A DIGEST

OF THE

REPORTED ENGLISH CASES

RELATING TO

PATENTS, TRADE MARKS

AND

COPYRIGHTS

Determined in the House of Lords and the Courts of Common Law and Equity, with reference to the Statutes; founded on the Analytical Digest by Harrison, and adapted to the present Practice of the Law

BY R. A. FISHER
Of the Middle Temple

EDITED AND BROUGHT DOWN TO THE PRESENT TIME, WITH INDEX, TABLE OF CASES, ETC.

BY HENRY HOOPER

CINCINNATI
ROBERT CLARKE & CO

NEW YORK: BAKER, VOORHIS & CO
1872

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PREFACE TO THE AMERICAN EDITION.

THIS work contains a digest of the existing law, equity, and practice relating to Patents, Trade Marks, and Copyrights, as determined in the English Courts of Common Law and Equity, including the House of Lords. To the Analytical Digest of Harrison and the later Digest of R. A. Fisher have been added all the contemporaneous reports of English cases upon the above branches of the law, down to the present year.

The English statutes upon these subjects, when short and comprehensive in their terms, have been introduced in the language of the legislature. Overruled cases have been omitted, as well as obsolete law. In short, it is believed that all rulings and decisions, from the earliest period until the present time, upon Patents, Trade Marks, and Copyrights, are here collated and presented for the use of the profession.

CINCINNATI, *May* 3, 1872.

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ABBREVIATIONS.

A. C.—Full Court of Appeal in Chancery.
C.—Lord Chancellor's Court.
B. & S.—Best and Smith, Queen's Bench Reports.
Bank.—Court of Bankruptcy.
C. C. J.—County Court Judge.
C. L.—Common Law.
Chanc.—Chancery.
C. P.—Common Pleas.
De G. F. & J.—De Gex, Fisher and Jones, L. Chancellor and Court of Appeal in Chancery.
Exch.—Exchequer.
Ex. Cham.—Exchequer Chamber.
H. L.—House of Lords.
Hopw. & C.—Hopwood and Coltman.
Ir. R., C. L.—Irish Reports of 1867, Current Common Law Series.
Ir. R. Eq.—Irish Reports, Equity Series of 1867.
L. JJ. and L. J.—Lord Justices' Court, or Lord Justice.
L. R.—Law Reports.
L. J.—Law Journal.
L. T. R.—Law Times Reports.
M. C.—Magistrates' Cases.
Moore P. C. C., N. S—Moore's Report of Privy Council.
N. S.—New Series.
P. C.—Privy Council and Privy Councillor.
Q. B.—Queen's Bench.
R.—Rolls' Court.
V. C. M.—Vice-Chancellor Malin's Court.
V. C. G.—Vice-Chancellor Gifford's Court.
V. C. B.—Vice-Chancellor Bacon's Court.
V. C. J.—Vice-Chancellor James' Court.
V. C. S.—Vice-Chancellor Stuart's Court.
S. C.—Same Case.
S. P.—Same Point.
W. R.—Weekly Reporter.

Copyright Cases.

DIGEST

English Copyright Cases.

I. BOOKS.

I. Statutory Enactments.

The 8 Anne, c. 19, s. 1, *gave a copyright in books then printed for twenty-one years, and to authors and their assignees the exclusive copyright for fourteen years.*

And by s. 9, *after the expiration of the fourteen years, another similar period, if the author was living. This act was extended to the United Kingdom by* 41 Geo. 3, c. 107.

By 54 Geo. 3, c. 156, s. 4, *authors and their assignees had the exclusive copyright for twenty-eight years from the day of publication; and if the authors were living at the end of that time, for the residue of their lives.* And see *Anon.*, 1 Chit. 24.

The 5 and 6 Vict. c. 45, *amends the general law of copyright in literary works and productions, repeals* 8 Anne, c. 19, 41 Geo. 3, c. 107, and 54 Geo. 3, c. 156, *and extends the period of copyright to the author's life, and for seven years after his death, or if that falls short of forty-two years, then for forty-two years from the first publication.*

The property of an author in an unpublished work exists independently of the statute. *Southey* v. *Sherwood*, 2 Mer. 435; *S. P. Tonson* v. *Collins*, 1 W. Bl. 301.

The right and property of an author or a composer of any work, whether of literature, art, or science, in such work, unpublished or kept for his private use or pleasure, entitle the owner

to withhold the same altogether, or so far as he may please, from the knowledge of others; and the court of chancery will interfere to prevent the invasion of this right by the publication of a catalogue containing a description of such work. *Albert* (*Prince*) v. *Strange*, 1 Mac. & G. 25; 1 H. & T. 1; 13 Jur. 109; 18 L. J., Chanc. 120.

Authors have not, by common law, the sole and exclusive copyright in themselves, or their assigns, in perpetuity, after having printed and published their compositions. *Miller* v. *Taylor*, 4 Burr. 2303.

Copyright does not exist at common law, it is the creature of statute. *Jefferys* v. *Boosey* (in error), 4 H. L. Cas. 815; 3 C. L. R. 625; 1 Jur., N. S. 615; 24 L. J., Exch. 81—Lords Brougham and St. Leonards.

An Englishman, though resident abroad, will have copyright in a work of his own first published in this country. *Ib.*

Copyright in works of literature and art, after they are published, exists by statute only; and there is no co-existing common-law protection during the statutable period. *Reade* v. *Conquest*, 7 Jur., N. S. 265; 30 L. J., C. P. 269; 9 C. B., N. S. 755; 9 W. R. 434; 3 L. T., N. S. 888.

The first edition of a work of compilation was published before 5 and 6 Vict. c. 45; several editions of it were published after that act, and not registered: Held, that as to so much of the matter contained in the original edition as was contained in the subsequent ones, the owner might sue, although those subsequent editions were not registered; but as to the new matter, the subsequent editions were books which ought to be registered, and the owner could not sue for an infringement on that point. *Murray* v. *Bogue*, 1 Drew. 353; 17 Jur. 219; 22 L. J., Chanc. 457.

An author whose works had been published more than twenty-eight years before the passing of 8 Anne, c. 19, was not entitled to the copyright for life. *Brooke* v. *Clarke*, 1 B. & A. 396.

That statute did not impose upon authors as a condition precedent to their deriving any benefit under it, that the com-

position should be first printed; and, therefore, an author did not lose his copyright by selling his work in manuscript before it was printed. *White* v. *Geroch*, 2 B. & A. 298; 1 Chit. 24.

Upon a bill in equity by the king's printer to restrain the defendant from the publication of certain acts of parliament, to which the patentees for printing law books were also defendants, the court refused to interfere between the contending patents, and therefore only restrained the defendant from printing at any other than a patent press. *Baskett* v. *Cunningham*, 2 Eden, 1173.

2. Subject Matter of Copyright.

Generally.]—Copyright may be either in respect of the matter or the arrangement, but no property can be acquired in any article copied from a prior work. *Barfield* v. *Nicholson*, 2 Sim. & Stu. 1.

Where a person simply makes corrections in and additions to a work in which he had originally no interest, he acquires a copyright in them, and may bring an action if they are pirated. *Carey* v. *Longman*, 1 East, 358; 3 Esp. 273.

C. published a book of roads of Great Britain, comprising Patterson's book (to the copyright of which he was not entitled), with improvements and additions, obtained by actual survey and otherwise; an injunction to restrain a publication of an edition of Patterson, comprising C.'s improvements and additions, was refused in equity. *Cary* v. *Fadin*, 5 Ves. 24.

There may be a copyright in a translation, whether produced by personal application and expense, or by gift. *Wyatt* v. *Barnard*, 3 Ves. & B. 77.

The question whether one author has made a piratical use of another's work does not necessarily depend upon the quantity of that work which he has quoted or introduced in his own book. *Bramwell* v. *Halcomb*, 3 Mylne & C. 737.

If any person by pains and labor collects and reduces into the form of a systematic course of instruction those questions which he may find ordinary persons asking in reference to the common phenomena of life, with answers to those questions, and explana-

tions of those phenomena, whether such explanations and answers are furnished by his own recollection of his former general reading, or out of works consulted by him for the express purpose, the reduction of questions so collected, with such answers, under certain heads and in a scientific form, is sufficient to constitute an original work, of which the copyright will be protected *Jarrold* v. *Houlston*, 3 Kay & J. 708; 3 Jur., N. S. 1051.

But another person may originate another work in the same general form, provided he does so from his own resources, and makes the work he so originates a work of his own by his own labor and industry bestowed upon it. *Ib.*

If, instead of searching into the common sources, and obtaining your subject matter thence, you avail yourself of the labors of your predecessor, adopt his arrangement and questions, or adopt them with a colorable variation, it is an illegitimate use. *Ib.*

Falsely to deny that you have copied or taken any idea or language from another work is a strong indication of an animus furandi. *Ib.*

A newspaper not being within the copyright act, 5 and 6 Vict. c. 45, requires no registration under that act; but the proprietor of a newspaper has, without registration, such a property in all its contents as will entitle him to sue in respect of a piracy. *Cox* v. *Land and Water Journal Company*, 9 L. R., Eq. 324; 39 L. J., Chanc. 152—V.-C. M.

Where the proprietor of a newspaper sought to restrain the piracy of "a list of hounds," the court was of opinion that, although the piracy might be established, the list was liable to such frequent changes, and a correct list was so easily obtained, that it was not a case for an interlocutory injunction. *Ib.*

An author has no monopoly in any theory propounded by him. *Pike* v. *Nicholas*, 5 L. R., Chanc. 251; 39 L. J., Chanc. 435; 18 W. R. 321.

Public and General Works.]—There is no copyright in a general subject, though from its nature the consequence may be close resemblance and considerable interference, as in the case of maps and road-books. *Wilkins* v. *Aikin*, 17 Ves. 427.

Though copyright can not, as such, subsist in an East India calendar, as a general subject, any more than in a map, chart, or series of chronology, it may in the individual work; and where it can be traced that another work upon the same subject is not an original compilation, but a mere copy with colorable variations, it will be protected by injunction. *Matthewson* v. *Stockdale*, 12 Ves. 270.

An injunction was granted against pirating a court calendar, the individual work creating a copyright, though the general subject was common. *Longman* v. *Winchester*, 16 Ves. 269.

There is no copyright in the specifications of patents. *Wyatt* v. *Barnard*, 3 Ves. & B. 77. But see *Newton* v. *Cowie*, 12 Moore, 457; 4 Bing. 234.

A voyage of discovery having been executed, and a narrative of it prepared under the orders of the crown, the narrative is the property of the crown; but on a bill in equity by a publisher, authorized by the secretary of the board of Admiralty to publish such a narrative, the profits remaining at their disposition, an injunction restraining publication by a stranger was dissolved. *Nicol* v. *Stockdale*, 3 Swans. 687.

Catalogues.]—There is copyright in a catalogue, unless it is a mere dry list of names. *Hotten* v. *Arthur*, 1 H. & M. 603; 32 L. J., Chanc. 771; 11 W. R. 934; 9 L. T., N. S. 199.

Compilations.]—A work consisting partly of compilations and selections from former works, and partly of original compositions, may be the subject of copyright. *Lewis* v. *Fullarton*, 2 Beav. 6; 3 Jur. 669.

S. published a work containing an original essay on modern English poetry, biographical sketches of forty-three modern poets, and selections from their poems, amongst which were six short poems and parts of longer poems, the copyright whereof belonged to C. The selections constituted altogether the bulk of S.'s work, but were alleged to have been introduced into it for the purpose of illustrating the essay. A court of equity restrained the publication of S.'s work as being an infringement of C.'s copyright. *Campbell* v. *Scott*, 11 Sim. 31; 6 Jur. 186.

A proprietor of a periodical professing to be an analytical digest of equity, common law, and other cases, copying verbatim the head or marginal notes of cases from reports, the copyright of which was in another person, without his consent, is a piracy (Maule, J., dissentiente). *Sweet* v. *Benning*, 16 C. B. 459; 1 Jur., N. S. 543; 24 L. J., C. P. 175.

In making a map, or compiling a directory, or a similar work, a former work of an exactly similar nature may be used to correct the new work, or as an aid in collecting information, but must not merely be copied or verified. *Kelly* v. *Morris*, 35 L. J., Chanc. 423; 1 L. R., Eq. 697; 14 W. R. 496; 14 L. T., N. S. 222—V.-C. W.

Although the compiler of a new directory is not justified in using slips cut from one previously published, for the purpose of deriving information from them for his own work; yet he may use such slips for the purpose of directing him to the parties from whom such information is to be obtained. *Morris* v. *Wright*, 5 L. R., Chanc. 279; 18 W. R. 327; 22 L. T., N. S. 78.

Music.]—A musical composition was a work within 8 Anne, c. 19. *Bach* v. *Longman*, Cowp. 623; *S. P.*, 1 Chit. 26; *Platt* v. *Button*, 19 Ves. 447; Coop. C. C. 303.

Though published on a single sheet of paper. *Clementi* v. *Goulding*, 11 East, 244; 2 Camp. 25; *S. P.*, *Storace* v. *Longman*, and *Hime* or *Hine* v. *Dale*, 11 East, 244, n.; 2 Camp. 27, n.

In a declaration for pirating a book, an allegation that the plaintiff was the author of a book, being a musical composition called A., is well supported by showing him to be the author of a musical composition of that name, comprised in, and occupying only one page of a work with a different title, which contained several other musical compositions. *White* v. *Geroch*, 2 B. & A. 298; 1 Chit. 24.

MSS.]—An injunction was granted to restrain the printing of an unpublished MS. which had been, by the representative of the author, given to a person under whom the defendant claimed, but not with the intention that he should publish it. *Queensberry* (*Duke*) v. *Shebbeare*, 2 Eden, 329.

Semble, unless there is a special contract, either express or

implied, reserving to the author a qualified copyright, the purchaser of a manuscript is at liberty to alter and deal with it as he thinks proper. *Cox* v. *Cox*, 11 Hare, 118.

Letters.]—A copyright in private letters remains in the writer after transmission. *Perceval* (*Lord*) v. *Phipps*, 2 Ves. & B. 19.

Letters written by the plaintiff to the defendant, having been returned by him, with a declaration that he did not consider himself entitled to retain them, the publication of copies taken before the return, without the knowledge of the plaintiff, was restrained by injunction, though represented by the defendant as necessary for the vindication of his character. The jurisdiction to restrain the publication of letters is founded on a right of property in the writer. *Gee* v. *Pritchard*, 2 Swans. 402.

The receiver of a letter has a sufficient property in the paper upon which it is written to entitle him to maintain an action of detinue for it against the sender, into whose hands it had come as a bailee. *Oliver* v. *Oliver*, 11 C. B., N. S. 139; 8 Jur., N. S. 512.

When the solicitor of a company writes a letter, apparently on the behalf of the company, he has no such property in the letter as to entitle him to prevent its publication, although it was written in his private capacity. *Howard* v. *Gunn*, 32 Beav. 462.

An injunction was granted to restrain the executor of the person to whom private letters were written from publishing them, without leave of the executors of the person who wrote them. *Thompson* v. *Stanhope*, Ambler, 737.

Continuations of Works.]—An injunction was granted to restrain the publication of a magazine as a continuation of the plaintiff's magazine, in numbers, and as to communications from correspondents received by the defendant while publishing for the plaintiff, not preventing the publication of an original work of the same nature, and under a similar title. *Hogg* v. *Kirby*, 8 Ves. 215.

An author having sold the copyright of a work published under his own name, and covenanted with the purchaser not to publish any other work to prejudice the sale of it. Semble, that another publisher, who has no notice of this covenant, will be

restrained from publishing a work subsequently purchased by him from the same author, and published under his name, on the same subject but under a different title, and though there is no piracy of the first work. *Barfield* v. *Nicholson*, 2 Sim. & Stu. 1.

Contrary to Morality, Religion, and Truth.]—The author or a publisher of a work of a libellous or of an immoral tendency can have no legal property in it. *Stockdale* v. *Onwhyn*, 7 D. & R. 625; 5 B. & C. 173; 2 C. & P. 163.

No action can be maintained for pirating a work which professes to be the amours of a courtezan, and it is no answer to the objection that the party is also a wrong-doer in publishing them, and that he therefore ought not to set up their immorality. *Ib.*

An injunction to restrain the infringement of the copyright in a work, as to which it appeared doubtful whether it did not tend to impugn the doctrine of the scriptures, was refused by a court of equity. *Lawrence* v. *Smith*, Jacob, 471.

The court of chancery will not interfere by injunction, upon the author's application, to restrain the publication of a work which is of such a nature as that an action could not be maintained upon it for damages. *Southey* v. *Sherwood*, 2 Mer. 435.

To an action for infringing the copyright in a work entitled "Evening Devotions; or, the Worship of God in Spirit and in Truth, for every Day in the Year, from the German of Sturm;" a plea that Sturm was a well-known writer on religious subjects, and that the plaintiff procured H. to write the book in question, as a translation from a work in the German, by Sturm, whereas no such work existed, and, with a view to defraud the public, and obtain a profit to himself, published a title-page and preface to the work, falsely representing it to be the genuine production of Sturm: Held, that the plea disclosed a transaction, on the part of the plaintiff, in the nature of crimen falsi; that he had no copyright in the work; and that the plea afforded a good defense to the action. *Wright* v. *Tallis*, 1 C. B. 893; 9 Jur. 946; 14 L. J., C. P. 283.

3. In Periodicals and Serials.

(5 *and* 6 *Vict. c.* 45, *ss.* 8, 9.)

By the effect of 5 and 6 Vict. c. 45, s. 18, the proprietor of a periodical is precluded from re-publishing, without the consent of the author, articles written by the latter for and published in such periodical in any other form than as reprints of the entire numbers of the periodical in which the articles appeared. *Smith* v. *Johnson*, 33 L. J., Chanc. 137; 4 Giff. 632; 9 Jur., N. S. 1223; 12 W. R. 122; 9 L. T., N. S. 437.

A republication in supplemental numbers of a selection of various tales previously published in a periodical is a separate publication within the section. *Ib.*

The right of an author of an article in a periodical, under 5 and 6 Vict. c. 45, s. 18, to prevent a separate publication, is not copyright within the meaning of section 24, and it is no objection to a motion for an injunction in such a case that the author has not entered his work at Stationers' Hall. *Mayhew* or *Murray* v. *Maxwell*, 1 Johns. & H. 312; 8 W. R. 118; 3 L. T., N. S. 466.

The republication of the Christmas number of a periodical under a different title, form, and price, is a separate publication of an article contained in such number, which the author is entitled to restrain. *Ib.*

Under 5 and 6 Vict. c. 45, s. 18, actual payment for an article written for a periodical work is a condition precedent to the vesting of the copyright, in the article, in the proprietor of the work; a contract for payment is not sufficient. *Richardson* v. *Gilbert*, 1 Sim., N. S. 336; 15 Jur. 389; 20 L. J., Chanc. 553.

A proprietor of an encyclopedia, who employs a person to write an article for publication in that work, can not, without the writer's consent, publish an article in a separate form, or otherwise than in the encyclopedia, unless the article was written on the terms that the copyright therein should belong to the proprietor of the encyclopedia for all purposes. *Hereford* (*Bishop*) v. *Griffin*, 16 Sim. 190; 12 Jur. 255; 17 L. J., Chanc. 210.

By 5 and 6 Vict. c. 45, s. 18, when a proprietor of any

periodical work shall employ any person to compose any article, and the same shall have been composed on the terms that the copyright therein shall belong to such proprietor, the copyright shall be the property of such proprietor: Held, that these terms need not be expressed, but may be implied. *Sweet* v. *Benning*, 16 C. B. 459; 1 Jur., N. S. 543; 24 L. J., C. P. 175.

Where an author is employed by the proprietor of a periodical to write for it articles on certain terms as to price, but without any mention of the copyright, it is to be inferred that the copyright is to belong to such proprietor. *Ib.*

4. In Plays and Novels.

A. published a play, and afterwards published a novel founded upon it, into which he introduced many scenes and passages from the play. B. afterward published a play, compiled from A.'s novel, without (as was alleged) any knowledge of A.'s play. B.'s play contained scenes and passages, substantially identical with scenes and passages which were common both to A.'s play and novel: Held, that even if B.'s play was a fair adaptation of the novel, and not an infringement of the copyright therein, it was an infringement of the copyright in A.'s play. *Reade* v. *Lacy*, 1 Johns. & H. 524; 7 Jur., N. S. 463; 30 L. J., Chanc. 655; 9 W. R. 531; 4 L. T., N. S. 354.

Dramatizing the incidents of a novel without the author's consent is not an infringement of his copyright. *Reade* v. *Conquest*, 9 C. B., N. S. 755; 7 Jur., N. S. 265; 30 L. J., C. P. 209; 9 W. R. 434; 3 L. T., N. S. 888.

It is no infringement of copyright to represent a play dramatized from a novel written by another author; but it is an infringement to print and publish a play so constructed. *Tinsley* v. *Lacy*, 1 H. & M. 747; 32 L. J., Chanc. 535; 11 W. R. 876.

5. In Songs.

One who adapts words of his own to an old air, adding thereto a prelude and an accompaniment, also his own, acquires a copyright in the combination, and may, in an action for an infringement against one who has pirated the whole, properly describe

himself as the proprietor of the entire composition. *Lover* v. *Davidson*, 1 C. B., N. S. 182.

Certain music publishers having adapted original words to an old American air, which was re-arranged for them, gave to the song so composed the name of "Minnie," and procured it to be sung by Madame Anna Thillon, a popular singer, at M. Julien's concerts in London; and when it had by that means become a favorite song, they published it with a title-page containing a picture of the singer who had brought the song into notice, and the words, "Minnie, sung by Madame Anna Thillon and Miss Dolby at Julien's Concerts, written by George Linley:" Held, that the publishers had by these means obtained a right of property in that name and description of their song, which a court of equity would restrain any person from infringing. *Chappell* v. *Sheard*, 2 Kay & J. 117; 1 Jur., N. S. 996.

Another music publisher subsequently published the same melody with different words, and upon the title-page they placed a similar portrait of Madame Anna Thillon, with the words "Minnie Dale, sung at Julien's Concerts (and always encored), by Madame Anna Thillon; the music composed by H. S. Thompson;" this song having never, in truth, been sung by Madame Anna Thillon at Julien's concerts: Held, that this was a palpable attempt to induce the public to believe that the song so published was the same as that of the first publishers; and an injunction was granted to restrain this or any other similar infringement of their right to the name and description of their song. *Ib.*

There are four indicia in the title of a song, the imitation of which by another party may be restrained by injunction, viz., the name of the song, the name of the singer, of the composer, and of the publisher. *Ib.*

There can not be a copyright claimed for a part of a book and disclaimed for another part, as in a patent; and the plaintiffs were entitled to protection, although they had simply registered their song, without mentioning that they claimed no copyright in the tune. *Ib.*

The statement in the title-page, "written by L.," when the

music was not, although the words were, composed by L., is not such a misrepresentation as to disentitle the plaintiffs to protection. *Ib.*

C. having published a song, on the title-page of which was a portrait of Madame Anna Thillon, and the words "Minnie, sung by Madame Anna Thillon and Miss Dolby at Julien's Concerts, written by George Linley," and this song having become very popular, D. subsequently published another song, consisting of different words to the same air (in which there was no copyright), with a title-page on which was a different portrait of Madame Anna Thillon, copied from an American publication, and the words "Minnie, dear Minnie. Madame Anna Thillon:" Held, that this was an obvious attempt to pass off D.'s publication for that of C.'s, which had obtained the public favor; and this attempt was restrained by an interlocutory injunction, without imposing upon the parties the necessity of trying the right at law. *Chappell* v. *Davidson*, 2 Kay & J. 123.

A count stated that a song, of which the plaintiff was the proprietor, had been sung by an eminent singer at public concerts, and had acquired great popularity, and became in great demand; that he published it with a likeness of the singer on the outside leaf, and that the defendant, after such publication, deceitfully and fraudulently, and without his consent, caused to be printed another song, the music, melody, and words whereof closely resembled the music, melody, and words of the plaintiff's song, and with an outside leaf bearing the likeness of the same singer, and similar words to those of the plaintiff's song, with the fraudulent intention of representing and inducing a belief that it was the song of the plaintiff, and deceitfully and fraudulently, and without his consent, offered for sale and sold great numbers, under the false color and pretense that it was the song so published by the plaintiff, whereby he was injured in the sale of his song. A second count was substantially the same, but limited to the piratical use of the title-page and devices on the outside leaf of the plaintiff's song. A third count stated that the plaintiff was the proprietor of the copyright in a certain book, and that the defendant, without his consent in writing, wrongfully and injuriously printed for sale divers copies of the work, whereby his

profits were lessened. A fourth count charged the defendant with having in his possession for sale, and selling, copies of the work so unlawfully, and without the consent of the plaintiff, printed. He pleaded to these counts, that the song was printed and published without the name and place of abode of the printer upon the first or last leaves thereof, in violation of the 2 and 3 Vict. c. 12: Held, that the plea disclosed no defense as to the charges contained in the third and fourth counts; and semble, that it could not be taken distributively. *Chappell* v. *Davidson*, 18 C. B. 194; 2 Jur., N. S. 544; 25 L. J., C. P. 225.

6. By Foreigners.

The object of the 8 Anne, c. 19, was to encourage literature among British subjects, which description includes such foreigners as, by residence here, owe the crown a temporary allegiance; and any such foreigner, first publishing his work here, is an author within the meaning of the statute, no matter where his work was composed, or whether he came here solely with a view to its publication. *Jefferys* v. *Boosey* (*in error*), 4 H. L. Cas. 815; 3 C. L. R. 625; 1 Jur., N. S. 615; 24 L. J., Exch. 81 (overruling *Boosey* v. *Jefferys*, 6 Exch. 580; 15 Jur. 540; 20 L. J., Exch. 354—Exch. Cham.; *Cocks* v. *Purday*, 5 C. B. 860; 12 Jur. 677; 17 L. J., C. P. 273; *Boosey* v. *Davidson*, 13 Q. B. 257; 13 Jur. 678; 18 L. J., Q. B. 174; and *Ollendorf* v. *Black*, 14 Jur. 1080; 4 De G. & S. 209; 20 L. J., Chanc. 1080. And affirming *Boosey* v. *Purday*, 4 Exch. 145; 13 Jur. 918; 18 L. J., Exch. 378; and *Chappell* v. *Purday*, 14 M. & W. 303; 9 Jur. 495; 14 L. J., Exch. 258).

Copyright commences by publication; if at that time a foreign author is not in this country, he is not a person whom the statute meant to protect. *Ib.*

B., a foreigner, resident at Milan, composed a musical work, and, according to the law of Milan, assigned his copyright to R., also a foreigner, who coming to London, assigned his interest therein to an Englishman, but for publication in Great Britain and Ireland only, and thereupon the first publication took place

in England: Held, that B. had no copyright in the publication. *Ib.*

If a foreigner translates an English work, and then an Englishman retranslates the foreign work into English, that would be an infringement of the original copyright. *Murray* v. *Bogue*, 1 Drew. 353; 17 Jur. 219; 22 L. J., Chanc. 457.

An alien friend, coming into a British colony, and residing there for the purpose of acquiring copyright during and at the time of the publication in England of a work composed by him, and first published in this country, is entitled to copyright in England in the work so published, though he may not, under the laws in force in the colony where he is residing, be entitled to copyright there. *Low* v. *Routledge*, 11 Jur., N. S. 939; 35 L. J., Chanc. 114; 1 L. R., Ch. App. 42; 14 W. R. 90; 13 L. T., N. S. 421.

7. Free Copies.

To British Museum.]—By 5 and 6 Vict. c. 45, s. 6, *a printed copy of the whole of every book, together with all maps, prints, or other engravings, and also of any second or subsequent edition, shall, within one calendar month after the day on which the book is first sold, published, or offered for sale within the bills of mortality, or within three calendar months, if first sold, published, or offered for sale in any other part of the United Kingdom, or within twelve calendar months if first sold, published, or offered for sale in any other part of the British dominions, be delivered, on behalf of the publisher, at the British Museum.*

By s. 7, *the mode and time of delivering are pointed out and prescribed.*

To other Public Libraries.]—By 5 and 6 Vict. c. 45, s. 8, *a copy of the whole of every book and of any second or subsequent edition of every book containing additions and alterations, together with all maps and prints belonging thereto, are on demand in writing left at the place of abode of the publisher at any time within twelve months after publication to be delivered within one month after the demand for the use of the following libraries, viz., Bodleian Library at Oxford, Public Library at Cambridge, Faculty of Advocates at*

Edinburgh and Trinity College, Dublin.

By s. 10, *a penalty not exceeding 5l., besides the value of the copy, on neglecting or failing to deliver is incurred for every default.*

A single part of a work published at uncertain intervals, of which thirty copies only were printed, twenty-six of which were subscribed for, the principal costs of publication being defrayed by funds devised for that purpose, was not a periodical publication, or book, which need be entered at Stationers' Hall; nor was it demandable by the public libraries under 54 Geo. 3, c. 156. *British Museum* v. *Payne*, 2 Y. & J. 166; 1 M. & P. 415; 4 Bing. 549.

The 8 Anne, c. 19, s. 5, made it necessary for a printer of a book, composed after the passing of the act, and published for the first time after the composition, which book was printed and published with the consent of the proprietor of the copyright, to deliver a copy upon the best paper to the warehouse-keeper of the Company of Stationers, for the use of the library of the University of Cambridge, notwithstanding the title to the copy of such book, and the consent of the proprietor to the publication, was not entered in the registry book of the company. *Cambridge University* v. *Bryer*, 16 East, 317.

8. Entry of Proprietorship at Stationers' Hall.

By 5 and 6 Vict. c. 45, s. 13, *it shall be lawful for the proprietor of copyright in any book published or to be published, to make entry in the registry book of the Stationers' Company of the title of such book, the time of the first publication thereof, the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright, in the form in the schedule given to the act, upon payment of 5s. to the officer of the company.*

No copyright is acquired by the registration of a book before its actual publication. *Correspondent Newspaper Company* v. *Saunders*, 11 Jur., N. S. 540; 13 W. R. 804; 12 L. T., N. S. 540—V. C. W.

To entitle any one but the author of a literary work to register

it at Stationers' Hall, there must be an absolute assignment of the copyright. *Bastow, ex parte*, 14 C. B. 163.

Where in registering the proprietorship of a copyright, either the date of the first publication or the name of the publisher, is incorrectly entered, a subsequent assignment by entry in the book of registry is invalid. *Low* v. *Routledge*, 10 Jur., N. S. 922; 33 L. J., Chanc. 717; 12 W. R. 1069; 10 L. T., N. S. 838—V. C. K.

The author and proprietor of copyright in a song, in the entry at Stationers' Hall, describing his place of abode as 65 Oxford street, he being in America at the time of the publication, and having no place of abode in England, but 65 Oxford street being the address of his publishers, is a sufficient description. *Lover* v. *Davidson*, 1 C. B., N. S. 182.

A., being in New York, and wishing to publish a song there, and in London simultaneously, entered into an agreement for an assignment of the American copyright to a publisher in New York: Held, that a receipt for the purchase money was no evidence of the assignment; and also, that the date on the title-page (as required by the American law) was not conclusive evidence of the time of publication in New York. *Ib.*

H. agreed with T. to edit a translation of a foreign work, and compose a biographical sketch of the author, and give notes of his own. It was intended that T. should have the sole right of multiplying copies of the work, and the work was published before 5 and 6 Vict. c. 45. There was no assignment of the copyright from H. to T. After T.'s death, his widow, with H.'s knowledge and assent, registered the copyright in her own name under 5 and 6 Vict. c. 45: Held, that the copyright was in T.'s widow and not in H. *Hazlitt* v. *Templeman*, 13 L. T., N. S. 593—Q. B.

After H.'s assent to T.'s widow registering the copyright in her own name, she paid to him money, and he received from her books on the publication of a fresh edition on the same terms as stipulated in the agreement between H. and her husband in his lifetime. H., on three occasions, claimed remuneration on those terms, and she did not repudiate all liability, but disputed the

quantum merely: Held, evidence from which the jury might infer an agreement by the widow to remunerate H. on the same scale as in the agreement with her husband in consideration of his assenting to her registering the copyright in her own name. *Ib.*

The proprietor of the copyright in a map, whether forming part or published independently of a book, can not maintain a suit in respect of any infringement of his copyright until he has registered the map at Stationers' Hall, under the provisions of 5 and 6 Vict. c. 45. Decision of Malius, V.-C., reversed. *Stannard* v. *Lee*, 6 L. R., Chanc. App. 346—L. J. J.

Before this Enactment.]—An author, whose work was pirated before the expiration of 28 years (under 54 Geo. 3, c. 156) from the first publication of it, might maintain an action for damages against the offending party, although the work was not entered at Stationers' Hall, and although it was first published without the name of the author affixed. *Beckford* v. *Hood*, 7 T. R. 260.

9. Expunging or Varying Entry.

By 5 and 6 Vict. c. 45, s. 14, *if any person shall deem himself aggrieved by any entry under color of the act in the book of registry, it shall be lawful for such person to apply by motion to the Court of Queen's Bench, Common Pleas, or Exchequer, in term time, or by summons to a judge in vacation, for an order that such entry may be expunged or varied, and upon the application the court or judge shall make such order for expunging, varying, or confirming such entry, either with or without costs, as to the court or judge shall seem just, and the officer appointed by the Stationers' Company shall, on the production of such order, expunge, or vary the same according to the requisitions of the order.*

Before the act, a plaintiff instituted proceedings in equity for an alleged infringement of his copyright, and an issue had been directed, whereupon he caused the entry to be made, and commenced an action: Held, that the defendant was entitled to have the entry expunged; but the court discharged the rule for that purpose, on the plaintiff undertaking not to use the entry as evidence at the trial. *Chappell* v. *Purday*, 1 D. & L. 458; 12 M. & W. 303; 13 L. J., Exch. 7.

An entry having been improperly made on the registry, the court granted a rule to vary or expunge it. *Bastow, ex parte*, 14 C. B. 631.

Upon a rule nisi to expunge three entries made in the registry on the ground that they would be prima facie evidence in an action against the defendant for publishing the pieces of music mentioned in them, alleged to be the copyright of the plaintiff, the court (the plaintiff refusing to consent not to use the entries on the trial) declined to expunge the entries, but directed an issue whether there was a copyright in the music, and whether the plaintiff was the proprietor of the copyright, on the trial of which the entries should not be used; and ordered that the rule should be enlarged until the trial of the issue. *Davidson, ex parte*, 2 El. & Bl. 577; 18 Jur. 57.

The court will not exercise its power to expunge an entry of proprietorship of copyright in the registry, unless it is clearly and unequivocally shown that it is false, or vary it, unless satisfied by affidavit that in so doing the court would make a true entry; repudiating the power exercised by the Court of Queen's Bench in the above case. *Davidson, ex parte*, 18 C. B. 297; 2 Jur., N. S. 1024; 25 L. J., C. P. 237.

A., the author of a song, wishing to preserve his copyright therein in America as well as in England, caused his agents simultaneously to register it in New York and London. In the entry in the registry, the name of the London agent was inserted by mistake as the proprietor of the copyright. A., when he discovered this, procured such entry to be altered under a judge's order, by inserting his own name as proprietor in lieu of that of his agent, and he afterward brought an action for piracy against B., who had published the song in this country before the entry had been altered. B. claimed no title in himself to the copyright, but relied on such prior publication, and also on an alleged publication in America anterior to that stated in the original registration. The court refused, on the application of B., to expunge or vary such altered entry in the registry, because it did not clearly appear that there had been a prior publication in America, or that the entry was untrue. *Ib.*

Expunging Entries.]—An information was laid by G. against W., charging that he, not being the proprietor of copyright in certain paintings and photographs mentioned in the information, had unlawfully sold copies thereof. At the hearing, certified copies of entries in the register kept under 25 and 26 Vict. c. 68, were produced as proof that G. was the proprietor of the paintings and photographs. The photographs were copies of engravings made for G. from engravings of which he was the proprietor. The description of one of the paintings in the register was, "A piper and a pair of nut-crackers," with the name of the painter, Sir E. Landseer, R. A. W. was convicted, and G. subsequently applied, under 5 and 6 Vict. c. 45, s. 14, to have the entries expunged: Held, first, that G. was not a person who could deem himself "aggrieved" within the meaning of that section. *Walker, ex parte, Graves, in re*, 39 L. J., Q. B. 31.

Held, secondly, that the entries were not invalid by reason of their not showing that the author or former proprietor had registered in addition to G. *Ib.*

Held, thirdly, that the description, "A piper and a pair of nut-crackers" was not so uncertain as that the court would, on application of G., expunge the entry. *Ib.*

10. Assignment of Copyright.

By 5 and 6 Vict. c. 45, s. 13, *it shall be lawful for every registered proprietor to assign his interest or any portion of his interest therein, by making entry in the book of registry of such assignment, and of the name and place of abode of the assignee thereof, in the form in the schedule, on payment of the sum of 5s.; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, without being subject to any stamp duty, and shall be of the same force and effect as if such assignment had been made by deed.*

To entitle a party to maintain an action as assignee for an infringement of the copyright in a song, under 8 Anne, c. 19, s. 1, there must have been an assignment of the copyright by an instrument in writing, attested by two witnesses. *Davidson* v.

Bohn, 6 C. B. 456; 12 Jur. 922; 18 L. J., C. P. 15; *S. P Power* v. *Walker*, 3 M. & S. 7; 4 Camp. 8.

No assignment of copyright under 8 Anne, c. 19, the benefit of which was claimed by the assignee, although from a foreigner, could be good in this country, unless it was attested by two witnesses. *Jefferys* v. *Boosey*, 4 H. L. Cas. 815; 3 C. L. R. 625; 1 Jur., N. S. 615: 24 L. J., Exch. 81.

There can not be a partial assignment of copyright. *Ib.*—Lord St. Leonards.

A foreign author can not, by assigning his copyright according to the law of his country, give the assignee a copyright which will be recognized in England so as to entitle the purchaser of it here to the right of exclusive publication. *Ib.* (Overruling *Boosey* v. *Davidson*, 13 Q. B. 257; 13 Jur. 678; 18 L. J., Q. B. 174; *Cocks* v. *Purday*, 5 C. B. 860; 12 Jur., 677; 17 L. J., C. P. 273; and *Boosey* v. *Jefferys*, 6 Exch. 580; 15 Jur. 540; 20 L. J., Exch. 354—Exch. Cham.)

A. wrote words to an old air, and got his friend D. to compose an accompaniment, and A. agreed in writing with D. to execute a proper assignment of the whole work to him or any person whom he might name. A. accordingly executed a deed of assignment to D. and C. The defendant published a copy of the whole work: Held, that the agreement to assign was executory, and did not operate as an assignment, so as to render the subsequent deed of assignment inoperative. *Leader* v. *Purday*, 7 C. B. 4; 12 Jur. 1091; 18 L. J., C. P. 197.

If a prima facie title to the copyright in a book is rebutted, the right may be supported without the production of a formal assignment attested by two witnesses under 5 and 6 Vict. c. 45. *Kyle* v. *Jefferys*, 3 Macq. H. L. Cas. 611.

A receipt in writing for the price of the copyright operates as an effectual assignment. *Ib.*

An assignment of copyright made after the 54 Geo. 3, c. 156, and before the 5 and 6 Vict. c. 45, needs not be attested. *Cumberland* v. *Copeland*, 1 H. & C. 194; 9 Jur., N. S. 253; 31 L. J., Exch. 353; 7 L. T., N. S. 334—Exch. Cham.

The 54 Geo. 3, c. 156, repealed, by sect. 4, the 8 Ann. c. 19, s. 1, in this particular. *Ib.*

Action for the copyright of a play. Plea, non assumpsit: Held, that it could not be objected that the assignment was not in writing, but that it ought to have been specially pleaded. *Barnett* v. *Glossop*, 1 Scott, 621; 1 Bing. N. C. 633; 1 Hodges, 94.

In an action for pirating a work, evidence that the plaintiff acquiesced in the publication six years ago is no proof of an assignment of the copyright. *Latour* v. *Bland*, 2 Stark. 382—Abbott.

Where an author who had sold his copyright, by living more than fourteen years obtained the resulting right for fourteen years more, under 8 Anne, c. 19: Held, to belong to his assignee, and not to himself. *Carnan* v. *Bowles*, 2 Bro. C. C. 80; 1 Cox, 283.

An author having given a work to a publisher, who, by the sale of it, reimbursed his expenses and made considerable profit, can not, at the end of the first fourteen years, restrain him by injunction from continuing the publication. *Rundell* v. *Murray*, Jacob, 311.

II. Proof of Registry.

By 5 and 6 Vict. c. 45, s. 11, *a book of registry, wherein may be registered the proprietorship in the copyright of books, and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licenses affecting such copyright, is to be kept at the Hall of the Stationers' Company, by the Officer appointed by the company, and open at all convenient times to inspection on payment of a shilling.*

Such officer must give a copy of any entry in this book, certified under his hand and impressed with the stamp of the company, to any one on payment of five shillings. Id.

Copies so certified and impressed shall be received in evidence in all courts, and in all summary proceedings, and shall be prima facie proof of the proprietorship or assignment of copyright or license as therein expressed, but subject to be rebutted by other evidence; and, in

the case of dramatic or musical pieces, shall be prima facie proof of the right of representation or performance, subject to be rebutted as aforesaid. Id.

12. Penalties on Importation of prohibited Works.

(5 *and* 6 *Vict. c.* 45, *s.* 17.)

Two penalties might be incurred on the same day, on 12 Geo. 2, c. 36, for selling books, originally written and published here, and afterward reprinted in any other country, and imported into this, if the acts of sale were distinct. *Brooke* v. *Millikin*, 3 T. R. 509.

13. Rights of Authors, Editors, and Publishers.

Semble, where an author agrees with a bookseller to publish his work, and to allow him interest for the money he should advance, and also a share of the profits, the bookseller has a lien on the copyright for his disbursements. *Brook* v. *Wentworth*, 3 Anst. 881.

An author may maintain an action for an injury to his reputation against a publisher of an inaccurate edition of his work, falsely purporting to be executed by him, though the publisher is the owner of the copyright. *Archbold* v. *Sweet*, 1 M. & Rob. 62; 5 C. & P. 219—Tenterden.

A., having printed a work, sold 300 copies to B., a bookseller, at 40*s.* a copy, binding himself not to sell to others, in quires, under 48*s.*, and in single copies under 50*s.* a copy, until B.'s 300 were sold, or his consent was obtained. In his letter, which constituted the agreement, he said to B., "I do not expect you to sell under 48*s.* and 50*s.*, but do as you like." When B. had sold a part of the 300 copies, he went into partnership with C. and transferred all his stock at the cost price. He also sold some copies at 45*s.* and 46*s.* A., in contravention of his agreement, sold under the stipulated prices; but, on being threatened with proceedings by B., persuaded D., who had purchased the principal part, to consent to give them back, if it would satisfy B. D. had an interview with B., and told him this. D. said that he understood the arrangement was a settlement of the difference,

and that B. went away from the interview perfectly satisfied: Held, in an action by B. against A. for a breach of the agreement, that neither the underselling by B., nor the transfer of the stock to the partnership, were grounds of a nonsuit; but that the arrangement with D. was an answer to the action, if the jury thought that it made an end of the dispute between the parties. Held, also, that, on the question of damage, it might be considered whether B.'s own underselling had or had not contributed to affect the price of the work in the market. *Benning* v. *Dove*, 5 C. & P. 427—Denman.

The court of chancery can not specifically perform an agreement, whereby A. agrees to compose and write reports of cases determined in a court of justice, to be printed and published by a particular individual, for a stipulated remuneration, nor interfere by an injunction to restrain the party from permitting the reports written by him to be published by another person; the remedy, if any, is at law. *Clarke* v. *Price*, 2 Wils. C. C. 157.

S. entered into a contract with the author of a work, which had already passed through nine editions, to purchase from him, and to sell to the public at a fixed price, a tenth edition, consisting of 2,500 copies: Held, that he had obtained a right in the copyright of the work until he should have sold off the tenth edition; that, during such time, he had bound himself to sell the book at the fixed price, and the author would be bound not to interfere in the sale. *Sweet* v. *Cater*, 11 Sim. 572; 5 Jur. 38.

Held also, after examination by the court of the two books, that there had been such an abstraction of matter from S.'s work as executed the limits of fair quotation; and that, though the pirated passages might be contained in the prior editions, in which the author had the entire copyright, yet that being also incorporated in the tenth edition, S. was entitled to an injunction. *Ib.*

The defendant having been applied to by the plaintiff for permission to publish a work, wrote to him as follows: "You formerly made me an offer of 50*l.* for the exclusive right of publishing for ten years Captain M.'s work, 'Monsieur Violet,' which offer I accepted, and wrote to you to that effect. I pos-

sess but few of the copyrights of the earlier portions of Captain M.'s works, and they are many of them published in a cheap edition. I will let you know, in a few days, those of the works that belong to me that I feel disposed to offer to you; in the meantime I shall be glad to know if you received my last letter accepting your offer for 'Monsieur Violet,' and if not, whether you still hold the same proposal." The sum of 50*l.* was afterward paid, for which the defendant gave a receipt to the plaintiff, expressed to be "for permission to publish Captain M.'s work, 'Monsieur Violet,' so long as the copyright may endure, that right to be exclusively his own for ten years:" Held, this amounted to an express warranty by the defendant that he had the title to the copyright in question. *Sims* or *Simms* v. *Marryat*, 17 Q. B. 281; 20 L. J., Q. B. 454.

Prior to this transaction Captain M., by an instrument in writing, not sealed or attested so as to pass the legal copyright, agreed to assign the copyright in "Monsieur Violet" to B. for 300*l.*, with a stipulation that a deed of assignment of the copyright should be executed. The money was duly paid by B.: Held, that the effect of this was to vest the equitable copyright in B., who would be entitled to a decree in equity for a specific performance of the contract. *Ib.*

Publishers agreed with an author to print, reprint, and publish a work by him at their own risk, on the terms of dividing equally with him any profits that there might be after payment of all expenses; and that if all the copies should be sold and another edition should be required, the author should make all necessary alterations and additions, and the publishers should print and publish a second and subsequent edition on the same terms. After the publication of the first edition the firm of the publishers was changed, and the interest of the old firm in the work was in another publisher, with the author's concurrence, the agreement being held to be of a personal nature on both sides, and the benefit of it not assignable by either party without the other's consent. *Stevens* v. *Benning*, 6 De G. Mac. & G. 223; 1 Jur., N. S. 74; 24 L. J., Chanc. 153.

Semble, unless there is a special contract, either express or implied, reserving to the author a qualified copyright, the pur-

chaser of a manuscript is at liberty to alter and deal with it as he thinks proper. *Cox* v. *Cox*, 11 Hare, 118; 1 Eq. R. 94.

R., an author, agreed with B., a publisher, that he should publish, at his own expense and risk, a work named W., and after deducting from the produce of the sale all expenses and certain allowances, the profits remaining of every edition that should be printed were to be divided equally between them; the books to be accounted for at trade price, unless it was thought advisable to dispose of any at a lower price, which was to be left to the discretion of B.: Held, first, that this was a license to publish, and not a parting with the copyright. *Reade* v. *Bentley*, 3 K. & J. 271; 4 Jur., N. S. 82; 27 L. J., Chanc. 254.

Held, secondly, that B. could at any time put an end to the agreement by refusing to publish any more. *Ib.*

Held, thirdly, that the form, type, price, time, number, etc., of every edition were left to the sole judgment and discretion of B. *Ib.*

Held, fourthly, that edition meant every quantity of books put forth to the bookselling trade and to the world at one time by B.; and that when the advertisements, the printing, and other well-known expenses and acts by a publisher bringing out such quantity of copies in the ordinary way are closed, that constitutes the completion of the edition, whether the copies are taken from fixed or movable plates or types, and whether the types or plates are broken up or not, and whether all the copies taken are given forth and advertised for sale, or retained and stored in the warehouse of the publisher. *Ib.*

Held, fifthly, that on the completion of any edition as above defined, R. had a right to put an end to the agreement between himself and B., by notice given to B. before any expense has been incurred toward another edition. *Ib.*

An agreement between the author of a work and a publisher, by which the publisher agreed to publish the work at his own expense and risk, and after deducting all charges and expenses, and a percentage on the gross amount of the sale for commission, and risk of bad debts, the profits remaining of every edition that

should be printed of the work to be equally divided between the author and publisher, creates a joint adventure between the parties, which the author was at liberty to terminate upon notice to his publisher, after the publication of a given edition, it appearing that, at the date of such notice, no fresh expense had been incurred by the publisher in printing, advertisements, or otherwise, since the publication of that edition. *Reade* v. *Bentley*, 4 Kay & J. 656.

The circumstance of the publisher having stereotyped the work previously to the publication of the last published edition, did not affect the right of the author to terminate the agreement. *Ib.*

On the meaning of the word edition as applied to cases where a work is stereotyped, and printed in "thousands." *Ib.*

D., being one of the proprietors and the editor of a weekly periodical, called Household Words, is not, on a dissolution of the partnership, justified in advertising that the publication would be discontinued; for the right to use the name must be sold for the benefit of all the partners, it being part of the partnership assets; but he might advertise the discontinuance of the publication as regarded himself. *Bradbury* v. *Dickens*, 27 Beav. 53; 28 L. J., Chanc. 667.

The name of the editor appearing upon the title-page forms no part of the title; and a court of equity refused to restrain, by injunction, the proprietors of a journal from omitting the publication of the editor's name on the title-page, although the agreement between the proprietors and editor provided that the title of the journal should not be altered without mutual consent. *Crookes* v. *Petter*, 6 Jur., N. S. 1131—R.

Without determining the extent to which the owners of the copyright in a journal are justified in interfering with the editor in his editorial capacity, where the remuneration of the editor depends on the success of the journal, a court of equity refused to restrain the proprietors from altering articles proposed to be inserted by the editor, or inserting others contrary to his wish, it being the province of a jury to determine the amount of damage, if any, which the editor sustained by reason of the conduct of the proprietors. *Ib.*

S., a proprietor of a weekly newspaper, by a letter to F., an author, agreed that he should write two tales, extending over one year, at 10*l.* per week for each number, to contain about the same quantity as was sent under a former similar engagement, and to receive the first number on the 22d April, 1855, and to continue to receive one number weekly during one year, conditionally that he should not write for any other newspaper published at less than 6*d.* He accepted the engagement, received 20*l.* as a deposit, and wrote regularly for some weeks; then went to Paris, sent an abrupt conclusion of a current tale in a small quantity of manuscript, refused to proceed with his engagement with S., and entered into another engagement with C. S. thereupon stopped his payments to F., and employed another author to conclude the half-finished tale: Held, first, that the engagement was a yearly engagement, and could not be terminated by F. as a weekly engagement. *Stiff* v. *Cassell*, 2 Jur., N. S. 348 —V. C. W.

Held, secondly, that the condition as to F. not engaging elsewhere was valid. *Ib.*

Where publishers of a magazine employ and pay an editor, and the editor employs and pays persons for writing articles in the magazine: Semble, the copyright in such articles is not vested in the publishers under 5 and 6 Vict. c. 45, s. 18. *Brown* v. *Cooke*, 11 Jur. 77; 16 L. J., Chanc. 140—Shadwell, V. C. E.

By 5 and 6 Vict. c. 45, s. 18, when the proprietor of any periodical work shall employ any person to compose any article, and the same shall have been composed on the terms that the copyright therein shall belong to such proprietor, the copyright shall be the property of such proprietor: Held, that these terms need not be expressed, but may be implied. *Sweet* v. *Benning*, 16 C. B. 459; 1 Jur., N. S. 543; 24 L. J., C. P. 175.

Where an author is employed by a proprietor of a periodical work for its articles on certain terms as to remuneration, but without any mention of the copyright, it is to be inferred that the copyright is to belong to such proprietor. *Ib.*

14. Piracy.

(a) *What amounts to.*

An action will lie if parts of a book of chronology are servilely imitated, though other parts of the book are different. *Trusler* v. *Murray*, 1 East, 363, n.

But not for publishing sea-charts on an improved and a more useful principle, with material corrections, though many of the lines are copied from old charts. *Sayre* v. *Moore*, 1 East, 361, n.

A count for pirating generally, is not supported by evidence that there are in the original work particular errors and mistakes, with which the pirated edition corresponds verbatim. *Cary* v. *Kearsley*, 4 Esp. 168—Ellenborough.

But such evidence would support a count for transcribing particular matter, without consent. *Ib.*

It is lawful to incorporate part of the works of a contemporary writer in a new work, provided it is not a pretext for stealing the original copyright. *Ib.*

But it is otherwise, if so much is copied as to form a substitute for the original work. *Roworth* v. *Wilkes*, 1 Camp. 94—Ellenborough.

To publish, in the form of quadrilles and waltzes, the airs of an opera of which there exists an exclusive copyright is an act of piracy. *D'Almaine* v. *Boosey*, 1 Y. & C. 289.

A fair abridgment is no infringement of copyright. *Anon.*, Lofft. 775; *S. P.*, *Bell* v. *Walker*, 1 Bro. C. C. 451.

An abstract published in an annual register or a magazine is not piracy, especially if the author himself has published extracts in a periodical paper. *Dodsley* v. *Kinnersley*, Amb. 403.

Upon an action by several for piracy of copyright, it appeared that the defendant had published the work in question, pursuant to the conditions of a cognovit given by him to one of the plaintiffs and P., in an action for not performing an agreement to write the work in question: Held, a sufficient defense. *Sweet* v. *Archbold*, 10 Bing. 133; 3 M. & Scott, 299.

An action will lie for multiplying copies of a work, in which

there is a subsisting copyright, without the consent of the proprietor, although the copies are not printed, and are made for gratuitous distribution, and not for sale or hire. *Novello* v. *Sudlow*, 12 C. B. 177; 16 Jur. 689; 21 L. J., C. P. 169.

A work may be a piracy from another, though the passages copied are stated to be quotations, and are not so extensive as to render the piratical work a substitute for the original work. *Bohn* v. *Bogue*, 10 Jur. 420—V. C. E.

In an action for an infringement of copyright, by merely publishing a work printed or caused to be printed by others, knowledge of the copyright so infringed must be proved *Leader* v. *Strange*, 2 C. & K. 1010—Wilde.

The proprietors of a periodical professing to be an analytical digest of equity, common law, and other cases, copying verbatim the head or marginal notes of cases from the reports, the copyright of which was in another person, without his consent, are guilty of a piracy. Maule, J., dissentiente. *Sweet* v. *Benning*, 16 C. B. 459; 1 Jur., N. S. 543; 24 L. J., C. P. 175.

A. published a work called Why and Because, treating of the scientific explanations of various common phenomena of life. B. afterward published a work on similar subjects, called The Reason Why, of which A. complained that the name and the plan were suggested by his own work, and the arrangement and phraseology in many instances taken bodily from his work: Held, first, that there was no such similarity or colorable imitation in the title as to support A.'s claim for an injunction. *Jarrold* v. *Houlston*, 3 Jur., N. S. 1051; 3 Kay & J. 708.

Held, secondly, that the method of communicating information by question and answer being of unknown antiquity, A. could not claim any originality in the plan of his work. *Ib.*

Held, thirdly, that many of the questions in A.'s book, being the simplest forms in which the questions could be asked, were not the subject of copyright, and could not be the privilege of A. *Ib.*

But arrangement of questions and answers, however simple in themselves, and on subjects however common, may be the subject of copyright. *Ib.*

Where two authors, A. and B., treat of the same subject, each being merely a compiler from various other original works, it is a fair use of A.'s work if B. examines it for the purpose of seeing what works, unprotected by copyright, were referred to by A., and B. may then himself refer to such unprotected work, and take from it whatever may be suggested by A.'s book. *Ib.*

It is also a legitimate use of A's work if B., after having by his labor brought his own work into shape, refers to A.'s work to supply omissions. *Ib.*

But it is a piratical use of A.'s work if B. takes the matter therein borrowed from authorities open to all the world, in order to save his own labor and expense of consulting the original work. *Ib.*

It is no defense to say that a pirated work is not offered for sale itself, but merely used to promote the sale of the books mentioned in it. *Hotton* v. *Arthur*, 1 H. & M. 603; 32 L. J., Chanc. 771; 11 W. R. 934; 9 L. T., N. S. 199.

Where a party sets up a case that his work is a fair compilation from a number of others, and not a mere copy from any one, it is of the highest importance that he should produce his original manuscript. *Ib.*

The author of a published work can not prohibit a subsequent writer from making use of the authorities quoted by him, even if it is proved that the latter was put on the track of these authorities by reading the earlier work, but the subsequent writer must, *bona fide*, go to the common sources, and not copy the quotations or passages from the earlier work. But the taking of a single quotation without verification, and of a single argument founded on facts stated in the earlier book, are not sufficient grounds for granting an injunction. *Pike* v. *Nicholas*, 39 L. J., Chanc. 435; 5 L. R., Ch. 251; 18 W. R. 321.

If any part of a work complained of is a transcript of another work, or with only colorable additions and variations, and prepared without any real independent literary labor, such portion of the work complained of is piratical. *Jarrold* v. *Haywood*, 18 W. R. 279—V.-C. J.

But it is impossible to establish a charge of piracy where it is necessary to track mere passages and lines through hundreds of

pages, or where the authors of a work challenged as piratical have honestly applied their labors to various sources of information. *Ib.*

(b) *Proceedings by Action.*

In an action for an infringement of copyright, the court refused to allow a count founded upon a common-law right to be joined with counts on the 5 and 6 Vict. c. 45, upon the same cause of action. *Boosey* v. *Tolkien*, 5 C. B. 476; 5 D. & L. 547; 17 L. J., C. P. 137.

The 5 and 6 Vict. c. 45, s. 15, which gives a remedy for piracy in certain cases, does not exclude the common-law remedy in other cases in which that statute has given a right. *Novello* v. *Sudlow*, 12 C. B. 177; 16 Jur. 689; 21 L. J., C. P. 169.

In an action for infringement of copyright in a book, the court will permit interrogatories, as to the sale of the book for a certain period before and after the date of the alleged infringement, to be administered to the plaintiff for the purpose of ascertaining the amount of damage sustained, and enabling the defendant to pay a sufficient sum into court to meet it. *Wright* v. *Goodlake*, 13 L. T., N. S. 120; 3 H. & C. 540; 34 L. J., Exch. 82; 12 Jur., N. S. 14; 13 W. R. 349.

In an action for infringing the copyright in an opera, in order to prove a prior publication, a statement by a witness that he had seen in print, in Milan, many parts of the opera before the 10th June, 1831, is inadmissible, without accounting for the non-production of the printed copies. *Boosey* v. *Davidson*, 13 Q. B. 257; 13 Jur. 678; 18 L. J., 2. B. 174.

A statement by a witness of his having heard, before the 10th of June, 1831, persons in society sing parts of the opera at a piano, with printed music before them, is no evidence that the music in the printed papers was the same as that of the opera in question. *Ib.*

To an action for the infringement of a copyright in a work, the defendant was allowed to plead that the plaintiff was not the proprietor of the copyright at the time of committing the grievance, and also that he was not the proprietor of the copyright

when the books were printed. *Chappell* v. *Purday*, 1 D. & L. 458; 12 M. & W. 303; 13 L. J., Exch. 7.

The proprietor of a copyright in a book needs not, in an action for its infringement, aver that the defendant published the plaintiff's book. The declaration states a good cause of action if it avers that the defendant published parts of the plaintiff's book. *Rooney* v. *Kelley*, 14 Ir. C. L. R. 158—Q. B.

Such a cause of action is not answered by a plea in confession and avoidance, to the effect that the book of the plaintiff and the books of the defendant were composed by one and the same author, from common sources of information; and that no part of the defendant's books, or either of them, was copied or colorably altered from the book of the plaintiff. *Ib.*

A declaration alleging that the plaintiff agreed to manufacture for the defendant bricks according to his directions; that the defendant directed the plaintiff to mark them in a way which to the defendant's knowledge amounted to a piracy of R.'s trade mark; that the plaintiff, being ignorant of R.'s rights, marked the bricks as directed, and delivered them to the defendant; that R. thereupon filed a bill in chancery for an injunction and account against the plaintiff, which he compromised on the payment of costs, discloses a good cause of action, as equity would grant an injunction against a person who innocently uses another's trade mark. *Dixon* v. *Fawcus*, 7 Jur., N. S. 895; 30 L. J., Q. B. 137.

The costs of a successful appeal will not be given in the absence of misconduct on the part of the respondent. *Stannard* v. *Lee*, 6 L. R., Chanc. Ap. 346—L. J. J.

(c) *Notice of Objections.*

By 5 and 6 Vict. c. 45, s. 16, *in an action for piracy the defendant is to give written notice of the objections to the plaintiff's title on which he means to rely.*

Notice of objections required by the statute is sufficiently complied with, by alleging a definite publication of the disputed work at some particular place, by some definite party, either before, or simultaneously with, the publication by the plaintiff, or

with a publication in another place. *Boosey* v. *Purday*, 10 Jur. 1038—Exch.

In an action by A. for the infringement of copyright in a musical composition, consisting of an air which was old and not the subject of copyright, of words which were written by B., and of an accompaniment which was composed by C. at the request and for the benefit of B.: Held, that it was not competent to the defendant, under a notice of objections, stating merely that A. was not the owner of the copyright, and that there was no subsisting copyright in the work, to object at the trial that there had been no assignment by C., even though the point arose upon the evidence adduced on the part of the plaintiff. *Leader* v. *Purday*, 7 C. B. 4; 6 D. & L. 408; 12 Jur. 1091; 18 L. J., C. P. 197.

In an action for the infringement of a copyright of a book, the defendant pleaded several pleas, denying that the plaintiff was the proprietor of the copyright; that there was any copyright subsisting; that the books were first published in England, and that the copies complained of were unlawfully printed: Held, on an application by the plaintiff to have the notice of objection delivered with the pleas amended, that the alleged first publication having taken place abroad, and so far back as 1831, it was sufficient for the defendant to state the year of the first publication, and that it was not necessary that he should specify the day or month; but that he was bound to state the name of the party whom he alleged to be the proprieter or first publisher, the title of the work, the place where and the time when the first publication took place. *Boosey* v. *Davidson*, 4 D. & L. 147—B. C.—Wightman.

Held, also that he was not entitled to object that some person whose name was to the defendant unknown, and not the plaintiff, was the proprietor of the copyright; nor that the plaintiff was not himself the author; nor that the work was not first printed or published in the British dominions: nor that the plaintiff ever acquired any title, by assignment or otherwise, to the copyright; nor that there was no valid assignment; nor that there is no copyright in a work first published out of the British dominions under such circumstances as the books in question

were published. But that he might object that A., if any one, and not the plaintiff, was the proprietor; and that at the time of committing the grievances no copyright in the work was subsisting. *Ib.*

(d) *Proceedings by Injunction.*

Where there are two rival works, a court of equity will restrain the proprietor of one of them from advertising it in terms calculated to induce the public to believe that it is the other work, but will not restrain him from publishing an advertisement tending to disparage that other work. *Seeley* v. *Fisher*, 11 Sim. 581.

A bill in equity stated, that one of the plaintiffs had composed a book, and that all the plaintiffs had caused the book to be printed and published for their joint benefit, and the book had been duly registered by the plaintiffs, as proprietors of the copyright thereof, at Stationers' Hall; and the copyright had ever since remained in them for their joint benefit. The bill also alleged that the defendant had published a book, in which numerous passages were copied from the plaintiffs' book; and it prayed an injunction to restrain the sale of the defendant's book: Held, that the plaintiffs had a joint right to sue. *Stevens* v. *Wildy*, 19 L. J., Chanc. 190—V. C. E.

Held, also, upon comparison of the two books, and in the defendant's book there had been such copying from the plaintiffs' book as would entitle them to the injunction. *Ib.*

A fraudulent intention in infringing copyright is not necessary to entitle the proprietor of the copyright to relief in equity if his right of property has been invaded. *Clement* v. *Maddick*, 1 Giff. 98; 5 Jur., N. S. 592; 33 L. T. 117.

The registered proprietors of Bell's Life in London and Sporting Chronicle, published weekly, at the price of 5*d.*, filed a bill in equity against the proprietors and publishers of a newspaper, called The Penny Bell's Life and Sporting News, which was published at the price of 1*d.* The evidence showed, that from the similarity of the two names mistakes had occurred, and were likely to occur, on the part of the public, and that inquiries had

been made at the office of Bell's Life in London for The Penny Bell's Life. The court granted an injunction to restrain the proprietors of the latter publication from the use of the words Bell's Life in the title of their newspaper. *Ib.*

In 1857, A., being proprietor of a weekly publication, The London Journal, the price of which was 1*d.*, assigned his copyright and interest therein to B. for value, and entered into a covenant with B. not to publish, either alone or in partnership with any other person, any weekly periodical of a nature similar to the London Journal. In 1859, A. issued an advertisement, announcing the publication by him of a daily newspaper, to be called The Daily London Journal, and to be sold at 1*d.* B. thereupon filed a bill in equity against A. for an injunction to restrain A. from publishing The Daily London Journal; and Wood, V. C., made an order for an injunction. Upon appeal, Knight Bruce, L. J. (dissentiente Turner, L. J.), confirmed the order for an injunction, upon B. undertaking to abide by any order the court might make as to damages, and to bring an action against A. within one week. *Ingram* v. *Stiff*, 5 Jur., N. S. 947; 33 L. T. 195—L. J.

(e) *Destroying or Delivering up of Pirated Copies.*

A proprietor of a book, whose copyright has been invaded by the printing of a similar work, and who is entitled to an injunction to restrain the printing and sale of the unlawful work, was not, under 54 Geo. 3, c. 156, s. 4, entitled to an order for the delivery up of illegal copies, if the book, the copyright of which had been infringed, was not composed, and entered according to the statutes, at the time the illegal copies were printed. *Colburn* v. *Simms*, 2 Hare. 543; 7 Jur. 1104.

The registered owner of a copyright in a work is entitled to have all the unsold copies of a piratical edition delivered up to him for his own use, without making any compensation for the cost of production or publication. *Delf* v. *Delamotte*, 3 Kay & J. 581; 3 Jur., N. S. 933.

But as to the copies of such piratical edition which may have been sold, he is not entitled in equity to the gross produce

of the sale thereof, but only to the profits which the party may have made by the sale thereof. *Ib.*

To recover the pirated copies, he must proceed at law. *Ib.*

Where a party obtains possession by purchase of impressions of etchings, the plates of which are the property of another, knowing that the vendor has obtained such impressions through a breach of trust, a court of equity will interfere by injunction, and, without giving him the right to try the question of property at law, will order the impressions to be delivered up; and the material on which the impressions is taken being substantially worthless, except for that in which the possessor had no property, viz., the impressions, the court will order their destruction. *Albert (Prince)* v. *Strange*, 2 De G. & S. 652; 13 Jur. 507. see *S. C.* 1 Mac. & G. 25; 13 Jur. 109; 18 L. J., Chanc. 120.

II. INTERNATIONAL AND COLONIAL COPYRIGHT.

Statutes.]—7 and 8 Vict. c. 12, *is the International Copyright Act, which repealed* 1 and 2 Vict. c. 59.

9 and 10 Vict. c. 58, *reduced the duties payable upon books and engravings on importation from foreign parts into this country.*

By 15 and 16 Vict. c. 12, *her Majesty is enabled to carry into effect a convention with France on the subject of copyright. This act extends and explains* 7 and 8 Vict. c. 12, *and* 9 and 10 Vict. c. 58.

As to the provisions for prohibiting the importation into the United Kingdom of foreign reprints of books wherein the copyright is subsisting, see 16 and 17 Vict. c. 107, ss. 44, 46, 160, *and* 18 and 19 Vict. c. 96, ss. 39, 40.

10 and 11 Vict. c. 95, *amends the law in regard to the copyright of books published in the colonies.*

International.]—Before the statutes the court would not protect a foreigner's copyright. *Delondre* v. *Shaw*, 2 Sim. 237.

The privileges conferred by 54 Geo. 3, c. 150, did not extend

to books printed abroad. *Clementi* v. *Walker*, 4 D. & R. 598; 2 B. & C. 861.

Prints engraved and struck off abroad, but published here, were not protected from piracy. *Page* v. *Townsend*, 5 Sim. 305.

A proprietor of a foreign print can not claim copyright therein, under 7 & 8 Vict. c. 12, unless the date of publication, and name of the proprietor are engraved on the plate, and printed on the print, as required by 8 Geo. 3, c. 13. *Avanzo* v. *Mudie*, 10 Ex. 203.

The 7 and 8 Vict. c. 12, 15 and 16 Vict. c. 12, and the convention with France and order in council made thereunder, do not exempt authors of works in France claiming copyright in this country from the conditions affecting authors of works in this country. *Cassell* v. *Stiff*, 2 Kay & J. 279.

The order in council of the 10th of January, 1852, providing that French works must be registered at Stationers' Hall within three months after the first publication thereof in France, "or, if such works be published in parts, then within three months after the publication of the last part thereof:" Held, that a French newspaper, published weekly, and not intended to be completed in any definite number or parts, must be registered within three months after the commencement, or, if it had commenced before 1852, within three months after the date of the order in council. *Ib.*

Neglect to register on the part of the officials at Stationers' Hall prevents an author having the benefit of the statute as against the public. *Ib.*

The 7 and 8 Vict, c. 12, s. 19, applies to British subjects first publishing in a country with which no international convention exists. *Boucicault* v. *Delafield*, 1 H. & M. 597; 9 Jur., N. S. 1282; 33 L. J., Chanc. 38; 12 W. R. 101; 9 L. T., N. S. 709.

A British subject first produced for representation a dramatic piece or entertainment at New York, in America. He subsequently produced it in London: Held, that there being no international treaty or arrangement (which was alluded to by 7 and 8

Vict. c 12, s. 14), he had not obtained the copyright to such piece in England. *Ib.*

The assignee of a foreign dramatic work, in order to entitle himself to the exclusive right to represent it on the stage in English, must register a translation. Such translation must be sufficiently literal to enable an Englishman to see from it the character of the original work. *Wood* v. *Chart*, 39 L. J., Chanc. 641; 10 L. R., Eq. 193; 22 L. T., N. S. 432; 18 W. R. 822—V.-C. J.

When the original work sought to be protected was a French comedy entitled "Frou-Frou," and the version sanctioned by the foreign authors and published in England was entitled "Like to Like," the names of the characters and the scenery were changed from French to English; in some instances English manners were substituted for French; and considerable omissions of speeches and alterations of passages were made: Held, that the version was not a translation within the meaning of the 15 Vict. c. 12, International Copyright Act, such as to entitle the foreign authors and their assignee to the benefit of the statute. *Ib.*

Colonial.]—An alien who, whilst resident in any possession of the British crown, first publishes his work in England, acquires a copyright throughout the British dominions. *Low* v. *Routledge*, 10 Jur., N. S. 922; 33 L. J., Chanc. 717; 12 W. R. 1069; 10 L. T., N. S. 838—V. C. K. Affirmed on appeal: 35 L. J., Chanc. 114; 1 L. R., Ch. App. 42; 11 Jur., N. S. 939; 14 W. R. 90; 13 L. T., N. S. 421.

III. DRAMATIC PRODUCTIONS AND MUSICAL COMPOSITIONS.

Statutes.]—By 3 and 4 Will. 4, c. 15, *the author, or his assignee, of any tragedy, comedy, play, opera, farce, or other dramatic piece or entertainment, composed and not printed and published, shall have, as his own property, the sole liberty of representing the same for twenty-eight years at any place or places of dramatic entertainment whatsoever; and if the author shall be living at the end of that time, for the rest of his life.*

By 5 and 6 Vict. c. 45, s. 20, *the provisions of the statute are extended to musical compositions, and the terms of copyright as provided by* 5 and 6 Vict. c. 45, *applied to the liberty of representing dramatic pieces and musical compositions;* and by s. 21, *the person who has the sole liberty of representing a dramatic piece or musical composition has and enjoys the remedies given and provided by* 3 and 4 Will. 4, c. 15, *during the whole of his interest therein.*

Dramatic Pieces.]—Before the statute, a proprietor of the copyright of a tragedy, which had been printed and published for sale, could not maintain an action against the manager of a theater for publicly acting and representing such tragedy in an unabridged form for profit. *Murray* v. *Elliston*, 1 D. & R. 299; 5 B. & A. 657.

An injunction, however, had been granted in chancery to restrain the publication in a magazine of a farce occasionally suffered by the author to be acted, but never printed or published. *Macklin* v. *Richardson*, Amb. 694.

An introduction to a pantomime—that is, the only written part of the entertainment—is within the protection of the statute. *Lee* v. *Simpson*, 3 C. B. 871; 4 D. & L. 666; 11 Jur. 127; 16 L. J., C. P. 105.

A person who employs another to adapt a foreign dramatic piece for representation upon the English stage, and who has no other share in the design or execution of the work than that of suggesting the subject, is not the author of such adaptation

within the meaning of the 3 and 4 Will. 4, c. 15; and, therefore, when such employment is by parol, the employer has not the right of representing it without an assignment in writing from the author. *Shepherd* v. *Conquest*, 17 C. B. 437; 2 Jur., N. S. 286; 25 L. J., C. P. 127.

An author of a drama called "Gold," which had been printed and represented on the stage, published a novel founded upon it, called "It is never too late to Mend," to which novel he transferred some of the scenes from the drama. The defendant caused another drama to be constructed from the novel, which he called "Never too late to Mend," taking many of the scenes from the novel which had been imported into the novel from the original drama, and produced it at his theater: Held, that this was an infringement of the plaintiff's copyright in his drama. *Reade* v. *Conquest*, 11 C. B., N. S. 479; 8 Jur., N. S. 764; 31 L. J., C. P. 153; 5 L. T., N. S. 677.

If a manager of a theater, having designed to bring out an old play, with new scenery, dresses, and musical accompaniments, hires A. to compose the requisite music, who does so, and is paid for it, the sole right to the representation or performance of such musical compositions, as part of the whole, becomes thereby vested in the former, without assignment or the consent in writing of A., the terms of the contract between them being, that the compositions should become part of the entire dramatic piece, and that the manager should have the sole liberty of representing and performing the compositions with the dramatic piece. *Hatton* v. *Kean*, 7 C. B., N. S. 268; 6 Jur., N. S. 226; 8 W. R. 7; 2 L. T., N. S. 10; 29 L. J., C. P. 20.

One who employs another to write a play for him, and even suggests the subject, does not thereby become the proprietor of the copyright. *Levy* v. *Rutley*, 6 L. R., C. P. 523.

In order to constitute a joint authorship of a dramatic piece, or other literary work, it must be the result of preconcerted joint design. Mere alterations, additions, or improvements by another person, whether with or without the sanction of the author, will not entitle such other person to claim to be "joint author" of the work. *Ib.*

The plaintiff, the lessee of a theater, employed one W. to write a play for him, suggesting the subject. W. having completed it, the plaintiff and some members of his company introduced various alterations in the incidents and in the dialogue, to make the play more attractive, and one of them wrote an additional scene: Held, that these circumstances did not make the plaintiff joint author of the play with W. *Ib.*

The play being finished, a sum of 4*l.* 15*s.* was paid to W. on account, and he signed a receipt, drawn up by the plaintiff's attorney, as follows: "Received of Mr. L. (the plaintiff) the sum of 4*l.* 15*s.* [on] account of 15 guineas for my share, title, and interest as co-author with him in the drama instituted, etc.; balance of 15 guineas to be paid on assigning my share to him." The balance was never paid, nor was any assignment executed by W.: Held, no evidence that the plaintiff was either "joint author" or assignee of the author. *Ib.*

Musical Compositions.]—The copyright in musical compositions is more extensively protected than the copyright in dramatic pieces. *Russell* v. *Smith*, 15 Sim. 181.

An alien resident abroad composed three musical pieces in a foreign country, and sold the copyright in this country to a British subject, who published the work in London. The work was on the same day published in Prussia. On motion in a suit instituted by the purchaser of the coypright against a person who had, without leave, published the three musical compositions in this country: Held, that the publication was within the 5 and 6 Vict. c. 45; and the court granted an injunction, restraining the unauthorized publication. *Buxton* v. *James*, 5 De G. & S. 80; 16 Jur. 15.

A person who writes words to an old air, and procures an accompaniment and publishes them together, is entitled to the copyright in the whole work. *Leader* v. *Purday*, 7 C. B. 4; 12 Jur. 1091; 18 L. J., C. P. 197.

A. was the composer of a musical composition of a representative character, called "The Ship on Fire;" B. sang it at a vocal entertainment, announced by bills, with the price of tickets of admission, and giving a programme of the two parts of the

performance. The performance was at Crosby Hall, which was licensed for musical entertainments, and was prepared with seats for the audience, and a stage for the performer; and B., without scenes or appropriate dresses, accompanied his singing with a piano, and gave considerable expression to the matters described: Held, first, that "The Ship on Fire," was a dramatic piece within 5 and 6 Vict. c. 45, s. 20. *Russell* v. *Smith*, 12 Q. B. 217: 12 Jur. 723; 17 L. J., Q. B. 225.

Held, secondly, that Crosby Hall was, on the occasion of the performance, a place of dramatic entertainment, within 3 and 4 Will. 4, c. 15, s. 1, and 5 and 6 Vict. c. 44. *Ib.*

Held, thirdly, that it was not necessary that A.'s right should be registered under 5 and 6 Vict. c. 45, s. 24. *Ib.*

The publication of a piece of music, not for sale or hire, but by the gratuitous distribution of lithographed copies amongst the members of a musical society, is a publication for which a party is liable as for an invasion of the property of the proprietor therein, independently of 5 and 6 Vict. c. 45, s. 15. *Novello* v. *Sudlow*, 12 C. B. 177; 16 Jur. 689; 21 L. J., C. P. 169.

Rights of Assignees.]—By 5 and 6 Vict. c. 45, s. 22, *no assignment of the copyright of any book consisting of or containing a dramatic piece or musical composition, shall be holden to convey to the assignee the right of representing or performing such dramatic piece or musical composition, unless an entry in the registry book shall be made of such assignment, wherein shall be expressed the intention of the parties that such right should pass by such assignment.*

Before this statute, the assignee of the copyright of a dramatic work, printed and published within ten years of the passing of 3 and 4 Will. 4, c. 15, and not the author, who had assigned such copyright, was entitled to the sole right of representing the piece or causing it to be represented. *Cumberland* v. *Planche*, 3 N. & M. 537; 1 A. & E. 580.

So, where the work was printed and published subsequently to the act, and no reservation of the right to the exclusive representation was expressly made by the author. *Ib.*

A deed, subsequently to 5 and 6 Vict. c. 45, assigning all the right, title, and interest in a dramatic piece, both copyright and

acting right, does not require registration under that act, in order to entitle the assignee to the exclusive right of representation, and to all the other rights and remedies conferred by 3 and 4 Will. 4, c. 15, on the author of a dramatic piece and his assignee. *Lacy* v. *Rhys*, 10 Jur., N. S. 612; 4 B. & S. 873; 33 L. J., Q. B. 157; 12 W. R. 309; 9 L. T., N. S. 607.

The 5 and 6 Vict. c. 45, s. 22, applies only where a copyright only is assigned, and not the exclusive right of representation. *Ib.*

It is competent to an assignee of the sole right of representing a dramatic piece, to sue for penalties under 3 and 4 Will. 4, c. 15, s. 2, notwithstanding the assignment is not by deed, or registered under 5 and 6 Vict. c. 45. *Marsh* v. *Conquest*, 17 C. B., N. S. 418; 10 Jur., N. S. 989; 33 L. J., C. P. 319; 12 W. R. 309; 10 L. T., N. S. 717.

The assignment of the copyright of a book consisting of or containing a dramatic piece does not, in the absence of an expressed intention that it should be so, pass the right of representing or performing it. That may be the subject of a subsequent assignment to a third person. *Ib.*

What is a Representation.]—No one can be considered as an offender against the provisions of the 3 and 4 Will. 4, c. 15, so as to be liable to an action at the suit of the author or proprietor, unless he, by himself or his agent, actually takes part in the representation, which is a violation of the copyright. *Russell* v. *Briant*, 8 C. B. 836; 14 Jur. 201; 19 L. J., C. P. 33.

Therefore, one who merely lets a room to the offender is not liable, even though he supplies the benches and lights, or sells a ticket of admission, himself deriving no other profit than that arising from the letting of the room. *Ib.*

It is a question of fact, and not of law, whether there has been a representation of a part of a dramatic entertainment. *Planché* v. *Braham*, 8 C. & P. 68; 5 Scott, 242; 4 Bing., N. C. 17; 3 Hodges, 288; 1 Jur. 823.

Where the jury found that the singing the words of a song

taken from an opera written by the plaintiff amounted to such a representation, the court refused to disturb the verdict. *Ib.*

A proprietor of a theater let it for one night for the benefit of one of his performers, who was to pay him 30*l.* for the use of it for that night, together with the services of the corps dramatique, band, lights, and accessories. The performer who so had the use of the theater represented therein a dramatic piece the sole right of representing which had been assigned to the plaintiff: Held, that the proprietor of the theater caused the piece to be represented, and consequently was guilty of an infringement of the plaintiff's right, and liable to the penalty imposed by 3 and 4 Will. 4, c. 15, s. 2. *Marsh* v. *Conquest*, 17 C. B., N. S. 418; 10 Jur., N. S. 989; 33 L. J., C. P. 319; 12 W. R. 309; 10 L. T., N. S. 717.

The licensed proprietor of a theater entered into an arrangement with D., whereby he had the use of the theater for dramatic entertainments. D. provided the company, had the selection of the pieces to be represented, together with the entire management of their representation, and exclusive control over the persons employed in the theater. The proprietor of the theater on his part paid for printing and advertising, furnished the lighting, door-keepers, scene-shifters and supernumeraries, and hired the band, music being the necessary part of the performance. The money taken at the door was taken by the servants of the proprietor, who retained one-half of the gross receipts as his remuneration for the use of the theater, and handed the other half to D. Among the pieces represented were two of which L. had the sole liberty of representing, as assignee of the author, under 3 and 4 Will. 4, c. 15, and 5 and 6 Vict. c. 45: Held, that no action under those statutes was maintainable by L. against the proprietor of the theater, as the facts did not show that those pieces had been represented by him, or that there was a partnership between D. and him so as to render him liable for the representation of them by D. *Lyon* v. *Knowles*, 3 B. & S. 556; 9 Jur., N. S. 774; 32 L. J., Q. B. 71; 11 W. R. 266; 7 L. T., N. S. 670. Affirmed on appeal, 5 B. & S. 751; 12 W. R. 1083; 10 L. T., N. S. 876—Exch. Cham.

Necessary Consent of Author.]—By 3 and 4 Will. 4, c. 15, s. 2, a penalty is imposed on any who shall represent any dramatic piece without the consent in writing of the author or other proprietor first had and obtained: Held, that this consent need not be in the handwriting of, or signed by, the author or other proprietor, and that the statute is satisfied if it is in writing, though given only by the agent of the author. *Morton* v. *Copeland*, 16 C. B. 517; 1 Jur., N. S. 979; 24 L. J., C. P. 517.

In an action by a dramatic author for a penalty under the statute, it appeared that he was a member of a society of dramatic authors, the secretary of which had given the defendant a consent in writing to play dramas belonging to the authors forming such society, upon his punctual transmission of the monthly bills, and payment of the prices for the performance of such dramas. The society published a prospectus, showing the terms on which permission might be obtained from the secretary for the performance of pieces the property of its members, and that supplementary lists would be annually published of the plays of its members which should from time to time be added to the stock of the society: Held, that such consent exempted the defendant from any penalty under the act for the performance of dramas of the plaintiff which had been composed by him subsequently to such consent, and belonged to the stock of the society, although the same had not been published by the society in any supplementary list, and although the defendant had not complied with the terms of transmitting monthly bills and paying the prices for such performances. *Ib.*

Proceedings.]—After 5 and 6 Vict. c. 45, the administrator of the author of a dramatic piece first acted in 1843, by deed, dated the 14th of April, 1859, in consideration of 100*l.* assigned to the plaintiff the copyright and acting right in all dramatic pieces written by the author; no entry of the assignment to the plaintiff had been made in the registry book in pursuance of 5 and 6 Vict. c. 45, s. 22. The letters of administration were not stamped until March, 1863: Held, first, that the administrator might maintain an action for penalties under 3 and 4 Will. 4, c. 15, against the defendant for representing the piece without his

license within twenty-eight years of its publication, the period for which the sole liberty of representation is given by that statute, although the deed was not registered under 5 and 6 Vict. c. 45, s. 22. *Lacy* v. *Rhys*, 4 B. & S. 873; 33 L. J., Q. B. 157.

Held, also, that the defendant could not object to the admissibility of the letters of administration in evidence, on the ground that they had not been stamped within six months after the discovery of the mistake in omitting to get them stamped, and the penalty had not been paid, in pursuance of 55 Geo. 3, c. 185, s. 43. *Ib.*

In an action upon the 3 and 4 Will. 4, c. 15, s. 2, for penalties for the representation of a dramatic piece at a place of dramatic entertainment, without the author's consent, it is sufficient to describe the offense in the words of the act. *Lee* v. *Simpson*, 3 C. B. 871; 4 D. & L. 666; 11 Jur. 127; 16 L. J., C. P. 105.

To constitute the offense, it is not necessary to show, nor need the declaration aver, that the defendant knowingly invaded the right. *Ib.*

Declaration upon section 20 of 5 and 6 Vict. c. 45, that the plaintiff had the sole liberty of representing and performing a musical composition; yet the defendant, without the consent of the plaintiff, at a place of dramatic entertainment, wrongfully represented and performed the musical composition. Upon motion in arrest of judgment, on the ground that the right of the plaintiff was stated too largely: Held, that it was insufficient, inasmuch as it followed the words of the statute. *Russell* v. *Smith*, 12 Q. B. 217; 12 Jur. 723; 17 L. J., Q. B. 225.

IV. LECTURES.

By 5 and 6 Will. 4, c. 65, s. 1, *the author of any lecture, or person to whom he hath sold or otherwise conveyed the copy thereof, in order to deliver the same in any school, seminary, institution, or other place, or for any other purpose, is to have*

the sole right and liberty of printing and publishing such lecture; and if any person shall, by taking down the same in short-hand, or otherwise in writing, or in any other way, obtain or make a copy of such lecture, and shall print, lithograph, or otherwise copy and publish the same, without leave of the author or other person, to whom the author has sold or otherwise conveyed the same, and every person who, knowing the same to have been printed or copied and published without such consent, shall sell, publish, or expose to sale any such lecture, shall forfeit such printed or otherwise copied lecture or parts thereof, together with one penny per sheet which shall be found in his custody, to be recovered by action of debt.

By s. 2, *the penalty is imposed for publication in newspapers.*

By s. 3, *persons having leave to attend lectures are not to be deemed to have leave to publish them.*

By s. 4, *nothing is to prevent persons from printing and publishing lectures which have been printed and published with leave of the authors or their assigns, and of which the period of copyright has expired.*

By s. 5, *the act is not to extend to lectures delivered in unlicensed places, universities, or public schools, or colleges, or on any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation.*

Before this enactment an injunction would be granted against third persons publishing lectures orally delivered, who had procured the means of publishing those lectures from parties who had attended the oral delivery of them. *Abernethy* v. *Hutchinson*, 1 H. & T. 28; 3 L. J. (1825), Chanc. 209.

V. PRINTS AND ENGRAVINGS.

By 8 Geo. 2, c. 13, *the property in prints and engravings is vested in the proprietor for fourteen years, if the proprietor's name and the date of the publication are affixed on each print.*

By 7 Geo. 3, c. 38, *the time is extended to twenty-eight years.*

By 17 Geo. 3, c. 57, *persons who pirate prints are liable to*

damages and double costs; but by 24 and 25 Vict. c. 101, *this provision as to double costs is repealed.*

Actions for offenses against the 8 Geo. 2, c. 13, *to be brought in three months*, s. 4.

Against 7 Geo. 3, c. 38, *in six months*, s. 6.

6 and 7 Will. 4, c. 59, *extends these acts to Ireland.*

And by 15 and 16 Vict. c. 12, s. 14, *the provisions of the acts were intended to include prints taken by lithography or any other mechanical process by which prints or impressions of drawings or designs are capable of indefinite multiplication immediately.*

9 and 10 Vict. c. 58, *reduced the duties payable on the importation from abroad of engravings.*

In order to sustain an action for pirating prints, the proprietor's name, and the date of the publication, must appear on the original print, pursuant to 8 Geo. 2, c. 13; but it is not necessary that the designation of proprietor should be added to the name. *Newton* v. *Cowie*, 12 Moore, 457; 4 Bing. 234.

No action can be maintained for pirating a print, where the date of the first publication has not been engraved on the plate, according to 8 Geo. 2, c. 13, s. 1; the performance of the directions of the statute in that respect being a condition precedent to the right of property vesting in the proprietor. *Brooks* v. *Cock*, 4 N. & M. 652; 3 A. & E. 138; 1 H. & W. 129.

The assignee of a print may maintain an action on 17 Geo. 3, c. 57, against any person who pirates it. *Thompson* v. *Symonds*, 5 T. R. 41.

In such an action, it is not necessary to produce the plate itself in evidence; one of the prints taken from the original plate is good evidence. *Ib.*

The date must always appear on the print. *Ib.*

It is no piracy of one engraving, to make another from the original picture. *Berenger* v. *Wheble*, 2 Stark. 548—Abbott.

A. made a copy of a print invented by B. in colors, and of large dimensions, and exhibited it as a diorama. A court of equity refused to restrain the exhibition until the right had been established by law. *Martin* v. *Wright*, 6 Sim. 297.

The mere seller or publisher of a pirated copy of a print, is liable to an action under 17 Geo. 3, c. 57, although not an exact copy of the original, and though the seller did not know it to be a copy. *West* v. *Francis*, 1 D. & R. 400; 5 B. & A. 737.

A., being employed by B. to engrave plates from drawings belonging to B., took off from the plates so engraved by him a number of proof impressions, which he retained for his own use. A. afterward became bankrupt, and the proofs of which he had so possessed himself were advertised by his assignees for sale: Held, that neither he was nor were his assignees liable to an action for having disposed of pirated prints without the consent of the proprietor, inasmuch as the 17 Geo. 3, c. 57, applied to the impressions of engravings pirated from other engravings, and not prints taken from a lawful plate. *Murray* v. *Heath*, 1 B. & Ad. 804.

In an action for pirating an engraving, brought under 17 Geo. 3, c. 57, which gives a right of action against any one who shall copy any print in the whole or in part, by varying, adding to or diminishing from, the main design, the judge directed the jury to consider whether the defendant's engraving was substantially a copy of the plaintiff's: Held, that this direction was correct. *Moore* v. *Clarke*, 9 M. & W. 622; 6 Jur. 648.

In order to avail himself, by his plea, of the provisions of the 8 Geo. 2, c. 13, s. 1, and 17 Geo. 3, c. 57, prohibiting persons from engraving any print, without the consent of the proprietor first had in writing, it is necessary for a defendant to aver that the date and name of the proprietor were truly engraven on each plate, and printed on every such print, according to the provisions of that statute. *Colnaghi* v. *Ward*, 6 Jur. 969; 12 L. J., Q. B. 1.

B. published a book containing letterpress, illustrated by wood engravings, printed on the same paper at the same time. A. published a similar book, with different letterpress, but containing pirated copies of the wood engravings. B., upon motion for an injunction, proved that he had complied with the requisitions of the 5 and 6 Vict. c. 45, but he had not complied with the 8 Geo. 2, c. 13, by printing the date of publication and the

name of the proprietor on each copy: Held, that the 5 and 6 Vict. c. 45, extended to the wood engravings equally with the letterpress, and the court granted an injunction. *Bogue* v. *Houlston*, 5 De G. & S. 267; 16 Jur. 372; 21 L. J., Chanc. 470.

A person having a copyright in a print or an engraving may maintain an action against a person for selling pirated copies of it, though such person has no knowledge that the prints are piracies. *Gambart* v. *Sumner*, 5 H. & N. 5; 5 Jur., N. S. 1109; 29 L. J., Exch. 98; 8 W. R. 27.

The piracy of a picture or an engraving by the process of photography, or by any other process, mechanical or otherwise, whereby copies may be indefinitely multiplied, is within 8 Geo. 2, c. 13, 7 Geo. 3, c. 38, and 17 Geo. 3, c. 57. *Gambart* v. *Ball*, 14 C. B., N. S. 306; 9 Jur., N. S. 1059; 32 L. J., C. P. 166; 11 W. R. 699; 8 L. T., N. S. 426.

VI. PICTURES, PAINTINGS, DRAWINGS, AND PHOTOGRAPHS.

By 25 and 26 Vict. c. 68, *the author, being a British subject or resident within the dominions of the crown, of every original painting, drawing, and photograph made either in the British dominions or elsewhere, and which shall not have been sold or disposed of before the 29th of July*, 1862, *and his assigns, 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.*

A person lending prints or photographs to another, who, with his consent, takes and sells copies, can not only sue in detinue for the originals, but also for the copies, and can likewise sustain an injunction to prevent the sale of any copies remaining, and this quite apart from copyright, and although there has been a publication. *Mayall* v. *Higby*, 10 W. R. 631; 6 L. T., N. S. 362—Exch.

At common law, a painter has, before publication of his picture, a right to prevent any person from copying it. *Turner* v. *Robinson*, 10 Ir. Chanc. Rep. 121—R. Affirmed on appeal, 10 Ir. Chanc. Rep. 510—A. C.

The owner of the picture who has purchased it from the painter has the same right. *Ib.*

But after publication, that right is lost. *Ib.*

The sale of a picture is not a publication of it. *Ib.*

The publication of a wood engraving in a magazine, with an article describing the picture, is not a publication of the picture itself. *Ib.*

The exhibition of a picture at a public exhibition or gallery, where copying it would not be permitted, is not a publication of the picture, nor is the exhibition of the picture for the purpose of obtaining subscribers to an engraving of it. *Ib.*

A., the painter of a picture, sold it to B., who, for a valuable consideration, agreed to sell to C. the sole right to make and publish an engraving of the picture, and to exhibit it for short periods at any of the principal towns either in Great Britain or Ireland, in order that C. might obtain subscribers, and otherwise derive a full advantage in the publication and sale of the engraving. The picture having been exhibited for that purpose, D. arranged in his own studio a group, which bore an exact resemblance to the picture, and took photographs for the stereoscope (colored so as to correspond with the picture), which he published and sold: Held, that C. was entitled to an injunction to restrain the publication and sale of the photographs, if the picture had not previously been published. *Ib.*

But it appearing that the picture had been previously exhibited at the Royal Academy, London, and at the Manchester Exhibition of 1857, the court referred it to the master to inquire whether there were rules, resolutions, by-laws, or regulations to prevent the taking of copies, sketches, or drawings of painting or works of art sent there for exhibition. *Ib.*

There may be copyright in a photograph taken from an engraving of a painting. *Walker, ex parte, Graves, in re*, 39 L. J., Q. B. 31.

VII. BUSTS.

By 38 Geo. 3, c. 71, s. 1, *the sole property of models or casts was vested in the original proprietor for fourteen years, repealed by* 24 and 25 Vict. c. 101.

By 54 Geo. 3, c. 56, s. 1, *the inefficiency of the former act was attempted to be remedied, and the sole right and property of all new and original sculptures, models, copies, and casts are vested in the proprietor for fourteen years: provided that the name of the proprietor, with the date of publication, is put on each article.*

Sect. 5, *actions for offenses against this act to be brought within six months.*

Sect. 6 *gives the original proprietor an additional term of fourteen years, if he is living at the expiration of the first.*

The selling of a pirated cast of a bust was no offense under 38 Geo. 3, c. 71, before the passing of 54 Geo. 3, c. 56, if the piracy had any addition to or diminution from the original; and, semble, that it was no offense to make a pirated bust if it was a perfect fac-simile of the original. *Gahagan* v. *Cooper*, 3 Camp. 111—Ellenborough.

VIII. DESIGNS.

Statutes.]—6 and 7 Vict. c. 65, *commonly called the Designs Act*, 1843, *amends* 5 and 6 Vict. c. 100, *and* 13 and 14 Vict. c. 104, *further amends these acts.*

21 and 22 Vict. c. 70, "*the Copyright of Designs Act*, 1858," *amends* 5 and 6 Vict. c. 100, *relating to the copyright of designs for ornamenting articles of manufacture; and by* s. 8 *proceedings for the prevention of piracy of designs may be instituted in the county courts.*

By 24 and 25 Vict. c. 73, s. 1, 5 and 6 Vict. c. 100, *and all acts extending or amending the same, shall be construed as if the words "provided the same be done within the United Kingdom of Great Britain and Ireland," had not been contained in* 5 and 6 Vict.

c. 100; *and that act, and all acts extending or amending the same, shall apply to every such design as therein referred to, whether the application thereof be done within the United Kingdom or elsewhere, and whether the inventor or proprietor of such design be or be not a subject of her Majesty.*

By s. 2, *these acts shall not be construed to apply to the subjects of her Majesty only.*

By 25 Vict. c. 12, s. 3, *designs exhibited at the International Exhibition of* 1861 *were protected.*

Distinction between the 5 and 6 Vict. c. 100, and the 6 and 7 Vict. c. 65. The first applies to new designs for the ornamentation of articles, the second to new designs of articles of utility. *Windover* v. *Smith*, 32 Beav. 200; 32 L. J., Chanc. 561.

What within.]—D. registered a design under 6 and 7 Vict. c. 65, for ventilation by opening a hinged pane of window by means of a screw; and it was stated that the parts of the design which were not new or original were all the parts, if taken per se, and apart from the purposes thereof, and that what was claimed as new was the general configuration and combination of the parts. The utility of the design was, in fact, not produced by the shape of any of the parts, but only by the mode of putting them together: Held, not a proper subject of registration, the statute not applying to designs which have reference to a purpose of utility through the combination of parts, independently of their shape and configuration. *Reg.* v. *Bessell*, 16 Q. B. 810; 15 Jur. 773; 20 L. J., M. C. 177. And the court quashed a conviction for pirating such design for want of jurisdiction. *Ib.* See *Bessell* v. *Wilson*, 1 El. & Bl. 489.

The proprietors of a registered design for ornamenting paper-hangings, sold as patterns small pieces containing the whole design, which were not marked with the letters "Rd." nor had they the letter corresponding with the date of the registration, as directed by 5 and 6 Vict. c. 100, s. 4. Paper-hangings were sold in lengths of twelve yards; and it was a general practice in the trade to send out patterns stamped with the marks of registration: Held, that the pattern was an article of manufacture within s. 4. *Heywood* v. *Potter*, 1 El. & Bl. 439; 17 Jur. 528; 22 L. J., Q. B. 133.

A newly invented brick, the utility of which consisted in its being so shaped, that when several bricks were laid together in building, a series of apertures was left in the wall, by which the air was admitted to circulate, and a saving in the number of bricks required was effected, is a design capable of being registered under 6 and 7 Vict. c. 65. *Rogers* v. *Driver*, 16 Q. B. 102; 20 L. J., Q. B. 31.

The protection granted by 6 and 7 Vict. c. 65, to any new or original design for any article of manufacture, having reference to some purpose of utility, so far as such design shall be for the shape or configuration of such article, is not clearly applicable to the design of a protector label, which consisted in making in the label an eyelet-hole, and lining it with a ring of a metallic substance, through which a string attached to the packages passed. *Margetson* v. *Wright*, 2 De G. & S. 420.

A new combination of old patterns may be a new and an original design, so as to be susceptible of registration under 5 and 6 Vict. c. 100. *Harrison* v. *Taylor*, 4 H. & N. 815; 5 Jur., N. S. 1219; 29 L. J., Exch. 3—Exch. Cham.

The question is solely for the jury. *Ib.*

There is little or no analogy between a patent and a design. *Ib.*

A. registered under 5 and 6 Vict. c. 100, a design for ornamenting woven fabrics. The design was applied to a fabric woven in cells, called "The Honeycomb Pattern," and it consisted of a combination of the large and small honeycomb, so as to form a large honeycomb stripe, or a small honeycomb ground. The large honeycomb was not new, but they had never been used in combination before A. registered his design. Other fabrics had been woven with a similar combination of a large and small pattern: Held, that the design was a new and an original design within 5 and 6 Vict. c. 100. *Ib.*

A new combination of several old and known designs may constitute a new design, capable of being protected under 5 and 6. Vict. c. 100; but such combination must, in order to be so protected, constitute one design, and not a multiplicity of designs.

Norton v. *Nicholls*, 1 El. & El. 761; 5 Jur., N. S. 1203; 27 L. J., Q. B. 225; 7 W. R. 420; 33 L. T. 131.

An article of manufacture to which a new design is applied (whether such design is single or the result of a new combination of old and known designs) is not itself a design within the meaning of the statute, and can not be protected by registration. *Ib.*

Four old designs were respectively applied to three ribbons, and to a button; and the three ribbons were then united by the button, so as to form a badge. The badge was registered under 5 and 6 Vict. c. 100: Held, that this union did not amount to a new design, within the statute. *Mulloney* v. *Stevens*, 10 L. T., N. S. 190—V. C. W.

The 6 and 7 Vict. c. 65, applies only to new designs having reference to some purpose of utility; and in order to obtain the benefit of the act, the purpose must be specified in the description supplied for registration. *Windover* v. *Smith*, 9 Jur., N. S. 397; 32 L. J., Chanc. 561; 7 L. T., N. S. 776; 32 Beav. 200.

A coachmaker caused to be registered a design for a dog-cart, specifying as the purpose of utility, that higher front wheels could be used or closer coupling effected. The design consisted of parts 1, 2, 3, 4, of which 1, 2, and 3 had nothing to do with front wheels or closer coupling, and No. 4 was not new: Held, that no exclusive privilege was gained by the registration. *Ib.*

It is a sufficient registration of a design applicable to the ornamenting woven fabrics comprised in class 12, of the 5 and 6 Vict. c. 100, to leave with the registrar a pattern or portion of the article of manufacture. *McCrea* v. *Holdsworth*, 5 B. & S. 495; 33 L. J., Q. B. 329; 12 W. R. 955. Affirmed on appeal, 35 L. J., Q. B. 123; 1 L. R., Q. B. 264; 14 W. R. 374; 13 L. T., N. S. 801—Exch. Cham.

A person claiming as his design the particular collection of the shaded and bored stars upon an ornamented chain surface, as shown in the registered pattern, thus forming together the ornamentation of the woven fabric: the stars and surface were sold, but the combination was new, is a new design, capable of being registered. *Ib.*

Where a pattern of an article has been registered under 21 and 22 Vict. c. 70, s. 5, the design will be infringed by an article to all appearance the same, though not actually identical. Observations in *Holdsworth* v. *McCrea*, L. R., 2 H. L. 384, explained. *McCrea* v. *Holdsworth*, 6 L. R., Chanc. Ap. 418—C.

Registering.]—The provisions of the 5 and 6 Vict. c. 100, s. 15, relative to furnishing the registrar of designs with copies, drawing points of the design to be registered prior to obtaining registration, are not complied with by furnishing him with a specimen of the article to which the design was applied. *Norton* v. *Nichols*, 4 Kay & J. 475.

It is not a sufficient registration of a design applied to the manufacture of an article comprised in class 8 of sect. 3 of 5 and 6 Vict. c. 100, to leave with the registrar the article so manufactured, with an intimation that it is to be applied to class 8. *Norton* v. *Nicholls*, 1 El. & El. 761; 5 Jur., N. S. 1203; 27 L. J., Q. B. 225; 7 W. R. 420; 33 L. T. 131.

A statement, in a notice, that if the parties to whom the notice is given either apply the design to an article of manufacture, or sell or expose to sale an article of manufacture with the design applied to it, the proprietor will sue them, is not a sufficient statement that he has not given his consent to the application of his design to the manufactured article. *Ib.*

A proprietor of a design duly registered under 5 and 6 Vict. c. 100, and 24 and 25 Vict. c. 73, whether he is a British subject or a foreigner, forfeits the benefit of the acts unless the proper registration marks are attached to all articles and substances to which the design is applied, whether the same are sold abroad or in the British dominions. *Sarazin* v. *Hamel*, 9 Jur., N. S. 192; 32 L. J., Chanc. 380; 11 W. R. 326; 7 L. T., N. S. 660; 32 Beav. 151.

Proceedings for Pirating.]—An inventor of new designs publishing and selling them in a book, registered under 5 and 6 Vict. c. 100, and containing a notice that persons wishing to manufacture them for the purpose of sale must have the inventor's permission, do not amount to a license to sell articles to which

the designs have been applied. *Branchardiere* v. *Elvery*, 4 Exch. 380; 18 L. J., Exch. 381.

The book does not require to be stamped with the letters mentioned in the 4th section. *Ib.*

Under 5 and 6 Vict. c. 100, the design protected by the act is entitled to an injunction, restraining not merely the sale, but the manufacture of any article to which the design is applied during the period of the protection. *MacRae* v. *Holdsworth*, 2 De G. & S. 496; 12 Jur. 820.

A plea that the plaintiff was not, before or at the time of registration, the inventor or proprietor of the design mentioned in the declaration to have been registered under 6 and 7 Vict. c. 65, does not put in issue the question whether the design was the subject of a certificate of registration under that act. *Millengen* v. *Picken*, 1 C. B. 799; 9 Jur. 714; 14 L. J., C. P. 254.

An action will lie for falsely representing a pattern under 6 and 7 Vict. c. 65, s. 7, whereby the party is damnified. *Barley* v. *Walford*, 8 Q. B. 197. See *Rodgers* v. *Nowell*, 5 C. B. 109.

IX: LINENS, CALICOES, AND MUSLINS.

By 27 Geo. 3, c. 38 (continued by 29 Geo. 3, c. 19, and made perpetual by 34 Geo. 3, c. 23), *the proprietor of original patterns for printing linen, cotton, calico, or muslin is to have the sole right of printing them for two months from the first publication; and whoever shall, within that period, print the same, is to be liable to an action upon the case for damages, to be brought within six months.*

34 Geo. 3, c. 23, *extends the time to three months, so that the name of the proprietor and the date of publication, is printed at each end of the piece of goods: the statute also gives a remedy by action.*

By 2 and 3 Vict. c. 13, s. 3, *the provisions of the* 27 Geo. 3, c. 38, and 34 Geo. 3, c. 23, *are extended to fabrics composed of wool, silk, or hair, and to mixed fabrics composed of any two or more of the following materials, viz., linen, cotton, wool, silk, or hair.*

By 2 and 3 Vict. c. 17, s. 1, *every proprietor of a new and original design made for any of the following purposes shall have the sole right to use the same for any such purpose during twelve calendar months, to be computed from the time of the same being registered: 1. For the pattern or print, to be either worked into or worked on, or printed on or painted on, any article of manufacture, being a tissue or textile fabric, except lace, and also except linens, cottons, calicoes, muslins, and any other article within the meaning of the acts mentioned in the schedule thereunto annexed; 2. For the modeling, or the casting, or the embossment, or the chasing, or the engraving, or for any other kind of impression or ornament, on any article of manufacture, not being a tissue or textile fabric; 3. For the shape or configuration of any article of manufacture, except as in No. 1.*

The 6 and 7 Vict. c. 65, *does not extend to the designs within these enactments.*

In an action on 34 Geo. 3, c. 23, for pirating a pattern for printing calico, the omission of an averment in the declaration, "that the day of first publishing the pattern was printed at each end of the piece of calico" (which, together with the name of the proprietor, is required by that statute, the monopoly being limited for three months from the first day of publishing the pattern), was aided by verdict; it being stated in the declaration that the defendant pirated the pattern within the term of three months from the day of the first publishing thereof, and while the plaintiff was entitled to have the sole right of printing the same. *Macmurdo* v. *Smith*, 7 T. R. 518.