior to registration (sect. 38).

(*a*) See *ante*, p. 14, *infra*, p. 101.

Exception as to Works of Art in the Public Galleries.

It is declared that, notwithstanding the provisions of the Act, it shall be lawful for all persons resident in Victoria to repeat, imitate, copy, and otherwise multiply any painting, drawing, work of sculpture, or photograph in or belonging to the Museum of Industry and Art, the National Gallery, or the Melbourne Library; and the trustees of these buildings are required to allow such copies to be made at such times as the Governor shall direct (sect. 56).

(III.) Copyright in South Australia.

This is regulated by the Copyright Act, 1878, which follows the words of the Victorian Act (*a*), except that it does not authorise the copying of works of art in any public building; it is confined to works of art made in the Colony by a British subject or resident in the Colony (sect. 34). Works must be registered in the Colony, and no proceedings can be taken for anything done prior to registration (sect. 36).

(IV.) Copyright in New South Wales.

The Copyright Act, 1879, follows the words of the Victorian Act (*b*). It is confined to works of art made in the Colony by a British subject or resident in the Colony (sect. 25). Works must be registered in the Colony, and no proceedings can be taken for anything done prior to registration (sect. 27). It is provided that, notwithstanding the provisions of the Act, it shall be lawful for any person resident in the Colony to repeat, imitate, copy, and

(*a*) *Ante*, p. 98. (*b*) *Ibid.*

otherwise multiply, any painting, drawing, work of sculpture or photograph in or belonging to the Museum, Academy of Art, or any art gallery, wholly or partly endowed from public funds, or in or to the Free Public Library, or the Library of the University of Sydney; and the trustees and authorities in charge of these buildings are required to allow copies to be made at such times as the governor shall direct (sect. 55).

APPENDIX OF STATUTES.

I. PAINTINGS, DRAWINGS, AND PHOTOGRAPHS.

25 & 26 VICT. CAP. LXVIII.

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.

1. 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 authorized, shall have been made to that Effect.

Copyright not to prevent the representation of the same subjects in other works.

2. 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.

3. 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.

4. 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.

5. The several Enactments in the said Act of the Sixth Year of Her present Majesty contained (*a*), 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.

6. 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 Distri-

(*a*) 5 & 6 Vict. c. 45, ss. 11, 12 & 14 *infra*, p. 108.

bution, 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.

7. 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 fraudule· ·y 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:

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 sLall 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. Penalties.

8. 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: Recovery of pecuniary penalties.

In *England* and *Ireland*, either by Action against the Party In England and Ireland.

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.

9. 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.

10. 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 Photo-

graph, 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.

11. 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

Saving of right to bring action for damages.

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.

12. 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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5 & 6 Vict. Cap. XLV.

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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 false Entry in the Book of Registry a Misdemeanor.

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.

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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.

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.

II. ENGRAVINGS.

8 Geo. II., Cap. XIII (*a*).

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.

Preamble.

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 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

After 24 June, 1735, the property of historical and other prints vested in the Inventor for 14 Years.

(*a*) The parts repealed by the Stat. Law Rev. Acts, 1867 and 1888, are omitted.

have the sole Right and Liberty of printing and reprinting the same for the Term of [Fourteen Years (*b*)], 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 Westminster, by Action of Debt, Bill,

Proprietor's Name to be affixed to each Print.

Penalty on Printsellers or others pirating same.

(*b*) See 7 Geo. III. c. 38, s. 7, *inf.* p. 114.

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.

[III] And . . if any action or suit shall be commenced or brought against any Person or Persons whatsoever, for doing or causing to be done any Thing 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

General Issue.

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:

[IV] Provided always . . 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; any Thing in this Act contained to the contrary notwithstanding. . . .

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7 Geo. III., Cap. XXXVIII (*a*).

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. . . .

Preamble, reciting Act, 8 Geo. II.

Whereas an Act of Parliament passed in the Eighth Year of the Reign of His late Majesty King *George* the Second,

(*a*) The parts repealed by the Stat. Law Rev. Acts, 1867 and 1888, are omitted.

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 herein-after 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 . . from and after the said First Day of *January* One thousand seven 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 herein-after mentioned, in like Manner as if such Print had been graved or drawn from the Original Design of such Graver, Etcher, or Draughtsman; 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 herein-after is mentioned.

and also such as shall engrave, &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.

* * * * *

[V] And . . . 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

Penalties may be sued for as by the recited Act is directed;

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.

and be recovered with full costs;

[VI] Provided also, That the Party prosecuting shall commence his Prosecution within the Space of Six Calendar Months after the Offence committed.

provided the Prosecution be commenced within six Months after the Fact.

[VII] And . . 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 herein-before 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 28 Years from the first Publication.

[VIII] And 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 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.

General Issue.

Full Costs.

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17 Geo. III. Cap. LVII. (*a*).

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 Geo. 2,

WHEREAS an Act of Parliament passed in the Eighth Year of the Reign of His late Majesty, King *George* the Second,

(*a*) The parts repealed by the Stat. Law Rev. Act, 1861, are omitted.

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 therein-after 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 herein-after 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, Printseller, 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 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

and 7 Geo. 3.

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. . .

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. . .

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6 & 7 Will. IV. c. 59.

An Act to extend the Protection of Copyright in Prints and Engravings to Ireland. [13th August, 1836.]

Reciting 17 Geo. 3, c. 57.

By this Act (after reciting 17 Geo. III. c. 57, and that it is desirable to extend the provisions thereof to Ireland), it is enacted:—

Provisions of recited Act extended to Ireland.

I. 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 other Acts therein recited, shall be and the same are hereby extended to the United Kingdom of *Great Britain* and *Ireland*.

Penalty on engraving or publishing any print without consent of proprietor.

II. 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 part, which may have been, or which shall 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 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. . .

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15 & 16 Vict. c. 12 (*a*).

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Lithographs, &c.

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:

Recital of 8 Geo. 2, c. 13; 7 Geo. 3, c. 38; 17 Geo. 3, c. 57; 6 & 7 Wm. 4, c. 59.

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.

(*a*) The rest of the Act (so far as it is not repealed by the Stat. Law Rev. Act, 1875, and the International Copyright Act, 1886) deals with International Copyright. Sect. 9 will be found *infra*, p. 156.

III. SCULPTURE.

54 Geo. III. c. 56 (*a*).

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. [18*th May*, 1814.]

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

The sole Right and Property of all new and original Sculpture, Models, Copies, and Casts, vested in the Proprietors, for 14 Years.

(*a*) The parts repealed by the Stat. Law Rev. Acts, 1873 and 1888, are omitted.

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 herein-before 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 herein-before 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 herein-before 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.

Works published under Act vested in Proprietors for 14 years.

II. And . . . the sole Right and Property of all Works which have been put forth or published 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

III. And . . . 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

pirated Copies or pirated Casts, may be prosecuted.

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 herein-before 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 (*a*)].

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, any Thing contained in this Act to the contrary notwithstanding.

(*a*) Repealed by 5 & 6 Vict. c. 97, s. 2.

V. Provided always, 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, 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 herein-before 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. . . . An additional Term of 14 Years, in case the Maker of the original Sculpture, &c., shall be living.

IV. DESIGNS (*a*).

46 & 47 Vict. Cap. LVII (*b*).

An Act to amend and consolidate the Law relating to Patents for Inventions, Registration of Designs, and of Trade Marks. [25th August, 1883.]

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:

PART I.

Preliminary.

Short title.

1. This Act may be cited as the Patents, Designs, and Trade Marks Act, 1883.

Division of Act into parts.

2. This Act is divided into parts, as follows:—

Part I.—Preliminary.
Part II.—Patents.
Part III.—Designs.
Part IV.—Trade Marks.
Part V.—General.

3. This Act, except where it is otherwise expressed, shall commence from and immediately after the thirty-first day of December one thousand eight hundred and eighty-three.

* * * * *

PART III.

Designs.

Registration of Designs.

Application for registration of designs.

47. (1.) The comptroller may, on application by or on behalf of any person claiming to be the proprietor of any

(*a*) *Ante*, pp. 64 to 84.

(*b*) The amendments and additions made by 51 & 52 Vict. c. 50 are printed in italics.

new or original design not previously published in the United Kingdom, register the design under this part of this Act.

(2.) The application must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the patent office in the prescribed manner.

(3.) The application must contain a statement of the nature of the design, and the class or classes of goods in which the applicant desires that the design be registered.

(4.) The same design may be registered in more than one class.

(5.) In case of doubt as to the class in which a design ought to be registered, the comptroller may decide the question.

(6.) The comptroller may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal therefrom to the Board of Trade.

(7.) The Board of Trade shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

Drawings, &c., to be furnished on application.

48. (1.) On application for registration of a design the applicant shall furnish to the comptroller the prescribed number of copies of drawings, photographs, or tracings of the design sufficient, in the opinion of the comptroller, for enabling him to identify the design; or the applicant may, instead of such copies, furnish exact representations or specimens of the design.

(2.) The comptroller may, if he thinks fit, refuse any drawing, photograph, tracing, representation, or specimen which is not, in his opinion, suitable for the official records.

Certificate of registration.

49. (1.) The comptroller shall grant a certificate of registration to the proprietor of the design when registered.

(2.) The comptroller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, grant a copy or copies of the certificate.

Copyright in registered Designs.

Copyright on registration.

50. (1.) When a design is registered, the registered pro-

prietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.

(2.) Before delivery on sale of any articles to which a registered design has been applied, the proprietor must (if exact representations or specimens were not furnished on the application for registration), furnish to the comptroller the prescribed number of exact representations or specimens of the design; and if he fails to do so, the comptroller may erase his name from the register, and thereupon his copyright in the design shall cease.

Marking registered designs.

51. Before delivery on sale of any articles to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark, or with the prescribed word or words or figures, denoting that the design is registered; and if he fails to do so the copyright in the design shall cease, unless the proprietor shows that he took all proper steps to ensure the marking of the article.

Inspection of registered designs.

52. (1.) During the existence of copyright in a design, the design shall not be open to inspection except by the proprietor, or a person authorised in writing by the proprietor, or a person authorised by the comptroller or by the court, and furnishing such information as may enable the comptroller to identify the design, nor except in the presence of the comptroller, or of an officer acting under him, nor except on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof. *Provided that where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered* (*a*).

(2.) When the copyright in a design has ceased, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

Information as to existence of copyright.

53. On the request of any person producing a particular design, together with its mark of registration, or producing only its mark of registration, or furnishing such information as may enable the comptroller to identify the design, and on

(*a*) Added by 51 & 52 Vict. c. 50, s. 6.

payment of the prescribed fee, it shall be the duty of the comptroller to inform such person whether the registration still exists in respect of such design, and if so, in respect of what class or classes of goods, and stating also the date of registration, and the name and address of the registered proprietor.

Cessor of copyright in certain events.

54. If a registered design is used in manufacture in any foreign country and is not used in this country within six months of its registration in this country, the copyright in the design shall cease.

Register of Designs.

Register of designs.

55. (1.) There shall be kept at the patent office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may from time to time be prescribed.

(2.) The register of designs shall be *primâ facie* evidence of any matters by this Act directed or authorised to be entered therein.

Fees.

Fees on registration, &c.

56. There shall be paid in respect of applications and registration and other matters under this part of this Act such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury shall from time to time direct.

Industrial and International Exhibitions.

Exhibition at industrial or international exhibition not to prevent or invalidate registration.

57. The exhibition at an industrial or international exhibition certified as such by the Board of Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof,

provided that both the following conditions are complied with; namely,—

(*a.*) The exhibitor must, before exhibiting the design or article, or publishing a description of the design, give the comptroller the prescribed notice of his intention to do so; and

(*b.*) The application for registration must be made before or within six months from the date of the opening of the exhibition.

Legal Proceedings.

58. During the existence of copyright in any design—

Penalty on piracy of registered design.

(*a.*) It shall not be lawful for any person without the license or written consent of the registered proprietor to apply *or cause to be applied* (*a*) such design or any fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered, for purposes of sale to any article of manufacture or to any substance artificial or natural, or partly artificial and partly natural; and

(*b.*) It shall not be lawful for any person to publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, knowing that the same has been so applied without the consent of the registered proprietor.

Any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding fifty pounds to the registered proprietor of the design, who may recover such sum as a simple contract debt by action in any court of competent jurisdiction. *Provided that the total sum forfeited in respect of any one design shall not exceed one hundred pounds* (*b*).

Action for damages.

59. Notwithstanding the remedy given by this Act for the recovery of such penalty as aforesaid, the registered pro-

(*a*) Added by 51 & 52 Vict. c. 50, s. 7 (1).
(*b*) *Ibid.* s. 7 (2).

prietor of any design may (if he elects to do so) bring an action for the recovery of any damages arising from the application of any such design, or of any fraudulent or obvious imitation thereof for the purpose of sale, to any article of manufacture or substance, or from the publication, sale or exposure for sale, by any person of any article or substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, such person knowing that the proprietor had not given his consent to such application.

Definitions.

60. In and for the purposes of this Act—

Definition of "design," "copyright."

"Design" means any design applicable to any article of manufacture, or to any substance artificial or natural, or partly artificial and partly natural, whether the design is 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 it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined, not being a design for a sculpture, or other thing within the protection of the Sculpture Copyright Act of the year 1814 (fifty-fourth George the Third, chapter fifty-six).

"Copyright" means the exclusive right to apply a design to any article of manufacture or to any such substance as aforesaid in the class or classes in which the design is registered.

Definition of proprietor.

61. The author of any new and original design shall be considered the proprietor thereof, unless he executed the work on behalf of another person for a good or valuable consideration, in which case such person shall be considered the proprietor, and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to any such article or substance as aforesaid, either exclusively of any other person or otherwise, and also every person on 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.

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PART V.

GENERAL.

Patent Office and Proceedings thereat.

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Seal of patent office.

84. There shall be a seal for the Patent Office, and impressions thereof shall be judicially noticed and admitted in evidence.

Trust not to be entered in registers.

85. There shall not be entered in any register kept under this Act, or be receivable by the comptroller, any notice of any trust expressed, implied, or constructive.

Refusal to grant patent, &c., in certain cases.

86. The comptroller may refuse to grant a patent for an invention, or to register a design or trade mark, of which the use would, in his opinion, be contrary to law or morality.

Entry of assignments and transmissions in registers.

87. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, or to a registered trade mark, the comptroller shall on request, and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade mark, in the register of patents, designs, or trade marks, as the case may be. The person for the time being entered in the register of patents, designs, or trade marks, as proprietor of a patent, copyright in a design or trade-mark as the case may be, shall, subject to *the provisions of this Act and to* (*a*) any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the same and to give effectual receipts for any consideration for such assignment, licence, or dealing. Provided that any equities in respect of such patent, design, or trade mark, may be enforced in like manner as in respect of any other personal property.

(*a*) Added by 51 & 52 Vict. c. 50, s. 21.

88. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee. Inspection of and extracts from registers.

89. Printed or written copies or extracts, purporting to be certified by the comptroller and sealed with the seal of the Patent Office, of or from patents, specifications, disclaimers and other documents in the Patent Office, or of or from registers and other books kept there, shall be admitted in evidence in all courts in Her Majesty's dominions, and in all proceedings, without further proof or production of the originals. Sealed copies to be received in evidence.

90. (1.) The Court may on the application of any person aggrieved by the omission without sufficient cause of the name of any person *or of any other particulars* (*a*) from any register kept under this Act, or by any entry made without sufficient cause in any such register, make such order for making expunging or varying the entry, as the Court thinks fit; or the Court may refuse the application; and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit. Rectification of registers by court.

(2.) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3.) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the comptroller.

91. The comptroller may, on request in writing accompanied by the prescribed fee,—

(*a.*) Correct any clerical error in or in connection with an application for a patent, or for registration of a design or trade mark; or
(*b.*) Correct any clerical error in the name style or address Power for comptroller to correct clerical errors.

(*a*) Added by 51 & 52 Vict. c. 50, s. 23.

of the registered proprietor of a patent, design, or trade mark.

* * * * *

(*d.*) *Permit an applicant for registration of a design or trade mark to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the design or trade mark to be registered* (*a*).

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Falsification of entries in registers.

93. If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor.

Exercise of discretionary power by comptroller.

94. Where any discretionary power is by this Act given to the comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a trade mark or design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.

Power of comptroller to take directions of law officers.

95. The comptroller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to either of the law officers for directions in the matter.

Certificate of comptroller to be evidence.

96. A certificate purporting to be under the hand of the comptroller as to any entry, matter, or thing which he is authorised by this Act, or any general rules made thereunder, to make or do, shall be *primâ facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Applications and notices by post.

97. (1.) Any application, notice, or other document authorised or required to be left made or given at the patent office or to the comptroller, or to any other person under this Act, may be sent by a prepaid letter through the post; and if so sent shall be deemed to have been left made or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.

(2.) In proving such service or sending, it shall be sufficient

(*a*) Added by 51 & 52 Vict. c. 50, s. 21.

to prove that the letter was properly addressed and put into the post.

Provision as to days for leaving documents at office.

98. Whenever the last day fixed by this Act, or by any rule for the time being in force, for leaving any document or paying any fee at the Patent Office shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or any day observed as a holiday at the Bank of England, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document or to pay such fee on the day next following such excluded day, or days if two or more of them occur consecutively.

Declaration by infant, lunatic, &c.

99. If any person is, by reason of infancy, lunacy, or other inability, incapable of making any declaration or doing anything required or permitted by this Act or by any rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted.

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Power for Board of Trade to make general rules for classifying goods and regulating business of patent office.

101. (1.) The Board of Trade may from time to time make such general rules and do such things as they think expedient, subject to the provisions of this Act—

(*a.*) For regulating the practice of registration under this Act:

(*b.*) For classifying goods for the purposes of designs and trade marks:

(*c.*) For making or requiring duplicates of specifications, amendment, drawings, and other documents:

(*d.*) For securing and regulating the publishing and selling of copies, at such prices and in such manner as the

Board of Trade think fit, of specifications drawings amendments and other documents:

(*e.*) For securing and regulating the making printing publishing and selling of indexes to, and abridgments of, specifications and other documents in the Patent Office; and providing for the inspection of indexes and abridgments and other documents:

(*f.*) For regulating (with the approval of the Treasury) the presentation of copies of Patent Office publications to patentees and to public authorities, bodies, and institutions at home and abroad:

(*g.*) Generally for regulating the business of the Patent Office, and all things by this Act placed under the direction or control of the comptroller, or of the Board of Trade.

(2.) Any of the forms in the First Schedule to this Act may be altered or amended by rules made by the Board as aforesaid.

(3.) General rules may be made under this section at any time after the passing of this Act, but not so as to take effect before the commencement of this Act, and shall (subject as herein-after mentioned) be of the same effect as if they were contained in this Act, and shall be judicially noticed.

(4.) Any rules made in pursuance of this section shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament, and they shall also be advertised twice in the official journal to be issued by the comptroller.

(5.) If either House of Parliament, within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule or to the making of any new rules or rule.

* * * * *

Proceedings of Board of Trade.

102A. (1.) *All things required or authorized under this Act to be done by to or before the Board of Trade may be done by to or*

before the President or a secretary or an assistant secretary of the Board.

(2.) *All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorised in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shewn.*

(3.) *A certificate, signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified* (*a*).

International and Colonial Arrangements.

International arrangements for protection of inventions, designs and trade marks (*b*).

103. (1.) If Her Majesty is pleased to make any arrangement with the government or governments of any foreign state or states for mutual protection of inventions, designs, and trade marks, or any of them, then any person who has applied for protection for any invention, design, or trade mark in any such state, shall be entitled to a patent for his invention or to registration of his design or trade mark (as the case may be) under this Act, in priority to other applicants; and such patent or registration shall have the same date as the date of the protection obtained in such foreign state.

Provided that his application is made, in the case of a patent within seven months, and in the case of a design or trade mark within four months, from his applying for protection in the foreign state with which the arrangement is in force.

Provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade mark in this country, as the case may be.

(2.) The publication in the United Kingdom, or Isle of Man during the respective periods aforesaid of any description

(*a*) Added by 50 & 51 Vict. c. 50, s. 25.

(*b*) For orders made under this sect., see *infra*, p. 148.

of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade mark, shall not invalidate the patent which may be granted for the invention, or the registration of the design or trade mark:

(3.) The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act: Provided that, in the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Act:

(4.) The provisions of this section shall apply only in the case of those foreign states with respect to which Her Majesty shall from time to time by Order in Council declare them to be applicable, and so long only in the case of each state as the Order in Council shall continue in force with respect to that state.

Provision for colonies and India (*a*).

104. (1.) Where it is made to appear to Her Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks, patented or registered in this country, it shall be lawful for Her Majesty from time to time, by Order in Council, to apply the provisions of the last preceding section, with such variations or additions, if any, as to Her Majesty in Council may seem fit, to such British possession.

(2.) An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if its provisions had been contained in this Act; but it shall be lawful for Her Majesty in Council to revoke any Order in Council made under this Act.

Offences.

Penalty on falsely representing articles to be patented.

105. (1.) Any person who represents that any article sold by him is a patented article, when no patent has been granted for the same, or describes any design or trade mark applied

(*a*) For orders made under this sect., see *infra*, p. 148.

to any article sold by him as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

(2.) A person shall be deemed, for the purposes of this enactment, to represent that an article is patented or a design or a trade mark is registered, if he sells the article with the word "patent," "patented," "registered," or any word or words expressing or implying that a patent or registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to, the article.

* * * * *

Scotland, Ireland, &c.

Saving for Courts in Scotland.

107. In any action for infringement of a patent in Scotland the provisions of this Act, with respect to calling in the aid of an assessor, shall apply, and the action shall be tried without a jury, unless the court shall otherwise direct, but otherwise nothing shall affect the jurisdiction and forms of process of the courts in Scotland in such an action or in any action or proceeding respecting a patent hitherto competent to those courts.

For the purposes of this section "court of appeal" shall mean any court to which such action is appealed.

Summary proceedings in Scotland.

108. In Scotland any offence under this Act declared to be punishable on summary conviction may be prosecuted in the sheriff court.

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General saving for jurisdiction of courts.

111. (1.) The provisions of this Act conferring a special jurisdiction on the court as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Scotland or Ireland in any proceedings relating to patents or to designs or to trade marks; and with reference to any such proceedings in Scotland, the term "the Court" shall mean any Lord Ordinary of the Court of Session, and the term "Court of Appeal" shall mean either Division of the said Court; and with reference to any such proceedings in Ireland, the terms "the Court" and "the Court of Appeal" respectively mean the High Court of Justice in Ireland and Her Majesty's Court of Appeal in Ireland.

(2.) If any rectification of a register under this Act is required in pursuance of any proceeding in a court in Scotland or Ireland, a copy of the order, decree, or other authority for the rectification shall be served on the comptroller, and he shall rectify the register accordingly.

Isle of Man.

112. This Act shall extend to the Isle of Man, and—

(1.) Nothing in this Act shall affect the jurisdiction of the courts in the Isle of Man, in proceedings for infringement or in any action or proceeding respecting a patent, design, or trade mark competent to those courts;

(2.) The punishment for a misdemeanor under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceeding one hundred pounds, at the discretion of the court;

(3.) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

Jurisdiction of Lancashire Palatine Court (*a*).

112A. *The Court of Chancery of the County Palatine of Lancaster shall, with respect to any action or other proceeding in relation to trade marks* (*b*) *the registration whereof is applied for in the Manchester Office, have the like jurisdiction under this Act as Her Majesty's High Court of Justice in England, and the expression "the Court" in this Act shall be construed and have effect accordingly.*

Provided that every decision of the Court of Chancery of the County Palatine of Lancaster in pursuance of this section shall be subject to the like appeal as decisions of that Court in other cases.

(*a*) Added by 51 & 52 Vict. c. 50, s. 26.

(*b*) This does not appear to enable the Palatine Court to expunge the registration of a design under s. 90 (1).

Repeal; Transitional Provisions; Savings.

113. The enactments described in the Third Schedule to this Act are hereby repealed. But this repeal of enactments shall not— Repeal and saving for past operation of repealed enactments, &c.

(*a.*) Affect the past operation of any of those enactments, or any patent or copyright or right to use a trade mark granted or acquired, or application pending, or appointment made, or compensation granted, or order or direction made or given, or right, privilege, obligation, or liability acquired, accrued, or incurred, or anything duly done or suffered under or by any of those enactments before or at the commencement of this Act; or

(*b.*) Interfere with the institution or prosecution of any action or proceeding, civil or criminal, in respect thereof, and any such proceeding may be carried on as if this Act had not been passed; or

(*c.*) Take away or abridge any protection or benefit in relation to any such action or proceeding.

114. (1.) The registers of patents and of proprietors kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of patents kept under this Act. Former registers to be deemed continued.

(2.) The registers of designs and of trade marks kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of designs and the register of trade marks kept under this Act.

115. All general rules made by the Lord Chancellor or by any other authority under any enactment repealed by this Act, and in force at the commencement of this Act, may at any time after the passing of this Act be repealed, altered or amended by the Board of Trade, as if they had been made by the Board under this Act, but so that no such repeal, alteration or amendment shall take effect before the commencement of this Act; and, subject as aforesaid, such general rules shall, so far as they are consistent with and are Saving for existing rules.

not superseded by this Act, continue in force as if they had been made by the Board of Trade under this Act.

Saving for prerogative.

116. Nothing in this Act shall take away, abridge, or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof.

General Definitions.

General definitions.

117. (1.) In and for the purposes of this Act, unless the context otherwise requires,—

"Person" includes a body corporate:

"The Court" means (subject to the provisions for Scotland, Ireland, and the Isle of Man) Her Majesty's High Court of Justice in England:

"Law officer" means Her Majesty's Attorney-General or Solicitor-General for England:

"The Treasury" means the Commissioners of Her Majesty's Treasury:

"Comptroller" means the Comptroller General of Patents, Designs, and Trade Marks:

"Prescribed" means prescribed by any of the Schedules to this Act, or by general rules under or within the meaning of this Act:

"British possession" means any territory or place situate within Her Majesty's dominions, and not being or forming part of the United Kingdom, or of the Channel Islands, or of the Isle of Man, and all territories and places under one legislature, as herein-after defined, are deemed to be one British possession for the purposes of this Act:

"Legislature" includes any person or persons who exercise legislative authority in the British possession; and where there are local legislatures as well as a central legislature, means the central legislature only.

In the application of this Act to Ireland, "summary conviction" means a conviction under the Summary Jurisdiction Acts, that is to say, with reference to the Dublin Metropolitan Police District the Acts regulating the duties of justices of the peace and of the police for such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending it.

RULES MADE UNDER S. 101 OF THE PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

PATENT OFFICE.

Designs Rules.

By virtue of the provisions of the Patents, Designs, and Trade Marks Act, 1883, the Board of Trade do hereby make the following rules:—

Commencement.

1. These rules may be cited as the Designs Rules, 1883, and shall come into operation from and immediately after the 31st day of December, 1883.

Interpretation.

2. In the construction of these Rules any words herein used defined by the said Act shall have the meanings thereby assigned to them respectively. Interpretation.

Fees.

3. The fees to be paid under the said Act, so far as it relates to applications for and registration of designs, shall be the fees specified in the first Schedule hereto. Fees.

Forms.

4. An application for the registration of a design shall be made in the form E. in the Second Schedule hereto. The remaining forms in such Schedule may be used in all cases to which they are applicable. Forms.

Classification of Goods.

5. For the purposes of the registration of designs and of these Rules, goods are classified in the manner appearing in the Third Schedule hereto. Classification of goods.

Application for Registration.

6. All communications between an applicant for the registration of a design and the Comptroller or the Board of Trade, as the case may be, may be made by or through Agents.

an agent duly authorised to the satisfaction of the Comptroller.

Address of Comptroller.

7. An application for the registration of a design shall, with the prescribed fee, be left at the Patent Office, Designs Branch, or be sent prepaid by post, addressed to the Comptroller at the Patent Office (Designs Branch), 25, Southampton Buildings, Chancery Lane, London.

Size of papers.

8. An application for the registration of a design, and all drawings, sketches, photographs, or tracings of a design, and all other documents sent to or left at the Patent Office (Designs Branch), or otherwise furnished to the Comptroller or to the Board of Trade, shall be written, printed, copied, or drawn upon strong wide-ruled foolscap paper (on one side only), of the size of 13 inches by 8 inches, leaving a margin of not less than one inch and a half on the left-hand part thereof, and the signature of the applicants or agents thereto must be written in a large and legible hand.

The Comptroller may in any particular case vary the requirements of this rule as he may think fit.

Sketches and drawings.

Nature of design.

9. An application for the registration of a design shall be accompanied by a sketch or drawing, or by three exactly similar drawings, photographs, or tracings of the design, or by three specimens of the design, and shall, in describing the nature of the design, state whether it is applicable for the pattern or for the shape or configuration of the design, and the means by which it is applicable.

When sketches, drawings, or tracings are furnished they must be fixed.

When the articles to which designs are applied are not of a kind which can be pasted into books, drawings, photographs, or tracings of such designs shall be furnished.

Acknowledgment to applicant.

10. On receipt of an application for registration the comptroller shall send to the applicant an acknowledgment thereof.

Notice of registration.

11. If the Comptroller determines to register a design, he shall as soon as may be send to the applicant a certificate of such registration in the prescribed form, sealed with the seal of the Patent Office.

Applications

12. Any application, notice, or other document authorised

or required to be left, made, or given at the Patent Office or to the Comptroller or to any other person under these Rules may be sent by a prepaid letter through the post, and if so sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post. may be sent by post.

In proving such service or sending it shall be sufficient to prove that the letter was properly addressed and put into the post.

13. Before exercising any discretionary power given to the Comptroller by the said Act adversely to an applicant for registration of a design, the Comptroller shall give him ten days' notice of the time when he may be heard personally or by his agent before the Comptroller. Hearing by Comptroller.

14. Within five days from the date when such notice would be delivered in the ordinary course of post, the applicant shall notify to the Comptroller whether or not he intends to be heard upon the matter. Hearing by Comptroller.

15. The decision or determination of the Comptroller in the exercise of any such discretionary power as aforesaid shall be notified to the applicant. Notification of Comptroller's decision.

Appeal to the Board of Trade.

16. Where the Comptroller refuses to register a design, and the applicant intends to appeal to the Board of Trade from such refusal, he shall, within one month from the date of the decision appealed against, leave at the Patent Office, Designs Branch, a notice of such his intention. Notice of appeal to Board of Trade

17. Such notice shall be accompanied by a statement of the grounds of appeal, and of the applicant's case in support thereof. Statement on appeal.

18. The applicant shall forthwith on leaving such notice send a copy thereof to the Secretary of the Board of Trade, No. 7, Whitehall Gardens, London. Notice to Secretary of Board of Trade.

19. The Board of Trade may thereupon give such directions, (if any) as they may think fit for the purpose of the hearing of the appeal for the Board of Trade. Directions by Board of Trade.

20. Seven days' notice, or such shorter notice as the Board of Trade may in any particular case direct, of the Notice of time of hearing.

time and place appointed for the hearing of the appeal shall be given to the Comptroller and the applicant.

Register of Designs.

Registering design.

21. Upon the sealing of a certificate of registration the Comptroller shall cause to be entered in the register of designs the name, address, and description of the registered proprietor, and the date upon which the application for registration was received by the Comptroller, which day shall be deemed to be the date of the registration.

Subsequent proprietors.

22. Where a person becomes entitled to the copyright in a registered design, or to any share or interest therein, by assignment, transmission, or other operation of law, or where a person acquires any right to apply the design either exclusively or otherwise, a request for the entry of his name in the register as such proprietor of the design, or as having acquired such right, as the case may be (herein-after called the claimant), shall be addressed to the Comptroller, and left at the Patent Office, Designs Branch.

Signature to request.

23. Every such request shall, in the case of an individual, be made and signed by the person requiring to be registered as proprietor; and in the case of a firm or partnership, by some one or more members of such firm or partnership, or, in either case, by his or their agent respectively duly authorised to the satisfaction of the Comptroller; and in the case of a body corporate, by their agent authorised in like manner.

Particulars in request.

24. Every such request shall state the name, address, and description of the claimant, and the particulars of the assignment, transmission, or other operation of law by virtue of which the request is made, so as to show the manner in which and the person or persons to whom the design has been assigned or transmitted, or the person or persons who has or have acquired such right as aforesaid, as the case may be.

Statutory declaration with request.

25. Every such request shall be accompanied by a statutory declaration to be thereunder written verifying the several statements therein, and declaring that the particulars above described comprise every material fact and document

affecting the proprietorship of the design or the right to apply the same, as the case may be, as claimed by such request.

Proof of title if required.

26. The claimant shall furnish to the Comptroller such other proof of title as he may require for his satisfaction.

Corporate name.

27. A body corporate may be registered as proprietor by its corporate name.

Notice of order of Court.

28. Where an order has been made by the Court, under section 90 of the said Act, the person in whose favour such order has been made shall forthwith leave at the Patent Office an office copy of such order. The register shall thereupon be rectified, or the purport of such order shall otherwise be duly entered in the register, as the case may be.

Power to dispense with Evidence.

Comptroller's discretion as to evidence.

29. Where under these Rules any person is required to do any act or thing, or to sign any document, or make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the Comptroller or at the Patent Office, and it is shown to the satisfaction of the Comptroller that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Comptroller, with the sanction of the Board of Trade, and upon the production of such other evidence and subject to such terms as they may think fit, to dispense with any such act or thing, document, declaration, or evidence.

Amendments.

Amendments.

30. Any document, drawings, sketches, or tracings for the amending of which no special provision is made by the said Act may be amended, and any irregularity in procedure which, in the opinion of the Comptroller, may be obviated without detriment to the interests of any person, may be corrected, if the Comptroller think fit, and upon such terms as he may direct.

Enlargement of Time.

Enlargement of time.

31. The time prescribed by these Rules for doing any act or taking any proceeding thereunder may be enlarged by the Comptroller, if he think fit, and upon such terms as he may direct.

Marking Goods.

Registration mark.

32. Before the delivery on sale of any article to which a registered design has been applied, the proprietor of such design shall, if such article is included in any of the classes one to twelve in the Third Schedule hereto, cause each such article to be marked with the abbreviation "R^D" and the number appearing on the certificate of registration, and shall, if such article is included in the classes thirteen or fourteen in the Third Schedule hereto, cause each such article to be marked with the abbreviation "REG^D."

Inspection.

Office hours.

33. On such days and during such hours as the Comptroller shall from time to time determine and notify by a placard posted at the Patent Office any person paying the prescribed fee may, on production of the number of any design of which the copyright has ceased, inspect such design, and any person paying the prescribed fee may take a copy or copies of such design.

Certificate by Comptroller.

Certificate legal proceeding.

34. Where a certificate is required for the purpose of any legal proceeding or other special purpose as to any entry, matter, or thing which the Comptroller is authorised by the said Act or these Rules to make or do, the Comptroller may, on a request in writing and on payment of the prescribed fee, give such certificate, which shall also specify on the face of it the purpose for which it has been requested as aforesaid.

Searches on production of Sketch of Design.

Search.

35. The Comptroller may, on receipt of the prescribed fee, make searches among the designs registered at the Patent

Office after the commencement of the Act, and inform any person requesting him so to do whether a particular design produced by such person, and to be applied to goods in any particular class, is or is not identical with or an obvious imitation of any design applied to such goods and registered since the commencement of the Act.

Industrial and International Exhibitions.

Notice of exhibition.

36. Any person desirous of exhibiting a design, or any article to which a design has been applied, at an industrial or international exhibition, or of publishing a description of a design during the period of the holding of the exhibition, shall, after having obtained from the Board of Trade a certificate that the exhibition is an industrial or international one, give to the Comptroller seven days' notice in writing of his intention to exhibit the design or article, or to publish a description of the design, as the case may be.

For the purpose of identifying the design in the event of an application to register the same being subsequently made, the applicant shall furnish to the Comptroller a brief description of the nature of the design, accompanied by a sketch or drawing thereof, and such other information as the Comptroller may in each case require.

Repeal.

Repeal of previous rules.

37. All general rules and regulations made any authority under the Acts relating to the Copyright of Designs, and in force on the 31st December 1883, shall be, and they are hereby repealed as from that date, without prejudice nevertheless to any application then pending.

J. CHAMBERLAIN,
President of the Board of Trade.

21*st December* 1883.

SCHEDULES.

FIRST SCHEDULE.

Fees.

	£	s.	d.
1. On application to register one design to be applied to single articles in each class except classes 13 and 14 .	0	10	0
2. On application to register one design to be applied to single articles in classes 13 and 14	0	1	0
3. On application to register one design to be applied to a set of articles for each class of registration . .	1	0	0
4. On notice of appeal to Board of Trade against refusal of Comptroller to register	1	0	0
5. Copy of certificate of registration, each copy . .	0	1	0
6. On request for Certificate of Comptroller for legal proceedings or other special purpose	0	5	0
7. On request to enter name of subsequent proprietor	same as registration fee.		
8. On notice to Comptroller of intended exhibition of an unregistered design	0	5	0
9. Inspection of design of which the copyright has expired, for each quarter of an hour	0	1	0
10. Copy of one such design	cost according to agreement.		
11. On request to correct clerical error	0	5	0
12. On request for search under section 53 . . .	0	5	0
13. On request to enter new address	0	5	0
14. For office copy, every 100 words	0	0	4
	(but never less than 1s.)		
15. For certifying office copies, MSS. or printed . .	0	1	0

Note.—The term "set" to include any number of articles ordinarily on sale together irrespective of the varieties of size and arrangement in which the particular design may be shown on each separate article.

J. CHAMBERLAIN,
President of the Board of Trade.

Approved,
CHARLES C. COTES,
HERBERT J. GLADSTONE,
Lords Commissioners of Her Majesty's Treasury.

4th December, 1883.

SECOND SCHEDULE.

Forms.

Form of Application to register.
„ Appeal to Board of Trade.
„ Certificate of registration.
„ Application for copy of certificate of registration.
„ Request for certificate for use in legal proceedings.
„ Certificate for use in legal proceedings.
„ Request to enter name of subsequent proprietor.
„ Notice of intending exhibition of unregistered design.
„ Request for correction of clerical error or for entry of new address.

THIRD SCHEDULE.

Classification of Articles of Manufactured and Substances. (*sic.*)

Classes.

1. Articles composed wholly or partly of metal, not included in Class 2.
2. Jewellery.
3. Articles composed wholly or partly of wood, bone, ivory, papier-mâché, or other solid substances not included in other classes.
4. „ „ „ „ glass, earthenware, or porcelain, bricks, tiles, or cement.
5. „ „ „ „ paper (except hangings).
6. „ „ „ „ leather, including book-binding, of all materials.
7. Paper hangings.
8. Carpets and rugs in all materials, floorcloths, and oilcloths.
9. Lace, hosiery.
10. Millinery and wearing apparel, including boots and shoes.
11. Ornamental needlework on muslin or other textile fabrics.
12. Goods not included in other classes.
13. Printed or woven designs on textile piece goods.
14. „ „ „ handkerchiefs and shawls.

21st December, 1883.

J. CHAMBERLAIN,
President of the Board of Trade.

LIST of ORDERS in COUNCIL ISSUED UNDER the PROVISIONS of SECT. 103 of the PATENTS, DESIGNS, and TRADE MARKS ACT 1883.

Date of Order.	Nature of Order.	To whom applicable.	Remarks.
26 June, 1884	Applying provisions of sect. 103	Belgium, Brazil, France, Guatemala, Italy, Netherlands, Portugal, *Salvador* (a), Servia, Spain, Switzerland, *Ecuador* (a), Tunis	In view of adhesion to Industrial Property Convention of 1883.
27 *Jan.*, 1885	,,	*San Domingo* (a)	,,
9 July, 1885	,,	Sweden and Norway	,,
12 July, 1887	,,	United States .	,,
17 Nov., 1888	,,	East Indian colonies of the Netherlands	,,
16 April, 1886	Making sect. 103 to cease to apply	Ecuador . .	In view of withdrawal from Convention.
24 Sept., 1886	,,	Salvador . .	,,
Draft Order in Council awaiting Her Majesty's approval	,,	San Domingo .	,,
24 Sept. 1886	Applying provisions of sect. 103	Paraguay and Uruguay	In view of provision of Commercial Treaties (most favoured nation clause).
Draft Order in Council awaiting Her Majesty's approval	,,	Mexico . . .	,,

ORDER in COUNCIL UNDER SECT. 104.

17 Sept. 1885	Applying provisions of sects. 103 & 104	Queensland .	In view of satisfactory colonial legislation for protection of inventions, designs, and trade-marks.

(a) Since revoked, see below.

V. INTERNATIONAL COPYRIGHT. (*a*)

7 & 8 Vict., Cap. XII.

An Act to amend the Law relating to International Copyright. [10*th May* 1844.]

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 herein-after, 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: 1 & 2 Vict., c. 59.

(*Recites* 5 *&* 6 *Vict. c.* 45, *and* 3 & 4 *Wm. IV. c.* 15.)

And whereas under or by virtue of the Four several Acts next herein-after mentioned; (that is to say) an Act 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 or Engravers during the Time therein mentioned;* an Act passed in the 8 Geo. 2, c. 13.

(*a*) See *ante*, pp. 81 to 91.

7 Geo. 3, c. 38. Seventh Year of His late 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*
17 Geo. 3, c. 57. *Prints;* an Act 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 an Act passed in the Session of
6 & 7 Wm. 4, c. 59. Parliament held in the Sixth and Seventh Years of the Reign of His late Majesty King *William* the Fourth, intituled *An Act to extend the Protection of Copyright in Prints and Engravings to* Ireland (and which said Four several Acts are herein-after, 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
38 Geo. 3, c. 71. 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, entitled *An Act for encouraging the Art of making new Models and Casts of Busts and other Things thereto*

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, herein-after 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 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; 54 Geo. 3, c. 56.

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 herein-after contained: 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 the said recited Act herein designated as the International Copyright Act shall be and the same is hereby repealed (*a*)].

Repeal of International Copyright Act.

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.

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 herein-before recited Acts respectively, or under any Acts which may hereafter be passed in that behalf.

III. (*Applies only to Books.*)

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.,

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,

(*a*) Repealed by the Stat. Law Rev. Act, 1874 (No. 2).

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 herein-after 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. to which such Order relates.

V. (*Applies only to Dramatic and Musical Compositions.*)

VI. Provided always, and be it enacted, That . . . 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 . . . 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 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 (*sic*) 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 Particulars to be observed as to Registry and to Delivery of Copies.

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.

VII. (*Relates only to Books.*)

The Provisions of the Copyright Amendment Act as regards Entries in the Register Book of the Company of Stationers, &c., to apply to Entries under this Act.

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 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.

X. (*Relates only to Books.*)

Officer of Stationers Company to deposit Books, &c., in the British Museum.

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*.

XII. (*Relates to Books.*)

Orders in Council may specify different Periods for different Foreign Countries and for different Classes of Works.

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 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 herein-before is mentioned, may be different for different Foreign Countries and for different Classes of Books or other Articles.

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.

XVII. and XVIII. (*Repealed by* 49 *&* 50 *Vict. c.* 33.)

Authors of Works first published in Foreign Countries not entitled to Copyright except under this Act.

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 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.

Interpretation Clause.

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. . . .

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15 Vict. Cap. XII. (*a*)

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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

(*a*) See also *ante*, p. 116, note (*a*).

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 herein-before 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.

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25 & 26 Vict. Cap. 68. (*a*)

(*Paintings, Drawings, and Photographs*).

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12. This Act shall be considered as including the Provisions of the Act passed in the Session of Parliament held in the 7th and 8th years of Her present Majesty, *An Act to amend the Law relating to International Copyright*, in the same manner as if such provisions were part of this Act.

Provisions of 7 & 8 Vict. c. 12, to be considered as included in this Act.

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49 & 50 Vict. Cap. XXXIII.

An Act to amend the Law respecting International and Colonial Copyright. [25th June 1886.] A.D. 1886.

Whereas by the International Copyright Acts Her Majesty

(*a*) For the complete Act, see *ante*, p. 101.

is authorised by Order in Council to direct that as regards literary and artistic works first published in a foreign country the author shall have copyright therein during the period specified in the order, not exceeding the period during which authors of the like works first published in the United Kingdom have copyright:

And whereas at an international conference held at Berne in the month of September one thousand eight hundred and eighty-five a draft of a convention was agreed to for giving to authors of literary and artistic works first published in one of the countries parties to the convention copyright in such works throughout the other countries parties to the convention:

And whereas, without the authority of Parliament, such convention cannot be carried into effect in Her Majesty's dominions and consequently Her Majesty cannot become a party thereto, and it is expedient to enable Her Majesty to accede to the convention:

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:

Short titles and construction.

1. (1.) This Act may be cited as the International Copyright Act, 1886.

(2.) The Acts specified in the first part of the First Schedule to this Act are in this Act referred to and may be cited by the short titles in that schedule mentioned, and those Acts, together with the enactment specified in the second part of the said schedule, are in this Act collectively referred to as the International Copyright Acts.

The Acts specified in the Second Schedule to this Act may be cited by the short titles in that schedule mentioned, and those Acts are in this Act referred to, and may be cited collectively as the Copyright Acts.

(3.) This Act and the International Copyright Acts shall be construed together, and may be cited together as the International Copyright Acts, 1844 to 1886.

Amendment as to extent and

2. The following provisions shall apply to an Order in Council under the International Copyright Acts:—

(1.) The order may extend to all the several foreign countries named or described therein: Effect of order under International Copyright Acts.

(2.) The order may exclude or limit the rights conferred by the International Copyright Acts in the case of authors who are not subjects or citizens of the foreign countries named or described in that or any other order, and if the order contains such limitation and the author of a literary or artistic work first produced in one of those foreign countries is not a British subject, nor a subject or citizen of any of the foreign countries so named or described, the publisher of such work, unless the order otherwise provides, shall for the purpose of any legal proceedings in the United Kingdom for protecting any copyright in such work be deemed to be entitled to such copyright as if he were the author, but this enactment shall not prejudice the rights of such author and publisher as between themselves:

(3.) The International Copyright Acts and an order made thereunder shall not confer on any person any greater right or longer term of copyright in any work than that enjoyed in the foreign country in which such work was first produced.

Simultaneous publication.

3. (1.) An Order in Council under the International Copyright Acts may provide for determining the country in which a literary or artistic work first produced simultaneously in two or more countries is to be deemed, for the purpose of copyright, to have been first produced; and for the purposes of this section "country" means the United Kingdom and a country to which an order under the said Acts applies.

(2.) Where a work produced simultaneously in the United Kingdom, and in some foreign country or countries is by virtue of an Order in Council under the International Copyright Acts deemed for the purpose of copyright to be first produced in one of the said foreign countries, and not in the United Kingdom, the copyright in the United Kingdom shall be such only as exists by virtue of production in the said foreign country, and shall not be such as would have

been acquired if the work had been first produced in the United Kingdom.

Modification of certain provisions of International Copyright Acts.

4. (1.) Where an order respecting any foreign country is made under the International Copyright Acts, the provisions of those Acts with respect to the registry and delivery of copies of works shall not apply to works produced in such country except so far as provided by the order.

(2.) Before making an Order in Council under the International Copyright Acts in respect of any foreign country, Her Majesty in Council shall be satisfied that that foreign country has made such provisions (if any) as it appears to Her Majesty expedient to require for the protection of authors of works first produced in the United Kingdom.

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Application of Act to existing works.

6. Where an Order in Council is made under the International Copyright Acts with respect to any foreign country, the author and publisher of any literary or artistic work first produced before the date at which such order comes into operation shall be entitled to the same rights and remedies as if the said Acts and this Act and the said order had applied to the said foreign country at the date of the said production: Provided that where any person has before the date of the publication of an Order in Council lawfully produced any work in the United Kingdom, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such production which are subsisting and valuable at the said date.

Evidence of foreign copyright.

7. Where it is necessary to prove the existence or proprietorship of the copyright of any work first produced in a foreign country to which an Order in Council under the International Copyright Acts applies, an extract from a register, or a certificate, or other document stating the existence of the copyright, or the person who is the proprietor of such copyright, or is for the purpose of any legal proceedings in the United Kingdom deemed to be entitled to such copyright, if authenticated by the official seal of a Minister of State of the said foreign country, or by the official seal or the signature of a British diplomatic or consular officer acting in such country, shall be admissible as evidence of the facts named therein, and all courts shall

take judicial notice of every such official seal and signature as is in this section mentioned, and shall admit in evidence, without proof, the documents authenticated by it.

Application of Copyright Acts to colonies.

8. (1.) The Copyright Acts shall, subject to the provisions of this Act, apply to a literary or artistic work first produced in a British possession in like manner as they apply to a work first produced in the United Kingdom:

Provided that—

(*a*) the enactments respecting the registry of the copyright in such work shall not apply if the law of such possession provides for the registration of such copyright; and

(*b*) where such work is a book the delivery to any persons or body of persons of a copy of any such work shall not be required.

(2.) Where a register of copyright in books is kept under the authority of the government of a British possession, an extract from that register purporting to be certified as a true copy by the officer keeping it, and authenticated by the public seal of the British possession, or by the official seal or the signature of the governor of a British possession, or of a colonial secretary, or of some secretary or minister administering a department of the government of a British possession, shall be admissible in evidence of the contents of that register, and all courts shall take judicial notice of every such seal and signature, and shall admit in evidence, without further proof, all documents authenticated by it.

(3.) Where before the passing of this Act an Act or ordinance has been passed in any British possession respecting copyright in any literary or artistic works, Her Majesty in Council may make an Order modifying the Copyright Acts and this Act, so far as they apply to such British possession, and to literary and artistic works first produced therein, in such manner as to Her Majesty in Council seems expedient.

(4.) Nothing in the Copyright Acts or this Act shall prevent the passing in a British possession of any Act or ordinance respecting the copyright within the limits of such possession of works first produced in that possession.

Application of International Copyright Acts to colonies.

9. Where it appears to Her Majesty expedient that an Order in Council under the International Copyright Acts made after the passing of this Act as respects any foreign country, should not apply to any British possession, it shall be lawful for Her Majesty by the same or any other Order in Council to declare that such Order and the International Copyright Acts and this Act shall not, and the same shall not, apply to such British possession, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order; and the expressions in the said Acts relating to Her Majesty's dominions shall be construed accordingly; but save as provided by such declaration the said Acts and this Act shall apply to every British possession as if it were part of the United Kingdom.

Making of Orders in Council.

10. (1.) It shall be lawful for Her Majesty from time to time to make Orders in Council for the purposes of the International Copyright Acts and this Act, for revoking or altering any Order in Council previously made in pursuance of the said Acts, or any of them.

(2.) Any such Order in Council shall not affect prejudicially any rights acquired or accrued at the date of such Order coming into operation, and shall provide for the protection of such rights.

Definitions.

11. In this Act, unless the context otherwise requires—

The expression "literary and artistic work" means every book, print, lithograph, article of sculpture, dramatic piece, musical composition, painting, drawing, photograph, and other work of literature and art to which the Copyright Acts, or the International Copyright Acts, as the case requires, extend.

The expression "author" means the author, inventor, designer, engraver, or maker of any literary or artistic work, and includes any person claiming through the author; and in the case of a posthumous work means the proprietor of the manuscript of such work and any person claiming through him; and in the case of an encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, includes the proprietor, projector, publisher, or conductor.

The expressions "performed" and "performance" and similar words include representation and similar words.

The expression "produced" means, as the case requires, published, or made, or, performed or represented, and the expression "production" is to be construed accordingly.

The expression "book published in numbers" includes any review, magazine, periodical work, work published in a series of books or parts, transactions of a society or body, and other books of which different volumes or parts are published at different times.

The expression "treaty" includes any convention or arrangement.

The expression "British possession" includes any part of Her Majesty's dominions exclusive of the United Kingdom; and where parts of such dominions are under both a central and a local legislature, all parts under one central legislature are for the purposes of this definition deemed to be one British possession.

Repeal of Acts.

12. The Acts specified in the Third Schedule to this Act are hereby repealed as from the passing of this Act to the extent in the third column of that schedule mentioned:

Provided as follows:

(*a.*) Where an Order in Council has been made before the passing of this Act under the said Acts as respects any foreign country the enactments hereby repealed shall continue in full force as respects that country until the said Order is revoked.

(*b.*) The said repeal and revocation shall not prejudice any rights acquired previously to such repeal or revocation, and such rights shall continue and may be enforced in like manner as if the said repeal or revocation had not been enacted or made.

FIRST SCHEDULE.

International Copyright Acts.

Part I.

Session and Chapter.	Title.	Short Title.
7 & 8 Vict. c. 12 .	An Act to amend the law relating to International Copyright.	The International Copyright Act, 1844.
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.	The International Copyright Act, 1852.
38 & 39 Vict. c. 12	An Act to amend the law relating to International Copyright.	The International Copyright Act, 1875.

Part II.

Session and Chapter.	Title.	Enactment referred to.
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.	Section twelve.

SECOND SCHEDULE.

Copyright Acts.

Session and Chapter.	Title.	Short Title.
8 Geo. 2. c. 13 . .	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.	The Engraving Copyright Act, 1734.

SECOND SCHEDULE—*continued.*

Session and Chapter.	Title.	Short Title.
7 Geo. 3. c. 38 .	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.	The Engraving Copyright Act, 1766.
15 Geo. 3. c. 53. .	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.	The Copyright Act, 1775.
17 Geo. 3. c. 57 .	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.	The Prints Copyright Act, 1777.
54 Geo. 3. 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.	The Sculpture Copyright Act, 1814.

SECOND SCHEDULE—*continued.*

Session and Chapter.	Title.	Short Title.
3 Will. 4. c. 15 .	An Act to amend the laws relating to Dramatic Literary Property.	The Dramatic Copyright Act, 1833.
5 & 6 Will. 4. c. 65	An Act for preventing the publication of Lectures without consent.	The Lectures Copyright Act, 1835.
6 & 7 Will. 4. c. 69	An Act to extend the protection of copyright in prints and engravings to Ireland.	The Prints and Engravings Copyright Act, 1836.
6 & 7 Will. 4. c. 110	An Act to repeal so much of an Act of the fifty-fourth year of King George the Third, respecting copyrights, as requires the delivery of a copy of every published book to the libraries of Sion College, the four Universities of Scotland, and of the King's Inns in Dublin.	The Copyright Act, 1836.
5 & 6 Vict. c. 45 .	An Act to amend the law of copyright.	The Copyright Act, 1842.
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.	The Colonial Copyright Act, 1847.
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.	The Fine Arts Copyright Act, 1862.

THIRD SCHEDULE.

Acts Repealed.

Session and Chapter.	Title.	Extent of Repeal.
7 & 8 Vict. c. 12 .	An Act to amend the law relating to international copyright.	Sections fourteen, seventeen, and eighteen.

THIRD SCHEDULE—*continued.*

Session and Chapter.	Title.	Extent of Repeal.
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 engravings.	Sections one to five, both inclusive, and sections [illegible] and eleven.
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.	So much of section twelve as incorporates any enactment repealed by this Act.

ORDERS IN COUNCIL MADE UNDER THE INTERNATIONAL COPYRIGHT ACT, 1844.

Country.	Date.	Applies to works published after	Registration to be made and copies delivered within
Prussia	27 Aug., 1846	1 Sept., 1846	12 months.
Saxony	26 Sept., 1846	1 Sept., 1846	12 months.
Brunswick	24 Apr., 1847	1 Apr., 1847	12 months.
States of Thuringian Union	10 Aug., 1847	15 July, 1847	12 months.
Hanover	30 Oct., 1847	28 Oct., 1847	12 months.
Oldenburg	11 Feb., 1848	1 Jan., 1848	12 months.
France	10 Jan., 1852	17 Jan., 1852	3 months.
Anhalt, Dessau, and Analt Bernbourg .	11 Mar., 1853	1 Apr., 1853	12 months.
Hamburgh	25 Nov., 1853	16 Dec., 1853	3 months.
Belgium	8 Feb., 1855	17 Feb., 1855	3 months.
Spain	24 Sept., 1857 20 Nov., 1880	30 Sept., 1857 24 Nov., 1880	3 months. 3 months.
Sardinia	4 Feb., 1861	6 Feb., 1861	3 months.
Hesse Darmstadt . .	5 Feb., 1862	1 Apr., 1862	12 months.
Italy	9 Sept., 1865	13 Sept., 1865	3 months.
German Empire . . .	24 Sept., 1886	29 Oct., 1886	12 months.

These orders were revoked (without prejudice to rights acquired thereunder) by the order of 28th November, 1887.

ORDER IN COUNCIL UNDER THE INTERNATIONAL COPYRIGHT ACTS MADE THE 22ND DAY OF NOVEMBER, 1887.

WHEREAS the Convention of which an English translation is set out in the First Schedule to this Order has been concluded between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the foreign countries named in this Order, with respect to the protection to be given by way of copyright to the authors of literary and artistic works:

And whereas the ratifications of the said Convention were exchanged on the fifth day of September one thousand eight hundred and eighty-seven, between Her Majesty the Queen and the Governments of the foreign countries following, that is to say:

Belgium; France; Germany; Hayti; Italy; Spain; Switzerland; Tunis.

And whereas Her Majesty in Council is satisfied that the foreign countries named in this Order have made such provisions as it appears to Her Majesty expedient to require for the protection of authors of works first produced in Her Majesty's dominions:

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and by virtue of the authority committed to Her by the International Copyright Acts, 1844 to 1886, doth order; and it is hereby ordered, as follows:

1. The Convention as set forth in the First Schedule to this Order, shall, as from the commencement of this Order, have full effect throughout Her Majesty's dominions, and all persons are enjoined to observe the same.

2. This Order shall extend to the foreign countries following, that is to say:

Belgium; France; Germany; Hayti; Italy; Spain; Switzerland; Tunis (*a*);

and the above countries are in this Order referred to as the

(*a*) By Order dated the 10th of August, 1888, it was declared that the provisions of this Order should be extended to the Grand Duchy of Luxemburg.

foreign countries of the Copyright Union, and those foreign countries, together with Her Majesty's dominions, are in this Order referred to as the countries of the Copyright Union.

3. The author of a literary or artistic work which, on or after the commencement of this order is first produced in one of the foreign countries of the Copyright Union shall, subject as in this Order and in the International Copyright Acts, 1844 to 1886, mentioned, have as respects that work throughout Her Majesty's dominions, the same right of copyright, including any right capable of being conferred by an Order in Council under section two or section five of the International Copyright Act, 1844, or under any other enactment, as if the work had been first produced in the United Kingdom, and shall have such right during the same period;

Provided, that the author of a literary or artistic work shall not have any greater right or longer term of copyright therein, than that which he enjoys in the country in which the work is first produced.

The author of any literary or artistic work first produced before the commencement of this order shall have the rights and remedies to which he is entitled under section six of the International Copyright Act, 1886.

4. The rights conferred by the International Copyright Acts, 1844 to 1886, shall, in the case of a literary or artistic work first produced in one of the foreign countries of the Copyright Union by an author who is not a subject or citizen of any of the said foreign countries, be limited as follows, that is to say, the author shall not be entitled to take legal proceedings in Her Majesty's dominions for protecting any copyright in such work, but the publisher of such work shall, for the purpose of any legal proceedings in Her Majesty's dominions for protecting any copyright in such work, be deemed to be entitled to such copyright as if he were the author, but without prejudice to the rights of such author and publisher as between themselves.

5. A literary or artistic work first produced simultaneously in two or more countries of the Copyright Union shall be deemed for the purpose of copyright to have been first produced in that one of those countries in which the term of copyright in the work is shortest.

6. Section six of the International Copyright Act, 1852, shall not apply to any dramatic piece to which protection is extended by virtue of this Order.

7. The Orders mentioned in the Second Schedule to this Order are hereby revoked;

Provided, that neither such revocation, nor anything else in this Order, shall prejudicially affect any right acquired or accrued before the commencement of this Order, by virtue of any Order hereby revoked, and any person entitled to such right shall continue entitled thereto, and to the remedies for the same, in like manner as if this Order had not been made.

8. This Order shall be construed as if it formed part of the International Copyright Act, 1886.

9. This Order shall come into operation on the sixth day of December, one thousand eight hundred and eighty-seven, which day is in this Order referred to as the commencement of this Order.

And the Lords Commissioners of Her Majesty's Treasury are to give the necessary orders herein accordingly.

C. L. PEEL.

FIRST SCHEDULE.

Copyright Convention.

Convention for protecting effectively and in as uniform a manner as possible, the rights of Authors over their literary and artistic works. Made on the fifth day of September, one thousand eight hundred and eighty-seven, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the German Emperor, King of Prussia; His Majesty the King of the Belgians: Her Majesty the Queen Regent of Spain, in the name of His Catholic Majesty the King of Spain; the President of the French Republic; the President of the Republic of Haïti; His Majesty the King of Italy; the Federal Council of the Swiss Confederation; His Highness the Bey of Tunis.

[The following is an English Translation of the Convention, with the omission of the formal beginning and end.]

ARTICLE I.

The Contracting States are constituted into an Union for the protection of the rights of Authors over their literary and artistic works.

ARTICLE II.

Authors of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether published in one of those countries or unpublished, the rights which the respective laws do now or may hereafter grant to natives.

The enjoyment of these rights is subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work, and cannot exceed in the other countries the term of protection granted in the said country of origin.

The country of origin of the work is that in which the work is first published, or if such publication takes place simultaneously in several countries of the Union, that one of them in which the shortest term of protection is granted by law.

For unpublished works the country to which the author belongs is considered the country of origin of the work.

ARTICLE III.

The stipulations of the present Convention apply equally to the publishers of literary and artistic works published in one of the countries of the Union, but of which the authors belong to a country which is not a party to the Union.

ARTICLE IV.

The expression "literary and artistic works" comprehends books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of design, painting, sculpture, and engraving; lithographs, illustrations, geographical charts, plans, sketches, and plastic works relative to geography, topography, architecture, or science in general; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction.

ARTICLE V.

(Translations and Periodical Works.)

ARTICLE VI.

(Translations.)

ARTICLE VII.

(Newspapers and Periodicals.)

ARTICLE VIII.

As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational or scientific purposes, or for chrestomathies, the matter is to be decided by the legislation of the different countries of the Union, or by special arrangements existing or to be concluded between them.

ARTICLE IX.

(Dramatic and Musical Works.)

ARTICLE X.

Unauthorised indirect appropriations of a literary or artistic work, of various kinds, such as *adaptations*, *arrangements of music*, &c., are specially included amongst the illicit reproductions to which the present Convention applies, when they are only the reproduction of a particular work, in the same form, or in another form, with non-essential alterations, additions, or abridgments, so made as not to confer the character of a new original work.

It is agreed that, in the application of the present Article, the tribunals of the various countries of the Union will, if there is occasion, conform themselves to the provisions of their respective laws.

ARTICLE XI.

In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against pirates before the courts of the various countries of the Union, it will be sufficient that

their name be indicated on the work in the accustomed manner.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work is entitled to protect the rights belonging to the author. He is, without other proof, reputed the lawful representative of the anonymous or pseudonymous author.

It is, nevertheless, agreed that the tribunals may, if necessary, require the production of a certificate from the competent authority to the effect that the formalities prescribed by law in the country of origin have been accomplished, as contemplated in Article II.

ARTICLE XII.

Pirated works may be seized on importation into those countries of the Union where the original work enjoys legal protection.

The seizure shall take place conformably to the domestic law of each State.

ARTICLE XIII.

It is understood that the provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit, by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.

ARTICLE XIV.

Under the reserves and conditions to be determined by common agreement, (*a*) the present Convention applies to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin.

ARTICLE XV.

It is understood that the Governments of the countries of the Union reserve to themselves respectively the right to enter into separate and particular arrangements between each other, provided always that such arrangements confer

(*a*) See paragraph 4 of Final Protocol.

upon authors or their lawful representatives more extended rights than those granted by the Union, or embody other stipulations not contrary to the present Convention.

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ARTICLE XVIII.

Countries which have not become parties to the present Convention, and which grant by their domestic law the protection of rights secured by this Convention, shall be admitted to accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Such accession should imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention.

ARTICLE XIX.

Countries acceding to the present Convention shall also have the right to accede thereto at any time for their Colonies or foreign possessions.

They may do this either by a general declaration comprehending all their Colonies or possessions within the accession, or by specially naming those comprised therein, or by simply indicating those which are excluded.

ARTICLE XX.

The present Convention shall be put in force three months after the exchange of the ratifications, and shall remain in effect for an indefinite period until the termination of a year from the day on which it may have been denounced.

Such denunciation shall be made to the Government authorized to receive accessions, and shall only be effective as regards the country making it, the Convention remaining in full force and effect for the other countries of the Union.

* * * * *

Additional Article.

The Convention concluded this day in no wise affects the maintenance of existing Conventions between the Contract-

ing States, provided always that such Conventions confer on authors, or their lawful representatives, rights more extended than those secured by the Union, or contain other stipulations which are not contrary to the said Convention.

Final Protocol.

1. As regards Article IV. it is agreed that those countries of the Union where the character of artistic works is not refused to photographs, engage to admit them to the benefits of the Convention concluded to-day, from the date of its coming into effect. They are, however, not bound to protect the authors of such works further than is permitted by their own legislation, except in the case of international engagements already existing, or which may hereafter be entered into by them.

It is understood that an authorized photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the said Convention for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private arrangements between those who have legal rights.

* * * * *

4. The common agreement alluded to in Article XIV. of the Convention is established as follows:—

The application of the Convention to works which have not fallen into the public domain at the time when it comes into force, shall operate according to the stipulations on this head which may be contained in special Conventions either existing or to be concluded.

In the absence of such stipulations between any countries of the Union, the respective countries shall regulate, each for itself, by its domestic legislation, the manner in which the principle contained in Article XIV. is to be applied.

* * * * *

7. The present final Protocol, which shall be ratified with the Convention concluded this day, shall be considered as forming an integral part of the said Convention, and shall have the same force, effect, and duration.

SECOND SCHEDULE.

Orders in Council Revoked.

Orders in Council of the dates named below for securing the privileges of Copyright in Her Majesty's dominions to authors of works of literature, and the fine arts and dramatic pieces, and musical compositions, first produced in the following foreign countries, namely:—

Foreign Country.	Date of Order.
Prussia	27th August, 1846.
Saxony	26th September, 1846.
Brunswick	24th April, 1847.
The States of the Thuringian Union	10th August, 1847.
Hanover	30th October, 1847.
Oldenburg	11th February, 1848.
France	10th January, 1852.
Anhalt, Dessau, and Analt Bernbourg	11th March, 1853.
Hamburgh	25th November, 1853, and 8th July, 1855.
Belgium	8th February, 1855.
Prussia, Saxony, Saxe-Weimar	19th October, 1855.
Spain	24th September, 1857, and 20th November, 1880.
The States of Sardinia	4th February, 1861.
Hesse, Darmstadt	5th February, 1862.
Italy	9th September, 1865.
German Empire	24th September, 1886.

The Order in Council of the 5th August, 1875, revoking the application of section 6 of 15 and 16 Victoria, chapter 12, to dramatic pieces referred to in the Order in Council of 10th January, 1852, with respect to works first published in France.

APPENDIX OF PRECEDENTS.

1. *Memorandum of Agreement on the Sale of a Picture, reserving the Copyright to the Artist.*
2. *Memorandum reserving to the Artist Copyright in a Picture executed on Commission.*
3. *Memorandum of Agreement on a Sale, conveying the Copyright to the Purchaser.*
4. *Conveyance by Deed of a Piece of Sculpture and the Copyright to a Purchaser.*
5. *Agreement between Artist and Publisher for the sale of a Picture and the Copyright for a fixed sum—Artist to sign Proofs.*
6. *Assignment of Copyright in Picture to a Publisher, the Artist concurring and agreeing to sign Proofs.*
7. *Assignment by Proprietor of Copyright to a Publisher of right of producing Engraving—Proprietor to procure Artist's signature to Proofs.*
8. *Agreement between Owner and Publisher for Publication of Engraving—Publisher to pay expenses and Owner to receive half profits.*
9. *Agreement for execution of Engraving.*
10. *Agreement for sale of a Picture and the Copyright, the Picture being retained for a time for the purpose of being engraved.*
11. *Agreement between Artist and Art Publishers for Exhibition of Picture and publication of Engraving.*

No. I.

MEMORANDUM *upon* SALE *of a* PICTURE, *reserving* COPYRIGHT *to* ARTIST (*a*).

AGREEMENT made the day of , 18 . BETWEEN *A. B.*, of, &c. (*artist*), of the one part, and *C. D.*, of, &c. (*purchaser*), of the other part WHEREAS, the painting executed by the said *A. B.*, and entitled , the subject-matter of which is (*short description*), is now about to be sold to the said *C. D.*, excepting only and reserving to the said *A. B.* the copyright therein, for the sum of £ Now it is hereby AGREED that the copyright in the said painting shall be and remain the property of the said *A. B.*

As witnesseth the hand of the said *C. D.*

(Signed) *C. D.* (*b*)

(*a*) In default of some memorandum in writing, the copyright will be lost: see *ante*, p. 15.

(*b*) A witness is not required by the Act, but may be convenient.

No. II.

MEMORANDUM *reserving to the* ARTIST COPYRIGHT *in a Picture executed on Commission* (*c*).

AGREEMENT made, &c., BETWEEN *A. B.*, of, &c. (*artist*), of the one part, and *C. D.*, of, &c. (*purchaser*), of the other part WHEREAS, the painting entitled , the subject-matter of which is (*short description*), is being or is about to be executed by the said *A. B.*, for and on behalf of the said *C. D.*, for the sum of £ NOW THESE PRESENTS WITNESS, and it is hereby AGREED, that the copyright in the same shall be and remain the property of the said *A. B.*

As witnesseth the hand of the said *C. D.*

(Signed) *C. D.* (*d*)

No. III.

MEMORANDUM *upon the* SALE *of a* PICTURE *conveying the* COPYRIGHT *to* PURCHASER (*e*).

AGREEMENT made, &c., BETWEEN *A. B.*, of, &c. (*artist*), of the one part, and *C. D.*, of, &c. (*purchaser*), of the other part WHEREAS, the said *A. B.* is about to sell to the said *C. D.* all that painting [*or* drawing] executed by *A. B.*, called (including the copyright therein) for the sum of £ NOW THESE PRESENTS WITNESS, and it is hereby AGREED, that the copyright in the said painting [*or* drawing], shall become and be the property of the said *C. D.* PROVIDED that nothing herein contained shall prejudice the right of the said *A. B.* to use or sell the sketches or studies made for such painting, or any copies of such sketches or studies.

AS WITNESS the hands of the parties,

(Signed) *A. B.* (*f*)
C. D.

No. IV.

CONVEYANCE *of a* PIECE *of* SCULPTURE *together with the* COPYRIGHT *therein to a* PURCHASER.

THIS INDENTURE, made the day of , 18 , BETWEEN *A. B.* (*artist*), of, &c., and *C. D.* (*purchaser*), of, &c. WHEREAS, the said *A. B.* has made the new and original sculpture called and is entitled to the copyright therein AND WHEREAS he has agreed to sell the same including such copyright to the said *C. D.* for the

(*c*) In default of some memorandum in writing, the copyright will go to the person for whom the picture is executed: see *ante*, p. 15.

(*d*) A witness is not required by the Act, but may be convenient.

(*e*) See note (*a*), *ante*, p. 177. This agreement had better be in duplicate, each party retaining the instrument signed by the other party.

(*f*) A witness is not required by the Act, but may be convenient.

sum of £ NOW THIS INDENTURE WITNESSETH that, in consideration of the said sum of £ to the said *A. B.*, paid by the said *C. D.* on or before the execution of these presents (the receipt whereof the said *A. B.* hereby acknowledges), the said *A. B.* doth hereby convey and assign to the said *C. D.* all that new and original sculpture called the together with the copyright therein To hold the same to the said *C. D.* absolutely [PROVIDED ALWAYS that nothing herein contained shall prejudice the right of the said *A. B.* to use, exhibit, or sell the casts or models made for the said sculpture].

In witness whereof the said parties have hereunto set their hands and seals the day and month first above written.

A. L. S. *B.*

C. L. S. *D.*

Signed, sealed, and delivered by the said *A. B.*, in the presence of (*a*)
E. F., of, &c.
G. H., of, &c.

No. V.

AGREEMENT *between* ARTIST *and* PUBLISHER *for Sale of* PICTURE *and* COPYRIGHT *for fixed sum—Artist to sign Proofs.*

MEMORANDUM OF AGREEMENT, made, &c., BETWEEN *A. B.*, of, &c. (*artist*), of the one part, and *C. D.*, of, &c. (*publisher*), of the other part WHEREAS, the said *A. B.* has painted a picture, the subject and title whereof is , and is entitled to the copyright in the same AND WHEREAS he has agreed for the consideration hereinafter mentioned to sell the said picture and the copyright therein to the said *C. D.*

NOW IT IS HEREBY AGREED as follows:—

1. The said *A. B.*, in consideration of the sum of £ , to be paid as hereinafter mentioned, doth hereby convey and assign to the said *C. D.* the said picture, together with the frame in which the same is intended to appear in the Royal Academy Exhibition, and also all the copyright therein to which the said *A. B.* may be entitled, whether in the British dominions or elsewhere. Conveyance of picture and Copyright.

2. Provided always that nothing herein contained shall prejudice the right of the said *A. B.* at any time to use or sell the sketches or studies made for such painting [or any copies of such sketches or studies]. Reservation of right to use sketches.

3. The said sum of £ shall be paid as follows, that is to say, the Consideration.

(*a*) This instrument must be under seal, and be executed by *A. B.*, in the presence of two witnesses. See *ante*, p. 63.

sum of £ , upon the signing of this agreement, and the balance upon the actual delivery of the said picture to the said *C. D.*

Artist to sign proofs.

4. The said *A. B.* will sign any number not exceeding artist's proofs (provided he considers them satisfactory) of any engraving or reproduction of the said picture that may be presented to him for signature, and shall be entitled to receive for his own use of such artist's proofs in respect of every hundred so signed.

Delivery of picture.

5. The said picture shall be delivered to the said *C. D.* within 21 days after the close of the Royal Academy Exhibition next ensuing, should the picture be there exhibited; but should anything happen to prevent its being so exhibited, it shall be finished and delivered to *C. D.* on or before the 30th April next.

Further assurance.

6. The said *A. B.* will at all times hereafter, at the cost of the said *C. D.*, execute and do all such assurances and acts whatsoever for further or more effectually assuring the said premises to the said *C. D.* as shall be reasonably required.

As witness, &c.

No. VI.

Assignment of Copyright *in* Picture *by* Proprietor to a Publisher, *the* Artist *concurring and agreeing to sign* proofs *of* Engraving.

Memorandum of Agreement made, &c. Between *A. B.* of, &c. (*proprietor of Copyright*) of the first part, *J. W.*, of, &c. (*artist*), of the second part, *C. D.* of, &c. (*publisher*), of the third part

Whereas, *A. B.* is entitled to the copyright and sole and exclusive right of copying a picture painted by *J. W.*, the subject and title of which is , and which was made or executed by the said *J. W.* for or on behalf of the said *A. B.* for valuable consideration, and is now being exhibited at The Royal Academy of Arts,

And whereas *A. B.* has agreed to sell the said copyright to *C. D.* on the terms hereunder expressed,

Now these presents witness:

Assignment of copyright.

1. The said *A. B.* doth hereby assign unto the said *C. D.* all the copyright of and in the said picture to which he is entitled, whether in the British dominions or elsewhere.

Consideration.

2. The said *C. D.* shall pay to the said *A. B.* the sum of £ , that is to say, £ upon the execution of these presents, and the remaining £ on the delivery of the picture to the said *C. D.* in manner hereunder mentioned, for the purpose of being engraved, copied, or otherwise reproduced.

Delivery of picture.

3. The said *A. B.* shall deliver the said painting to the said *C. D.* at Blackacre Hall, in the county of , on the day of , or within seven days thereafter, and the said *C. D.* shall deliver the said picture again at the same place not later than the day of next ensuing.

Second delivery if required.

4. If required the said *A. B.* shall within three years of the date of these presents again deliver up the picture to *C. D.* for three calendar months at such time as the said *A. B.* may determine.

5. The said *C. D.* shall on the delivery of the picture to him cause Execution of an engraving thereof to be executed by an engraver to be appointed by engraving. *J. W.* and *C. D.*

6. The said *C. D.* shall pay all costs and expenses of or incidental Costs and to the removal of the said painting from and the return thereof to insurance. Blackacre Hall, and shall throughout the period during which the same shall remain out of the possession of the said *A. B.* keep the said painting with the utmost degree of care and in good order and condition, and also at his own cost insure the same and keep it insured at Lloyd's in the name of the said *A. B.*, and for his benefit against loss or damage by fire and all other risks whatsoever in the sum of £ , and will produce and deliver to the said *A. B.* the policy or policies of such insurance and the receipt for every premium thereon at all times when reasonably required.

7. The said *J. W.* shall sign (*artist to sign proofs as in* clause 4, *ante*, p. 180).

8. The said *A. B.* shall be entitled to ten signed artist's proofs of such engraving.

9. The said *A. B.* will at all times hereafter (*continue as in* clause 6, *ante*, p. 180).

As witness, &c.

No. VII.

Assignment by Proprietor of Copyright to Publisher of Right of Producing an Engraving. *Proprietor to procure Artist's signature to proofs.*

Memorandum of Agreement made, &c., Between *A. B.*, of, &c. (*proprietor*), of the one part, and *C. D.* of, &c. (*publisher*), of the other part Whereas *A. B.* is possessed of and entitled to a picture painted Title to by *J. W.*, the subject and title whereof is , and of and to the copyright. copyright therein And whereas for the consideration hereinafter Agreement. mentioned the said *A. B.* has agreed to assign to the said *C. D.* the sole and exclusive right of producing a line or mezzo-tint engraving thereof, subject to the provisions hereinafter contained,

Now these presents witness, and it is hereby Agreed as follows: Assignment of

1. The said *A. B.* doth hereby assign to the said *C. D.* the sole and right to exclusive right of reproducing the said picture by line engraving or engrave. mezzo-tint within the British dominions.

2. As consideration for the said assignment the said *C. D.* shall pay Consideration. to the said *A. B.* the sum of £ , that is to say, £ upon the delivery of the said picture, and £ , the balance thereof, within seven days after the artist's proofs shall have been signed in manner hereinafter mentioned, subject, as to such last-mentioned sum, to the conditions hereinafter contained.

3. *Provisions as to delivery of Picture* (clause 3, *ante*, p. 180).

4. The said *C. D.* shall on the delivery of the picture to him cause Execution of a line engraving or mezzo-tint thereof to be executed by an engraver, engraving. to be appointed by *J. W.* and *C. D.*

5. *Provisions as to costs and insurance* (clause 6, *supra*).

6. The said *A. B.* shall procure the signature of the said *J. W.* to Artist's

signature to proofs to be procured.

such number not exceeding 500 of artist's proofs of the said engraving as may be presented to him for the purpose, provided that the said *J. W.* shall be entitled to reject any proofs that he shall deem unsatisfactory.

7. The said *A. B.* shall be entitled to receive ten of such signed artist's proofs.

Reduction of payment if proofs not signed.

8. In case the said *J. W.* shall refuse or neglect to sign such proofs as aforesaid within three calendar months of the time when they shall be presented to him for signature, the said *C. D.* shall be released from all obligation to pay the said sum of £ payable upon the signature of the said proofs.

No. VIII.

AGREEMENT *between* OWNER OF COPYRIGHT *in Picture and* PUBLISHER *for publication of an* ENGRAVING—PUBLISHER *to pay expenses and* OWNER *to receive* HALF PROFITS.

MEMORANDUM OF AGREEMENT made, &c., BETWEEN *A. B.*, of &c., (*owner*), of the one part, and The Publishing Company (hereinafter called the Company), of the other part WHEREAS *A. B.* has purchased of J. W. the picture by that artist, entitled , and the copyright therein AND WHEREAS the Company have arranged, with the consent of the said *A. B.*, to publish an engraving of the said picture, and have agreed with *S.* to engrave the same NOW THESE PRESENTS WITNESS and it is hereby AGREED as follows:—

2–5. *Delivery of picture*, clause 3, *ante*, p. 180; *Execution of engraving*, clause 4, *ante*, p. 181; *Costs and insurance*, clause 6, *ante*, p. 181; *Artist's signature*, clause 6, *ante*, p. 181.

Expenses.

6. The said Company shall defray all costs, and expenses of, and incidental to executing the said plate, and of and to printing, advertising, and issuing the engravings therefrom, and the copyright in the said plate and engraving, and all proofs, prints, and impressions therefrom shall be the sole property of the Company.

Proceeds of sale.

7. The proceeds arising from the sale of the said engraving shall be applied in or towards the following purposes in the order named, that is to say,—

(*a*) First in repaying to the Company one half the sum of £500, or of such other sum as shall be paid by them to *S.* for engraving the picture.

(*b*) Secondly, in paying to the said *A. B.* the sum of £50.

(*c*) In repaying to the said Company the balance of the cost of engraving, and all other costs and expenses which they may incur in or about the said engraving, or printing, advertising, or issuing proofs, and prints therefrom.

8. The net proceeds of sale, after payment of such sums as aforesaid, shall be divided equally between the said *A. B.* and the Company.

9. The said *A. B.* shall be entitled to twelve artist's proofs of the engraving (to be selected by himself) as soon as they shall be ready for issue.

10. An account shall be delivered by the Company to *A. B.* six months after the date of the publication of the said engraving, and subsequent

accounts shall be rendered to him at the expiration of every succeeding six months, and any moneys that may appear to be due to the said *A. B.* upon such accounts respectively, shall be paid to him within one month of the time fixed for the delivery of such accounts respectively.

Sale of surplus engravings after five years.

11. PROVIDED ALWAYS that until the expiration of five years from the publication of the said engraving, the said Company shall not dispose of such engraving otherwise than in the usual course of business, but at any time after the expiration of such period it shall be lawful for the said Company to sell or dispose of the unsold engravings, together with the plate and the copyright therein (if any) by public auction or private contract in such manner and at such price as they shall think fit, and the proceeds of such sale shall be applied in the manner hereinbefore directed concerning the proceeds of sale.

Payments to cease in certain event.

[*Or, if preferred* 11A. PROVIDED ALWAYS that if within five years from the date of the publication thereof the proceeds of the sale of the said engraving shall not have been sufficient to satisfy the payments mentioned in paragraph 7 hereof, or if the average net proceeds of sale in any two successive years shall not amount to £20, then, in any such case, no further accounts shall be rendered, and no further sum shall be payable by the said Company to the said *A. B.*]

12. So long as the copyright in the said engraving is subsisting, the said *A. B.* will not permit the said picture to be engraved or reproduced by any means whatsoever, and will not knowingly do anything which will interfere with or prejudice the sale of the said engraving.

13. If any dispute, difference, or question shall arise between the parties, or any person or company claiming under them concerning the construction, meaning, or effect of these presents, or any clause or thing herein contained, or, as to any matter whatsoever relating to the premises, then, and in every such case, such dispute or difference shall be referred to the arbitration of two persons, one to be appointed by each party to the reference or an umpire to be appointed by the arbitrators in writing before commencing the business of the reference, and the decision or award of the said arbitrators or umpire shall be final and binding on the parties respectively, and these presents shall be deemed a submission to arbitration within the Common Law Procedure Act, 1854, or any statutory modification or re-enactment thereof for the time being in force, and upon every such reference the costs shall be in the discretion of the arbitrators, arbitrator, or umpire, who may direct to and by whom, and in what manner the same, or any part thereof, shall be paid, and shall have power to tax or settle the amount of costs to be so paid, or any part thereof AND this submission to reference, and any award made in pursuance thereof, may be made a rule or order of any Division of the High Court of Justice at the instance of either party.

IN WITNESS, &c.

No. IX.

AGREEMENT *for execution of* ENGRAVING.

MEMORANDUM OF AGREEMENT made, &c., BETWEEN *A. B.* (*publisher*), of the one part, and *C. D.*, of, &c. (*engraver*), of the other part.

WITNESSETH that it is hereby agreed as follows:

1. *C. D.* shall engrave for *A. B.* the picture , now being painted by *J. W.*; such engraving to be of a size to be agreed upon between the said *A. B.* and *J. W.*, but not to be less than 24 inches in height, to be in the best mezzo-tint style, and executed and completed to the satisfaction of the said *J. W.*

2. The copyright in such engraving shall belong solely to the said *A. B.*

3. The said *C. D.* shall sign the artist's proofs from the plate to the number of not exceeding 500.

4. The said *C. D.* shall if required repair and keep in repair the said plate during the printing of 1000 impressions.

5. The said *A. B.* shall pay to the said *C. D.* the sum of £100 on the completion of the etching of the said picture, and the further sum of £300 when the plate shall be handed over to the printer in a completed state, and the balance upon the completion of the printing.

6. *C. D.* shall be entitled to select for his own use two etchings and 6 finished proofs from the said plate.

7. The printing of the proofs and prints from the said plate shall be entrusted to such printer as the said *A. B.* shall from time to time direct.

AS WITNESS, &c.

No. X.

AGREEMENT *for* SALE *by a* PUBLISHER *of a* PICTURE *and the* COPYRIGHT, *the Picture being retained for a time for the purpose of being* ENGRAVED.

MEMORANDUM OF AGREEMENT, made, &c., BETWEEN *A. B.*, of, &c. (*publisher*), of the one part, and *C. D.*, of, &c. (*purchaser*), of the other part WHEREAS, the said *A. B.* is possessed of and entitled to the picture hereinafter mentioned and the copyright therein

NOW THESE PRESENTS WITNESS, and it is hereby AGREED as follows:

Sale of picture. 1. The said *A. B.* hereby agrees to sell, and the said *C. D.* (hereinafter called the purchaser), agrees to purchase, subject to the stipulations hereinafter contained, the portrait in oil of Lord A———, recently painted by *J. W.*, and now in the exhibition of the Royal Academy, together with the copyright of the same picture at the price of £ , to be paid as follows, that is to say, £ to be paid immediately after the execution of this agreement, and the balance upon delivery of the picture.

Retention and delivery of picture. 2. *A. B.* shall be entitled to retain the picture for the purposes hereinafter mentioned from the time when it shall be removed from the Royal Academy until the day of , 188 , on or before which day it shall be delivered by the said *A. B.* to the purchaser uninjured, at his residence at , [and in this respect time shall be of the essence of the contract].

Insurance. 3. From the execution of this agreement until the delivery of the picture, the said *A. B.* shall, at his own expense, insure and keep the picture insured at Lloyd's against all risks in the sum of £ , in the

name and for the benefit of the purchaser, and shall deliver the policy to the purchaser at his said residence.

4. If the picture shall be injured before the time hereinbefore fixed for delivery thereof, the purchaser shall be at liberty to rescind the present sale, and thereupon the said *A. B.* shall return to him the sum of £ , without interest, and the policy of insurance, and the money insured thereby shall be held by the purchaser upon trust for *A. B.* or assigned by the purchaser to him. Power to rescind in case of injury to picture.

5. If from any cause whatever, except the neglect or default of *A. B.* or his agents, the balance of the purchase-money shall not be paid upon the delivery of the picture as aforesaid upon the day of , 188 , the purchaser shall pay interest at the rate of £ per cent. per annum upon the balance of the purchase-money from that day until the payment thereof. Interest on unpaid purchase-money.

6. The said *A. B.* shall be at liberty to cause one plate and no more to be engraved from the said picture by some engraver to be agreed on between the parties, or in case of difference to be determined by arbitration under the provisions hereinafter contained. The dimensions of such plate shall not exceed 36 inches × 18 inches, nor be less than 24 inches × 12 inches. Execution of engraving.

7. The said *A. B.* shall be entitled to publish from such plate for his own benefit the following proofs and prints and no more, that is to say, 100 artist's proofs, 200 proofs before letters, and 400 lettered proofs, and also, unless and until such notice to the contrary as is hereinafter mentioned shall be sent to him, so many prints as he shall think fit. Publication of engravings.

8. It shall be lawful for the purchaser at any time after the printing of the said proofs if he shall think the plate too worn to be capable of giving satisfactory impressions, to give notice to the said *A. B.* to discontinue taking prints therefrom, and the said *A. B.* shall thereupon discontinue taking the same accordingly until the matter shall have been determined by arbitration, and if it shall be determined that no more satisfactory prints can be obtained then no more prints shall be taken therefrom, and the plate shall be forthwith cancelled and destroyed. Printing from plate to cease in certain events.

9. The purchaser will not within seven years of the date of these presents cause or permit the picture to be engraved or reproduced by any means whatsoever, and will not knowingly do anything which will interfere with or prejudice the sale of the engraving hereinbefore mentioned. No other engraving to be made.

10. If during the period in the last paragraph mentioned, any copies, repetitions, or imitations of the said painting shall be published or sold, or any act or thing shall be done, which, in the opinion of the said *A. B.* are, is, or may be infringements, or an infringement of the copyright in the said picture, the said purchaser will take legal proceedings, but if the purchaser shall so require at the cost of the said *A. B.*, against any person or persons so infringing the same, or, in default of his taking such proceedings within fourteen days after notice in that behalf shall have been given him by registered letter addressed to him at his usual residence, it shall be lawful for the said *A. B.* to take such proceedings in the name of the said purchaser, but at the sole cost of the said *A. B.* PROVIDED that before any such proceedings Legal proceedings to be taken in certain events.

are taken by the said purchaser, or in his name, the said *A. B.* shall indemnify him in such reasonable manner as he may require against loss, damages or expenses occasioned by or consequent upon such proceedings (in case of difference the indemnity to be settled by arbitration), and the damages and penalties recovered in such proceedings at the cost of the said *A. B.* shall belong to the said *A. B.*

Exhibition of the picture.

11. *A. B.* shall not exhibit the picture, nor permit it to be exhibited publicly, until after the completion of the plate of the engraving hereinbefore mentioned, and after such completion *A. B.* shall be at liberty up to the said day of , 188 , to exhibit it for his own profit at all or any of the following places, that is to say, but not at any other place or places without the previous consent in writing of the purchaser.

Picture not to be altered.

12. *A. B.* shall not without the previous assent in writing of the purchaser allow the said *J. W.* or any other person to further paint or otherwise work upon the picture.

13. Immediately after the publication of the said engraving, *A. B.* will deliver to the purchaser, free of charge, ten artist's proofs thereof, of which five shall (if the engraver shall consent to mark the plate for that purpose) be remarque proofs.

Default in payment of purchase-money.

14. If the purchaser shall neglect or fail to comply with the foregoing stipulation as to payment of the balance of the purchase-money for one calendar month after notice in writing by *A. B.* to pay the same shall have been given to him by registered letter addressed to him at his said residence, *A. B.* shall be at liberty to rescind the present sale and to resell the picture and the copyright thereof by public auction or private contract subject to the foregoing stipulations as far as applicable, and any deficiency in price which may happen on, and all expenses attending such resale shall be retained by *A. B.* out of the said sum of £ , and the residue of that sum without any interest shall be repaid by *A. B.* to the purchaser.

15. If at any time any dispute, difference, or question shall arise between the parties hereto, or any company or person claiming under them respectively, concerning any matter hereinbefore agreed to be referred to arbitration or the construction, &c. (*arbitration clause*, *ante*, p. 183, clause 13.)

No. XI.

Agreement *for* exhibition *of* Picture *and* publication *of* Engraving.

Memorandum of Agreement made, &c., between *A. B.*, of, &c. (*art publisher*), of the one part, and *C. D.*, of, &c. (*artist*), of the other part Whereas, the said *C. D.* has painted a picture entitled , and is desirous of employing the said *A. B.* as his agent for the purpose of the exhibition thereof, and for such other purposes as are hereinafter mentioned

Now these presents witness, and it is hereby agreed as follows:

Delivery of picture.

1. The said *C. D.* shall on or before the day of next deliver the said picture to the said *A. B.*, who shall forthwith place the same in his gallery for public exhibition. The public exhibition

shall commence within ten days after such picture shall have been delivered to the said *A. B.*, and the said *A. B.* shall pay the said *C. D.* the sum of £ on the day on which such exhibition shall commence, such sum to be repaid to the said *A. B.* in manner hereinafter appearing.

2. The said gallery shall be used solely for the purpose of exhibiting the said picture for a period of eight calendar months from the day on which the exhibition of the picture shall commence. If during the last four weeks of the said eight months the average weekly receipts from entrances to view the pictures shall amount to the sum of £ or upwards then the said gallery shall be used as aforesaid for a further period of four calendar months. The said gallery shall be arranged and the picture placed and draped as the said *C. D.* shall direct. The said *A. B.* shall permit the drapery and fittings now in the said gallery, and any further fittings he may have, to be used for the said purpose free of charge, but if any further drapery and fittings shall be required, the cost thereof shall be borne by the said *C. D.*, and such drapery and fittings shall belong to him.

Work to be done by agent.

3. The said *A. B.* shall as such agent as aforesaid arrange all business matters, make all payments, and receive all moneys connected with the said exhibition of the said picture. The advertising, postages, printing, employing a canvasser, and providing extra assistance in the said gallery beyond the staff at present employed by the said *A. B.*, shall be under the control of the said *C. D.*, and the cost thereof shall be borne by him. If the said picture shall be exhibited by artificial light, the mode of lighting the same shall be under the direction of the said *C. D.*, and the cost thereof shall be borne by him, and he shall be entitled at his own expense to fit up a separate meter for measuring the amount of gas used.

Application of moneys.

4. The money which shall be received in connection with the said exhibition of the said picture shall be applied as follows. First, in repaying the said *A. B.* the sum of £ , to be paid by him pursuant to clause 1. Secondly, in repaying the said *A. B.* all payments made by him which by the terms of this agreement are to be borne by the said *C. D.*, and which shall have been paid for him by the said *A. B.* Thirdly, in paying the said *A. B.* a commission of per cent. upon the gross sum received in respect of the said exhibition for payments for admission. The balance after such payments shall be paid to the said *C. D.*

Exhibition in Provinces.

5. After the said picture shall have been exhibited at the said gallery as aforesaid, it shall be exhibited during calendar months at such places in the United Kingdom, and upon such terms with the said *A. B.'s* country agents as the said *A. B.* shall think fit. The said *A. B.* as such agent as aforesaid shall make all arrangements for, and entirely manage such last-mentioned exhibitions and make all payments and receive all moneys connected therewith. The moneys which shall be received in connection with such exhibition shall be applied first in repaying the said *A. B.* all payments made by him in connection with such exhibitions, or with the exhibition in London, including the sum of £ paid by him as aforesaid, and, secondly, in paying him a commission of per cent. upon the net amount which shall come to his hands in respect of such exhibition in the provinces.

The residue of such moneys shall be paid to the said *C. D.* The said *A. B.* shall cause the said picture to be exhibited upon the terms of this clause for a further period of calendar months if the said *C. D.* shall so desire and of such desire shall give notice in writing to the said *A. B.* three months at least before the expiration of the calendar months mentioned in the earlier part of this clause.

Engraving.

6. The said *A. B.* shall make arrangements for having the said picture engraved by the process, and printed within years from the date hereof at the expense of the said *C. D.* The plate shall be engraved to the satisfaction of and shall be approved of by the said *C. D.*, and he shall decide what number of artist's or other proofs and prints respectively shall be taken from the plate, and what prices shall be charged for the same respectively, and shall communicate such decision to the said *A. B.* prior to the commencement of the exhibition in London, and shall also at a convenient time sign the artist's proofs.

Application of proceeds of engraving.

7. The moneys to be received from subscriptions for and from the sale of proofs and prints of the said engraving shall be applied first in repaying the said *A. B.* all moneys due to him under this agreement and unpaid, and secondly, in paying the said *A. B.* a commission of per cent. on the gross amount received from the sale of such proofs and prints, the residue of the said moneys shall be paid to the said *C. D.*

Half-yearly accounts.

8. The said *A. B.* shall render to the said *C. D.* within twenty-one days after the expiration of every half-year from the commencement of the said exhibition, an account of all receipts by him in respect of any of the matters referred to in this agreement during the half-year then preceding, and shall pay the amount thereof (after deducting such payments and sums as he is authorized by these presents to retain thereout) unto the said *C. D.*

Deficiency to be satisfied at end of 2½ years.

9. In case the moneys received from the exhibition of the said picture and from the sale of proofs and prints thereof, shall not be sufficient at the end of two years and a-half from the date hereof to repay the said *A. B.* the sums due to him or disbursed by him under this agreement, then the said *C. D.* shall pay the amount of the deficiency to the said *A. B.*, together with interest thereon, at the rate of five per cent. per annum from the date at which the respective sums accrued due or were disbursed.

Commission on sale of picture.

10. In case the said picture shall be sold by the said *C. D.*, whilst the same is in the custody of the said *A. B.* or his agents under this agreement, the said *A. B.* shall receive a commission of per cent. upon the sum for which it shall be sold, such commission to be paid immediately after the said *C. D.* shall have received the price of the said picture.

No other agents to be employed.

11. The said *A. B.* is to be the sole agent of the said *C. D.* for the sale of proofs and prints of the said engraving upon the terms of this agreement for a period of five years from the first publication of such engraving, at the end of which period this agreement is to terminate.

12. The said *A. B.* during such period shall have power to sell to the trade, upon the usual trade terms, and his percentage will be calculated upon the net amount of such sales.

13. The copyright and property of the said picture, plate, and engraving shall belong solely to the said *C. D.*

14. So long as the said picture shall be in the custody of the said *A. B.* under the terms of this agreement, the said *C. D.* shall not, without the consent of the said *A. B.*, sell or dispose of any replica or copy thereof, nor shall he exhibit any replica or copy in the United Kingdom, but he shall have the right to exhibit the same in any place out of the United Kingdom.

15. The said *C. D.* shall not within five years from the date of these presents (*continue at ante*, p. 185. clause 9.)

16. (*Arbitration clause, ante*, p. 183, clause 13.)

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