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ON

THE LAWS

OF

ARTISTIC COPYRIGHT

AND THEIR DEFECTS.



For the use of Artists, Sculptors, Engravers, Printsellers, etc.

BY

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"The history of errors, properly managed, often shortens the road to truth."

Sir Joshua Reynolds's 2nd Discourse.

JOHN MURRAY, ALBEMARLE STREET.

1853.

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PREFACE.

No treatise appears to have been hitherto published on the subject of Artistic Copyright alone. By "Artistic Copyright" is meant that protection for his works which the British artist, whether sculptor, painter, or engraver, is entitled to receive.

That such a treatise is wanted, in consequence of the importance of such rights, will, it is hoped, appear in the following pages, wherein it will be found that, either from ignorance or non-observance of the existing laws of artistic copyright, artists, printsellers, and other proprietors of such rights, are placed in the greatest jeopardy as to property of that description.

As this work is chiefly intended for the guidance and information of persons interested in artistic copyrights, the primary object has been to state the law as to such rights as it is conceived to exist, and in so plain a manner that all those persons may understand their rights, remedies, and the mode of transfer of their property.

And that at the same time the work may not be without its use for the legal profession, the views advanced

have in most instances been supported by reference to decided cases.

With regard to the defects of the existing laws of artistic copyright, some suggestions have been made for their remedy; an unusual plan, it may be said, in a work of this nature, and which has only been attempted after considerable hesitation, because it was felt that the necessity for an amendment of such defects is alike urgent and important to a large and meritorious class of artists, whose efforts in the cultivation of the Fine Arts appear destined to have a most important effect on the moral and material welfare of the British people.

1, TANFIELD COURT, TEMPLE,
23rd October, 1853.

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ARTISTIC COPYRIGHT.

INTRODUCTION.

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1. The fine arts of sculpture, painting, and engraving, like music, are a universal language. Artistic works have also this additional and direct advantage, that, while they afford employment and support to those who produce them, they form a large and permanent addition to the material wealth of the people in whose possession they remain.

The revolutions on the European continent, and their reaction, have dealt a heavy blow to the artistic profession there, especially in Germany and France. In the British Islands and the United States, freedom and wealth—those elements so important to the tranquillity and encouragement of the artist—are to be found in the most eminent degree, and should they continue to progress, there can be little doubt that most of the finest artistic talent in Europe will gradually be attracted to London and New York as the great centres of commerce, for history furnishes various instances which prove the merchant to have been the pioneer of the artist—wealth being created by commerce, that wealth produces luxury, and luxury the perfection of the arts[1].

[1] See 'L'Esprit des Lois,' par Montesquieu, liv. 21, chap. 6.

The important bearing of the Fine Arts upon our manufactures has long been felt by those, whose efforts for the advancement of art in connection with manufactures have, to some extent, been crowned with success by inducing the Legislature to afford its valuable assistance in investigating and promoting the subject.

On the 10th of February, 1836, a Select Committee of the House of Commons was appointed to inquire into the best means of extending a knowledge of the arts, and of the principles of design, among the people (especially the manufacturing population) of this country; also to inquire into the constitution, management, and effects of institutions connected with the arts. The Committee divided the subject of their inquiry into the following parts,—1. The state of art in this and other countries, as manifested in their different manufactures.—2. The best means of extending among the people, especially the manufacturing classes, a knowledge of, and a taste for art.—3. The state of the higher branches of art, and the best mode of advancing them. The investigations of the Committee were chiefly confined to the first and second of these subdivisions of the subject; but several of the most eminent architects, painters, and engravers[1] were examined before the committee, and much interesting evidence elicited respecting the Royal Academy[2]. The

[1] Viz., the Baron Von Klenze (architect to H. M. the King of Bavaria) and Messrs. Cockerell, Donaldson, Wilkins,—Sir M. A. Shee, and Messrs. Hilton, Martin, Haydon, Howard, Hurlstone, Reinagle, R. T. Stothard, Clint,—Burnet, Landseer, Pye, and Wyon.

[2] See that especially of Sir M. A. Shee and other members of the Royal Academy, as well as documents produced by them and printed in the Appendix to the Report. The origin and institutions of the Royal Academy are not given in the evidence taken before the Committee. It appears that the Royal Academy is not a chartered Society, as it is generally supposed to be, but was and is a *private* unincorporated society, first established in 1768 under the patronage of George the Third, in opposition to "The Society of Artists of Great Britain," to which that sovereign had granted a charter in 1764, and which was speedily ruined by his patronage of the Royal Academy. See 'Patronage of British Art, by John Pye,' 1845, in which that celebrated engraver has collected a mass of interesting details connected with his subject, and especially the origin and history of the Royal Academy. See also, as to the institutions of the Academy, 'Abstract of the instrument of institution and laws of the Royal Academy of Arts in London, established 10 December, 1768.' This was published in 1797. Another, but very abbreviated and imperfect work of the same description, was published in 1815; both were printed by the printer to the Academy.

Committee made their Report to the House in August, 1836, in which they stated that, "to us, a peculiarly manufacturing nation, the connection between art and manufactures is most important; and for this merely economical reason, (were there no higher motive,) it equally imports us to encourage art in its loftier attributes, since it is admitted that the cultivation of the more exalted branches of design tends to advance the humblest pursuits of industry; while the connection of art with manufacture has often developed the genius of the greatest masters of design[1]." And after most justly noticing with regret the neglect of any general instruction, even in the history of art, at our Universities and Public Schools,—and the imperfect protection afforded by the Copyright Acts in favour of designs and sculpture, the Report then proceeds with this most important observation and suggestion: "Whatever be the legal latitude of these Acts, the expensiveness of a remedy through the courts of law or equity is a virtual bar to invention, and almost affords impunity to piracy in art. The most obvious principle of any measure enacted for the protection of invention appears to be the constitution of *a cheap and accessible tribunal.* The French have long possessed a court of this kind,"—the *Conseil des Prud'hommes*, the constitution of which is developed in the evidence given by a distinguished witness, who was also one of the members of the Committee[2]. These *Conseils* "form a kind of jury or board of arbitration composed of master-manufacturers and workmen, empowered to decide on priority of invention, as well as on any other subjects connected with the manufactures." In addition to cheapness, the greatest promptitude of decision is another obvious element in the constitution of such a tribunal. For this and for other reasons a *system of registration* appears to be indispensable[3]."

2. In presenting their Report to the House, the Committee[4] expressly recommended the resumption of the inquiry in the next

[1] See "Report of the Select Committee on Arts and their connection with Manufactures," p. iii., published at the Parliamentary Paper Office, Great Turnstile, Lincoln's Inn Fields.

[2] Dr. Bowring. See part 2, p. 7 et seq., of the Minutes of Evidence.

[3] See the Report, p. vii.

[4] The names of the members who were present at the meetings were Mr. Ewart, chairman; Dr. Bowring, The Lord Advocate, and Messrs. Brotherton, Davenport, Henry Thomas Hope, David Lewis, John Parker, Pusey, and Scholefield.

session of Parliament. This recommendation, if acted upon at all, has unfortunately not been productive of any additional Report.

3. But a very important result followed the investigations of the Committee. Two Acts were passed in 1839, which were repealed and the law on the subject consolidated and amended in 1842, giving considerable additional protection to designs for manufactures, and partially establishing the valuable system of *Registration* recommended by the Committee.

4. Their equally important suggestion of *a cheap, accessible tribunal,* for the benefit of persons interested in inventions, has not hitherto been carried into effect by the Legislature. It is true that to some extent the establishment of the County Courts has supplied a cheap and accessible tribunal to the proprietors of Copyrights, but these Courts are far from meeting the requirements of the case in most instances. "As to the state of the higher branches of art," which subject, as we have seen[1], was only partially investigated by the Committee, the following particulars, derived from the catalogues of the London Exhibitions during the present year 1853, will afford some evidence of the number of persons[2] engaged in the production of works of art, chiefly sculpture, paintings, and drawings; and the consequent importance of the subject of Artistic Copyright under the existing most defective Sculpture and Engraving Copyright Acts.

	Objects.	Artists.
1. Winter Exhibition of Artists' Sketches and Drawings	280	129
2. British Institution	589	388
3. Portland Gallery	410	115
4. Suffolk Street	750	349
5. Old Water Colour	309	48
6. New Water Colour	365	57
7. Royal Academy[3]	1465	866
Total	4168	1952

[1] Vide supra, p. 2.

[2] It should be observed that although some artists exhibit at more than one Exhibition, others do not exhibit at all; especially that most numerous body who are occupied in the various processes of engraving, and making designs for woodcuts and other engravings.

[3] Of these works 152 are the productions of members of the Royal Academy, exhibited by 47 of the Royal Academicians and Associates of that Institution.

Besides this large number of objects exhibited, there are hundreds of works annually refused at the various Exhibitions for want of sufficient space,—there are also annual exhibitions of pictures and other objects of art in many of the large towns in England as well as in Edinburgh and Dublin,—and yet the whole of the objects so exhibited form but a very small amount of those annually produced in the United Kingdom, of which engravings of all descriptions form a large proportion; and some idea may be formed of the extent to which thearts of sculpture, painting, and engraving are already cultivated and encouraged by the British people.

It should also be borne in mind how interwoven with, and dependent upon the proper cultivation of the fine arts, a very large class of our manufactures are become[1], and to a vast extent must in future depend, if we are not to be beaten by other nations in the race of manufacturing industry in all the markets of the world. The capital embarked in our manufactures is so great, and there are so many millions of souls dependent for their daily bread upon the improvement[2] and consumption of those manufactures, that it is scarcely possible to overrate the importance in connection with them of the fine arts of design and colour. The extent to which the manufacturing industry of this country has availed itself of the benefits in favour of useful and ornamental designs, is evidenced by the fact, that since the passing of the Acts of Parliament for the protection of such designs in 1839, and the establishment of a system of registration thereof, upwards of 95,000 designs have been registered under those Acts[3].

[1] "A just feeling in the fine arts is an elegant acquirement, and capable of cultivation. Drawing is necessary to many pursuits and useful arts: Locke has included it amongst the accomplishments becoming a gentleman; and we may add, it is much more useful to the artisan. Good taste and execution in design are necessary to manufactures, and consequently they contribute to the resources of a country. It is a happy characteristic of the present times that a love of the fine arts is becoming more and more prevalent among the affluent; but still rich furniture—mere ornamental painting and gilding, usurp the place of art properly so called. For the improvement of art there must be a feeling in the public in correspondence with the artists' aspirations."—The Anatomy and Philosophy of Expression as connected with the Fine Arts, by Sir Charles Bell, pp. 1, 3, 11.

[2] "L'effet du commerce sont les richesses; la suite des richesses, le luxe; celle de luxe, la perfection des arts." See L'Esprit des Lois, par Montesquieu, liv. 21, chap. 6.

[3] The numbers up to 20th August, 1853, have been 3499 Useful, and

It was the same Committee which, as before stated, in 1836 reported in favour of a system of registration of designs that also recommended the establishment of an efficient, cheap, and accessible tribunal for the protection of the proprietors of designs. The positive necessity of such a tribunal for designs of all descriptions, whether artistic or useful, and the wisdom of the Committee in recommending it, must surely be apparent from the facts above stated[1]. Is it not a denial of justice to compel the proprietor of a copyright, however trifling in value, to involve himself in the anxiety and expense of a Chancery suit in order to obtain effectual redress for an invasion of his right? He may sue the offender at law for damages or penalties, but the only efficient remedy at once to stay the injury—namely, an Injunction, is not to be obtained except by the costly aid of the Court of Chancery.

92,100 Ornamental designs. The small number of Useful designs registered is said to be attributable to the beneficial working of the Patent Law Amendment Act of 1852.

[1] And if such a tribunal be needed in favour of the proprietors of copyrights in artistic and useful designs, it certainly is equally requisite in favour of literary and musical copyrights. In support of this assertion the following circumstances may be stated, as being within the author's own knowledge. Mr. Boosey, the well-known publisher of foreign music, has, during the last eighteen years, been more or less constantly involved in litigation, and almost exclusively for the purpose of protecting his copyright in Bellini's celebrated opera 'La Sonnambula,' the only question of law in the case really being *whether under the statute of Anne an alien composing a work abroad could acquire or confer a copyright in it in this country if first published here.* Let any one imagine the cost and anxiety of being a party to numerous actions at law and Chancery suits to determine this question, and yet Mr. Boosey was placed in the position of either allowing others to deprive him of his profits derivable from the copyright in this opera, or to avail himself of the costly and cumbrous machinery open to him for protection. In two actions which Mr. Boosey tried in the Queen's Bench and Common Pleas, those Courts were of opinion that an alien could acquire a copyright under such circumstances as those above stated, and that consequently Mr. Boosey, as the assignee of the copyright in 'La Sonnambula,' was entitled to protection from the piracy of it. But in a third action which Mr. Boosey tried in the Exchequer, that Court differed in opinion from the Queen's Bench and Common Pleas. Their judgments were however confirmed on his appeal to the Exchequer Chamber, but from that judgment the defendant has appealed to the House of Lords, where the question will be finally set at rest when the appeal is heard. Messrs. Murray, Cocks, Chappell, and other large publishers, have also been heavy sufferers in the same way, and upon the same question. Assuredly the British law of copyright is

5. Until 1852 the proprietors of patents for inventions were placed in the same position; but by the 42nd section of the Patent Law Amendment Act, passed in that year, the judges of the superior courts of record at Westminster and in Dublin are empowered to make orders for injunction, inspection, and account,—to that extent consequently blending the equitable with the legal remedy of the proprietor of the patent. It is earnestly to be hoped that a like salutary enactment will be made in favour of the proprietors of all descriptions of copyrights, and that it will not be confined to the superior courts.

6. A very general but erroneous notion appears to prevail as to the purchase of copyrights of pictures for engraving. A custom[1] is said to have become usual as to such copyrights as between artists and the purchasers of their pictures, and it is supposed by such persons that the alleged custom in question is the law on the subject, and is to govern the artist's rights; nothing can be more incorrect. As the law stands, all copyrights are dependent on the various Acts of Parliament under which such rights exist, and consequently those statutes alone define the mode which is to be pursued in order to acquire and transfer a valid copyright. No custom of a profession or trade can be allowed to overrule an Act of Parliament[2]. The subject is of much importance, yet

an exception to the following observation upon the commercial spirit of the English:—"D'autres nations ont fait céder des intérêts du commerce à des intérêts politiques; celle-ci a toujours fait céder ses intérêts politiques aux intérêts de son commerce."—L'Esprit des Lois, par Montesquieu, liv. 20, chap. 7.

[1] As to this alleged custom see *infra*, pp. 39, 40.

[2] As illustrative of this may be mentioned the erroneous practice which formerly prevailed amongst the booksellers as to the purchase of literary copyrights. Prior to the Copyright Act of 8 Anne, c. 19, the copyright existing at common law was a perpetual right; but by the celebrated case of *Donaldson* v. *Beckett*, decided by the House of Lords in 1774, it was held that such common-law right was taken away by that statute. This created great alarm amongst the booksellers, who immediately presented a petition to the House of Commons, stating their previous belief that such statute did not interfere with their common-law right: that they had therefore for many years past continued to purchase and sell such copyrights in the same manner as if such Act had never been made; that large sums had been invested in the purchase of ancient copyrights not protected by the statute of Anne, so that the support of many families in a great measure depended on the same; *that the petitioners would be great sufferers through their involuntary misapprehension of the law*, and therefore praying the House to grant them relief. A Committee was accordingly obtained, and

the public, as well as most artists, appear to be unacquainted with the laws upon which the copyright in their works depends.

7. And here it should be observed, with reference to the several Acts of Parliament upon which artistic copyright is based, that "every man is presumed to be cognizant of the statute law of this realm, and to construe it aright; and if any individual should infringe it through *ignorance*, he must nevertheless abide by the consequences of his error. It will not be competent for him to aver, in a court of justice, that he has mistaken the law, this being a plea which no court of justice is at liberty to receive[1]."

8. The object of this work will therefore be—1. Slightly to trace the principles upon which it is conceived that artistic copyright should be based, and the existing British legislation as to such copyrights. 2. In a plain manner to state the law of copyright in designs, engravings, and sculpture, so that every artist may know his rights, remedies, and mode of transfer of such rights. 3. To point out the chief defects of the present Acts of Parliament known as the Engraving, and Sculpture Copyright Acts; and 4. to suggest some amendments in the laws of artistic copyright for the security of the proprietors of such rights and the consequent advancement of British art.

a Bill for the relief of the booksellers passed by the House of Commons, but it was thrown out in the House of Lords.—See 'Lowndes's Historical Sketch of the Law of Copyright,' pp. 58-59.

[1] Broom's 'Legal Maxims,' p. 201, 2nd edition, citing Sir W. Scott in *The Charlotta*, 1 Dods. R. 392, and Lord Hardwicke, C., in *Middleton* v. *Croft*, Stra. 1056; see also per Maule, J., in *Martindale* v. *Falkner*, 2 C.B. 706.

CHAPTER I.

OF THE PRINCIPLE UPON WHICH ARTISTIC COPYRIGHT SHOULD BE BASED; AND OF BRITISH LEGISLATION IN RESPECT OF SUCH COPYRIGHTS.

1. The definition of Artistic Copyright.—2. Principle upon which it should be based.—3. Observations as to British Legislation in respect of Artistic Copyrights.—4. The First Copyright Engraving Act. Obtained by Hogarth. His commemoration of the event.—5. Insufficiency of the Act.—6. Its Amendment in 1767.—7. And again in 1777. In 1836 Ireland was included in the Copyright Engraving Acts. And in 1852 those Acts were extended to "Prints taken by Lithography or any other Mechanical process."—8. These five Acts comprise the Painter and Engraver's only protection.—9. The Sculpture Copyright Acts.

1. The definition of the words "Artistic Copyright," as used in this pamphlet, is the sole and exclusive liberty of multiplying copies of any work which is the subject of copyright under the Engraving, and Sculpture Copyright Acts.

There is no authority which proves that such a right in works of that description exists by the common law; although, upon principle, there is the same ground as in the case of literary copyright[1] for contending that it does so exist, or at all events did, prior to the statutes on the subject.

2. The principle upon which it would seem all copyright should be based is that, so far as it may not be injurious to the public weal, the inventor of a work is entitled to all the benefits of his invention and the labour and cost he has bestowed upon it; and the question to be practically solved by the Legislature is, what period of exclusive enjoyment is adequate to secure such benefits to the author.

Every member of a community must necessarily sacrifice some portion of his abstract rights for the public good, and inasmuch

[1] See *Millar* v. *Taylor*, 4 Burr. 2303; *Donaldson* v. *Beckett*, ib. 2408; also the observations of Lord Campbell, C.J., in delivering judgment in *Boosey* v. *Jefferys*, 20 L. J. Ex. 354.

as a perpetuity in very many inventions would entail a serious obstruction to the progress of art or manufactures, it ought to be a question of deep importance for the Legislature to determine as between the inventor and the public, how far the interests of the latter can justly demand a surrender of the rights of the former. In every case "it is a mixed question of policy and justice, with regard to which no positive rule can be laid down[1]," beyond that above stated, and that the rights of the inventor should not be trenched upon by the Legislature beyond the limit which the just protection of the public interests demands.

3. Inventions being at length recognized as property—and a property, it may be said, which is entitled to the highest consideration, inasmuch as it is the creation of *intellectual* labour—the legal history of copyrights in this country affords a striking example of the following most truthful comment upon the peculiar genius of the English people, made by one of the most profound historians and statesmen of modern times:—"Quiconque observera un peu attentivement le génie Anglais sera frappé d'un double fait: d'une part, de la sûreté du bon sens, de l'habileté pratique; d'autre part, de l'absence d'idées générales et de hauteur d'esprit dans les questions théoriques. Soit qu'on ouvre un ouvrage Anglais d'histoire ou de jurisprudence, ou sur toute autre matière, il est rare qu'on y trouve la grande raison des choses, la raison fondamentale[2]." And thus we find the Legislature of this great country, in dealing with subjects of copyright of all descriptions, instead of recognizing as a fundamental principle the absolute right of persons to derive all the benefits they can obtain from their inventions and works, subject only to such limitations as the public welfare demands, absolutely reversing that principle by practically treating works of invention as public property, and granting the inventors most inadequate periods of copyright. Hence, in the case of literary copyrights, in which by the common law it has been said that the authors had a *perpetuity*[3], the statute of Anne cut down that perpetual right to the

[1] See Curtis on Copyright, 25.

[2] See M. Guizot's 'Histoire générale de la Civilisation en Europe,' p. 402, 5th edition.

[3] See opinion of Sir Samuel Romilly, cited in Lowndes on Copyright, p. 69; also the cases supra, p. 9.

short term of fourteen years, and since that time instalments of justice have with the greatest difficulty [1] been wrung from the Legislature. It would indeed be difficult to exaggerate the importance of fostering the arts of sculpture, painting, and engraving, especially in this great manufacturing country[2]—every one acquainted with the subject knows this; and yet it is not too much to say that the existing legislation for the professed protection of artists is, to use the mildest term, most inadequate. Let any one who doubts this compare the Acts printed in the Appendix to this Book, with that portion of the Code Napoléon comprised in the "Code de la propriété industrielle," and especially the first article, which is thus honestly, tersely and comprehensively worded: "Toute découverture ou nouvelle invention, dans tous les genres d'industrie, est la propriété de son auteur; en conséquence, la loi en garantit *la pleine et entière jouissance*:" that is, during the term for which the inventor takes out his patent.

4. In 1735 the first Act relating to copyright in the fine arts was passed; and it is a remarkable fact, that after the lapse of

[1] The passing of the last literary Copyright Act in 1842 was mainly attributable to the generous and unwearied exertions of one of the most distinguished authors of modern times, Sir Thomas Noon Talfourd; and several brilliant speeches he made in Parliament in favour of the measure may be ranked amongst the happiest efforts of his genius.

[2] "The estimation in which we stand in respect to our neighbours will be in proportion to the degree in which we excel or are inferior to them in the acquisition of intellectual excellence, of which trade and its consequential riches must be acknowledged to give the means; but a people whose whole attention is absorbed in those means, and who forget the end, can aspire but little above the rank of a *barbarous* nation. To him who has no rule of action but the gratification of the senses, plenty is always dangerous; it is therefore necessary to the happiness of individuals, and still more necessary to the security of society, that the mind should be elevated to the idea of general beauty, and the contemplation of general truth: by this pursuit the mind is always carried forward in search of something more excellent than it finds, and obtains its proper superiority over the common senses of life by learning to feel itself capable of higher aims and nobler enjoyments. In this gradual exaltation of human nature every art contributes its contingent towards the general supply of mental pleasure; whatever abstracts the thoughts from sensual gratifications, whatever teaches us to look for happiness within ourselves, must advance, in some measure, the dignity of our nature." *Vide* Sir Joshua Reynolds' 9th Discourse. Those who are desirous of seeing a grand school of British Art established will also do well to read 'The True Principles of Beauty in Art,' by James Fergusson.

nearly one hundred and twenty years the mode of obtaining an Act of Parliament and its preparation should remain in the same lamentable state in which it then was, that is, that the obtaining an Act to accomplish a measure of justice of great benefit to the public, and also the cost of such Act, may be thrown upon a private individual—and that the Government is still without a permanent and efficient staff at its command, whose duty it should be to prepare all public statutes.

William Hogarth was not only the father of British art, but to him also is the honour due of being the first protector of its artistic invention and industry. Coarse and vulgar as so many of his works are, yet they were admirably suited to the period in which they were produced; and their intense vigour, truth, and nationality at once spoke home to the public mind, and laid the foundation of that love for art which has been steadily increasing amongst us ever since.

Needy artists and printsellers soon fastened themselves upon the genius of Hogarth by pirating his *designs*; and for his own protection and that of other persons similarly situated, he at length employed a gentleman to draw an Act on the subject, which was ultimately passed by Parliament, the 8 Geo. II. c. 13.

On the Act being passed, Hogarth published a small print with emblematical devices and the following inscription:—"In humble and grateful acknowledgment of the grace and goodness of the Legislature, manifested in the Act of Parliament for the encouragement of the arts of designing, engraving, etc., *obtained by the endeavours, and almost at the sole expense, of the designer of this Print* in the year 1735; by which not only the professors of those arts were rescued from the tyranny, frauds, and piracies of monopolizing dealers, and legally entitled to the fruits of their own labours, but genius and industry were also prompted by the most noble and generous inducements to exert themselves; emulation was excited, ornamental compositions were better understood; and every manufacture where fancy has any concern was gradually raised to a pitch of perfection before unknown, insomuch that those of Great Britain are at present the most elegant and the most in esteem of any in Europe[1]."

5. But poor Hogarth lived to see the inefficiency of his Act of Parliament, which he had intended should protect not only

[1] Biographical Anecdotes of W. Hogarth, p. 39, 3rd ed.

the artist, but also his patron. A printseller employed an artist to make a design and engrave it. The print from that engraving being pirated, upon a Bill filed by the printseller for discovery and relief, the Lord Chancellor held that the plaintiff's engraving was not within the protection of the Engraving Copyright Act, it not being made from his, the printseller's *own* design, but from that of the artist whom he employed to make it[1].

6. In 1767, after the death of Hogarth[2], another Statute, the 7 Geo. III. c. 38, was passed to amend the previous Act and also to vest the Copyright of Hogarth's Engravings in his widow for an additional term of years. This concession to his relict was at least a tribute of national respect to the memory of the great artist, and as such may be hailed as a bright page in the records of the British Legislature, affecting the inventive talent of the people of this country—the brighter because it appears to be almost the only one where such an instance of justice and respect in favour of an artist is to be found in our Statute-book.

7. In 1777, by the 17 Geo. III. c. 57, the two previous Acts were further amended; and it was only so recently as 1836, that the English Engraving Copyright Acts were extended to Ireland by the 6 and 7 Will. IV. c. 59. Up to that time engravings published in England might be, and were, pirated in Ireland with perfect impunity; and those first published in Ireland were in the same manner subject to piracy in England. In consequence of doubts being entertained whether the provisions of these Copyright Engraving Acts extended "to lithographs and certain other impressions," in 1852 by the 15 Vic. c. 12, s. 14, it was declared that they were intended to include "prints taken by lithography, or any other mechanical process."

8. These five Acts form the only recognized protection which the British painters and engravers possess against the piracy of their works: they are printed in the Appendix hereto. Let any one read those Acts, and then say whether or not further Legislation is not required in favour of the arts of painting and engraving.

9. The same observations apply with nearly equal force to the

[1] By Lord Hardwicke, C., in *Jefferys* v. *Baldwin*, Amb. 164, 2nd ed. by Blunt.

[2] He died 26th October, 1764, aged 67, and is buried in the churchyard at Chiswick, where a monument is erected to his memory.

existing legislation in favour of sculpture. Assuming that the sculptor had no copyright at common law up to 1798, it appears that his works were unprotected from piracy. In that year the first Act was passed which protected the copyright in sculpture; this clumsy piece of legislation[1] was the 38 Geo. III. c. 71, and was amended in 1814 by the 54 Geo. III. c. 56. How practically inoperative these Statutes have been for the purpose intended by the Legislature, is best evidenced by the notorious piracy of the most celebrated works of sculpture; yet they formed the only shadow of protection the sculptor had to rely upon down to 1850, when, by the 13 and 14 Vic. c. 104. s. 6, his works may be brought within the operation of that Act by registering them amongst the ornamental and useful designs. These three Acts therefore comprise the legislation in favour of works of sculpture—a fine art of the highest order, and which from the dawn of civilization appears to have commanded the homage of mankind. As we look with admiration on the finest Greek marbles and bronzes, and are reluctantly compelled to admit their matchless superiority when compared with anything that has since been produced, how little do we pause to reflect on the circumstances under which Greek sculpture was carried to such perfection—when the highest honours and rewards attended the successful productions of the artist. "But the time is past when the people knelt down before the work of a sculptor's hands; when the Amphictyons, the council of all Greece, gave him solemn thanks, and assigned him a dwelling at the public expense in every city[2]." What a painful contrast this affords to the existing legislation in favour of the genius and industry of *British* sculptors!

[1] This Act called forth the following witticism from Lord Ellenborough, C. J., at the trial of an action for piracy of a bust, and where the plaintiff was nonsuited:—"These artists must again apply to Parliament for protection; and they had better not *model* the new Act themselves, as they appear to have done the former." See *Gahagan* v. *Cooper*, 3 Camp. 114, A. D. 1811. Sculptors appear to have considered the piracy of their works as the least of two evils, for this is the only reported case under the Sculpture Copyright Acts.

[2] See 'The Anatomy and Philosophy of Expression as connected with the Fine Arts,' by Sir Charles Bell, p. 9.

CHAPTER II.

AS TO COPYRIGHT IN DESIGNS, ETCHINGS, ENGRAVINGS, MAPS, CHARTS, AND PLANS, MADE AND FIRST PUBLISHED IN GREAT BRITAIN OR IRELAND.

1. As to the number and mode of interpreting the Engraving Copyright Acts. The definition of "Copyright."—2. The territorial extent of protection the Engraving Acts afford.—3. The works entitled to Copyright now include all prints or impressions, whether obtained by means of engraving, "lithography, or any other mechanical process." The extent of Copyright, or term of years for which it continues.—4. The *conditions* on which Copyright is granted by the Acts. Various cases decided as to such conditions.—5. Danger of publishing "proof impressions before letters."—6. The works not entitled to Copyright. Of claims to Copyright in pictures if not engraved. How to secure the Copyright in a picture. Danger in exhibiting pictures before they are engraved. Engravers not entitled to retain proofs for their own use. Death discharges their executors, etc., from their testators' contracts to engrave a work. The forgery of pictures.—7. The piracy of Copyright. Different descriptions of piracy. Copying the whole engraving. Copying a part of it. Copying the title. Cases as to the piracy of maps, etc. Liability of printsellers, etc., for selling pirated copies of prints.—8. Remedies of proprietors of Copyright in cases of piracy. Proceedings at law. Evidence for the plaintiff. Evidence for the defendant. Proceedings in equity: injunction.—9. The transfer of Copyright. Prevailing practice amongst artists as to Copyright in their pictures for purposes of engraving. Various modes of transfer of Copyrights. Practice amongst printsellers: its dangers.

1. *The number, and mode of interpreting, the Engraving Copyright Acts.*—Having previously stated[1] that there is no decision which proves copyright in the works of the designer and engraver to have existed by the common law, it follows that such right as it now exists has been the creation of the Legislature, and depends upon the *five* Acts of Parliament on the subject. The first four of those statutes are known as "The Engraving Copyright Acts," and in the construction of any one of these

[1] Vide supra, p. 9.

five Statutes the Court will give effect to the intention of the Legislature to be collected from all of them[1].

There may be, and usually are, two copyrights connected with every engraving—one in the work of the engraver—the other in the picture or design engraved; but copyright in the latter only exists for the purposes of engraving.

Copyright under the Engraving Copyright Acts therefore consists in the sole and exclusive liberty of multiplying copies of a picture or design by any process of engraving, lithography, etc., and to secure such right, certain important *conditions* must be performed, which will be hereafter stated.

2. *The territorial extent of protection afforded by the Engraving Acts* appears to be limited to Great Britain and Ireland[2], exclusive of the Colonial or any other portion of the British dominions; as that protection is expressly confined to such prints as have been "engraved, etched, drawn, or designed in any part of Great Britain[3]" or Ireland[4]. If so engraved, etc. out of the United Kingdom, it therefore appears that no copyright can be acquired under the Acts in question. Thus, where a Bill was filed in Chancery under the Engraving Acts, for the piracy of prints forming part of a *book*, which prints had been designed and engraved abroad, and only published with the book in England, it was held that the plain object of the Legislature was to protect those works only which were executed in Great Britain (and Ireland), and not those which were only published there[5]. When therefore engravings, or the designs for them, are made out of the United Kingdom, copyright in such works so made can only be acquired within the British dominions by virtue of the International Copyright Acts[6], which, as this book is devoted to works entitled to copyright under the British Engraving, and Sculpture Copyright Acts, will consequently not be further alluded to.

[1] See observations of Best, C. J., in delivering judgment of the court in *Newton* v. *Cowie*, 4 Bing. 245; also of Lord Denman, C. J., on the Literary Copyright Acts, in *Russell* v. *Smith*, 17 L. J., Q. B., 229.

[2] 8 Geo. II. c. 13; see Appendix, p. 61. Also 6 and 7 Will. IV. c. 59. s. 1.; ib., p. 68.

[3] 17 Geo. III. c. 57; ib. p. 67.

[4] 6 and 7 Will. IV. c. 59. s. 1; ib. p. 68.

[5] Per Shadwell, V. C., in *Page* v. *Townsend*, 5 Sim. 395.

[6] 1 and 2 Vic. c. 59; 7 Vic. c. 12; 15 and 16 Vic. c. 12; see also the able little work on International Copyright Law, by Peter Burke.

3. *The works entitled to protection for Copyright* under the Statutes in question are thereby declared to be—1. Such historical and other prints as any person shall invent *and*[1] design, engrave, etch, or work in mezzotinto or *chiaro-oscuro*; or from his own works and inventions shall cause to be designed and engraved, etched, or worked in mezzotinto or *chiaro-oscuro*[2]. 2. Any historical print or prints of any portrait, conversation, landscape, or architecture, *map, chart, or plan*[3], or any other print or prints whatsoever, which any person shall invent *or* design, engrave, etch, or work in mezzotinto or *chiaro-oscuro*, or from his own work, design, or invention, shall cause or procure to be designed, engraved, etched, or worked in mezzotinto or *chiaro-oscuro*[4]. 3. Any print taken from any *picture*, drawing, model, or sculpture, either ancient or modern, which any person shall engrave or cause to be engraved, etched, or worked in mezzotinto or *chiaro-oscuro*[5]. And such person so mentioned in each of the said Acts is to have the *sole right* of printing and reprinting the same. 4. In 1852 it was further declared by the Legislature that the provisions of the Copyright Engraving Acts "are intended to include prints taken by lithography, *or any other mechanical process* by which prints or impressions of drawings or designs are capable of being multiplied indefinitely[6]." It would therefore seem that this very important enactment includes all descriptions of impressions or prints taken from any plate or slab, upon which any drawing or design can by any means be engraved or drawn, and from which plate or slab, prints or impressions are capable of being multiplied indefinitely, as by the so-called "mechanical" process of lithography. It should however be stated that there has been no decision upon the construction of this enactment of 1852, which, from its peculiar language, appears open to much argument as to the intention of the Legislature in using the words "or any other *mechanical* process."

[1] It has been noticed, *supra*, p. 12, that it was chiefly by Hogarth's efforts this Act was obtained; and that he was alike the inventor, designer, *and* engraver of his works.

[2] 8 Geo. II. c. 13. s. 1; see Appendix, p. 61.

[3] "Maps, charts, or plans," separately published since 1st July, 1842, have the same protection as *literary* copyright; see 5 and 6 Vic. c. 45. s. 2, which Act must therefore be relied on, for such has have been so published since that time.

[4] 7 Geo. III. c. 38. s. 1; see Appendix, p. 64.

[5] Ibid. s. 2.

[6] 15 Vic. c. 12. s. 14.; ib. p. 69.

In any event, the *conditions* imposed by the original Engraving Act of 8 Geo. II. c. 13, must be performed in order to secure the copyright in lithographic and all other works to which this Act of 1852 applies.

The extent of Copyright under the Engraving Acts was originally limited to fourteen years from the first publication of the work[1], and was afterwards extended to twenty-eight years from such first publication[2], but upon the *conditions* therein specified, and which will be immediately noticed.

It has been held that the first[3] of these Acts protects not only such designs as are the pure invention of the designer, but also designs of flowers, and any other objccts of nature, as well as those of art[4].

4. *The conditions upon which Copyright is granted* under the Engraving Acts are most important to observe, as the validity of the copyright depends on their performance. They are as follow:—1. That the day of first publication shall be truly stated on the plate. 2. Also the name of the proprietor of the copyright. 3. And that such name and date shall be printed on *every* print taken from the plate[5].

Several cases have been decided upon the subject of these conditions, and it will be found that such cases are in some respects conflicting.

It has been said by eminent judges, that the engraving of the name of the proprietor and the date is not merely directory or discretionary, but *imperative*, as making the engraving of them part of the thing to be protected[6].

And it has been decided that the date of the first publication of the engraving and name of the inventor of the design must always appear, so that the public may know who was the original owner of the copyright, and when it expires[7]. And in another case, where the plates in a monthly journal had been pirated,

[1] 8 Geo. II. c. 13. s. 1; see Appendix, p. 61.
[2] 7 Geo. III. c. 38. s. 7; *ib.* p. 66.
[3] 8 Geo. II. c. 13.
[4] By Lord Hardwicke, C., in *Blackwell* v. *Harper*, 2 Atk. 93; S.c. Barn., C. R. 210, where the Case is said to be more fully and better reported.
[5] 8 Geo. II. c. 13. s. 1; see Appendix, p. 62.
[6] Per Littledale, J., in *Brooks* v. *Cock*, 3 Ad. and E. 141; Acc. per Lord Denman, C. J., S.c. p. 140.
[7] *Thompson* v. *Symonds*, 5 T. R. 41; Acc. *Harrison* v. *Hogg*, 2 Ves. Jun. 323.

the court recognized the uniform practice, said to be followed by engravers, in not engraving on the plate the word "proprietor," as used in the Statute, but the names only of the designer and engraver, which, after reviewing all the authorities on the subject, was, together with the date of publication, held sufficient to satisfy the requirements of the Statute as to the name of the proprietor[1]. So also where the prints pirated formed part of a book, the *publisher's* name, with the date of publication, appeared on the prints, but the proprietor's was omitted, such name of the publisher, with the date, were held to be sufficient[2]. But the omission of the date only on the plate[3], or even the day of the month[4], has been held fatal to the existence of the copyright of those engravings where they were omitted.

The correct date is also material with reference to the validity of title to the copyright, to be proved by the proprietor. Thus, where A. employed B. to engrave a plate, which he did on the 1st June, and printed some impressions from it for A.'s use, and on the 2nd A. gave the plate to B., who then engraved on it, "drawn and engraved by J. B., published on the 1st June, 1778," the declaration stating that the plaintiff, B., was the proprietor on that day, he was nonsuited by Lord Mansfield, C. J., on the ground that B. had no title to the copyright on the *first* of June[5]: and there can be little doubt that where an engraving is published *before* the date is engraved on the plate, such prior publication is fatal to the copyright.

On the other hand, it has been said that the words of the Act as to the day of publication appearing on the print are merely directory or discretionary; that the copyright vests in the proprietor without it, and that it is only requisite to make the penalty incur which is imposed by the Act[6]. There is also a recent decision where the woodcuts in a book having been pirated, such *woodcuts being illustrative of the letter-press*, it was held that

[1] *Newton* v. *Cowie*, 4 Bing. 234; see also per Lord Hardwicke, C., in *Blackwell* v. *Harper*, 2 Atkyns, 93; S.c. Barn. C. R. 210.

[2] Per Lord Ellenborough, C. J., in *Roworth* v. *Wilkes*, 1 Camp. 94; his Lordship however reserved the point at the trial, but there is no report of its subsequent argument.

[3] *Brooks* v. *Cock*, 3 A. and E. 138; see also *Macnurdo* v. *Smith*, 7 T. R. 522, decided under the Calico Printing Acts.

[4] *Sayer* v. *Dicey*, 3 Wils. 60.

[5] *Bonner* v. *Field*, cited in Thompson v. Symonds, 5 T. R. 44.

[6] Per Lord Hardwicke, C., in *Blackwell* v. *Harper*, *supra*, n. 1.

they formed part of the "book" within the definition of the 5 and 6 Vic. c. 45. s. 2, and consequently did *not* require to have the date and proprietor's name upon them[1].

The first of these cases so directly conflicts with the several other and subsequent decisions on the point before stated, that it does not now appear entitled to much weight, notwithstanding the great authority of the noble Chancellor who is reported to have so ruled.

But the second case is not only of great interest and importance, as well from its being the first decided upon the point since the Act of 5 and 6 Vic. c. 45, was passed, as for the profound legal talent of the learned judge whose decision it was. His judgment is therefore only to be questioned with the greatest deference; but it does seem open to doubt upon these grounds.

As the law stands with respect to engravings generally, we have seen that the copyright in them depends alone upon the Engraving Acts, and it has therefore been said that it is impossible to suppose the Legislature intended that the public should not have the protection afforded them by the Act of 8 Geo. II. c. 13, against a fraudulent continuance of a monopoly beyond the term prescribed by that Act[2]. Whenever the point has been discussed, all the decisions prior to the passing of the Act of 5 and 6 Vic. c. 45, with the exception of *Blackwell* v. *Harper*, appear to agree as to the intention of the Legislature in directing the name and date to be engraved on the plate and printed on all the prints. It would therefore be contrary to that intention if the public have not the means of knowing from each print when the copyright in it expires. The 5 and 6 Vic. c. 45 does not in terms repeal any part of the Engraving Acts as to prints; and yet to hold that prints illustrative of a book and published with it form part of the book, so as to take them out of the operation of the Engraving Acts, is in effect deciding that the 5 and 6 Vic. c. 45 did repeal those Acts as to such prints (assuming from the cases on the subject that such Acts apply to prints in books), in which case the mischief intended to be guarded against by the Legisla-

[1] Per Parker, V.C., in *Bogue* v. *Houlston*; 21 L. J. Ch. 470.

[2] Per Best, C.J., in delivering the considered judgment of the Court in *Newton* v. *Cowie*, 4 Bing. 245. And for his lordship's admirable rules as to the authority of Cases upon any given point where they are consistent or conflicting, see *Ib.* p. 421.

ture would at once arise. This will be seen in a moment, when it is considered that prints illustrative of books, and which have been published with them, are to be purchased separate from the letter-press in most of the print-shops. If the name and date of publication be not upon them, how is the public to be protected against what has been called "the fraudulent continuance of a monopoly beyond the term prescribed by the Acts"? The public would be without the slightest means of knowing what book the prints had formed a part of, and consequently when the copyright commenced or expired—a mischief which all the Copyright Acts on all subjects have carefully guarded against.

5. *Danger of publishing "proof impressions before letters*[1]."—

[1] "*Proofs* were anciently a few impressions taken off in the course of an engraver's process. He *proved* a plate in different states that he might ascertain how far his labours had been successful, and when they were complete. The excellence of such early impressions, worked with care, and under the artist's eye, occasioning them to be greedily sought after, and liberally paid for, it has been customary among our modern printsellers to take off a number of them, amounting perhaps to hundreds, from every plate of considerable value, and yet their want of rareness has by no means abated their price. On retouching a plate it has been also usual among the same conscientious fraternity to cover the inscription, which was immediately added after the first proofs were obtained, with slips of paper, that a number of secondary proofs might also be obtained. This device is notorious, and too often practised without discovery on the unskilful purchaser. *Le faux pucelage* is disposed of many times over."—*See* 'Nichols's Biographical Anecdotes of Hogarth,' p. 311, n. 3rd edit. It should be stated the above was descriptive of the practice amongst printsellers so far back as 1785, but fraudulent practices of a somewhat similar description have continued to a much more recent period, and especially in the issue of an excessive number of artist's and other "proofs before letters," which was done to such an extent in some instances as to render the name of proofs "perfectly farcical." See 'The Print Collector,' p. 165 of edit. of 1844. This very able and artistic little book, written by an amateur collector of prints, also contains much useful and interesting information connected with the subject of engraving. It was with a view as far as possible to prevent the continuance of such disreputable practices that "The Printsellers' Society" was established some few years since, and of which most of the chief printsellers are members. Before any member publishes a print, in his prospectus announcing it he stipulates that only a fixed number of proofs will be taken from the plate. When printed, that number is sent to the Society, who stamp them. No subsequent impressions taken as proofs are allowed to be stamped, and without that certificate of honesty on the part of the publisher, they would be comparatively valueless as proofs. The president of this society is the well-known printseller, Mr. Dominic Colnaghi, who was also its founder; and it is only requisite to mention his name as

It may be well to notice a practice which has gradually arisen amongst the publishers of engravings since the passing the English Engraving Copyright Acts, but which practice, although become a usage amongst such publishers, appears to be quite opposed to the clear intention of the Legislature. We have seen[1] that one of the conditions imposed upon the proprietor of the copyright is not only that he shall cause his name and the date of the publication to be engraved upon the plate, but that *the same "shall be printed on every print"* taken therefrom. The intention of the Legislature in imposing this condition has been already stated; yet notwithstanding such intention, all the finest, and consequently most valuable, impressions taken from every plate, and which are called "artists' proofs" and "proofs before letters," are now always published without either name or date on them.

At present there appears to have been no decision upon the point, but it may well be doubted whether the publication of proof impressions without complying with the conditions of the Act of Parliament respecting them is not fatal to the copyright; because it is obvious that if the *usage* of the publishers is to be upheld, the intention of the Legislature might, and most probably would, be entirely defeated in those cases where, from interest, caprice, or any other motive, only artists' and other proof impressions before letters should be published, and the plate then destroyed or no further used.

Assuming, as before observed, that the Engraving Copyright Acts apply to prints in books, it may therefore also be doubted whether the copyright in any engraving, either published separately or forming part and even illustrative of a book, can be deemed perfectly secure unless the name of the proprietor and correct date of publication be engraved on the plate, and "printed on *every* print" taken from it for publication[2].

being thus connected with the Society to entitle it to perfect confidence in the artistic world, especially amongst amateur collectors of prints.

[1] *Supra*, p. 18. See also 8 Geo. II. c. 13. s. 1: Appendix, p. 62.

[2] Since the above was written, a Case has been reported which, by analogy, strongly confirms this construction of the Engraving Acts. The point arose under the Copyright of Designs Act, 5 and 6 Vic. c. 100. s. 4, which enacts, as one of the conditions of copyright being secured, that no person shall be entitled to the benefits of that Act unless, after publication

6. *The works not entitled to protection for copyright* are important to observe. In the first place they comprise all those in respect of which the above-mentioned statutory conditions have not been performed. In addition to these, no obscene[1], libellous, or other immoral prints or pictures are within the protection of the Engraving Copyright Acts; such prints and pictures have no legal value. Thus, where an order had been given by I. to F., who was a printseller, to send him, I., a collection "of all the caricature prints that had ever been published," and, when sent, I. refused to receive them on the ground that several were of obscene and immoral subjects, it was held, in an action by F.

of the design, *every article* to which the design is applied and published by the proprietor of the copyright hath thereon the letters "Rd." The plaintiffs were the registered proprietors of a design for paper-hangings, and manufactured the same, which were cut into lengths of twelve yards, each length being marked with the letters "Rd." Such lengths were then cut by the plaintiffs into smaller lengths of twenty-seven inches, as patterns for distribution to the trade, but such patterns were *not* marked "Rd." The plaintiffs sued the defendants for an infringement of this design, to which they pleaded that the paper-hangings in question had been published by the plaintiffs without the letters "Rd." upon them, contrary to the form of the statute. Upon the trial of the cause before Lord Campbell, C.J., a verdict was entered for the defendant upon the issue raised by the replication to this plea, with leave for the plaintiffs to move to enter a verdict thereon for them if the Court should be of opinion that the pattern-pieces "were not articles of manufacture" upon which the letters "Rd." should have been marked. And upon cause being shown against a rule *nisi* afterwards obtained for that purpose, Lord Campbell, C.J., and Wightman, J. (*dissentiente* Coleridge, J.), held that the verdict upon that issue must stand for the defendant; Lord Campbell observing in the course of the argument that if a pattern is displayed without the letters "Rd." it is an indication that it is not registered. His lordship was of opinion that *the plaintiff had not complied with the condition required by the statute;* and Wightman, J., said one of the main objects of the statute was that the publishers of a registered design should indicate to the world that it is protected. See *Heywood* v. *Potter*, 22 L. J. Q. B. 133. It should also be stated that neither Mr. Justice Coleridge nor either of the learned counsel engaged in the case appear to have doubted the necessity of the letters "Rd." being marked on the pieces of twelve yards each. The only question really was whether, after those pieces so duly marked had been cut into patterns by the plaintiffs, and before they were distributed as such by them, the letters should have also been marked on each of such patterns as being "an article of manufacture" within the meaning of the statute.

[1] Every person exposing to view in any street, shop, or other public place, any obscene print, picture, or other indecent exhibition, is liable to three months' imprisonment with hard labour. 5 Geo. IV. c. 83. s. 4; 1 and 2 Vic. c. 38. s. 2.

against I. for the value of the collection, that for prints whose objects were general satire or ridicule of prevailing fashions or manners, F. might recover; but not for those whose tendency was immoral or obscene, nor for such as were libels on individuals, and for which F. might have been rendered criminally answerable for libel in selling[1]. And where A. was exhibiting a libellous picture, which B. destroyed, it was decided in an action by A. against B. for the value of the picture and loss of the profits of the exhibition of it, that the picture had no value in law as a work of art, its value being merely the canvas and paint forming its component parts; and it was said by the learned judge who presided at the trial that an injunction would be granted against its exhibition, and that the exhibitor was both civilly and criminally liable for the libel[2]. And in that case declarations of the spectators who saw the picture when exhibited were received as *evidence* as to whom the figures were meant to represent.

Of claims to the Copyright in pictures, if not engraved.—It must also be observed that engravings and not pictures, *as such*, are the especial object of protection under the Engraving Copyright Acts. Thus, where M. had painted a picture from his sketches, which picture he sold, and some years after engraved from his sketches a print of the same subject, one of which W. bought and had it painted in colours on a large scale with dioramic effect, and exhibited it for money as "Mr. Martin's grand picture of Belshazzar's feast," upon a Bill filed by M., the court decided that the Engraving Acts did not apply to such a case as this, and refused to grant an injunction to restrain W. from exhibiting his copy and representing to the public that it was

[1] Per Lawrence, J., in *Fores* v. *Johnes*, 4 Esp. 97.

[2] Per Lord Ellenborough, C. J., in *Du Bost* v. *Beresford*, 2 Camp. 511. The celebrated painter Hogarth, under somewhat the like circumstances, acted with greater discretion than Du Bost. In a picture called "The Misers' Feast," Hogarth had represented as the miser a certain gentleman proverbial for his avarice. Hearing of this, his son called at Hogarth's to see the picture, and on its being shown to him, asked "whether that odd figure was intended for any particular person;" the reply being "it was thought to be very like one Sir Isaac Shard," Mr. Shard immediately drew his sword, and slashed the canvas. Hogarth was in great wrath, but on Mr. Shard stating who he was, and that he was ready to defend any proceedings on the subject, the painter very wisely submitted to the loss of his picture as a just penalty for the "unwarrantable license" he had been guilty of. See 'Biographical Anecdotes of Hogarth,' p. 69, 3rd edition.

the work of the plaintiff, until the right had been established at law, at the same time observing that if M. had exhibited his picture as a diorama, then he might have been entitled to an Injunction[1].

Again, it has been said that the Engraving Acts are manifestly confined to prints taken from plates, the engraving upon which plates has been *pirated from other engravings*, and consequently where H. had been employed by M. to engrave plates for him, which H. did, and then took several proof impressions from them, which he retained for his own use, it was decided that although H. was guilty of a breach of contract in not delivering *all* the impressions to M., yet that neither trover could be maintained for them, nor would an action lie under the Engraving Acts; the impressions having been legally taken from lawful plates, and a breach of contract only been committed by H. in not handing them over to M.[2]

In another case where an action had been brought on the Statutes of 8 Geo. II. c. 13, and 17 Geo. III. c. 57, for the piracy of two prints engraved from pictures of which the plaintiff had bought the copyright for engraving from the artist, and then employed the defendant to engrave them, which he did; at the same time making sketches from the pictures, from which sketches he afterwards engraved two other prints not copied from the plaintiff's, such act on the part of the defendant was held *not* to amount to a piracy of the plaintiff's engravings, and the learned judge who tried the cause said it would destroy all competition in the art of engraving to extend the monopoly to the *paintings* themselves from which the defendant's engravings were made, and not from the plaintiff's prints[3].

Notwithstanding the very high authority of the great judge who tried that case, and of the previous dictum of Lord Mansfield on the point, it may be doubted whether his direction on that occasion will stand the test of further inquiry. If it be sound, then it is obvious that the value of the copyright which an artist has in the *invention* or *design* of his picture is compa-

[1] Per Shadwell, V.C., in *Martin* v. *Wright*, 6 Sim. 297.

[2] *Murray* v. *Heath*, 1. B. and Ad. 804.

[3] Per Abbott, C.J., in *De Berenger* v. *Wheble*, 2 Stark. 548; And in another case Lord Mansfield, C.J., is reported to have said:—"in the case of prints no doubt different men may take engravings from the same picture." *Sayre* v. *Moore*, 1 East, 361. n.

ratively small; and that the enormous capital embarked in the copyright of pictures and engraving them, is placed in the greatest jeopardy; because it follows that any one who can surreptitiously or otherwise obtain access to a picture, either before or after it is engraved, so as to obtain sketches from, or a copy of it, may thus proceed *to engrave the picture*, provided he does not copy from the authorized engraving.

The Engraving Acts were passed with the express object of encouraging the art of *designing* for the purposes of engraving, and *if the original design be not made public before the engraving from it be published, in accordance with the conditions imposed by the Engraving Acts*, it would seem to have been the intention of the Legislature to protect the invention of the design, as well as the authorized engraving from that design[1].

Now, as formerly, there are thousands of pictures or designs, coloured or plain, which are prepared of the required size for engraving, and from which the engravings are made. In other cases, where the picture is larger than the plate, it is usual to make a drawing from the picture of the size to be engraved; and it is from such reduced copy that the engraver works, giving the finishing touches to his work from the original picture when he is fortunate enough to obtain access to it for that purpose.

It may be, and usually is, that there are two copyrights connected with every engraving—one in the invention of the picture or design, the other in the engraving.

The copyright in a picture, as such, is not protected. It is merely the *design* of the picture *when coupled with engraving*, which is entitled to copyright.

How to secure the copyright in a picture.—The design or subject of a picture therefore appears to be on the same footing as an invention entitled to protection under the Patent Law; or as public lectures were as to copyright in them prior to the Act of 5 and 6 Will. IV. c. 65. If the *design* of the picture before it is made public be in any manner copied, whether by engraving, lithography, or any other mechanical process, and the copies are published in accordance with the *conditions* of the Acts of Parliament, then it seems to have been the intention of the Legislature that neither the original design of the picture, or the engraving, etc., from it should be copied for any other engraving,

[1] See the words of the Statute, 7 Geo. III. c. 38. s. 1: Appendix, p. 26.

and that the copyright is secured as well in the design of the picture as in the engraving, etc.

Danger in exhibiting pictures before they are engraved.—But if, on the other hand, as is usually the case at the present day, the picture or design be privately or publicly exhibited or otherwise published before it has been engraved, and the prints from the engraving are published, then it would seem that the design is public property; and that the work of the engraver, exclusive of the design, is alone entitled to copyright; in other words, that any one may engrave the subject provided they do not copy it from the engraving[1].

Engravers not entitled to retain proofs.—It is also requisite to notice that an asserted usage amongst engravers to retain a certain number of the proof copies of their works for their own use, when *employed* to engrave a work, was negatived by the Jury in the only case where the point appears to have been decided[2]. If therefore an engraver desires to retain proof impressions of his work for his own use, the right to do so should form a part of his contract with his employer, and such contract should in all cases be *in writing*.

As to the liability of a painter or engraver's executors or administrators in respect of a work which he has contracted to execute; where he dies before completing it, his representatives are thereby discharged from his contract. The undertaking is merely personal in its nature, as in the case of a literary composition, and by the event of the contractor's death has become impossible to be performed[3].

As to the forgery of pictures.—This infamous fraud has in-

[1] In a recent case in equity before Lord Langdale and Lord Cranworth, then Baron Rolfe, Lords Commissioners, where an *ex parte* injunction had been granted to restrain the use of a registered design under the Ornamental Designs Act, and upon the coming in of the defendant's answer it appearing that the plaintiff had two months before the registration exhibited a drawing of the design at his place of business to his customers there, and this fact not appearing on the bill, Lord Langdale said, "the question at law is therefore whether this state of facts did not deprive the plaintiff of the protection of the Act," and the court confirmed a previous order of the Vice-Chancellor dissolving the injunction on the ground that the plaintiff had suppressed the fact above stated as to the exhibition of his design prior to its registration. *Dalgleish* v. *Jarvie*, 20 L. J. Ch. 475.

[2] See *Murray* v. *Heath*, 1 B. and Ad., 804.

[3] By Lord Lyndhurst in *Marshall* v. *Broadhurst*, 1 Tyrwhitt 349. See also Williams's Executors, p. 1467, 4th edition.

creased to such an extent that it may be useful to call attention to the law affecting such cases. As it at present stands, pictures as we have seen are not the subject of copyright, excepting only as regards their design for the purposes of engraving. Thus copies may be and in many cases are multiplied at discretion to the serious injury of the fame of the artists who painted the originals, as well as to the annoyance and pecuniary loss of the persons who may become the purchasers of such forged copies.

But although the copying of a picture without the artist's or owner's permission may not be illegal, yet if such copy be made with the fraudulent object of inducing some person to purchase it as a picture painted by the author of the original work, and which object would seem clear where the signature to the original picture has been forged upon the copy, in such a case there can be no doubt that not only the person making the copy with such object, but also the person causing it to be so made, would upon principle be legally liable for such fraudulent act, although not carried to final completion by a sale of the copy; and an artist is equally liable who, with a similarly fraudulent object, forges upon his own picture the signature of some more celebrated artist.

There is also another fraud practised upon the purchasers of pictures, but which is happily of more rare occurrence; where an artist of celebrity, regardless of his fame, and of the first principles of common honesty, takes advantage of the conventional value of his name with the public by slightly painting on, and signing with his own name, pictures painted by other persons, and which pictures are then, upon the strength of his signature, sold as being his productions[1].

7. *The piracy of copyright* existing under the Engraving Acts is thereby declared to consist in engraving, etching, or working

[1] It is vain to cite the names of celebrated artists in favour of the practice, or who have been otherwise "assisted" in their pictures. In every case where a picture is not entirely painted by an artist, unless it is bought with a full knowledge of all the circumstances, it is a fraud upon the purchaser who buys it direct from the artist or his agent. The *extent* of the fraud must of course depend on the amount of the unknown man's work which has been allowed to remain in the picture; but as the conventional value of the picture depends on the hand that painted it, a fraud is practised by an artist who sells a picture as painted by himself which in fact is not so.

in mezzotinto or chiaro-oscuro, or in any other manner copying or selling, or causing to be engraved, etched, or copied and sold in the whole or in part, by varying, adding to, or diminishing from the main design—or in printing, reprinting, or importing for sale, or causing to be printed, reprinted, or imported for sale any such print or any parts thereof without the consent of the proprietor, first obtained in writing, signed by him in the presence of two or more witnesses; or in publishing, selling, or exposing for sale, or in any other manner disposing of any such print without such consent as aforesaid, or causing the same to be done[1]; and such copying as above mentioned includes prints taken by *lithography*, or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely[2].

In considering questions of piracy under the Engraving Copyright Acts, the same principles will apply as those which govern cases of piracy of literary copyright. Thus, while the primary object of the Engraving Copyright Acts was "for the encouragement of the arts of designing and engraving," and to secure to the artists the profits of their works; the interests of knowledge in those arts require a reasonable freedom to others in the use of all such works as are to a limited extent made public property by the fact of their publication[3]. The law of artistic copyright is therefore to be administered in such a manner as not to curtail the fair and reasonable use of existing works which are the subject of copyright. What is, or is not, such a fair and reasonable use must necessarily in many cases be a nice question to determine.

The intention of the Legislature to be gathered from the Engraving Acts appears to have been to invest the proprietor of the copyright of an *engraving* with the whole profit to be derived from its publication, either in its original or in any other form; as during the continuance of the proprietor's term, the public are expressly prohibited from re-engraving or otherwise similarly

[1] See 8 Geo. II. c. 13, s. 1. Appendix p. 62. Also 7 Geo. III. c. 38. s. 2. Appendix p. 64. 17 Geo. III. c. 57. Appendix p. 68. And 6 and 7 Will. IV. c. 59. s. 2. Appendix p. 69.

[2] 15 Vic. c. 12. s. 14; ib. p. 69.

[3] See observations of Lord Mansfield, C.J., in *Sayre* v. *Moore*, 1 East, 361 n., which was an action founded on the Engraving Acts for piracy of a *chart*.

copying his work "in the whole or in part, by varying, adding to, or diminishing from the main design[1]."

It consequently follows that the copyright of the proprietor may be pirated in different modes:—1. By re-engraving or otherwise similarly copying the whole engraving, either from the plate or an impression from it. 2. By re-engraving or otherwise similarly copying a part of the engraving by varying, adding to, or diminishing from the main design. 3. And to these must be added the printing, reprinting, or importing for sale, or publishing, or disposing of pirated copies of the engraving[2].

Copying the whole engraving.—In all cases of infringement of copyright, the first point for consideration on the part of the proprietor and his advisers is to ascertain whether he has a clear legal title if he intends to adopt proceedings at law; or such *legal*, or at least a good equitable title, if he avails himself of the protection afforded by a Court of Equity; and that the conditions required by the Engraving Acts have been complied with in the publication of the prints. When the proprietor is prepared with proper evidence on these points, then where the whole work has been copied, the only question to determine upon a comparison of the original print[3] and the pirated one is whether the latter is a copy of the former; and a late celebrated judge defined the copy of a print to be "that which comes so near to the original as to give every person seeing it the idea created by the original[4].

Copying a part of the engraving.—This class of cases must ever comprise those which are the most difficult to decide, as they involve the question—What use may be lawfully made of the original engraving? We have just seen that the acts declare it to be piracy to copy the original work "in part by varying, adding to, or diminishing from the main *design*;" and in ascertaining what use may be lawfully made of the original, the best

[1] See 8 Geo. II. c. 13, s. 1. Appendix p. 62. Also 17 Geo. III. c. 57. Appendix p. 68.

[2] Ib. Also 7 Geo. III. c. 38, s. 2. Appendix p. 64. 17 Geo. III. c. 57. Appendix p. 68.

[3] That an *impression* taken from the original engraved plate is sufficient evidence on the part of the plaintiff, without the production of the plate, see *Thompson* v. *Symonds*, 5 T. R. 41.

[4] Per Bailey, J., in *West* v. *Francis*, 5 B. and Ald. 743; S.c. 1 D. and Ry. 407.

test is to ascertain whether the parts copied from it tend to, or do in point of fact, injure the sale of the original print, and thus diminish the value of the proprietor's copyright in it. Thus where R. had published a work on fencing, containing a number of plates, and W. in an Encyclopædia under the head "Fencing" published three engravings representing figures in exactly the same attitudes as R.'s, but disguised with a different costume, Lord Ellenborough, C. J., who presided at the trial of an action brought by R. against W. for the piracy of the prints and part of the letterpress of R.'s work, told the jury that the *intention* to pirate is not necessary in an action of this sort; it is enough that the publication complained of is in substance a copy whereby a work vested in another is injured, and added that the question would be as to the prints, whether W. had copied the main design; and the jury found a verdict for the plaintiff, with separate damages for the piracy of the letterpress and the prints[1]. And in a somewhat recent case the facts were, that M. was the proprietor and publisher of an engraving of the portrait of a mare called "Beeswing," and C. was the printer and publisher of a book in which was published a woodcut of "Coronation," the winner of the Derby in 1841, which cut was said to be a piracy of M.'s engraving, with slight variations; and upon an action brought by him against C., under the 17 Geo. III. c. 57, the learned judge who tried the cause directed the jury "to consider whether the main design of the plaintiff's engraving had been copied, and whether the defendant's was substantially a copy of the plaintiff's," and upon the jury finding a verdict for the defendant, this direction was afterwards held to be correct[2].

In all these cases therefore, one of the questions of fact for the jury to determine is, whether the alterations in the engraving be colourable or not? There must be such a similitude as to make it probable and reasonable to suppose that one is a copy of the other, and nothing more than a copy[3].

Copying the title of a print is such an invasion of the right of

[1] *Roworth* v. *Wilkes*, 1 Camp. 94.

[2] *Moore* v. *Clarke*, 9 M. and W. 692; see also *West* v. *Francis*, 5 B. and Ald. 737, where all the pirated engravings varied from the originals in some respects, but preserved generally the design of the originals.

[3] Per Lord Mansfield, C. J., in *Sayre* v. *Moore*, 1 East, 361, n., which was an action under the Engraving Acts for piracy of a sea-chart.

the proprietor of the copyright that, during the existence of such copyright, a court of equity would doubtless, as in the case of piracy of title of a literary work[1], restrain its wrongful appropriation for any other print, although such print might not be a piracy. The title of a print being used to mark its individuality becomes a most valuable addition to the copyright, and consequently its wrongful usurpation for any other print might, and most probably would, be a serious injury to the proprietor of the copyright in the engraving having such title, as it would intercept profits which would otherwise accrue to him from the sale of his prints.

As to maps, charts, and plans.—We have seen[2] that the copyright in these invaluable works is protected under the Engraving Acts to the same extent as all other engravings, and also that since the 1st July, 1842, they have received the additional protection afforded them by the Statute of 5 and 6 Vic. c. 45, being thereby placed in all respects upon an equal footing with literary copyright works. It may however be useful to notice in this place the only reported case as to the piracy of "maps, charts, or plans," as the principle to be deduced from it applies to all works of that class. It was an action under the Engraving Acts for piracy of a *sea-chart*, tried before that great judge, Lord Mansfield, C. J., in 1785; and the facts were, that the defendant had taken the body of his publication from the work of the plaintiffs, but that he had made many alterations and improvements thereupon. His Lordship, in his direction to the jury, said "the rule of decision in this case is a matter of great consequence to the country. In deciding it we must take care to guard against two extremes equally prejudicial; the one, that men who have employed their time for the service of the community may not be deprived of their just merits, and the reward of their ingenuity and labour; the other, that the world may not be deprived of improvements, nor the progress of the arts retarded." And after observing with reference to literary copyright and prints, that there was no copyright in the *subject*, he proceeded to observe to the jury, that "whoever has it in his intention to publish a chart, may take advantage of all prior publications. There is no monopoly of the subject here any more than in the other

[1] See *Hogg* v. *Kirby*, 8 Ves. Jun. 215.

[2] *Supra*, p. 17.

instances; but upon any question of this nature the jury will decide whether it be a servile imitation or not. If an erroneous chart be made, God forbid it should not be corrected, even in a small degree, if it thereby become more serviceable and useful for the purposes to which it is applied. But here you are told that there are various and very material alterations. This chart is upon a wrong principle, inapplicable to navigation. The defendant therefore has been correcting errors, not servilely copying. If you think so, you will find for the defendant; if you think it is a mere servile imitation, and pirated from the other, you will find for the plaintiff;" and the jury accordingly found their verdict for the defendant[1].

Selling pirated copies of prints—liability of printsellers.—We have seen[2] that the piracy of engravings not only consists in copying them, but also in printing, reprinting, or importing them for sale, without the consent in writing of the proprietor, to be signed by him in the presence of two or more witnesses; and that it is also piracy to publish, *sell*, or expose for sale any such unauthorized print.

As the law stands, printsellers are placed in a most unjust position; it has long since been determined that the seller of a pirated print is liable to the proprietor of the copyright, although at the time he sold it he did not know that it was an unauthorized copy[3], the words "*knowing* the same to have been so reprinted," etc., which occur in the Act of the 8 Geo. II. c. 13, s. 1, having been omitted in the 17 Geo. III. c. 57. And in another case, the facts were, that the defendant had purchased a large quantity of engravings in London for re-sale, and amongst them were three copies of a print, which the plaintiff proved to be a French piracy from a print of his; and having, *ex parte*, obtained an Injunction against the defendant, on the cause afterwards coming on to be heard, although the plaintiff's print was not then produced, or the pirated copies in question, and there was no proof that the name of the proprietor, or date of the publication, was on the plaintiff's print, yet as the defendant by his answer had not suggested that the copies he had sold were not pirated from the plaintiff's, and the defendant had not tendered

[1] *Sayre* v. *Moore*, 1 East. 361, n.
[2] *Supra*, p. 29.
[3] See *West* v. *Francis*, 5 B. and Ald. 742.

to the plaintiff his costs upon being served with the Injunction, the court made it perpetual, and decreed the defendant to pay the costs of the suit, saying that it was not reasonable that a party, whose copyright had been pirated, should sustain the further injury of having to bear the costs of obtaining protection[1].

8. *The remedies of the original proprietor of the copyright and his assignees*, as given by the Engraving Acts for piracy of the copyright, are—1. That the offender shall forfeit the plates on which such prints shall be copied. 2. And all prints therefrom to the proprietors of the copyright, who shall forthwith destroy the same pirated plate and prints. 3. The offender also incurs the penalty of 5*s*. for every such print found in his custody, either printed, or published, or exposed for sale, or otherwise disposed of contrary to that statute, one half thereof to the Crown, the other to the person who shall sue for the same in any of the courts of record at Westminster[2], together with full costs of suit[3]; but *the prosecution must be commenced* within six calendar months after the discovery of the offence committed[4]. 4. And a special action on the case in any court of law of Great Britain or Ireland for such damages as *a jury* shall assess, together with double costs of suit[5].

Proceedings at law under the Engraving Acts in cases of piracy of copyright were at first directed to be taken in the courts of record at Westminster[6], but subsequently in any court of law in Great Britain or Ireland[7], and now the County Courts have jurisdiction in such cases[8] where the debt, damage, or demand does not exceed £50[9], or to any amount where the plaintiff and defendant agree that the Court shall have power to try the case[10]. The institution of the County Courts and the

[1] Per Leach, V. C., in *Fradella* v. *Weller*, 2 R. and M. 247.

[2] 8 Geo. II. c. 13, s. 1. See Appendix, p. 62. Also 7 Geo. III. c. 38. s. 5. Appendix, p. 66.

[3] 7 Geo. III. c. 38. s. 5.

[4] Ib. s. 6. See also 8 Geo. II. c. 13. s. 4.

[5] 17 Geo. III. c. 57. See Appendix, p. 68, also 6 and 7 Will. IV. c. 59. s. 2. Appendix, p. 69.

[6] 8 Geo. II. c. 13, s. 1. See Appendix, p. 62; also 7 Geo. III. c. 38. s. 5. Appendix, p. 66.

[7] 6 and 7 Will. IV. c. 59. s. 2. See Appendix, p. 69.

[8] 9 and 10 Vic. c. 95, s. 58.

[9] 13 and 14 Vic. c. 61, s. 1.

[10] Ib. s. 17.

jurisdiction they possess in cases of piracy of copyright (even as far as such limited jurisdiction extends), is a great and just boon to the proprietors of such property, as well for the expedition and economy of the proceedings, as also that the parties themselves and their wives may be examined as witnesses, and thus giving those persons having a clear *legal* title to copyright a more efficient remedy than they previously possessed; although by the recent alterations in the law of evidence the parties and their wives may now also give evidence in their own cause as well in Chancery as in the superior courts of law.

Evidence for the Plaintiff.—We have seen[1] that there may be, and usually are, two copyrights claimed in every engraving—one for the design or subject, the other for the work of the engraver. If the proprietor of the copyright be the inventor of the design, his proofs will therefore be—1. His invention and execution of such design. 2. That he engraved or caused it to be engraved or lithographed, etc., as the case may be[2]. 3. That he complied with the *conditions* imposed under the Engraving Acts[3]. 4. That the impressions or copies were first published on the day named on them, and that he thus was and still is the proprietor of the copyright. The production of the plate is not requisite, an impression is sufficient evidence (*Thomson* v. *Symonds*, 5 T. R. 41). 5. The piracy will be proved by the production of a pirated copy, comparing it with the plaintiff's, proving by skilled witnesses the extent to which it was copied from the plaintiff's, either as to the design or engraving, etc., or both, according to the copyright claimed, and that it was either made, published, or sold by the defendant.

If the proprietor of the copyright be *assignee* thereof, then, in addition to such of the above proofs as are applicable, if he claim such right both in the design as well as the engraver's work, he must prove his title to the design by deed of assignment[4], attested by two witnesses, and that he engraved or caused the work to be engraved[5]; or if the engraver executed it on his own account, then the title to his copyright therein must be proved by deed of assignment, in the same way as from the inventor of the design.

If the copyright claimed be only in the engraver's work, and

[1] *Supra*, p. 26. [2] Ib. p. 17. [3] Ib. p. 18.
[4] *Power* v. *Walker*, 4 Camp. 8; S. c. 3 M. and S. 7.
[5] See 7 Geo. III. c. 38. s. 2: Appendix, p. 64.

not the design, then of course the proofs will be confined to that claim only.

The Evidence for the Defendant.—In answer to the plaintiff's action, the defendant may show—1. That the conditions imposed by the Engraving Copyright Acts have not been complied with—including therein the publication of proof impressions before letters[1]. 2. That the engraving was obscene, libellous, or otherwise immoral[2]. 3. If copyright be not claimed in the design, then that defendant's work was not copied from plaintiff's, but from the original design or studies from it[3]. 4. Or if the copyright in the design be claimed, that it was published by being exhibited or otherwise made public before it was engraved[4]. 5. And that the copyright has expired[5].

Proceedings in equity are frequently either essential or advisable (where the work in dispute is of sufficient value to warrant the expense), in preference to those at law, especially where the party injured has only an *equitable* title to the copyright, or where it is of importance immediately to restrain the sale of the pirated work. Under the existing unjust and absurd system[6] the Courts of law have no power to restrain the sale of a pirated Copyright work, although the fact of such piracy may be indisputable; it can only be done by obtaining an Injunction from the Court of Chancery, such Injunction being a writ from that Court prohibiting the continuance of the wrongful act complained of.

The principle upon which *Injunctions* were formerly granted by the Court of Chancery to restrain the publication, sale, or other piracy of prints, as in all other cases of copyright, was that of making the legal right effectual; and accordingly, where a fair doubt existed as to such legal right in the plaintiff, the Court always directed it to be tried, making some provision in the interim—the best that could be for the benefit of both parties[7]; and although injunctions are now more liberally granted, yet still equity generally requires the plaintiff to show a *primâ facie* legal

[1] *Vide supra*, p. 21, 22. [2] Ib. p. 23. [3] Ib. p. 25.
[4] Ib. p. 27. [5] Ib. p. 18.

[6] "We assert as an indisputable proposition that every court ought to possess within itself the means of administering complete justice within the scope of its jurisdiction." Vide Second Report of Common Law Commissioners, p. 36.

[7] Per Lord Eldon, C., in *Wilkins* v. *Aiken*, 17 Ves. 422.

title[1]. But where the plaintiff had only an equitable title, and it has been requisite to send the case to law to try the question of piracy, the defendant has been put under terms to admit in the action the legal copyright of the plaintiff; and this was considered as the settled practice[2] at the period when courts of equity most justly became invested with power to try the legal title, without requiring the parties to proceed at law to establish the same[3], and were thus empowered from the 1st of November, 1852, to administer complete justice to the parties. But when the Court has doubts as to the construction of a Copyright Act, it will still leave the plaintiff to his remedy at law[4].

The granting or refusal of an injunction in any case is a matter resting in the sound discretion of the Court[5]; and it has been decided that its jurisdiction to relieve by injunction is not taken away because an Act of Parliament provides a remedy by special action on the case, such jurisdiction being founded on the right of property given by that Act[6].

It may therefore be considered as the practice in equity that to entitle a plaintiff to relief it is not now indispensable for him to have a strictly legal title, it being sufficient that he has a clear equitable title[7], and the present course is for the Court to grant the injunction in all cases where there is a clear colour of title founded upon a long possession and assertion of right[8], provided the work be not disentitled to protection on principles of public policy, as being clearly irreligious, immoral, libellous, or obscene[9], the onus of showing which is on the defendant, as *primâ facie* the copyright confers title[10]. But at the same time it must

[1] See Drewry on Injunctions, p. 192.

[2] Ib. p. 197, citing *Sweet* v. *Shaw*, 17 L.J. Ch. 216; and *Sweet* v. *Cater*, 5 Jurist, Ch. 68.

[3] See 15 and 16 Vic. c. 86. ss. 62–67.

[4] *Perfect* v. *Shepard*, before Sir W. Page Wood, V.C., 24 Feb. 1853, which case arose under the Ornamental Designs Copyright Act, 5 and 6 Vic. c. 100.

[5] Story's Equity Jurisprudence, s. 863, citing 1 Mad. Ch.Pr. 104.

[6] *Sheriff* v. *Coates*, 1 Rus. and M. 159, which was a case of piracy under the Calico Printing Acts.

[7] *Mawman* v. *Tegg*, 2 Russ. 385; and *Sweet* v. *Shaw*, *supra*.

[8] Story's Equity Jurisprudence, s. 935, citing Eden on Injunctions, p. 284; and *Tonson* v. *Walker*, 3 Swans. 679.

[9] Ib. s. 396. citing *Lawrence* v. *Smith*, Jac. 471.

[10] Ib. 472. Per Lord Eldon, C.

be borne in mind that it is one of the first principles of equity that to entitle the plaintiff to relief he must have acted equitably to the defendant in the subject-matter of the suit; and thence it has been established as an inherent doctrine of the Court of Chancery that it will not entertain stale or antiquated demands, or encourage laches and negligence[1].

And in applications for ex parte Injunctions the greatest care should be taken by the solicitor in getting up the case and instructing counsel, that every fact likely to be material as affecting the question should be fully stated; for it has been said by very high authority, that such applications are very analogous to the case of Insurances, in which it is not only required to state all the matters you believe to be material, but all which are in fact so; if anything be concealed, the concealment of which may diminish the rate of premium, the policy is vitiated. So if a party abstain from stating facts in his bill which the court sees are material, he forfeits his right to the Injunction[2].

In addition to the relief granted in ordinary cases of piracy, the court has also restrained the sale of pirated copies of prints in the hands of an innocent purchaser of them[3]. It has also restrained the publication of prints surreptitiously obtained, which have been taken from plates engraved for the plaintiff's amusement and not intended to be made public[4]. And in an early case at law, it was said that an Injunction would be granted to prevent the exhibition of a libellous picture[5].

9. *The transfer of Copyrights.*—As to the purchase of Copyrights we have seen[6] that according to the Engraving Acts, it is an act of piracy in any person even to print, publish, or sell an engraving "without the consent of the proprietor first obtained in writing, signed by him in the presence of *two* or more witnesses." It therefore follows that in order to render a contract valid for the purchase of a copyright, such contract must be *in*

[1] See Story's Equity Jurisprudence, s. 529, and numerous cases there cited.

[2] Per Rolfe, Lord Commissioner, in *Dalglcish* v. *Jarvie*, 20 L.J. Ch. 476.

[3] *Fradella* v. *Weller*, 2 Rus. and M. 247. As to the *legal* liability of an innocent purchaser of pirated prints, see *West* v. *Francis*, 5 B. and Ald. 737, and *supra*, p. 33.

[4] *Prince Albert* v. *Strange*, 18 L.J. Ch. 120.

[5] Per Lord Ellenborough, C.J., in *Du Bost* v. *Beresford*, 2 Camp. 511.

[6] *Supra*, p. 29.

writing[1], and signed and witnessed as above specified; and as both the painter, or other inventor of the design, as well as the engraver of it, have each a distinct copyright in his work, care should always be taken that the contracts for the purchase of their rights are duly signed and witnessed as the statute directs. But even then the purchaser cannot sue a pirate in any court of law, because to invest himself with the *legal* title as assignee of the copyright, it must have been assigned to him by *deed*[2], duly stamped with the proper *ad valorem* duty on the price of the copyright, signed by the proprietor, and his signature attested by *two* witnesses[3].

The general practice amongst the purchasers of copyrights under the Engraving Acts appears to be only to acquire an *equitable* title to them—that is, by paying the proprietor the purchase-money, and in some cases taking his receipt for the money, with an undertaking to execute an assignment of the copyright when called upon to do so. As the law stands on the subject, the purchaser of a copyright having only such equitable title to it, although courts of law will recognize such equitable interest[4], yet if his right be infringed upon, he cannot proceed at *law*, but must resort to the Court of Chancery for relief; and in the event of selling his copyright, unless he makes it part of his contract with the purchaser that only an equitable title will be given him, he may insist upon having a legal title at the vendor's expense. When a copyright is *valuable*, it is therefore dangerous and most unwise on the part of the purchaser not to be duly invested with the *legal* title to it.

The practice amongst Artists as to their claims to Copyright.—When an artist sells his picture, it seems to be generally understood that the copyright for purposes of engraving passes with the picture to the purchaser, unless the artist at the time of the

[1] *Power* v. *Walker*, 4 Camp. 8; S. c. 3 M. and S. 7, where the point arose upon a literary copyright. See also Chitty on Contracts, p. 71, 4th edition.

[2] Ib. See also *Thompson* v. *Symonds*, 5 T. R. 41; also per Tindal, C. J., in *De Pinna* v. *Polhill*, 8 C. and P. 78.

[3] In a somewhat recent case for piracy of a *literary* copyright, claimed under the act of 8 Anne, c. 18, the first section of which requires the author's consent to be signed in the presence of *two* witnesses, the plaintiff was nonsuited because his purchase-deed was only attested by *one* witness. *Davidson* v. *Bohn*, 18, L.J. C.P. 15.

[4] See *Simms* v. *Marryat*, 20 L.J. Q.B. 459.

sale either verbally or in writing reserves the copyright. No case appears in the books in which this point has ever been discussed or decided, and it may well be doubted whether such a practice, which by some persons only is asserted to amount to a usage or custom, could be established in any court of law[1] or equity in this country, even assuming that no legislative enactment existed on the subject. It is but natural justice that the artist should have the whole profits allowed by law to be derivcd from the invention of his picture as well as its execution. Each work he produces may be a double source of direct profit to him: first, by sale of the picture; second, by the exercise or sale of the copyright, or the exclusive right of multiplying copies of the picture by any of the various processes of engraving. It is rare to find that artists are good men of business; and as this arises from the peculiar nature of their occupations, they require and deserve that more than ordinary precaution should exist in their favour. The Legislature has therefore enacted that their designs shall not be engraved, etc., without their consent in *writing*, signed in the presence of *two* witnesses. The wisdom and justice of this enactment, so far as the *written* consent is required, is the more obvious when it is considered that some artists obtain much more for their copyrights than for their pictures[2]; and yet if a painter should happen to forget the reservation of his copyright before he has sold his picture, it is attemptcd to be treatcd as a usage to defraud him of it! But any usage to be admissible must be consistent with the principles of law[3]. Looking to the object and enactments of the Legislature in the Engraving Acts, it seems clear that its intention would be frustrated by recognizing any such unjust mode of divesting an artist of his copyright as that said to exist; and consequently, that

[1] A general understanding of persons engaged in a particular occupation or business is widely different from a legal custom, which, as in the case of bankers, can only be established by a long, well-known, acknowledged, and *universal* usage and practice amongst persons engaged in that business to act in accordance with it. See per Parke, B., in delivering the considered judgment of the Court in *Bellamy* v. *Majoribanks*, 21 L.J. Ex. 75.

[2] Take for example the two pictures by Sir Edwin Landseer in the Vernon Gallery, "Peace and War." His price, it has been said, was £1000 for those pictures, while he obtained £2500 for the copyright of them.

[3] See 3 Kent's Com. 260. Also observations, *supra*, p. 7.

in the absence of any express sale of the copyright with the picture, the purchase of the latter only will not include the copyright, excepting only in those cases where the picture has been commissioned or purchased with express notice to the artist that it was so commissioned or purchased for the purpose of engraving, in which case equity would probably protect the employer or purchaser, and enforce an assignment of the copyright from the artist.

The various modes of transfer of Copyrights.—Although personal estate, they can only be legally transferred, as already stated, by *deed*[1] of assignment in case of purchase, or other consideration, or gift, by the will of the proprietor, or by operation of law; as by administration to his effects in case of his dying intestate, or by his bankruptcy, or insolvency, forfeiture to the Crown in case of conviction for felony, or seizure by the sheriff under any writ of execution.

The practice amongst printsellers as to the transfer of their copyrights in engravings seems to be as loose and unrecognized by law as that usually adopted and understood by the purchasers of copyrights from artists. The purchase and possession of the metal or other plate on which the work is engraved is considered completely to vest the copyright in the purchaser, and it appears to be only in works of considerable value that the deed of assignment required by law to vest the legal title to the copyright in the purchaser, is ever executed by the proprietor. It is only requisite again to observe that the purchaser in such cases can have nothing more than perhaps a doubtful equitable title to the copyright, and that the fact of his not having the *legal* title properly assigned to him, exposes him to the chance of all the difficulties and increased expense above stated[2].

[1] *Vide supra*, p. 39, for enactment of the statute, and observe that *two* witnesses are required.

[2] *Supra*, p. 39.

CHAPTER III.

AS TO COPYRIGHT IN WORKS OF SCULPTURE.

1. Of what the Copyright consists. The number and mode of interpreting the Copyright Acts.—2. The territorial extent of protection they afford.—3. The works entitled to Copyright.—4. The persons entitled to Copyright.—5. The extent of Copyright or term of years for which it is granted.—6. The *conditions* upon which it is granted. Those which apply where a sculptor models a work on his own account. And those where he is employed to execute a model. Non-performance of these conditions fatal to claim for Copyright.—7. Works not entitled to Copyright.—8. Piracy of the Copyright defined. Legal principles applicable to such piracy.—9. Remedies of proprietor of Copyright. By the Sculpture Copyright Acts. At Common Law. In Chancery. Under "the Designs Act, 1850."—10. Importance of performance of *conditions* imposed by that Act as well as the Sculpture Copyright Acts. Fallacy of supposing that practice amongst Sculptors as to securing Copyrights is legal.—11. Procedure in cases of piracy—at Law—in Chancery.—12. As to the transfer of Copyright.

1. *Copyright of Sculpture* consists in the sole and exclusive liberty of multiplying copies of any work which is the subject of such right under the Statutes relating thereto.

We have seen[1] that those Acts are three in number, viz. the 38 Geo. III. c. 71; 54 Geo. III. c. 56; and 14 Vic. c. 104. ss. 6, 7. As there is no authority which proves that copyright in works of sculpture existed by the common law, it follows that it is to these Acts alone the sculptor can be advised to look for protection of the copyright in his productions. In putting a construction upon any one of these Acts the court will give effect to the *intention* of the Legislature to be collected from all of them[2]. The two

[1] *Supra*, p. 14.

[2] See observations of Best, C. J., in delivering Judgment of the Court in *Newton* v. *Cowie*, 4 Bing. 245, on the Engraving Acts; see also those of Lord Denman, C. J., on the Literary Copyright Acts in *Russell* v. *Smith*, 17 L.J., Q.B., 229.

first are known as "the Sculpture Copyright Acts;" and it is very important, as will presently be shown, that sculptors should carefully perform the *conditions* imposed on them by these Acts, because if they do not, no copyright is acquired in a work, nor is any person guilty of an *illegal* act (however immoral it may be) in copying it who can obtain an opportunity of doing so.

2. *The territorial extent of protection* afforded by these Acts is most extensive. The Copyright of Designs Act, as just observed, only gives additional remedies in favour of such works as are the subject of protection under the Sculpture Copyright Acts, it is consequently to them that we must look for the territorial extent they embrace. The first of these Statutes, as we have seen, was passed in 1795; the second in 1814, after the Union with Ireland. Both these Acts are silent as to the portion of the British Dominions to which the Legislature intended they should extend; nor can its meaning on that point be in any way collected by implication from the wording of any of the clauses. Under these circumstances therefore the protection afforded by the Statutes in question includes the whole of the British Dominions *except* the Channel Islands; the Isle of Man[1], and perhaps such of the Colonies to whose condition the Acts would not be applicable or beneficial, and also excepting the British possessions comprising the territory of the East India Company[2].

3. *The Works entitled to protection for Copyright.*—The Act of 1798 gives a copyright for any *new* model or copy or cast made from such new model[3]; but the Act of 1814 only confers copyright for any new and *original* work[4]. The latter Statute is also much more comprehensive than the former, which it in great measure supersedes; but as the Act of 1798 has not been repealed, it must, as before stated, be read in conjunction with the Act of 1814 in order to arrive at the intention of the Legislature. It has therefore been printed in the Appendix hereto.

[1] No general Act of Parliament extends to the Isle of Man unless it be expressly named in such Act. See 4 Inst. 284; see also the Patent Law Amendment Act, 15 and 16 Vic., c. 83. s. 18, which specifies the Isle of Man as part of the British Dominions to which Patents shall extend.

[2] See Dwarris on the Statutes, pp. 526–7, 2nd edition, and authorities there collected.

[3] 38 Geo. III. c. 71. s. 1: Appendix, p. 72.

[4] 54 Geo. III. c. 56. s. 1: Ib. p. 75.

The Statute of 1814 enacts that every person who shall make or cause to be made any new and original sculpture or model or copy or cast of the human figure, or of any bust or busts or of any part of the human figure, clothed in drapery or otherwise, or of any animal or animals or of any part or parts of any animal combined with the human figure or otherwise, or of any subject being matter of invention in sculpture[1], or of any alto or basso-relievo representing any of the matters or things aforesaid, or any cast from nature of the human figure or of any part or parts of the human figure, or of any casts from nature of any animal or of any part or parts of any animal, or any such subject containing or representing any of the matters and things aforesaid, whether separate or combined—is to have the *sole right* and property of all and in every such new and original sculpture, etc., aforesaid[2].

4. *The persons entitled to Copyright*, it will be observed, are every person who shall make "or cause to be made" any new and original sculpture, and their assigns. From these words "cause to be made" it therefore seems to have been the intention of the Legislature to vest the copyright in the *employer*, and not in the sculptor, in all those cases where he is employed to design or model a work.

It is of much importance to bear this distinction in mind with reference to the performance of the *conditions* to be observed by the proprietor of the copyright, which conditions will shortly be stated.

5. *The extent of copyright, or term of years for which it is granted* in the work is fourteen years from first putting forth or publishing the work[3], with an additional term of fourteen years[4] to commence at the end of the first fourteen, if the person shall

[1] It seems difficult to understand why these latter words were not deemed sufficient. The enumeration of subjects is so ludicrously clumsy and unartistic, that assuredly no *artist* could have "*modelled*" that portion of the Act. *Vide supra*, p. 14. n. 1.

[2] 54 Geo. III. c. 56. s. 1: see Appendix, p. 75.

[3] Ib.

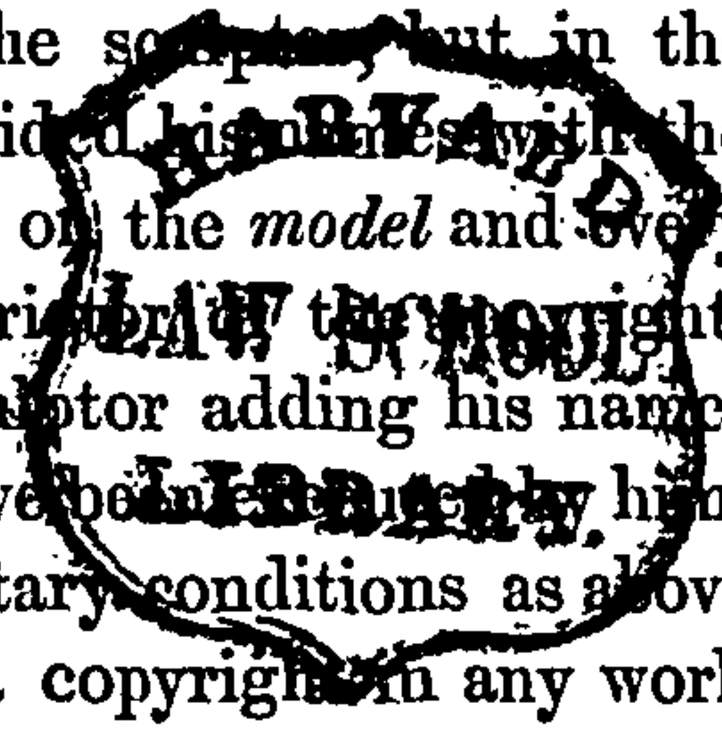
[4] Ib. s. 6. This placed sculptors on the same statutory footing as authors; but as the latter have now a term of forty-two years in their works, with the chance of a longer one if they survive that period, (see 5 and 6 Vic. c. 45, s. 3.) it is difficult to see the reason why sculptors are deprived of the same measure of justice.

be then living who made or caused to be made the work in which the copyright exists, which copyright is only acquired—

6. *Upon the following conditions.* That before the work is put forth or published, the proprietors shall cause to be put thereon, 1. Their names.—2. The date[1].

If therefore a sculptor models a work on his own account, which he is afterwards commissioned to execute in marble or any other material, the copyright vests in, and is the property of the sculptor, provided he has complied with the conditions above-mentioned,—that is, by engraving on the *model* as well as on every cast or copy thereof, his names and the date (namely the day of the month and year) when the model is first shown or otherwise published in his studio or elsewhere, *and such date must never be altered.* It is a popular and fatal error amongst sculptors to suppose that their names and the year when the finished *copy* from the model is executed are sufficient to engrave on such copy. Where the easy and plain conditions of the Acts of Parliament are not complied with, the copyright is not acquired.

If, on the other hand, the sculptor does not model the work on his own account, as is almost always the case for gold and silversmiths' works, busts, and public monuments, etc., then, as above stated, the copyright does not vest in the sculptor, but in the person causing the work to be made, provided his name, with the date of the first publication be engraved on the *model* and every cast or other copy thereof as the proprietor of the copyright. But there can be no objection to the sculptor adding his names with any addition denoting the work to have been executed by him.



That the non-performance of the statutary conditions as above pointed out, is fatal to the existence of a copyright in any work of sculpture, seems clear by analogy with the cases decided upon the Engraving Acts as to the date of publication of a print, as well as the intention of the Legislature in imposing the conditions[2], namely, that the public may know the day when the copyright expires. Nothing can be more easy than the performance of the conditions imposed by the statutes, and yet they appear

[1] 54 Geo. III. c. 56. s. 1: see Appendix, p. 75. If the work be registered under the Designs Act, see further conditions requisite to be observed, *infra*, pp. 47, 48.

[2] *Vide supra*, p. 18 *et seq.*

to be most rarely complied with. Indeed, to such an extent does this ignorance of or want of attention to the above conditions prevail amongst sculptors and their employers, that it may be doubted whether the copyright is acquired in above *one* out of every hundred works of sculpture produced in this country.

7. *As to works not entitled to copyright*, the same principles apply to the productions of the sculptor as to those of the painter and engraver[1]. Thus no obscene, libellous, or other immoral work is within the protection of the Sculpture Copyright Acts; and a caricature bust, statue, statuette, or other representation of a person which exposes him to public hatred, contempt, or *ridicule*, is libellous[2].

And to these must be added all those works in respect of which the above-mentioned statutory conditions have not been performed.

8. *The piracy of the copyright* is declared to consist in making or importing, or causing to be made or imported, or exposing to sale, or otherwise disposing of any pirated copy or pirated cast of any such new or original work as above specified, whether such pirated cast be produced by moulding or copying from or imitating *in any way*[3] such work, to the detriment, damage, or loss of the original or respective proprietors of the same work so pirated[4].

As the legal principles which govern the piracy of prints have been already explained and illustrated[5], and as the same principles will be found to apply in most cases which may arise under the Sculpture Copyright Acts, it would be superfluous to repeat them in this place.

9. *The remedies* given by the statutes to the proprietors of the copyright in case of piracy of their works, are a special action on the case against the pirate for such damages as *a Jury* shall assess, with double costs[6]. But such action must be commenced within *six* calendar months next after the discovery of the offence[7].

[1] As to which *vide supra*, p. 23 *et seq.*

[2] See Sel. Ni. Pri. 1015, 11th edit. citing *Villiers* v. *Mousley*, 2 Wils. 403; *Digby* v. *Thompson*, 4 B. and Ad. 821.

[3] These words appear sufficient to protect a work from being copied either upon a reduced or increased scale without the consent of the proprietor of the copyright.

[4] 54 Geo. III. c. 56. s. 3; see Appendix, p. 76.

[5] *Supra*, p. 28 *et seq.* [6] 54 Geo. III. c. 56. s. 3. [7] Ib.

But the remedy thus given appears to have been unnecessary, because in all cases where the copyright is vested in any person, the common law gives the ordinary remedy[1] by action on the case, in the event of such right being infringed. It would therefore seem that a plaintiff in such case may avail himself either of the remedy given him by the statute, or by the common law.

Or the plaintiff may proceed in Chancery against the pirate for an injunction to restrain him from continuing his piracy, and an account of the profits he made thereby.

Or the proprietor of the copyright may have his work *registered* under "the Designs Act, 1850," by *the Registrar of Designs*[2], on furnishing him with—1. Such copy, drawing, print[3], or description in writing or in print, as in the judgment of the Registrar shall be sufficient to identify the work—2. The name of the proprietor—3. His place of abode or business or other place of address—4. Or the name, style, or title of the firm under which he may be trading. Such registry to be for the whole or any part of the term during which copyright in such work shall exist under the Copyright Acts: and the Registrar to give the proprietor a certificate of such registration[4]; and if any person shall during the continuance of the copyright in any work so registered pirate the same in such manner, and under such circumstances as would entitle the proprietor to a special action on the case under the Sculpture Copyright Acts, the person so offending forfeits to the proprietor of the work for every such offence a sum not less than £5 and not exceeding £30, for the recovery whereof the proprietor may proceed under the Designs Act, 1842, 5 and 6 Vic., c. 100. s. 8, either—1. By an action of debt, or on the case against the party offending, or—2. By summary proceeding before two[5] Justices having jurisdiction where the offending party resides. *Upon condition* that every

[1] By Lord Ellenborough, C. J., in *Roworth* v. *Wilkes*, 1 Camp. 97.

[2] This office is now (1853) at No. 1, Whitehall. Attendance 10 to 4; but designs and transfers can only be registered between 11 and 3.

[3] But in case it appears to the Registrar that such copy, drawing, or print cannot be furnished, or that it is unreasonable or unnecessary to require the same, he may dispense with it. See 13 and 14 Vic. c. 104. s. 11.

[4] 13 and 14 Vic. c. 104. s. 6.

[5] But *one* Justice appointed under the Metropolitan Police Acts has co-extensive power with two or more ordinary Justices. See 2 and 3 Vic. c. 71. s. 14.

copy or cast of the work which shall be published by him after such registration as aforesaid must be marked—1. With the word "registered,"—2. And with the date of registration[1].

It cannot be too strongly again impressed upon sculptors, and other proprietors of copyright in sculpture, that to entitle themselves to any copyright in their works, they must strictly comply with the *conditions* imposed on them by the Sculpture Copyright Acts[2]; and if they desire to obtain the benefits of the Copyright of Designs Act, by registering their works, that the *conditions* imposed on them by that Statute, as above stated, must also be complied with. It may be that the Legislature intended the observance of the conditions in the last-mentioned Act to obviate the necessity of the sculptor's observing those under the Sculpture Copyright Acts; but in the absence of any decision on that point, and seeing that the Designs Act is a penal Statute, and therefore to be construed strictly, it is most advisable not to run any risk, but carefully to comply with *all* the conditions above specified.

It is a fallacy to suppose that the practice (or mis-called usage) amongst sculptors and their employers as to securing and transferring their copyrights can be upheld in opposition to the express requirements of the law on the subject.

As to procedure in cases of Piracy.—It must also be remembered that any proceedings against a pirate must be commenced *within six calendar months* after the discovery of the offence[3], if such proceedings are taken under the Sculpture Copyright Acts.

As regards the Court in which it will be proper to commence any process *at law* in case of piracy, that is, whether in the County Court or one of the Superior Courts, will depend upon the amount of the damage claimed by the plaintiff, and other circumstances which have been already pointed out as to proceedings at law under the Engraving Acts[4]. Where the work has been "registered" under the Designs Act, and no question of importance is likely to arise as to the title to the copyright, then in small cases it may be advisable to proceed summarily before two Justices for the penalties claimable under that Act[5].

[1] See 13 and 14 Vic. c. 104. s. 7: Appendix, p. 78.
[2] *Vide supra*, p. 46.
[3] 54 Geo. III. c. 56. s. 5. See Appendix, p. 77.
[4] *Vide supra*, p. 34, also pp. 46, 47.
[5] Ibid. p. 49.

If however it be of importance effectually to prevent a pirate from selling pirated copies of a work or otherwise invading a copyright, it may be advisable, when the work is of sufficient value to justify the proceeding being taken, to apply to the Court of Chancery for an *Injunction* to restrain the party from continuing the injury.

For proceedings in equity in such cases, *vide supra*, p. 36 *et seq.*

12. *As to the transfer of Copyrights* the reader is referred to pp. 38, 39, *supra*, relating to the transfer of Copyrights under the Engraving Acts, as the statements there made equally apply in all essential points to those under the Sculpture Copyright Acts. It therefore seems only requisite to observe as to the purchase of Copyrights under those Acts, that the 54 Geo. III. c. 56, s. 4, expressly specifies a *deed* in writing, signed by the proprietor in the presence of and to be attested by *two* or more witnesses, as being requisite to justify the purchaser in exercising the copyright, and consequently to vest the legal title to it in him.

CHAPTER IV.

OF THE CHIEF DEFECTS OF THE EXISTING LAWS OF ARTISTIC COPYRIGHT, WITH SOME SUGGESTIONS FOR THE AMENDMENT OF SUCH LAWS.

I. *Defects in the Engraving Copyright Acts.*

1. Their protection only extends to Great Britain and Ireland.—2. To acquire Copyright the work must be Engraved, etc., there.—3. Term of Copyright too short.—4. Copyright of a Picture unprotected.—5. And Proofs before Letters.—6. Pirated Copies, if not for sale, may be imported.—7. Printsellers liable for selling Pirated Copies, although not knowing them to be so pirated.—8. Penalties for Piracy too small.—9. Copyright only to be assigned by Deed.—10. Or in any way transferred save by Deed, Will, etc.—11. No means for public to ascertain Proprietor of Copyright for time being.—12. Ruinous Costs and delay of proceedings in case of Piracy.

II. *Defects in the Sculpture Copyright Acts.*

1. Channel Islands and Isle of Man not included in protection given.—2. Term of Copyright too short.—3. No protection against Drawings from works of Sculpture.—4. Also the same defects as 8, 9, 10, and 11 above mentioned, as to the Engraving Acts.

III. *Suggestions for Amendment of the Law of Artistic Copyright.*

1. That present Acts should be repealed, and Laws consolidated into one Act, which should protect existing *bonâ fide* claims to Copyright.—2. Copyright to be extended to all parts of the British Dominions, and term to be same as for Literary Copyright.—3. Works of British subjects to be entitled to Copyright, although not first published here, in certain cases.—4. Pictures, as such, to be the subject of Copyright.—5. Making fraudulent copies of Pictures to be declared a criminal offence.—6. Exhibition of a Picture not to affect the Copyright.—7. Copyright of Sculpture to include all enlarged or reduced copies of a work.—8. Only mode by which artists should be divested of their Copyrights.—9. Name of proprietor no longer requisite to appear on the work.—10. No pirated copies to be imported for any purpose whatever.—11. No printseller to be liable for selling pirated copies if ignorant of the piracy. Forgery of Stamp of Printsellers' Society, etc., to be declared a misdemeanour.—12. Penalties for Piracy to be increased, and all paid to proprietor of Copyright.—13. Artistic Copyrights to be registered, etc., and transferred by note in writing to be signed by proprietor and regis-

tered.—14. Copyright Registration Office to be under one management in three departments, Literary, Artistic, and Useful and Ornamental Designs.—15. Registration of Copyright to be *primâ facie* evidence of title.—16. Courts to have discretion in all cases of piracy to make defendant give security for plaintiff's costs.—17. That Common Law Courts should have powers to grant Injunctions, etc.—18. All Courts, at request of plaintiff or defendant, to have power to refer case to arbitration.—19. Each party in case of piracy, at commencement of proceedings, to deliver particulars of demand and defence, etc., to be verified upon oath. IV. Conclusion.

HAVING in the last and previous chapters endeavoured to state the existing laws of Artistic Copyright, it now only remains to point out what appear to be the leading defects in them, and to suggest some remedies for their removal.

I. *As to the Engraving Copyright Acts.*

The chief defects of these Acts may be comprised under the twelve following heads, which will be stated as briefly as possible, because most of them have been noticed in detail in their proper order in the two previous chapters.

1. The territorial extent of protection is at present limited to Great Britain and Ireland alone[1], so that in all other portions of the British dominions the copyright acquired under the Engraving Acts may be pirated with impunity.

2. No copyright can be acquired unless the work be either "engraved, etched, drawn, or designed" in Great Britain or Ireland[2]. Thus if any person, although a British subject, designs and engraves a work in the Isle of Man, the Channel Islands, or any of the British colonies, etc., he can neither acquire or confer on any one a copyright in Great Britain or Ireland under the Engraving Acts; the *publication* alone of the work there being insufficient.

3. An artist has only the short term of twenty-eight years granted him for his copyright[3], which is an inadequate return for his invention and industry. Originally it was only fourteen years, the first Act obtained by Hogarth having been framed on the Literary Confiscation Copyright Act of 8 Anne[4], which only allowed a term of fourteen years in favour of books published after the 10th of April, 1710. Maps and plans are included in

[1] *Vide supra*, p. 16. [2] Ib. p. 16. [3] Ib. p. 18.
[4] See 'Biographical Anecdotes of Hogarth,' p. 38, 3rd edit.

the Engraving Acts; but by a statute passed in 1842[1], copyright in them, as well as in books and music, is extended to a certain term of forty-two years, with the chance of a longer period, according to the duration of the designer or author's life. Why should not a similar extension of term be granted in favour of *artistic* copyright?

4. The copyright of a *picture* as such is unprotected. It is only the *design* of the work when coupled with engraving that is entitled to copyright. And unless an engraving from a picture be actually published before the picture is exhibited or otherwise made public, it would seem that the copyright even in the design is lost, and that any one may either engrave or re-engrave the picture provided he does not copy from the original engraving[2]. The forgery of pictures[3] would also be sensibly diminished if, as pictures, they were entitled to copyright.

5. No provision is made for the publication of proof impressions of prints before letters. It would seem that the date of publication must appear upon *every* impression taken from the plate, or the copyright in the engraving upon such plate is lost[4]. It may also be doubted whether there is any copyright in the engravings or other illustrations forming part of a book, unless the name of the proprietor and date of publication appears on each print[5].

6. It is declared piracy to import *for sale* a pirated print[6], but it is not piracy if not imported for sale. No books reprinted from works entitled to copyright in this country are allowed to be imported for private use or otherwise. Are not the proprietors of *artistic* copyright entitled to a similar protection?

7. Printsellers and other persons *selling* pirated copies of prints are guilty of piracy, although they may have both purchased and sold such copies in ignorance of the fact of their being pirated[7].

8. The penalties given for the infringement of the copyright[8] are too small to afford sufficient protection, and one-half is payable to the Crown. And no equitable jurisdiction is given to the courts of common law, as has been done by the recent Patent Law Amendment Act of 15 and 16 Vic. c. 83, s. 42, for

[1] See 5 and 6 Vic. c. 45. s. 2.
[2] *Vide supra*, p. 25.
[3] Ib. p. 27, 28.
[4] Ib. p. 18.
[5] Ib. p. 20, 21.
[6] Ib. p. 29.
[7] Ib. p. 33.
[8] Ib. p. 34.

granting Injunctions, and other purposes important to the protection of the proprietor.

9. The proper assignment of the legal interest in a copyright, which is purchased under the Engraving Acts, involves the cost of a Deed of Assignment, which must be stamped with an *ad valorem* duty, signed by the proprietor, and attested by two witnesses[1].

10. The absence of any legal mode of transfer of the copyright in any case, unless by deed or will, except by operation of law, as in the case of intestacy, bankruptcy, etc.

11. The absence of any means by which the public may ascertain the proprietors of a copyright for the time being, whose permission may be required for re-engraving either the whole or a portion of any plate, or for any other purposes relating to the copyright.

12. And lastly, the all-important evil of the ruinous cost and delay attendant on the proceedings requisite for sustaining and protecting a valuable copyright, in case of its being pirated.

II. *As to the Sculpture Copyright Acts.*

The leading defects existing under these Statutes are nearly as numerous as those under the Engraving Copyright Acts. They may be comprised under the *four* following heads:—

1. The Channel Islands and the Isle of Man are not included in the protection afforded to the works of the sculptor[2], and consequently they may be pirated there with impunity.

2. The inadequacy of the term granted for copyright in works of sculpture, which is only fourteen years *certain*, with the chance of a similar term if he should be living at the expiration of the first fourteen years[3].

3. The total absence of any protection for the sculptor against drawings or engravings of any description being made from his works without his permission. If well designed and engraved, they might be profitable to him in various ways—while, on the contrary, if they are badly executed, they may be alike injurious and annoying to him.

4. And in addition to these, the eighth and four following defects above pointed out as existing under the Engraving Copyright Acts, apply with equal force as to sculpture.

[1] *Vide supra*, p. 38. [2] Ib. p. 43. [3] Ib. p. 44.

III. *Suggestions for remedying the above defects.*

It is not supposed that the following suggestions are not open to objections, and capable of great improvements; but they are laid before the public, in the hope that those who are best qualified to decide on what is needful to be done in favour of the proprietors of copyrights and artistic inventions, may be induced to interest themselves in the subject, and promote such measures as may be considered best calculated to meet the requirements of the case. And of him who does so, it may be said, in the words of Lord Coke, "blessed be the amending hand."

The chief points to be included in any Act which may be passed for the amendment of the laws of Artistic Copyright, appear to be the following:—

1. The repeal of all the present complicated[1] Engraving and Sculpture Copyright Acts, except of course so far as relates to any existing rights. To consolidate the law relating to artistic copyright in one act, and, to some extent, to make such act retrospective, so as to protect all existing *bonâ fide* claims to copyright in works as to which it has not been acquired in consequence of the non-performance of the *conditions* imposed by the existing statutes; and also to protect the copyright as to those pictures which may have been exhibited before being engraved and prior to the passing of the act, provided the claims to such works, and copyright in pictures exhibited are established to the satisfaction of the registrar, and duly registered within six months from the passing of the act, at the Registration Office to be established as hereinafter mentioned.

2. That the copyright to be given in favour of artistic productions should extend to all parts of the British dominions; and that the term of years for which such copyright should endure be the same as that granted in 1842 in favour of books, music, maps, charts, and plans by the Act of 6 Vic. c. 45.

3. That as to any work of art by a *British* subject, if such work be first published in this country, or within six months

[1] "Les lois ne doivent point être subtiles; elles sont faites pour des gens de médiocre entendement; elles ne sont point un art de logique, mais la raison simple d'un père de famille."—L'Esprit des Lois, par Montesquieu, liv. 29. c. 16.

after its publication elsewhere, the copyright, if duly registered, should be secured without reference to the country where the work was designed or executed.

4. That copyright should be granted in pictures *as such*, and without reference to their being engraved.

5. That the making of a copy for sale of a picture, without the permission of the proprietor of the copyright thereof, or making such copy with a fraudulent object, or selling or offering for sale such copy as an original picture, knowing or having reason to believe it to be only a copy, should be declared a misdemeanour. And that fraudulently signing a picture painted by another person, or forging the signature to any painting, drawing, engraving, or work of sculpture, be also declared a misdemeanour, as well in the person committing such fraud, as also in any person selling or offering such picture, etc., for sale, knowing or having reason to believe that such fraud had been committed as to such picture, etc.

6. That the exhibition or other publication of a picture, drawing, or work of sculpture shall not affect the copyright for purposes of engraving or otherwise; and that during the term for which the copyright is granted the picture, etc., shall neither be engraved or in any manner copied without the permission of the proprietor of the copyright thereof.

7. The copyright of sculpture not only to include all copies of the same size as the original work, but also all copies upon an enlarged or reduced scale, and likewise the right of engraving in any way any design made from the original work or any copy thereof.

8. An artist should only be divested of his copyright by such note or memorandum in writing, to be signed by him and registered as hereinafter mentioned, or by operation of law, excepting as to *portraits*, the copyright whereof should in all cases be the property of the artist's employer.

9. That it should no longer be requisite for the name of the proprietor of the copyright of any engraving or work of sculpture to appear thereon.

10. That no pirated copies of any artistic work entitled to copyright in the British dominions should be allowed to be imported for any purpose whatever.

11. That no printseller, auctioneer, or other person be deemed

guilty of piracy for selling pirated copies of any print or other work entitled to copyright, if in ignorance of the fact of their being such pirated copies; and that forging the stamp or mark of "the Printsellers' Society," or of any other society, upon any print or other work being the subject of artistic copyright, be declared a misdemeanour.

12. That the penalties for infringement of copyright should be increased, and the whole of such penalties made payable to the proprietor of the copyright, as in the Designs Amendment Act of 13 and 14 Vic. c. 104. s. 7.

13. To avoid the present cumbrous and expensive transfer of artistic copyrights by deed, and also to furnish the public with the time of the commencement and expiration of a copyright, and the name of its proprietor for the time being, that an office for the registration of artistic copyrights should be established[1] somewhat upon the same plan as the Registry of Literary Copyrights; and also that under the Useful and Ornamental Designs Acts. That every artist who may wish to secure a copyright in his work, may do so on registering the same. The registration fee to be only one shilling, and the Registrar to be furnished with a slight outline of the work or a written description of it. The copyright to become public property unless the work be registered within six months from its publication by being exhibited or otherwise published. When registered, the Registrar to furnish the artist or other proprietor of the copyright with a numbered certificate of the registration; and that such number, with the year and letters denoting the Artistic Registration Office, should be put on the work registered and on every copy thereof, and every engraving therefrom, and every impression taken from such engraving: thus, for example "A.R. 1853, No. 10,021[2]." That in the case of illustrations of a book, the registration of the first design or plate in the book, together with the title of such book and the name of the author, if any be given, should be

[1] This has been done already as to *foreign* artistic copyrights under the *International Copyright Act of 1844, 7 Vic. c. 12. s. 6*, which are registered at Stationers' Hall. It would seem more advisable that the registration of artistic copyrights should be made in a separate department, so as to be kept quite distinct from literary copyrights.

[2] On referring to this date and number in the Artistic Register, the exact day of registration and publication, with the name of the proprietor of the copyright, and all other requisite particulars would be ascertained.

sufficient, and the same date and number used for all the subsequent plates. That upon all *copies* of paintings, drawings, and works of sculpture so registered as aforesaid, there shall be added the word "Copy" immediately following or under the number. That for the transfer of a copyright no deed should be requisite, nor any stamp duty payable upon the purchase money. That any note or memorandum in writing of the transfer signed by the proprietor should be sufficient when accompanied by the registration thereof. A fee of 2*s*. 6*d*. only to be paid for the registration of a transfer[1]. Persons making a false entry in the register to be guilty of a misdemeanour.

14. In order to secure unity and economy of administration, that the Artistic Copyright Registration should be united under one roof and management with the two now existing for the registration of literary copyrights, and useful and ornamental designs; but each of the three to be kept as distinct departments.

15. That every copyright and transfer of the same should be registered as a condition precedent to the right of the proprietor to sue for any infringement thereof, and that such registration should in all cases be *primâ facie* evidence of the proprietorship of the copyright, subject to be rebutted by other evidence.

16. That in all proceedings for infringement of copyrights, the defendants should be liable at the discretion of the Court to give security for the plaintiff's costs; such security to be increased from time to time, so that such costs may at all times during the progress of the case be fully covered by such security.

17. That the most ample equitable as well as legal jurisdiction should be conferred upon all courts of common law, so as by injunction[2] and otherwise to enable them to do complete justice in all cases relating to copyrights, and disputes arising between literary men, artists, sculptors, etc., and their employers, touching any work being the subject of copyright; but the

[1] It seems very desirable to offer every inducement, by a low fee and otherwise, for the registration of works of art. A most extensive and interesting record of British Art would thus be gradually accumulated, giving great additional value to the works registered from the information the register would afford of their origin, and the transfer of the copyright in them.

[2] See the admirable Patent Law Amendment Act, 15 and 16 Vic. c. 83. s. 42.

jurisdiction of the County Courts as to amount, to remain as at present.

18. That in the event of any proceedings being taken in any court of law or equity, relating to any work being the subject of copyright, that such court or any judge thereof should, upon the application of the plaintiff or the defendant[1], to be made at any stage of the proceedings, be at liberty to refer the case to arbitration upon such terms as may be deemed best to meet the requirements of the case; and to name the arbitrators or umpire as the case may be, should the parties differ about the same, or not appoint such arbitrators or umpire.

19. That in all proceedings to be taken, the plaintiff shall at the commencement thereof deliver the particulars of his demand, and of the specific injury of which he complains. And if the defendant appears and defends, he shall at the time of his appearance deliver the particulars of his defence. The truth of both the plaintiff's and defendant's particulars to be verified upon oath previous of their delivery, and neither party to be allowed to give evidence as to points not comprised in his particulars.

IV. Whether these suggestions, or any of them, are or are not deemed worthy of adoption, surely it must be considered that the time has now arrived when reasons of policy and justice[2] alike demand that the literary, artistic, and other inventive talent of the British people should be better cared for than it has been hitherto; and the proprietors of Copyrights, whether British or foreign, no longer exposed to the delays and costs in protecting

[1] Since this was written the Second Report of the Common Law Commissioners has appeared, and for their excellent recommendations on the subject of arbitration see pp. 5-6 of that Report.

[2] The rights which are, and will be, created under the Conventions entered into by Her Majesty by virtue of the International Copyright Acts, and the rapidity and economy with which copyright questions are disposed of in other countries, especially in France, form a most material *political* element in considering this question. The principle upon which such conventions are based is that of perfect reciprocity. But can it be said that such reciprocity exists in point of fact,—or that great injustice is not done to a French subject who is exposed to the frightful delays and expense attendant upon protecting his copyright in England, while on the other hand a British subject having a similar right in France is not exposed to such inconvenience or loss there?

their property, which are entailed upon them by the existing laws. Productions of the human intellect, which ought as such to be deemed worthy of the highest consideration, should at least have the same *legal* value as any other kind of personal estate.

The law recognizes copyright as property; and yet, while it is justly deemed a *criminal* offence to steal a man's purse, it is not a criminal offence deliberately to rob him of his copyright, even in the most wilful and manifest case of piracy.

But such is the peculiar and difficult nature of copyright questions, especially in cases of only *partial* infringement, that effectual protection and justice for the proprietors of such property is only to be obtained by the adoption of the suggestion made by the Committee of the House of Commons on arts and manufactures[1], namely, by the establishment of a cheap and accessible copyright tribunal. What that tribunal should be, is the difficulty to be solved, and it may perhaps be found that arbitrators to be chosen by the litigant parties would be at least the most satisfactory to them, in the majority of cases, if not the best. Armed with powers to decide between the plaintiff and defendant, many an unjust proceeding would thus be nipped in the bud; and if the arbitration were conducted without unreasonable delay, time, anxiety, and costs would also be saved; and oftentimes the hostile parties reconciled,—an event of somewhat rare occurrence in the history of litigation where it is prolonged to much extent, but which, apart from higher motives, is often of the deepest importance to the character and interests of the litigants and their families.

Instances are constantly arising where the injustice of one of the parties alone prevents the case being referred to arbitration at the commencement of litigation, and which, after very heavy costs have been incurred, is, at the suggestion of the Judge, or for some less cogent reason, referred immediately it comes on for trial.

It would therefore seem most advisable that the Courts should be empowered to *compel* a reference in any such case, at any stage of the proceedings, upon such terms as they should see fit to meet the requirements of the case.

The result of such an enactment, in addition to the advantages before alluded to, would, it is believed, in most cases, prove an

[1] *Vide supra*, Introduction, p. 3.

efficient protection to the owners of copyright, and the consequent advancement of art and literature. Considering the inherent love of justice, and the habits of liberty and self-government of the British people, there seems good reason to believe that compulsory arbitration in *all* copyright cases would work most satisfactorily to the parties litigant, because they would themselves have the means of selecting those persons to decide their case whom they considered most competent to form a sound conclusion upon the subject of the injury complained of,—and should any question of law arise, the opinion of one of the Courts might be taken upon it, as a special case, in a most inexpensive way.

Upon the whole therefore such a system of compulsory arbitration[1] would probably be found the nearest approach that, at present, can be safely made to the efficient, cheap, and accessible tribunal required in all disputes as to Copyright property.

If it has been satisfactorily proved that the Laws of Artistic Copyright are in a very defective state, and that such laws are of much national as well as individual importance, the proprietors of Artistic Copyrights may reasonably hope that those laws will be amended.

Sound and comprehensive legislation in favour of the productions of artistic genius and industry would form the best foundation upon which to erect the superstructure of a *School of British Art* which, for its grandeur and intellectual beauty, would be in keeping with the power, the genius, and the resources of the country; and afford material aid in the great and good cause of civilization.

[1] Since this was written, the author is glad to find that the Common Law Commissioners have reported in favour of *compulsory* arbitration, to a considerable extent; and also that the Superior Courts of Common Law should be armed with ample powers to do complete justice between suitors in all cases in which such courts have jurisdiction, so as to put an end to the present vicious system of driving parties to seek relief in the Court of Chancery, in those instances where the Courts of Common Law have now no power to afford equitable relief. See pp. 5, 35, 38, 39, and 40 of the Report. These and other admirable suggestions of the Commissioners it is earnestly to be hoped will be speedily adopted by the Legislature.

APPENDIX.

THE STATUTES RELATING TO COPYRIGHT IN ENGRAVINGS, ETC.

8 GEORGE II., CHAP. 13.

AN ACT

For the encouragement of the Arts of Designing, Engraving, and Etching Historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers during the time therein mentioned.

[A.D. 1735.]

WHEREAS divers persons have, by their own genius, industry, pains, and expense, invented and engraved, or worked in mezzotinto or chiaro-oscuro, sets of historical and other prints, in hopes to have reaped the sole benefit of their labours: And whereas printsellers and other persons have of late, without the consent of the inventors, designers, and proprietors of such prints, frequently taken the liberty of copying, engraving, and publishing, or causing to be copied, engraved, and published, base copies of such works, designs, and prints, to the very great prejudice and detriment of the inventors, designers, and proprietors thereof: For remedy thereof, and for preventing such practices for the future, may it please Your Majesty that it may be enacted, and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of June, which shall be in the year of our Lord one thousand seven hundred and thirty-five, every person who shall invent and design, engrave, etch, or work, in mezzotinto or chiaro-oscuro, or from his own works and invention shall cause to

After 24th June 1735 the property of historical and other prints vested in the inventor for fourteen years.

be designed and engraved, etched or worked, in mezzotinto or chiaro-oscuro, any historical or other print or prints, shall have the sole right and liberty of printing and reprinting the same for the term of fourteen years, to commence from the day of the first publishing thereof, which shall be truly engraved with the name of the proprietor on each plate, and printed on every such print or prints; and that if any printseller or other person whatsoever, from and after the said twenty-fourth day of June, one thousand seven hundred and thirty-five, within the time limited by this Act, shall engrave, etch, or work as aforesaid, or in any other manner copy and sell, or cause to be engraved, etched, or copied and sold, in the whole or in part, by varying, adding to, or diminishing from the main design, or shall print, reprint, or import for sale, or cause to be printed, reprinted, or imported for sale, any such print or prints or any parts thereof, without the consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him or them respectively in the presence of two or more credible witnesses, or, knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors, shall publish, sell, or expose to sale, or otherwise or in any other manner dispose of, or cause to be published, sold, or exposed to sale, or otherwise or in any other manner disposed of, any such print or prints, without such consent first had and obtained as aforesaid, then such offender or offenders shall forfeit the plate or plates on which such print or prints are or shall be copied, and all and every sheet or sheets (being part of or whereon such print or prints are or shall be so copied or printed), to the proprietor or proprietors of such original print or prints, who shall forthwith destroy and damask the same, and further, that every such offender or offenders shall forfeit five shillings for every print which shall be found in his, her, or their custody, either printed or published, and exposed to sale or otherwise disposed of, contrary to the true intent and meaning of this Act, the one moiety thereof to the King's Most Excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same, to be recovered in any of His Majesty's Courts of Record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoign, privilege, or protection, or more than one imparlance, shall be allowed.

Proprietor's name to be affixed to each print.

Penalty on printsellers or others pirating the same.

Not to extend to purchasers of plates from the original proprietors.

II. Provided nevertheless, That it shall and may be lawful for any person or persons who shall hereafter purchase any plate or plates for printing from the original proprietors thereof, to print and reprint from the said plates without incurring any of the penalties in this Act mentioned.

Limitation of actions for anything done in pursuance of Act.

General issue

III. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever for doing or causing to be done anything in pursuance of this Act, the same shall be brought within the space of three months after so doing; and the defendant and defendants in such action or suit shall or may plead the general issue, and give the special matter in evidence; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs, for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law.

Limitation of actions for offences against this Act.

IV. Provided always, and be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons for any offence committed against this Act, the same shall be brought within the space of three months after the discovery of every such offence, and not afterwards, anything in this Act contained to the contrary notwithstanding.

Clause relating to J. Pine.

V. And whereas John Pine, of London, engraver, doth propose to engrave and publish a set of prints copied from several pieces of tapestry in the House of Lords and His Majesty's wardrobe, and other drawings relating to the Spanish invasion in the year of our Lord one thousand five hundred and eighty-eight: Be it further enacted by the authority aforesaid, That the said John Pine shall be entitled to the benefit of this Act, to all intents and purposes whatsoever, in the same manner as if the said John Pine had been the inventor and designer of the said prints.

Public Act.

VI. And be it further enacted by the authority aforesaid, That this Act shall be deemed, adjudged, and taken to be a Public Act, and be judicially taken notice of as such by all judges, justices, and other persons whatsoever, without specially pleading the same.

7 Geo. III., chap. 38.

AN ACT

To amend and render more effectual an Act made in the Eighth year of the reign of King George the Second, for Encouragement of the Arts of Designing, Engraving, and Etching Historical and other Prints; and for vesting in, and securing to, Jane Hogarth, widow, the Property in certain Prints.

[A. D. 1767.]

Preamble, reciting Act 8 Geo. II.

WHEREAS an Act of Parliament passed in the eighth year of the reign of his late Majesty King George the Second, intituled, An Act for the Encouragement of the Arts of Designing, Engraving, and Etching Historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers during the time therein mentioned, has been found ineffectual for the purposes thereby intended; be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the first day of January, one thousand seven hundred and sixty-seven, all and every person and persons who shall invent or design, engrave, etch, or work in mezzotinto or chiaro-oscuro, or, from his own work, design, or invention, shall cause or procure to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro, any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, shall have, and are hereby declared to have, the benefit and protection of the said Act and this Act, under the restrictions and limitations hereinafter mentioned.

The original inventors, designers, or engravers, etc. of historical and other prints, and such who shall cause prints to be done from works, etc., of their own invention,

II. And be it further enacted by the authority aforesaid, That from and after the said first day of January, one thousand seven hundred and sixty-seven, all and every person and persons who shall engrave, etch, or work in mezzotinto or chiaro-oscuro, or cause to be engraved, etched, or worked, any print, taken from any picture, drawing, model, or sculpture, either ancient or modern, shall have, and are hereby declared to have, the benefit and protection of the said Act,

and also such as shall engrave, etc., any print taken from any picture, drawing, model, or sculpture,

and this Act for the term hereinafter mentioned, in like manner, as if such print had been graved or drawn from the original design of such graver, etcher, or draftsman; and if any person shall engrave, print, and publish, or import for sale, any copy of any such print, contrary to the true intent and meaning of this and the said former Act, every such person shall be liable to the penalties contained in the said Act, to be recovered as therein and hereinafter is mentioned.

are entitled to the benefit and protection of the recited and present Act;

and those who shall engrave or import for sale copies of such prints are liable to Penalties.

III. And whereas William Hogarth, late of the city of Westminster, painter and graver, did etch and engrave, and cause to be etched and engraved, several prints from his own invention and design, the property and sole right of vending all such prints being secured to him the said William Hogarth for the term of fourteen years from their first publication, by the said former Act of Parliament; which said property, by his last Will, became vested in his widow and executrix: And whereas since the first publication of several of the said prints, the term of fourteen years is expired, and several base copies of the same have been since printed and published, whereby the sale of the originals has been considerably lessened, to the great detriment of the said widow and executrix; And whereas since the publication of others of the said prints, the term of fourteen years is now near expiring; be it enacted by the authority aforesaid, That Jane Hogarth, widow and executrix of the said William Hogarth, shall have the sole right and liberty of printing and reprinting all the said prints, etchings, and engravings, of the design and invention of the said William Hogarth, for and during the term of twenty years, to commence from the said first day of January, one thousand seven hundred and sixty-seven; and that all and every person and persons who shall at any time hereafter, before the expiration of the said term of twenty years, engrave, etch, or work in mezzotinto or chiaro-oscuro, or otherwise copy, sell, or expose to sale, or cause or procure to be etched, engraved, or worked in mezzotinto or chiaro-oscuro, any of the said works of the said William Hogarth, shall be liable to the penalties and forfeitures contained in this and the said former Act of Parliament; to be recovered in like manner as in and by this and the said former Act are given, directed, and appointed.

The sole right of printing and reprinting the late W. Hogarth's prints,

vested in his widow and executrix for the term of twenty years.

Penalty of copying, etc. any of them, before the expiration of the said term;

IV. Provided nevertheless, That the proprietor or pro-

such copies excepted as were made and exposed to sale after the term of fourteen years, for which the said works were first licensed, etc.

prietors of such of the copies of the said William Hogarth's works, which have been copied and printed, and exposed to sale, after the expiration of the term of fourteen years from the time of their first publication by the said William Hogarth, and before the said first day of January, shall not be liable or subject to any of the penalties contained in this Act; anything hereinbefore contained to the contrary thereof in any wise notwithstanding.

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

V. And be it further enacted by the authority aforesaid, That all and every the penalties and penalty inflicted by the said Act, and extended, and meant to be extended, to the several cases comprised in this Act, shall and may be sued for and recovered in like manner, and under the like restrictions and limitations, as in and by the said Act is declared and appointed; and the plaintiff or common informer, in every such action (in case such plaintiff or common informer shall recover any of the penalties incurred by this or the said former Act) shall recover the same, together with his full costs of suit.

and be recovered with full costs,

provided the prosecution be commenced within six months after the fact.

VI. Provided also, That the party prosecuting shall commence his prosecution within the space of six calendar months after the offence committed.

The right intended to be secured by this and the former Act, vested in the proprietors for the term of twenty-eight years from the first publication.

VII. And be it further enacted by the authority aforesaid, That the sole right and liberty of printing and reprinting intended to be secured and protected by the said former Act and this Act, shall be extended, continued, and be vested in the respective proprietors, for the space of twenty-eight years, to commence from the day of the first publishing of any of the works respectively hereinbefore and in the said former Act mentioned.

Limitation of actions.

VIII. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, anything in pursuance of this Act, the same shall be brought within the space of six calendar months after the fact committed; and the defendant or defendants in any such action or suit shall or may plead

General issue.

the general issue, and give the special matter in evidence; and if, upon such action or suit, a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and re-

Full costs.

cover full costs; for the recovery whereof he shall have the

same remedy as any other defendant or defendants, in any other case, hath or have by law.

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17 Geo. III., chap. 57.

AN ACT

For more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases.

[A. D. 1777.]

Recital of Acts 8 Geo. II. and 7 Geo. III.

WHEREAS an Act of Parliament passed in the eighth year of the Reign of His late Majesty King George the Second, intituled 'An Act for the Encouragement of the Arts of designing, engraving, and etching Historical and other Prints, by vesting the Properties thereof in the Inventors and engravers, during the time therein mentioned:' And whereas by an Act of Parliament passed in the seventh year of the reign of His present Majesty, for amending and rendering more effectual the aforesaid Act, and for other purposes therein mentioned, it was (among other things) enacted, That from and after the first day of January, one thousand seven hundred and sixty-seven, all and every person or persons who should engrave, etch, or work in mezzotinto or chiaro-oscuro, or cause to be engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture, either ancient or modern, should have, and were thereby declared to have the benefit and protection of the said former Act and that Act, for the term thereinafter mentioned, in like manner as if such print had been graved or drawn from the original design of such graver, etcher, or draughtsman: And whereas the said Acts have not effectually answered the purposes for which they were intended, and it is necessary, for the encouragement of artists, and for securing to them the property of and in their works, and for the advancement and improvement of the aforesaid Arts, that such further provisions should be made as are hereinafter mentioned and contained: May it therefore please Your Majesty that it may be enacted, and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of June, one thousand seven hundred and seventy-seven, if any engraver, etcher, printseller, or other person, shall, within the time limited by the aforesaid Acts, or either of them, engrave, etch, or work, or cause or procure to be engraved, etched, or worked, in mezzotinto or chiaro-oscuro, or otherwise, or in any other manner copy in the whole or in part, by varying, adding to, or diminishing from the main design, or shall print, reprint, or import for sale, or cause or procure to be printed, reprinted, or imported for sale, or shall publish, sell, or otherwise dispose of, or cause or procure to be published, sold, or otherwise disposed of, any copy or copies of any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, which hath or have been, or shall be engraved, etched, drawn, or designed, in any part of Great Britain, without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her, or them respectively, with his, her, or their own hand or hands, in the presence of and attested by two or more credible witnesses, then every such proprietor or proprietors shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a Writ of Inquiry thereon, shall give or assess, together with double costs of suit.

After June 24, 1777, if any engraver, etc. shall, within the time limited by the aforesaid Acts, engrave or etch, etc., any print, without the consent of the proprietor, he shall be liable to damages and double costs.

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6 AND 7 WILLIAM IV., CHAP. 59.

AN ACT

To extend the Protection of Copyright in Prints and Engravings to Ireland.

[13th August, 1836.]

17 Geo. III. c. 57.

WHEREAS an Act was passed in the seventeenth year of the reign of his late Majesty King George the Third, intituled 'An Act for more effectually securing the Property of Prints to inventors and Engravers, by enabling them to

sue for and recover Penalties in certain Cases:' And whereas it is desirable to extend the provisions of the said Act to Ireland; be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act all the provisions contained in the said recited Act of the seventeenth year of the reign of His late Majesty King George the Third, and of all the other Acts therein recited, shall be and the same are hereby extended to the United Kingdom of Great Britain and Ireland.

Provisions of recited Act extended to Ireland.

II. And be it further enacted, that from and after the passing of this Act, if any engraver, etcher, printseller, or other person shall, within the time limited by the aforesaid recited Acts, engrave, etch, or publish, or cause to be engraved, etched, or published, any engraving or print of any description whatever, either in whole or in part, which may have been or which shall hereafter be published in any part of Great Britain or Ireland, without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her, or them respectively, with his, her, or their own hand or hands, in the presence of and attested by two or more credible witnesses, then every such proprietor shall and may, by and in a separate action upon the case, to be brought against the person so offending in any court of law in Great Britain or Ireland, recover such damages as a jury on the trial of such action or on the execution of a writ of inquiry thereon shall give or assess, together with double costs of suit.

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

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15 VICTORIA, CHAP. 12. s. 14.

AN ACT

To enable Her Majesty to carry into effect a Convention with France on the subject of Copyright; to extend and explain the International Copyright Act; and to explain the Acts relating to Copyright in Engravings.

[28th May, 1852.]

XIV. And whereas by the four several Acts of Parliament Lithographs.

Recital of 8 Geo. II. c. 13, 7 Geo. III. c. 38, 17 Geo. III. c. 57, 6 & 7 Will. IV. c. 59.

following, (that is to say,) an Act of the eighth year of the reign of King George the Second, chap. 13; an Act of the seventh year of the reign of King George the Third, chap. 38; an Act of the seventeenth year of the reign of King George the Third, chap. 57; and an Act of the seventh year of King William the Fourth, chap. 59; provision is made for securing to every person who invents or designs, engraves, etches, or works in mezzotinto or chiaro-oscuro, or from his own work, design, or invention, causes or procures to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro, any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, and to every person who engraves, etches, or works in mezzotinto or chiaro-oscuro, or causes to be engraved, etched or worked any print taken from any picture, drawing, model or sculpture, notwithstanding such print has not been graven or drawn from his own original design, certain copyrights therein defined: And whereas doubts are entertained whether the provisions of the said Acts extend to lithographs and certain other impressions, and it is expedient to remove such doubts:

For removal of doubts as to the provisions of the said Acts, including Lithographs, Prints, etc.

It is hereby declared, that the provisions of the said Acts are intended to include prints taken by lithography or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely, and the said Acts shall be construed accordingly.

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38 GEORGE III., CHAP. 71.

AN ACT

For encouraging the art of making new models and casts of busts, and other things therein mentioned.

[21st June, 1798.]

Preamble.

WHEREAS divers persons have, by their own genius, industry, pains, and expense, improved and brought the art of making new models and casts of busts, and of statues of human figures, and of animals, to great perfection, in hopes to have reaped the sole benefit of their labours; but that divers persons have (without the consent of the proprietors thereof) copied and made moulds from the said models and casts, and sold base copies and casts of such new models and casts, to the great prejudice and detriment of the original proprietors, and to the discouragement of the art of making such new models and casts as aforesaid: for remedy whereof, and for preventing such practices for the future, may it please Your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That, from and after the passing of this Act, every person who shall make or cause to be made any new model, or copy or cast made from such new model, of any bust, or any part of the human figure, or any statue of the human figure, or the head of any animal, or any part of any animal, or the statue of any animal; or shall make or cause to be made any new model, copy, or cast from such new model, in alto or basso relievo, or any work in which

The sole right and property of making models or casts shall be vested in the original proprietor.

the representation of any human figure or figures, or the representation of any animal or animals shall be introduced, or shall make or cause to be made any new cast from nature of any part or parts of the human figure, or of any part or parts of any animal, shall have the sole right and property in every such new model, copy, or cast, and also in every such new model, copy, or cast in alto or basso relievo, or any work as aforesaid, and also in every such new cast from nature as aforesaid, for and during the term of fourteen years from the time of first publishing the same: Provided always, That every person who shall make or cause to be made any such new model, copy, or cast, or any such new model, copy, or cast in alto or basso relievo, or any work as aforesaid, or any new cast from nature as aforesaid, shall cause his or her name to be put thereon, with the date of the publication, before the same shall be published and exposed to sale.

Provided his name and the date of publication be put thereon.

II. And be it further enacted, That if any person shall, within the said term of fourteen years, make or cause to be made any copy or cast of any such new model, copy, or cast, or any such model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any such new cast from nature as aforesaid, either by adding to or diminishing from any such new model, copy, or cast, or adding to or diminishing from any such new model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or adding to or diminishing from any such new cast from nature, or shall cause or procure the same to be done, or shall import any copy or cast of such new model, copy, or cast, or copy or cast of such new model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any copy or cast of any such new cast from nature as aforesaid, for sale, or shall sell or otherwise dispose of, or cause or procure to be sold or exposed to sale, or otherwise disposed of, any copy or cast of any such new model, copy, or cast, or any copy or cast of such new model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any copy or cast of any such new cast from nature as aforesaid, without the express consent of the proprietor or proprietors thereof first had and obtained, in writing signed by him, her, or them respectively, with his, her, or their hand or hands, in the presence of and attested by two or more credible witnesses, then and in all or any of the cases aforesaid, every proprietor or proprietors

Persons making copies of any model or cast, without the consent of the proprietor, may be prosecuted:

of any such original model, copy, or cast, and every proprietor or proprietors of any such original model, or copy or cast in alto or basso relievo, or any such work as aforesaid, or the proprietor or proprietors of any such new cast from nature as aforesaid respectively, shall and may, by and in a special action upon the case, to be brought against the person or persons so offending, recover such damages as a jury on the trial of such action, or on the execution of a writ of inquiry thereon, shall give or assess, together with full costs of suit.

except such persons who shall purchase the same of the original proprietor.

III. Provided nevertheless, That no person who shall hereafter purchase the right, either in any such model, copy, or cast, or in any such model, copy, or cast in alto or basso relievo, or any such work as aforesaid, or any such new cast from nature, of the original proprietor or proprietors thereof, shall be subject to any action for vending or selling any cast or copy from the same; anything contained in this Act to the contrary hereof notwithstanding.

Limitation of actions.

IV. Provided also, That all actions to be brought as aforesaid, against any person or persons for any offence committed against this Act, shall be commenced within six calendar months next after the discovery of every such offence, and not afterwards.

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54 GEORGE III., CHAP. 56.

AN ACT

To amend and render more effectual an Act of His present Majesty, for encouraging the art of making new models and casts of busts, and other things therein mentioned; and for giving further encouragement to such arts.

[18th May, 1814.]

38 Geo. III. c. 71.

WHEREAS by an Act, passed in the thirty-eighth year of the reign of His present Majesty, intituled 'An Act for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned,' the sole right and property thereof were vested in the original proprietors, for a time therein specified: And whereas the provisions of the said Act having been found ineffectual for the purposes

thereby intended, it is expedient to amend the same, and to make other provisions and regulations for the encouragement of artists, and to secure to them the profits of and in their works, and for the advancement of the said arts: May it therefore please Your Majesty that it may be enacted, and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act, every person or persons who shall make or cause to be made any new and original sculpture, or model, or copy, or cast of the human figure or human figures, or of any bust or busts, or of any part or parts of the human figure, clothed in drapery or otherwise, or of any animal or animals, or of any part or parts of any animal combined with the human figure or otherwise, or of any subject being matter of invention in sculpture, or of any alto or basso relievo representing any of the matters or things herein before mentioned, or any cast from nature of the human figure, or of any part or parts of the human figure, or of any cast from nature of any animal, or of any part or parts of any animal, or of any such subject containing or representing any of the matters and things hereinbefore mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture, model, copy and cast of the human figure or human figures, and of all and in every such bust or busts, and of all and in every such part or parts of the human figure, clothed in drapery or otherwise, and of all and in every such new and original sculpture, model, copy, and cast, representing any animal or animals, and of all and in every such work representing any part or parts of any animal combined with the human figure or otherwise, and of all and in every such new and original sculpture, model, copy, and cast of any subject, being matter of invention in sculpture, and of all and in every such new and original sculpture, model, copy, and cast in alto or basso relievo, representing any of the matters or things hereinbefore mentioned, and of every such cast from nature, for the term of fourteen years from first putting forth or publishing the same; provided, in all and in every case, the proprietor or proprietors do cause his, her, or their name or names, with the date, to be put on all and every such new and original sculpture, model, copy, or cast,

The sole right and property of all new and original sculpture, models, copies, and casts, vested in the proprietors, for fourteen years.

Provided his name and the date of publication be first put thereon.

and on every such cast from nature, before the same shall be put forth or published.

Works published under the recited Act, vested in the proprietors for fourteen years.

II. And be it further enacted, that the sole right and property of all works, which have been put forth or published under the protection of the said recited Act, shall be extended, continued to, and vested in the respective proprietors thereof, for the term of fourteen years, to commence from the date when such last-mentioned works respectively were put forth or published.

Persons putting forth pirated Copies or pirated Casts, may be prosecuted.

III. And be it further enacted, That if any person or persons shall, within such term of fourteen years, make or import, or cause to be made or imported, or exposed to sale, or otherwise disposed of, any pirated copy or pirated cast of any such new and original sculpture, or model, or copy, or cast of the human figure or human figures, or of any such bust or busts, or of any such part or parts of the human figure clothed in drapery or otherwise, or of any such work of any animal or animals, or of any such part or parts of any animal or animals combined with the human figure or otherwise, or of any such subject being matter of invention in sculpture, or of any such alto or basso relievo representing any of the matters or things hereinbefore mentioned, or of any such cast from nature as aforesaid, whether such pirated copy or pirated cast be produced by moulding or copying from, or imitating in any way any of the matters or things put forth or published under the protection of this Act, or of any works which have been put forth or published under the protection of the said recited Act, the right and property whereof is and are secured, extended, and protected by this Act, in any of the cases as aforesaid, to the detriment, damage, or loss of the original or respective proprietor or proprietors of any such works so pirated; then and in all such cases the said proprietor or proprietors, or their assignee or assignees, shall and may, by and in a special action upon the case to be brought against the person or persons so offending, receive such damages as a jury on a trial of such action shall give or assess, together with double costs of suit.

Damages and double costs.

Purchasers of copyright secured in the same.

IV. Provided nevertheless, That no person or persons who shall or may hereafter purchase the right or property of any new and original sculpture or model, or copy or cast, or of any cast from nature, or of any of the matters and things published under or protected by virtue of this Act,

of the proprietor or proprietors, expressed in a deed in writing signed by him, her, or them respectively, with his, her, or their own hand or hands, in the presence of and attested by two or more credible witnesses, shall be subject to any action for copying or casting, or vending the same, anything contained in this Act to the contrary notwithstanding.

Limitation of Actions.

V. Provided always, and be it further enacted, That all Actions to be brought as aforesaid, against any person or persons for any offence committed against this Act, shall be commenced within six calendar months next after the discovery of every such offence, and not afterwards.

An additional term of 14 years, in case the maker of the original sculpture, *etc.* shall be living.

VI. Provided always, and be it further enacted, That from and immediately after the expiration of the said term of fourteen years, the sole right of making and disposing of such new and original sculpture, or model, or copy, or cast of any of the matters or things hereinbefore mentioned, shall return to the person or persons who originally made or caused to be made the same, if he or they shall be then living, for the further term of fourteen years, excepting in the case or cases where such person or persons shall by sale or otherwise have divested himself, herself, or themselves of such right of making or disposing of any new and original sculpture, or model, or copy, or cast of any of the matters or things hereinbefore mentioned, previous to the passing of this Act.

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14 Victoria, chap. 104, ss. 6, 7.

AN ACT

To extend and amend the Acts relating to Copyright of Designs.

[14th August, 1850.]

Registration of sculpture, models, etc.

VI. That the Registrar of Designs, upon application by or on behalf of the proprietor of any sculpture, model, copy, or cast within the protection of the Sculpture Copyright Acts, and upon being furnished with such copy, drawing, print, or description, in writing or in print, as in the judgment of the said Registrar shall be sufficient to identify the particular sculpture, model, copy, or cast in respect of which registration is desired, and the name of the person claiming

to be proprietor, together with his place of abode or business, or other place of address, or the name, style, or title of the firm under which he may be trading, shall register such sculpture, model, copy, or cast in such manner and form as shall from time to time be prescribed or approved by the Board of Trade for the whole or any part of the term during which copyright in such sculpture, model, copy, or cast may or shall exist under the Sculpture Copyright Acts; and whenever any such registration shall be made, the said Registrar shall certify under his hand and seal of office, in such form as the said Board shall direct or approve, the fact of such registration and the date of the same, and the name of the registered proprietor, or the style or title of the firm under which such proprietor may be trading, together with his place of abode or business, or other place of address.

Benefits conferred by registration of sculpture, etc.

VII. That if any person shall, during the continuance of the copyright in any sculpture, model, copy, or cast which shall have been so registered as aforesaid, make, import, or cause to be made, imported, exposed for sale, or otherwise disposed of, any pirated copy or pirated cast of any such sculpture, model, copy, or cast, in such manner and under circumstances as would entitle the proprietor to a special action on the case under the Sculpture Copyright Acts, the person so offending shall forfeit for every such offence a sum not less than five pounds and not exceeding thirty pounds to the proprietor of the sculpture, model, copy, or cast whereof the copyright shall have been infringed; and for the recovery of any such penalty the proprietor of the sculpture, model, copy, or cast which shall have been so pirated shall have and be entitled to the same remedies as are provided for the recovery of penalties incurred under the Designs Act, 1842. Provided always, that the proprietor of any sculpture, model, copy, or cast which shall be registered under this Act shall not be entitled to the benefit of this Act unless every copy or cast of such sculpture, model, copy, or cast which shall be published by him after such registration shall be marked with the word "Registered," and with the date of registration.

Provided every copy, etc., be marked with the word "Registered," and date of registration.

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