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THE LAW OF COPYRIGHT

WITH AN

APPENDIX OF STATUTES

BY

B. A. COHEN

BARRISTER-AT-LAW

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PREFACE.

THE object of the Author in writing this Book has been to state as concisely as possible, and it is hoped with accuracy, the result of the decisions on the Law relating to Copyright.

No attempt has been made to discuss what the Law ought to be, although its present condition is generally admitted to be unsatisfactory, as is apparent from the Report of the Copyright Commission of 1878, where most of the defects are indicated and remedies for them proposed.

But, as there seems no immediate prospect of reform, it is hoped that this Book may be of use to the Profession as well as to those who are interested in this branch of the Law, and that its shortness may be found due not to the omission of what ought to be included, but to the exclusion of what is irrelevant.

B. A. COHEN.

11 KING'S BENCH WALK,
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CHAPTER I.

HISTORY OF LITERARY COPYRIGHT.

It is proposed to review shortly the History of Literary Copyright, which may be defined as the exclusive right of multiplying copies of a literary work after publication. It has at length been decided (*a*) that such a right exists solely by Statute, and not at Common Law; but the question has excited an extraordinary diversity of opinion amongst Judges of the greatest eminence, and is one of great historical, though perhaps not of practical, interest. Moreover, some writers on this subject at the present day entertain the view that the question ought to have been differently decided, and it may therefore be well to give a short outline of the history of the controversy and the main arguments on either side.

In the year 1474 printing was introduced into England by Caxton, and apparently remained free for fifty years. Then the crowned heads of Europe seized on it, seeing its effects on politics and religion, and in England the Crown appears to have claimed the monopoly of printing and licensing what should be printed.

Thus, in 1537, Henry VIII. published proclamations against printing without licence.

(*a*) Donaldson *v.* Becket, Bro. Parl. Cas. 120; 17 Cobbett's Parl. Hist. 953; Reade *v.* Conquest, 30 L. J., C. P. 209.

In 1555 Mary published a similar proclamation.

At about the same time the Stationers' Company came into existence; and in the year 1556, by a decree of the Star Chamber, it was ordained that certain named persons should be incorporated as a "Society of the Art of a Stationer," and that no person not being a member of that society should practise the art of printing. Extensive powers of searching and confiscation were at the same time granted to the Company, as well as power to make bye-laws.

In 1558 the Company's charter was confirmed by Queen Elizabeth, and "whether before 1640 Copyrights existed in this kingdom upon principles and usage can be only looked for in the Stationers' Company, or the Star Chamber, or Acts of State" (*b*).

At this time, therefore, the only persons entitled to print would be Licensees from the Crown and Members of the Stationers' Company.

In 1584, by a decree of the Star Chamber, it was ordained that every book should be licensed, and that no person should print any book contrary to the form or meaning of any restraint contained in any Statute or Law of the Realm, or against the true intent and meaning of any letters patent, commissions, or prohibitions under the Great Seal, or contrary to any allowed ordinance set down for the good government of the Stationers' Company.

Another decree of 1623 recited and enforced the above decree.

By a decree of 1637 no person "is to print or import any book or copy which the Company of Stationers or any other person hath or shall, by any letters patent, order, or entrance in their register book, or otherwise, have the right solely to print."

(*b*) *Per* Willes, J., in Millar *v.* Taylor, 4 Burr. 2311

In 1640 the Star Chamber was abolished, and all regulations of the Press and restraints of unlicensed printing by proclamations, decrees of the Star Chamber, and charter powers given to the Stationers' Company, were deemed to be, and certainly were, illegal (*c*).

However, in 1641, the "licentiousness of libels" induced the two Houses to make an ordinance forbidding printing unless the book was first registered and entered in the Register of the Stationers' Company, and forbidding any person printing any book so licensed and entered without the consent of the owner.

In 1644 Milton published his famous speech, the Areopagitica, against this ordinance.

In 1649 the Long Parliament made an ordinance forbidding the printing of any book legally granted, or any book entered, without the consent of *the owner*; and this ordinance was renewed in 1652.

The dissolution of the Long Parliament was followed by the Licensing Act of 1662 (13 & 14 Car. II.), which was based upon the lines of the previous ordinances, and prohibited the printing of any book unless first licensed and entered in the Register of the Stationers' Company, and also printing without the consent of the owner, under certain penalties.

This Act was continued by several Acts, and expired in 1679. It was revived by 1 Jac. II. c. 27, and continued by 4 W. & M. c. 24, and finally expired in 1694.

Thereupon attempts were made in several successive years to obtain a new Licensing Act. Proprietors of copies had so long been protected by penalties that they probably did not think of other remedies. Although an action on the case had been begun in 31 Car. II. for

(c) 4 Burr. 2314.

printing the "Pilgrim's Progress," it was not proceeded with (*d*).

Finally, in 1710 the Statute of Anne (8 Anne, c. 19), was passed, and was entitled "An Act for the Encouragement of Learning by *vesting* the Copies of Printed Books in the Authors or Purchasers of such Copies during the times therein mentioned."

The preamble recited that—

WHEREAS printers &c. have of late frequently taken the liberty of printing, reprinting, and republishing books without the consent of the authors or proprietors of such books: For the preventing such practice and for the encouragement of learned men to compose and write useful books, be it enacted that—

1. From the 10th of April, 1710, the author of any book already printed who shall not have transferred the right shall have the sole right and liberty of printing such book for the term of twenty-one years, to commence from the said 10th of April, *and no longer*, and that the author of any book not yet printed, and his assigns, shall have a similar right for fourteen years from first publication, *and no longer*.

9. Provided that nothing in this Act contained shall extend or be construed to extend either to prejudice or confirm any right that . . . . any person . . . . claims to have to the printing or reprinting any book or copy of a book already printed or hereafter to be printed.

11. Provided always, that after the expiration of the said term of fourteen years the sole right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years.

It will be necessary later on to discuss the terms of this Statute rather more in detail; at present it may be remarked that it is the first Statute directed to the encouragement of learning, all the previous decrees and ordinances having been passed for political and religious purposes with a view to suppressing blasphemous or seditious works.

(*d*) Ponder *v.* Bradyl, Lillie's Entries, 67.

It will be seen that the question of Common Law Copyright in the case of old copies could not arise for twenty-one years from the 10th April, 1710—*i.e.* till after the 10th April, 1731—and the cases on Copyright before the Statute are, as might be expected, disputes between patentees of the Crown, or between members of the Stationers' Company and patentees of the Crown. For this reason these cases do not throw any conclusive light upon the question whether Copyright existed at Common Law, but the following may be cited.

In 1666, in *Atkins's Case* (*e*), the question was between the law-patentee and some members of the Stationers' Company as to the right to print "Rolls' Abridgment." It was urged for the plaintiff that a copyright was a thing acknowledged by the Common Law, that the King had this right, and had granted it to the plaintiff. An injunction was granted by the Lord Chancellor, whose decision was affirmed by the House of Lords.

In 1670, in *Roper v. Streater* (*f*), the plaintiff had bought from Mr. Justice Croke's executors the third part of his "Reports." The defendant was law-patentee, and had reprinted it without plaintiff's consent. Plaintiff brought an action of debt under the Licensing Act. Defendant pleaded the King's grant, and plaintiff demurred. It was adjudged for the plaintiff in the Common Pleas, and this was only reversed in the Lords on the ground that the copy belonged to the King.

In 1678, in the case of *The Stationers' Company v. Skinner* (*g*), the plaintiffs, as grantees of the Crown, brought an action against defendant for printing "Gadsbury's Almanac." An injunction was granted,

(*e*) 4 Burr. 2315; Carter, 80.

(*f*) 4 Burr. 2316; Skinner, 234.

(*g*) 4 Burr. 2316; 1 Mod. 256.

and it was said: "The additions of prognostications do not alter the case; no more than if a man should claim a property in *another man's* copy by reason of some inconsiderable additions of his own."

After the Statute there are several cases of injunctions granted by a Court of Equity.

1735. *Eyre v. Walker* (*h*). An injunction was granted restraining the defendant from printing "The Whole Duty of Man," the first assignment of which had been made in 1657. In the same year, in *Motte v. Falkner* (*h*), an injunction was granted to restrain the printing of Pope's and Swift's "Miscellanies."

1736. *Walthoe v. Walker* (*h*). Injunction granted for printing Nelson's "Fasts and Festivals," though it was printed in the lifetime of the author, who died in 1714.

1739. *Tonson et alii v. Walker* (*h*). Injunction granted to restrain defendant from printing Milton's "Paradise Lost," the plaintiffs deriving their title under an assignment from the author in 1667.

1760. In *Tonson v. Collins* (*i*) the question as to the Common Law right was twice argued in a Court of Law, but no decision was given, because it was thought that the action was a collusive one.

In 1769 the celebrated case of *Millar v. Taylor* (*k*) was decided. Thomson had printed and published his work, "The Seasons," between 1727 and 1729, and had in the latter year sold the copyright to the plaintiff. In 1763—*i.e.* after the statutory term had expired—the defendant published the book without the plaintiff's consent. The question therefore was whether there was a Common Law right, and this question was answered in the affirmative by Willes, J., Aston, J., and Lord Mansfield, C. J. (Yates, J., differing).

(*h*) 4 Burr. 2325. (*i*) 1 Wm. Blackstone, 301. (*k*) 4 Burr. 2303.

In the judgments in this case, and the arguments in the case of *Tonson v. Collins* (*l*), most of the history of the Law of Copyright is to be found.

Finally, in 1774, the question came before the House of Lords in the case of *Donaldson v. Becket* (*m*), the facts being practically the same as in *Millar v. Taylor*. A perpetual injunction was granted by the Lord Chancellor against the defendant, who appealed to the House of Lords.

The Judges were called in to give their opinions upon certain questions, of which it is only necessary to set out three:—

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

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

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

To the first question ten Judges answered in the affirmative, and one in the negative.

(*l*) 1 Wm. Blackstone, 301.

(*m*) 4 Burr. 2408; Bro. Parl. Cas. 129; 17 Cobbett's Parl. Hist. 954, 1003.

To the second question seven Judges answered in the negative, and four in the affirmative.

To the third question six Judges answered in the affirmative, and five in the negative.

Lord Mansfield did not express his opinion, as it was unusual for a peer to support his own judgment on an appeal to the House of Lords, but it was notorious that he concurred with the majority of the Judges on the first and second questions, and with the minority on the third (*n*).

The Lords, on the motion of Lord Camden, reversed the decree, and decided against the Common Law right (*o*).

The main arguments adduced on either side were:

For the Common Law right—

1. The decrees of the Star Chamber, the ordinances of the Long Parliament, and the Licensing Act (13 & 14 Car. II.) appear from their language to recognise a Common Law right.
2. The cases before the Statute recognise such a right in the Crown, and this is only a Common Law right, because the Crown had no prerogative over printing generally.
3. The cases in Equity after the Statute assume such a right to exist, because (A) under the Statute protection was granted to owners of works who had entered them in the Register of the Stationers' Company, and yet injunctions were granted in cases where there was no entry; (B) under the Statute proceedings must be taken within three months after the offence was committed, yet injunctions were granted where the Bill in Chancery was not brought within three months.

(*n*) 4 Burr. 2417.

(*o*) Bro. Parl. Cas. 129; and 17 Cobbett's Parl. Hist. 953.

4. An author has a property in an unpublished work (*p*), and this cannot be taken away from him by the fact of publication.

Against the right—

1. The decrees of the Star Chamber and the ordinances of the Long Parliament were illegal, and only applied to members of the Stationers' Company.

2. In the early days of printing the prerogative of the Crown ran high, and the Crown claimed the right of regulating printing.

3. Literary works do not differ from other inventions: therefore an author may have the sole right of first publishing his work, but after publication his rights depend upon Statute.

4. Injunctions granted by a Court of Equity do not decide the legal right.

5. The terms of the Statute are decisive, inasmuch as it *vests* the rights, and enacts that they shall exist for the times specified, *and no longer*.

Such were the main arguments upon either side, and, as before stated, the House of Lords finally decided that after the expiration of the statutory period no Common Law right exists.

It was also subsequently decided that during the statutory period no concurrent Common Law right exists (*q*).

The decision in *Donaldson v. Becket* has frequently

(*p*) Webb *v.* Rose, 4 Burr. 2330; Pope *v.* Curl, *ibid.*; Duke of Queensberry *v.* Shebbeare, *ibid.*; Forrester *v.* Waller, *ibid.*

(*q*) Reade *v.* Conquest, 30 L. J., C. P. 209.

been approved in later cases (*r*), and the law has been settled to the same effect in America (*s*).

The matter has been dealt with at some length in the foregoing pages on account of its historical interest, and because several modern writers appear to question the correctness of the decision.

It remains to add that, by 54 Geo. III. c. 15, the term of Copyright granted by the Statute of Anne was extended; and in 1842 an Act, known as Talfourd's Act (*t*), was passed, which repealed the previous Acts, and by which Literary Copyright is at present regulated.

Copyright Commission.—In the year 1878 a Copyright Commission took evidence, and issued a Report containing various recommendations, but up to the present time little further has been done by the Legislature. Appended to the Report is a Digest of the Law relating to Copyright prepared by the late Sir James Stephen; and it is difficult, after studying the Digest, to avoid the conclusion that, as long, at any rate, as this branch of the law remains in its present condition, it is impossible to deal with it adequately in a short digest.

(*r*) *e.g.* Beckford *v.* Hood, 7 T. R. 620; Jefferies *v.* Boosey, 4 H. L. Cas. 815.

(*s*) Wheaton *v.* Peters, 8 Peters' Rep. (Amer.).

(*t*) 5 & 6 Vict. c. 45, *post*, p. 114.

CHAPTER II.

UNPUBLISHED WORKS.

In the case of a published work, as has been seen, Copyright, or the exclusive right of multiplying copies, is the creation of and depends entirely upon Statute. But the word "Copyright" is also sometimes used to denote the right of an author in his unpublished work (*a*), and this right depends not upon Statute but upon Common Law. That the author of any literary composition has at Common Law the sole right of first printing and publishing the same for sale has been recognised from a very early date (*b*). In the words of Lord Brougham, "The right of the author before publication we may take to be unquestioned, and we may even assume that it never was, when accurately defined, denied. He has the undisputed right to his manuscript; he may withhold or he may communicate it; and, communicating, he may limit the number of persons to whom it is imparted, and impose such conditions as he pleases upon their use of it. The fulfilment of the annexed conditions he may proceed to enforce, and for their breach he may claim compensation (*c*)."

(*a*) See *per* Parke, B., Jefferies *v.* Boosey, 4 H. L. Cas. 919.

(*b*) See answers of Judges to first question in Donaldson *v.* Becket, *ante*, p. 7.

(*c*) 4 H. L. Cas. p. 902.

An author who commits to paper a literary composition belonging to himself has a right to the paper and to as many copies as he chooses to make for himself or his friends (*d*).

Literary Property.—An author has also a literary property in his composition (*e*).

Thus, an injunction was granted to restrain a defendant from printing the precedents of conveyancing which had been stolen from the chambers of the plaintiff (*f*), or notes which had been copied by the clerk of a person to whom the author had lent them (*g*). So where the author of an unpublished farce specially permitted it to be represented on several occasions, and the defendants sent a shorthand writer to one representation, and from his notes published the first act of the farce in a magazine belonging to them, an injunction was granted (*h*).

The owner of unpublished etchings was held entitled to restrain the publication of a catalogue of such etchings as being an invasion of his property (*i*); and the receiver of letters who had returned the originals was restrained from publishing copies expressly on the ground of invasion of literary property (*k*).

(*d*) 4 H. L. Cas. 919.

(*e*) Southey *v.* Sherwood, 2 Merivale 435. It is difficult to distinguish between (1) the right to the manuscript; (2) the right to the composition as a literary property; and (3) the right to enforce the conditions, express or implied, under which an author has entrusted another with his manuscript. For instance, if A. lends his manuscript to B. to peruse and return, and B. refuses to return it, and publishes a copy, he will have infringed all the above-mentioned rights. And it is obvious that most cases of this description will fall under more than one of the three divisions.

(*f*) Webb *v.* Rose, cited 4 Burr. 2330.

(*g*) Forrester *v.* Waller, cited 2 Ed. 328.

(*h*) Macklin *v.* Richardson, 2 Ambl. 694; also Palmer *v.* De Witt, 2 Sweeney 530; affirmed 2 Sickel 532.

(*i*) Prince Albert *v.* Strange, 1 McN. & G. 44.

(*k*) Gee *v.* Pritchard, 2 Swanst. 402.

Implied Trust.—The author of an unpublished work is also protected where he has entrusted it to another upon the condition that it shall not be published (*l*), and such a condition will be implied under certain circumstances. Thus where the owner of certain unpublished etchings sent some plates to a printer in order to have impressions printed for private circulation, and the defendant obtained possession of certain impressions and published a catalogue of them, it was held that there must have been a breach of an implied condition by the printer or by some other person, and that defendant was not entitled to publish the catalogue (*m*). Where the proprietor of copyright in a picture, before registration, sent it to be copied, a condition was implied that no copies were to be made except those ordered (*n*); and so in the case of a photograph (*o*).

Again, where a manuscript of the Earl of Clarendon's History had been delivered by him to another person, a condition was held to be implied that it was not to be published (*p*).

Where a painter assigned to the plaintiff the copyright in the engraving of a picture, and lent the picture to him with permission to exhibit it for the purpose of getting subscriptions for the engraving, it was held that there had been no publication of the picture, and an injunction was granted against the defendant, who, having seen the picture, had arranged a scene in exact imitation of it, and had taken and sold coloured photographs of this scene (*q*).

(*l*) See *per* Parke, B., 4 H. L. Cas. 919, 920.

(*m*) Prince Albert *v.* Strange, 1 McN. & G. 44.

(*n*) Tuck & Sons *v.* Priester, 19 Q. B. D. 629.

(*o*) Pollard *v.* Photographic Co., 40 Ch. D. 345.

(*p*) Duke of Queensberry *v.* Shebbeare, 2 Eden 329, cited 4 Burr. 2330 *cf.* Kenrick *v.* Danube Collieries Co., 30 W. R. 473.

(*q*) Turner *v.* Robinson, 10 Ir. Ch. Rep. 121; affirmed at p. 510.

On a similar principle it was held that the composer of an opera, which had never been performed publicly, but was merely in rehearsal, was entitled to restrain a newspaper from publishing the plot of the play, because there must have been a breach of trust on the part of some employé of the author in revealing the plot to the newspaper (*r*).

A very recent case well exemplifies the rights of an author in his published and unpublished work. The facts were as follows:—

A company obtained information from the Stock Exchange with reference to the prices of stocks and shares, and published a newspaper six times daily containing such prices. The company also telegraphed these "tape prices" to members of the Stock Exchange, who subscribed for that purpose, but upon the express condition that this information should be solely used by the subscribers for the purposes of their business. The defendant—an outside broker who had originally been a subscriber, but whom the plaintiff company refused to continue as such—obtained the tape prices from a subscriber, and published them in his office.

The plaintiffs sought to restrain him from infringing their copyright in the newspaper (which was registered), and also from obtaining copies of the plaintiffs' tapes, and on both grounds an injunction was granted. In other words, it was held that, by communicating the tape prices to their subscribers, the plaintiffs had not published them, and also that they had a literary property in the unpublished matter (*s*).

Letters.—The cases as to letters also fall under this head.

The property in the paper on which a letter is written is in the receiver, who can maintain detinue for it, even against the sender, if the letter has come into the latter's

(*r*) Gilbert *v.* The Star Newspaper Co., Limited, 11 Times L. R. 4.

(*s*) Exchange Telegraph Co. *v.* Gregory [1896], 1 Q. B. 147.

hands (*t*). But the writer retains such an interest, if not a property, in the letter as to be entitled to restrain its publication (*u*); and the consent of the writer to the publication is not to be implied from the fact that he refused to receive back the letters (*w*). An exception to this rule was made where the publication of the letters was necessary in order to vindicate the character of the receiver from a charge made by the sender of having misrepresented the contents of the letters (*x*), but this exception will be strictly confined (*y*). Where the solicitor to a company wrote a letter to a shareholder, it was held by Lord Romilly, M. R., that the letter belonged to the company, not to the solicitor (*z*). In a dispute between the receiver of a letter and a stranger, the receiver may be ordered to produce the letter, and an undertaking must be given not to use it for any collateral purpose (*a*).

Lectures.—Upon the same principle of an implied condition, it has been decided that where lectures have been delivered, not to the public generally, but to a limited audience, although any member of the audience may take notes of the lectures for his own instruction in shorthand or otherwise, the lecturer will be entitled to restrain the publication of anything which amounts to a reproduction of his lecture (*b*). It does not seem to make any difference

(*t*) Oliver *v.* Oliver, 31 L. J., C. P. 4.

(*u*) Lytton *v.* Devey, 54 L. J., Ch. 293; see also Pope *v.* Curl, 2 Ath. 341; Earl of Granard *v.* Dunkin, 1 Ball & Beat. 207. In Pope *v.* Curl, Lord Hardwicke considered that a book containing a collection of letters was within the term "book" in the Statute of Anne.

(*w*) Thompson *v.* Stanhope, Ambl. 737.

(*x*) Perceval *v.* Phipps, 2 V. & B. 10.

(*y*) Gee *v.* Pritchard, 2 Swanst. 402; and Lytton *v.* Devey, *ante*.

(*z*) Howard *v.* Gunn, 32 Beav. 462.

(*a*) Hopkinson *v.* Lord Burghley, L. R., 2 Ch. 447.

(*b*) Caird *v.* Sime, 12 App. Cas. 326; Nicols *v.* Pitman, 26 Ch. D. 374; Bartlett *v.* Crittenden, 4 McLean 300, and 5 McLean 32.

whether the lecturer has committed his lectures to the form of a manuscript or not (*c*); and the condition is implied from the relationship between the lecturer and his audience (*d*).

The appointment of the lecturer may be a public one; but it will not follow that his lectures are published to the world at large by delivery. This will depend upon the duties prescribed to the lecturer, and upon the conditions under which he delivers his lectures: *e.g.* whether to the public generally (as usually may be the case with sermons), or to a limited audience (as in the case of lectures at a University). Nor does the Statute (*e*) relating to lectures affect the question, because that Statute merely secures to lecturers who have complied with certain conditions the exclusive property in their lectures, both in cases where the Common Law would have protected them, and where, apart from the Statute, the delivery of the lectures would have amounted to publication (*f*). This Statute, it may be observed, is very rarely taken advantage of: its provisions are set out at the end of this book.

Fraud.—An author possesses the further right at Common Law of preventing another from publishing a work in such a way as to deceive the public into believing it to be the work of the original author.

This right is independent of any question of copyright or literary property, and depends upon the principle that a man will be restrained from injuring another, who is lawfully carrying on his business, by doing acts calculated

(*c*) Abernethy *v.* Hutchinson, 3 L. J., Ch. 209; 1 H. & T. W. 28.

(*d*) Caird *v.* Sime, *supra*, p. 348.

(*e*) 5 & 6 Will. IV. c. 65 (see page 110).

(*f*) Caird *v.* Sime, *supra*; Nicols *v.* Pitman, *supra*.

to deceive the public into confusing the two businesses (*g*). Thus, although there is no copyright in the title of a book or newspaper (*h*), there may be something analogous to a trade mark, and it will be Common Law fraud for a man to attempt to pass off his book as that of another (*i*); and if the similarity is calculated to deceive it is immaterial that there was no intention to do so (*k*).

It must, therefore, be a question of fact in each case whether the acts done are calculated to deceive, and all the circumstances must be taken into account—*e.g.* similarity of type or appearance as well as similarity of name—but a similarity of name is strong, though not conclusive, evidence that the work is calculated to deceive (*l*). In analogy to the law relating to trade marks, the advertisement of an intention to use a name does not give an author the right to restrain another from using that name for his work; there must be actual user (*m*). Thus, where a man had extensively advertised a magazine as about to appear at a later date under the name of "Belgravia," but before that date the defendant published a magazine under the same name, an injunction was refused on the ground that the original projector had not actually produced and put upon the market his magazine, and so had not acquired a right to restrain another from using the name "Belgravia" (*n*).

(*g*) See *per* Bowen, L. J., in Walter *v.* Emmott, 54 L. J., Ch. 1059, and 53 L. T., N. S. 437. Weldon *v.* Dicks, 10 Ch. D. 247, is on this point overruled by Dicks *v.* Yates, *infra*.

(*h*) Kelly *v.* Hutton, L. R., 3 Ch. 703, and 37 L. J., Ch. 297, 917.

(*i*) See *per* Lush, L. J., in Dicks *v.* Yates, 18 Ch. D. 76; Kelly *v.* Hutton, *supra*; Walter *v.* Emmott, *supra*; Metzler *v.* Wood, 8 Ch. D. 606.

(*k*) Walter *v.* Emmott, *supra*; Weldon *v.* Dicks, *supra*; *cf.* Hall *v.* Burrows, 4 De G. J. & S. 150; McAndrew *v.* Bassett, 4 De G. J. & S. 380.

(*l*) Walter *v.* Emmott, *supra*.

(*m*) Maxwell *v.* Hogg, L. R., 2 Ch. 307.

(*n*) *Ibid.*; *cf.* The Primrose Press Agency Co. *v.* Mark Knowles and Others, 2 Times L. R. 404.

The use of a name must have gone on for a reasonable time in order to give the person using it an exclusive right to such user. Thus, where the plaintiffs had sold a small number of copies of a paper for a few days, they were held to have no title to restrain the defendants from using a similar name (*o*). Moreover, the name must be such that the public would reasonably suppose it to be exclusively used by one person only, and would naturally be deceived if it were used by another. Thus, it was held that a man had no such exclusive right to use the words "Post Office" in connection with his Directory as to prevent another from using the same title in connection with another Directory, which was not in other respects a colourable imitation of the former (*p*). The fact that a certain number of persons *have* been deceived by a similarity of name is not sufficient: there must be a reasonable probability of injury to the person entitled to the exclusive use of a name (*q*). Thus, where the proprietor of *The Morning Post* sought to restrain the defendants from publishing a paper entitled *The Evening Post*, it was held that, although some persons had been deceived into thinking that the two papers were published by the plaintiff, yet that, taking all the circumstances into consideration, there was not such a reasonable probability of injury to the plaintiff as to entitle him to an injunction (*r*). In that case, which was considered to be on the border-line, it was said by Cotton, L. J., that each case must be decided according to its particular circumstances, and that no case would be an authority for any other. It is, therefore, unnecessary to elaborate the decisions on the point, but the question will be found to have been discussed

(*o*) Licensed Victuallers' Newspaper Co. *v.* Bingham, 38 Ch. D. 139.

(*p*) Kelly *v.* Byles, 13 Ch. D. 682; see Schove *v.* Schminke, 33 Ch. D. 546.

(*q*) Borthwick *v.* *The Evening Post*, 37 Ch. D. 449.

(*r*) *Ibid.*

in the cases below cited, in addition to those previously mentioned (*s*).

In *ex parte Foss* (*t*) it was held that the right to publish a newspaper was "goods and chattels" within the meaning of the "order and disposition" clause of the Bankruptcy Act then in force.

The foregoing cases relating to the rights of an author before publication show the principle upon which it is determined whether or not a work has been published, and it appears from them that where an author has so dealt with his work that a condition is to be implied that any person into whose hands it may have come is only to use it in a particular way, whether for the benefit of himself or of the author, there will be no publication. So, on the other hand, where the author of a design permitted another to whom the design was shown in confidence to solicit orders for its sale, in order to see whether it was likely to please the public, it was held that the design *had* been published (*u*).

It is probable that a picture being exhibited at a public exhibition would amount to publication, though, upon the principles previously explained, such conditions might be annexed to the exhibition as to negative the inference of publication (*w*). No general rule can be laid down for determining when publication has taken place: the question in each case is whether the proper inference to be drawn from all the circumstances is that the author intended to make his work public.

(*s*) Hogg *v.* Kirby, 8 Ves. 215; Edmonds *v.* Benbow, Sebastian's Digest, 10; Prowett *v.* Mortimer, 2 Jur., N. S. 414; Ingram *v.* Stiff, 5 Jur., N. S. 947; Mack *v.* Petter, L. R., 14 Eq. 431; Clement *v.* Maddick, 5 Jur., N. S. 597; Cowen *v.* Hutton, 46 L. T., N. S. 897; Franke *v.* Chappell, 57 L. T. 141.

(*t*) 2 De G. & J. 230.

(*u*) Blank *v.* Footman, 30 Ch. D. 678.

(*w*) Turner *v.* Robinson, 10 Ir. Ch. Rep. 121.

CHAPTER III.

LITERARY COPYRIGHT BY STATUTE.

After publication, Literary Copyright is regulated by the Statute 5 & 6 Vict. c. 45. The preamble states that "it is expedient to amend the Law relating to Copyright, and to afford greater encouragement to the production of Literary Works of lasting benefit to the world." It is, therefore, necessary to see in what works copyright may be acquired.

In the first place, it is impossible to acquire copyright in works which are of a nature injurious to the public (*a*), such as a libel so gross as to affect public morals (*b*), or a work of an indecent (*c*) or blasphemous character (*d*).

Moreover, there must be originality in the work. "It must be a composition of the author; something which has grown up in his mind; the product of something which if it were applied to patent rights would be called invention" (*e*). Thus there is (except in a very exceptional case) no copyright in the title to a book or newspaper (*f*).

But it is not necessary that the subject matter should

(*a*) Southey *v.* Sherwood, 2 Meriv. 435.

(*b*) Hine *v.* Dale, 2 Camp. 32.

(*c*) Stockdale *v.* Onwhyn, 5 B. & C. 173.

(*d*) Lawrence *v.* Smith, 1 Jac. 471, and notes thereto.

(*e*) *Per* Lush, L. J., in Dicks *v.* Yates, 18 Ch. D. at p. 92.

(*f*) *Ibid.*, *ante*, p. 17.

be new if the treatment is original (*g*). There may, therefore, be copyright in such works as a map, directory, or calendar (*h*), although the materials are equally at the disposal of any other author; in additions and alterations made to the work of another (*i*); in the head-notes to law reports, but not in the verbatim reports of the judgments (*k*); in a telegraphic code (*l*); in a collection of public documents, in the arrangement and abridgment of which mental labour has been bestowed (*m*); and in the headings to advertisements (*n*).

In the case of time tables, where the compilers have merely to go to the railway book and copy the tables, a substantial appropriation by one party of the independent labour of the other must be shown in order to justify proceedings for infringement of copyright. But where part of such a book consisted of lists of circular tours, involving considerable labour in the compilation, although this formed a very small portion of the whole book, it was held that it was an independent work and entitled to protection (*o*).

Similarly, catalogues in the compilation of which skill has been used have been protected; and it is now clear law that this protection extends to cases where the catalogue is a mere advertisement and not used for purposes

(*g*) See Hogg *v.* Kirby, 8 Ves. 215.

(*h*) Longman *v.* Winchester, 16 Ves. 269.

(*i*) Carey *v.* Longman, 1 East 358, and see notes thereto.

(*k*) Sweet *v.* Benning, 16 C. B. 459.

(*l*) Ager *v.* Peninsular and Oriental Steam Navigation Co., 26 Ch. D. 637.

(*m*) Trade Auxiliary Co. *v.* Middlesbrough and District Tradesmen's Trade Protection Association, 40 Ch. D., at p. 435.

(*n*) Lamb *v.* Evans [1892], 3 Ch. 462, and [1893] 1 Ch. 218.

(*o*) Leslie *v.* Young & Sons [1894], App. Cas. 335.

of sale (*p*), though in one case this was differently decided (*q*).

New Editions.—The same principle applies to new editions of former works where they contain alterations or additions. Thus, where the first edition of a work was published before, and several editions were published after, the Act, it was held that, in so far as they contained new matter, the subsequent editions required registration to entitle the owner to sue for an infringement (*r*). But there is no copyright in a new edition which is simply a reprint of a former edition (*s*).

News.—Although there is no copyright in news, there may be copyright in the mode in which news is expressed (*t*).

Apparently, there may be copyright in "tape prices" of stocks and shares on the Stock Exchange (*u*).

But there cannot be copyright in an idea or an opinion. Thus, where the plaintiff published a registered weekly periodical in which he inserted a list of the horses he selected as likely to win races during the following week, and the defendant daily published a sheet containing (among others) the plaintiff's selections, it was held that, whatever might be the case as to his periodical, the plaintiff had no copyright in the name of the horse selected by him: in fact, that it was an attempt to copyright an opinion (*v*).

(*p*) Maple & Co. *v.* Junior Army and Navy Stores, 21 Ch. D. 369; Hotten *v.* Arthur, 1 H. & M. 603; Grace *v.* Newman, L. R., 19 Eq. 623; *cf.* Lamb *v.* Evans [1892], 3 Ch. 462, and [1893] 1 Ch. 218.

(*q*) Cobbett *v.* Woodward, L. R., 14 Eq. 407 (overruled).

(*r*) Murray *v.* Bogue, 1 Drew. 353.

(*s*) Thomas *v.* Turner, 33 Ch. D. 292.

(*t*) Walter *v.* Steinkopff [1892], 3 Ch. at p. 495.

(*u*) Exchange Telegraph Co. *v.* Gregory [1896], 1 Q. B. 147.

(*v*) Chilton *v.* Progress Printing and Publishing Co. [1895], 2 Ch. 29.

Many of the cases on infringement will also be found to exemplify the principle that originality is necessary in order to entitle a work to copyright.

Books.—Section 2 (*w*) of the Act defines "a book" as meaning "every volume, part, or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan, separately published."

The previous Statutes did not define the term "book," but it was held that a single sheet of music was a book within the Statute of Anne (*x*), and that a single piece of music, though printed in a volume with other compositions, was a book within 54 George III. c. 56 (*y*).

Under the Act of 1842 there have been several decisions upon this Section.

Thus, an album for holding photographs, and ornamented with views of seven castles, was held to be neither a "literary work" within the preamble, nor a "book" within Section 2 of the Act (*z*); and a similar decision was given with reference to a card on the face of a barometer (*a*). On the other hand, an advertisement sheet in the shape of a hand, which opened, and contained on one side a design, and on the other some verses, was held to be a book (*b*). So, also, a cardboard puzzle so made as to throw a shadow resembling a picture (*c*), and a cardboard pattern of the outer side of a lady's sleeve (*d*);

(*w*) See page 115, *post*.

(*x*) Clementi *v.* Goulding, 11 East 244.

(*y*) White *v.* Geroch, 2 B. & Ald. 298.

(*z*) Schove *v.* Schminke, 33 Ch. D. 546; *cf.* Cable *v.* Marks, 47 L. T., N. S. 432.

(*a*) Davis *v.* Comitti, 52 L. T., N. S. 539.

(*b*) Hildesheimer *v.* Dunn [1891], W. N. 66.

(*c*) Cable *v.* Marks, *supra*.

(*d*) Hollinrake *v.* Truswell [1894], 3 Ch. 420, reversing decision of Court below [1893], 2 Ch. 377.

though a similar case was differently decided in America (*e*).

The character of what is published must be looked at. If it is not separately published, and if it conveys no information except as a portion of some tool or apparatus, it may be the subject of patent rights but not of copyright (*f*).

At one time it was considered that there could be no copyright in an advertisement consisting of an illustrated guide of furniture, and containing engravings of designs of furniture (*g*), but this decision was subsequently overruled (*h*). Similarly a newspaper was originally held not to be a book (*i*), but this view was decided to be erroneous (*k*).

An illustration which is contained in a book is protected (*l*).

Maps are within the actual words of the definition, and this is so whether they form part of a book or not; whereas before the Statute they had been included among artistic works, and not books (*m*).

There may be copyright in part of a work (*n*); and to multiply copies of a material portion of a work which

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(*e*) Drury *v.* Ewing, 1 Bond (Amer.) 540; see, however, Baker *v.* Selden, 11 Otto 99, 107.

(*f*) Hollinrake *v.* Truswell [1894], 3 Ch. at p. 426.

(*g*) Cobbett *v.* Woodward, L. R., 14 Eq. 407.

(*h*) Maple & Co. *v.* Junior Army and Navy Stores, 21 Ch. D. 369; *cf.* also Hotten *v.* Arthur, 1 H. & M. 603; Grace *v.* Newman, L. R., 19 Eq. 623; and Lamb *v.* Evans [1893], 1 Ch. 218.

(*i*) Cox *v.* Land and Water Co., L. R., 9 Eq. 324.

(*k*) Walter *v.* Howe, 17 Ch. D. 708; Cato *v.* Devon &c. Newspaper Co., 40 Ch. D. 500.

(*l*) Comyns *v.* Hyde, 11 Times L. R. 107.

(*m*) Stannard *v.* Lee, L. R., 6 Ch. 346.

(*n*) Low *v.* Ward, L. R., 6 Eq. 415. See also the cases as to New Editions, *ante*, p. 22; Leslie *v.* Young & Sons [1894], App. Cas. 335.

is entitled to copyright is as much a breach of the law, though differing in degree, as to multiply copies of the whole work (*o*). The opinion, therefore, which was expressed by Lord St. Leonards in *Jefferies v. Boosey* (*p*) cannot be considered as law.

Who may Acquire Copyright—Copyright may be acquired by any person residing within the British dominions in any work first published by him in the United Kingdom while so resident (*q*). There was a difference of opinion in the House of Lords as to whether the protection extended to the work of any author, wherever resident, if first published in the United Kingdom, and the point was not necessary for decision; but it is submitted that the opinion of Lord Cairns, L. C., and Lord Westbury, who gave the Statute this extended interpretation, is correct (*r*).

Previously it was held, upon the construction of the Statute of Anne, that a foreigner residing abroad could not acquire copyright within the United Kingdom by first publishing his work there (*s*); but, as was pointed out by the Lord Chancellor in *Routledge v. Low*, the decision in the earlier case depended mainly on the preamble of the Statute of Anne, and the scope of legislation at that period; whereas different considerations in both respects apply to the later Statute. It may be added that before *Jefferies v. Boosey* (*t*), which was decided in 1854, opinions

(*o*) Ager *v.* Peninsular and Oriental Steam Navigation Co., 26 Ch. D. at p. 641.

(*p*) 4 H. L. Cas. 815.

(*q*) Routledge *v.* Low, 3 E. & I. App. 100.

(*r*) *Ibid.*

(*s*) Jefferies *v.* Boosey, 4 H. L. Cas. 815.

(*t*) 4 H. L. Cas. 815.

on this point had been equally divided—two cases having been decided for (*u*), and two against the foreigner's right to protection (*w*).

In a case in which the author in England of a story published in parts registered the first number in England, and subsequently by his authority the completed serial was published in America before being published in England, the Court, while declining to finally decide the point, were inclined to the opinion that the English author had not lost his copyright (*x*).

Copyright is defined by Section 2 to mean "the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied." It is to be observed that the words "or otherwise multiplying" were not contained in the earlier Statutes of 8 Anne c. 19, and 54 Geo. III. c. 56, which only gave protection against multiplication by printing, whereas the protection now extends to multiplication of copies by other means: *e.g.* lithography (*y*). It has also been held that although Section 15, which deals with infringement, is confined to printing, a proprietor of copyright is entitled to restrain the multiplication of copies of his work by means other than printing (*z*).

By Section 3, in the case of books published in an author's lifetime, copyright is to subsist for his life and a further term of seven years, or for forty-two years from the date of first publication, whichever term be the longer; in the case of books published after the death of

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(*u*) Boosey *v.* Davidson, 13 Q. B. 257; and Cocks *v.* Purday, 5 C. B. 860.

(*w*) Chappell *v.* Purday, 14 M. & W. 303; and Boosey *v.* Purday, 4 Ex. 14

(*x*) Reid *v.* Maxwell, 2 Times L. R. 700.

(*y*) Novello *v.* Sudlow, 12 C. B. 177.

(*z*) *Ibid.*

the author, the term is forty-two years from the date of first publication.

Sections 4 to 12 do not require detailed explanation. They contain provisions against suppression of books of importance to the public (*a*), for delivery of copies to the British Museum (*b*) and to other libraries (*c*), for penalties on default of delivery (*d*), for the keeping of a Book of Registry at the Stationers' Hall for the entry of the proprietorship of copyright in books, and of assignments and licences, together with regulations concerning the inspection of such book, and the admission in evidence of certified copies of the entries (*e*); and it is enacted that to wilfully make a false entry or produce in evidence a false copy is to be a misdemeanour (*f*).

Registration.—Section 13 deals with registration; and the Schedule to the Act contains the form in which registration is to be made (*g*).

By this Section it is provided that the time of first publication, the name and place of abode of the publisher, and the name and place of abode of the proprietor of the copyright must be registered.

The main points to be observed are the following:—

1. Publication must precede registration, because the entry must relate to a published work (*h*); and the first publication must take place within the United Kingdom (*i*).

(*a*) 5 & 6 Vict. c. 45, s. 5, *post*, p. 116. (*b*) *Ibid.* ss. 6 and 7, *post*, p. 117.

(*c*) *Ibid.* ss. 8 and 9, *post*, p. 118. (*d*) *Ibid.* s. 10, *post*, p. 119.

(*e*) *Ibid.* s. 11, *post*, p. 119. (*f*) *Ibid.* s. 12, *post*, p. 120. (*g*) Page 120, *post*.

(*h*) Henderson *v.* Maxwell, 4 Ch. D. 163, and 5 Ch. D. 892.

(*i*) Routledge *v.* Low, 3 E. & I. App. 100.

2. The name and place of abode of the *first* publisher must be entered. An entry of the firm's name will suffice (*k*).

3. Not only the year (*l*), but also the day and month (*m*) of the first publication must be entered.

4. The name and abode of the actual proprietor of the copyright at the date of publication must be entered; but it is not necessary to state how the copyright devolved upon him, nor who was the first proprietor (*n*). Where an advertisement sheet contained on one side a design, and on the other some verses, it was held sufficient to register the proprietor without also registering the writer of the verses or the artist (*o*).

5. The title of the book must be registered. Thus, where an illustrated catalogue of shop-fittings was registered as "Illustrated Book of Shop-fittings," and that nowhere appeared as the title on the book, whereas the title "Illustrated Catalogue and Price List" did appear, and had on a previous occasion been registered, it was held that the registration was bad, inasmuch as the book had a title which was not registered (*p*). An opinion was expressed that, if a book had no title, registration of a description of the book might be sufficient.

(*k*) Weldon *v.* Dicks, 10 Ch. D. 247; and Coote *v.* Judd, 23 Ch. D. 727.

(*l*) Wood *v.* Boosey, L. R., 2 Q. B. 340.

(*m*) Mathieson *v.* Harrod, L. R., 7 Eq. 270; Low *v.* Routledge, 33 L. J., Ch. 717; Emmott *v.* Collingridge, 57 L. T. 804.

(*n*) Weldon *v.* Dicks, *supra*.

(*o*) Hildesheimer *v.* Dunn [1891], W. N. 66.

(*p*) Harris *v.* Smart, 5 Times L. R. 594.

If the work registered amounts merely to a reproduction of a former edition, the date of first publication of the earlier edition must be registered (*q*); but if the subsequent edition contains new matter, registration of the date of first publication of *that edition will be good as to the new* matter (*r*). Until registration no proceedings for infringement can be taken by the proprietor of copyright (*s*); but registration is merely a condition precedent of the right to sue, and does not confer copyright, which arises from publication irrespective of registration (*t*). It follows that a proprietor of copyright may, after registration, sue for an infringement which took place before registration, and it is notorious that large publishers do not register until just on the eve of taking some proceedings (*u*), and a writ may be issued on the same day on which the entry is made, provided the entry is made before the writ is issued (*w*).

A prospective publication cannot be registered (*x*).

Assignment.—By the same (Thirteenth) Section it is provided that a registered proprietor of copyright may assign his interest therein, by entering such assignment in the Book of Registry in the form prescribed by the Schedule.

Such assignment must be in writing, and a written prevails over a prior verbal assignment (*y*).

An agreement may amount to an assignment of copyright, if it gives an exclusive power of printing,

(*q*) Thomas *v.* Turner, 33 Ch. D. 292.

(*r*) Hayward *v.* Lely, 56 L. T., N. S. 419; *cf.* Murray *v.* Bogue, 1 Drew. 353.

(*s*) Section 24, p. 126, *post*.

(*t*) Davis *v.* Comitti, 52 L. T., N. S. 539.

(*u*) Cate *v.* Devon &c. Newspaper Co., 40 Ch. D. 500; *cf.* Walter *v.* Howe, 17 Ch. D. 708.

(*w*) Warne *v.* Lawrence, 2 Times L. R. 404.

(*x*) Correspondent Newspaper Co. *v.* Saunders, 13 W. R. 804.

(*y*) Leyland *v.* Steward, 4 Ch. D. 419; Hole *v.* Bradbury, 12 Ch. D. 886.

reprinting, and publishing a work, but where there is an agreement to the effect that the publishers, so long as they perform certain conditions, shall have the right of printing and publishing a book, the copyright is not thereby assigned (*z*). Such an agreement is a personal one between anthor and publishers, and the latter cannot pass it on to assignees of their business (*z*).

In a case before 5 & 6 Vict. c. 45, where there was an agreement between the author of a work and the plaintiffs, who were publishers, that the latter should publish 2500 copies of the work, but there was no assignment of copyright, it was held that the plaintiffs were equitable assignees of the copyright in the 2500 copies, and entitled to restrain the defendants from infringing this copyright (*a*).

Upon an assignment of copyright, unless the contrary is agreed, the assignor may retain and sell all copies which he had printed prior to the assignment (*b*), but he is not entitled to restrain his assignee from selling other copies till he has disposed of all the copies in his possession (*c*).

The assignment must be registered in order to entitle the assignee to sue, and it seems that any defect in registration will be fatal (*d*).

A licence must also be in writing; but if a verbal licence is given it is possible that a Court of Eqnity would restrain the person giving the licence from derogating from his grant (*e*). Where the proprietor of copyright in a book of designs licensed another person to print from certain of

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(*z*) Stevens *v.* Benning, 1 K. & J. 168; *cf.* Hole *v.* Bradbury, *supra*.
(*a*) Sweet *v.* Cater, 11 Sim. 572.
(*b*) Taylor *v.* Pillow, L. R., 7 Eq. 418; Warne *v.* Routledge, L. R., 18 Eq. 497.
(*c*) *Per* Hannen, J., Graves's Case, L. R., 4 Q. B. at p. 724.
(*d*) Low *v.* Routledge, 10 L. T., N. S. 838.
(*e*) Cooper *v.* Stephens [1895], 1 Ch. at p. 571.

the blocks, it was held that this was no assignment of copyright, and did not entitle the licensee to permit a third person to print from the blocks (*f*).

Person Aggrieved.—By Section 14 (*g*) any person who shall deem himself aggrieved by any entry made under colour of the Act may apply in manner directed by the Section to have the entry expunged or varied.

A "person aggrieved must have some substantial objection going to the merits of the registered proprietor's title, and must show that the entry is inconsistent with some right that he sets up in himself or in some other person, or that the entry would really interfere with some intended action on the part of the person making the application" (*h*).

Again, "to induce the Court to exercise its jurisdiction under this Section it must be satisfied that there is something unfair in the entry, by reason of misconduct on the part of the person who made it, or of some right in the applicant which has been injuriously affected thereby" (*i*).

The term "person aggrieved" was considered by Parke, B., in *Chappell v. Purday* (*j*), to apply only to those whose title conflicts with that of the person registered. A "person aggrieved" may be the person who has himself made the entry (*k*).

The order to expunge will only be made where the case is a clear one. The application must be made by motion, and will not be granted as an auxiliary remedy unless it is asked for in the pleadings (*l*). Generally, an issue will be

(*f*) Cooper v. Stephens [1895], 1 Ch. at p. 571.
(*g*) 5 & 6 Vict. c. 45, s. 14, *post*, p. 121.
(*h*) See Warne v. Routledge, L. R., 18 Eq. 497.
(*i*) *Per* Willes, J., in *ex parte* Davidson, 18 C. B. at p. 311.
(*j*) 14 M. & W. 303; *cf. ex parte* Hutchins and Romer, 4 Q. B. D. 483.
(*k*) *Ex parte* Poulton, 53 L. J., Q. B. 320.
(*l*) Hole v. Bradbury, 12 Ch. D. 886, at p. 899.

directed to be tried, or *by consent* it will be ordered that at the trial of the action the entry shall not be used to the prejudice of the person who has applied (*m*).

There seems to be no appeal from the order of a Judge expunging an entry from the Registry (*n*).

Infringement.—Infringement of copyright, which is dealt with by Section 15, takes place in two ways.

In the first place, where there is an unauthorised sale, importation, &c., of the identical work in which there is subsisting copyright. In such cases the piracy is clear, and no difficulty arises.

Secondly, where a man, by appropriating the fruits of a previous author's literary labour, publishes a book which is, in effect, a copy of that author's work, and so infringes his sole right to the multiplication of copies.

These cases often present considerable difficulties, arising chiefly from the fact that, inasmuch as there is no copyright in ideas, different authors are at liberty to write books on the same subject, and to consult the same sources of information, so that the results will in all probability not be dissimilar. The real question in each case will be whether a man has made an unfair use of a work in which there is subsisting copyright, or has, by independent labour, produced what may be treated as an original work.

It has been seen that there may be copyright in a dictionary, a book of roads, a map, a directory, and other similar works, in which it is obvious that the sources of information are common, and must be open to any person. When two authors are writing on a subject of this kind in which the sources of information are common, the later

(*m*) Chappell *v.* Purday, *supra*.

(*n*) *Ex parte* Davidson, 18 C. B. 297; *cf.* 8 Times L. R. 41 (a case under The Fine Arts Act, 1862).

author must go to these sources and not merely copy the work of the earlier author (*o*); but he may use the work of the latter as a guide to those sources, or to verify his own calculations and results when obtained (*p*).

Intention Immaterial.—It is immaterial that there may have been no intention to infringe another's copyright. Where, therefore, a considerable part of an author's work has been appropriated by another, who has bestowed no independent labour on the matter, an injunction will be granted, although there was no dishonest intention, and although a full acknowledgment be made of the original. The result must be looked at, and if it is clear that the effect of the appropriation will be to injure the sale of the original, it will be restrained (*q*). So also where the author of a drama, "Gold," founded a novel upon the drama, and introduced much of the original dialogue, and the defendant, who had never seen the original drama, dramatised the novel, thereby introducing into his drama much of what was contained in the original drama, it was held that he had infringed the plaintiff's copyright in such drama (*r*). It seems clear from the words of the Statute which gives to the owner of copyright "the exclusive right of multiplying copies," that there may be infringement, although there is no intention to infringe.

It is likewise immaterial that the infringing work may have only been distributed among a limited number of persons, and not for sale (*s*).

(*o*) Pike *v.* Nicholas, L. R., 5 Ch. 251; Spiers *v.* Brown, 6 W. R. 352; Jarrold *v.* Houlston, 3 K. & J. 708.

(*p*) Kelly *v.* Morris, L. R., 1 Eq. 697; *cf.* Morris *v.* Ashbee, L. R., 7 Eq. 34; Lewis *v.* Fullarton, 2 Beav. 6; Morris *v.* Wright, L. R., 5 Ch. 279; Trade Auxiliary Co. *v.* Middlesbrough and District Tradesmen's &c. Association, 40 Ch. D. 425.

(*q*) Scott *v.* Stanford, L. R., 3 Eq. 718; Pike *v.* Nicholas, *supra*; Campbell *v.* Scott, 11 Sim. 31; Folsom *v.* Marsh, 2 Story 100; Bell *v.* Whitehead, 8 L. J., Ch. 141.

(*r*) Reade *v.* Lacey, 30 L. J., N. S., Ch. 655.

(*s*) Ager *v.* Peninsular and Oriental Steam Navigation Co., 26 Ch. D. 637; Novello *v.* Sudlow, 12 C. B. 177.

But if two authors should produce independently books which were extraordinarily similar, it seems probable that the later work would not be an infringement of the earlier; each person would seem to be properly described as the author of his work, and entitled to copyright in it, and therefore each might perhaps be able to sue a third person who multiplied copies of either work (*t*).

If the infringement is of a very trivial character no injunction will be granted (*u*); but "to multiply copies of a material portion of a work which is entitled to copyright is as much a breach of the law, though differing in degree, as to multiply copies of the whole work" (*w*). And if it is clear that there has been an infringement it is not necessary to wait till all the infringing portions of the work have been ascertained before granting an injunction (*x*).

Quotation.—A certain amount of quotation is legitimate if fairly used, and it is to be expected by authors that their works will be subjected to criticism (*y*); but a man cannot, under pretence of quotation, publish the whole or part of another man's work (*z*).

Although quotation is sometimes permissible, the publisher of a newspaper or magazine is not entitled to set up a practice or custom amongst publishers of such works to borrow from one another (*a*).

(*t*) See Reichardt *v.* Sapte [1893], 2 Q. B. 308—a case relating to Playright, in which the conclusions above deduced seem to be implied.

(*u*) Sweet *v.* Cater, 11 Sim. at p. 580.

(*w*) Ager *v.* Peninsular and Oriental Steam Navigation Co., 26 Ch. D. at p. 641.

(*x*) Lewis *v.* Fullarton, 2 Beav. 6.

(*y*) *Cf.* Whittingham *v.* Wooler, 2 Swanst. 428.

(*z*) Wilkins *v.* Atkin, 17 Ves. 422; *cf.* Walter *v.* Steinkopff [1892], 3 Ch. 489. See also Cary *v.* Kearsley, 4 Esp. 168; Campbell *v.* Scott, 11 Sim. 31.

(*a*) Walter *v.* Steinkopff [1892], 3 Ch. 489; *cf.* Wyatt *v.* Barnard, 3 V. & B. 77; Maxwell *v.* Somerton, 22 W. R. 313.

Abridgments.—The law as to abridgments is a little uncertain, and the question in each case seems to be whether the work is so far original as to amount to an independent production, or whether it is, in substance, a copy of the original work. Thus it was laid down in an early case (*b*) that a real and fair abridgment is not an infringement, but *secus* if the abridgment is merely colourable. And in a later case (*c*) Knight-Bruce, V.-C., seems to have been inclined to limit the right to abridge, although he admits that if an abridgment involves a new mental operation, and so is not merely colourable, it may be permissible. So, in the case of music, it is said that although an abridgment may be an original work, yet if a substantial part of the melody is taken from an air contained in an opera, this will constitute an infringement of the copyright in the opera (*d*).

Translations.—The question of translations does not seem to have arisen, but on principle a translation in England of an English copyright work would be piracy. It is believed that this question has very recently been otherwise decided in the Indian Courts, in a case in which Reuter's Telegrams were translated into the native language. It will be seen later (*e*) that provisions are contained in Statutes dealing with International Copyright which protect an author from piracy by translation of his works, and it is obvious that an author can rarely be injured by translation of his work in his own country, because it is unlikely that there could be any demand for such a translation.

In considering whether there has been an infringement

(*b*) Gyles *v.* Wilcox, 2 Atk. 141; *cf.* Dodsley *v.* Kinnersley, 1 Amb. 403.

(*c*) Dickens *v.* Lee, 8 Jur. 183.

(*d*) D'Almaine *v.* Boosey, 1 Y. & C., Exch. 288.

(*e*) *Post*, p. 85.

it is necessary to look not only at the quantity but also at the value of the matter pirated (*f*), and when it is impossible to separate the matter pirated from the original matter the infringer must suffer (*g*).

Where you find the same errors in the work of the defendant and the plaintiff, it is strong evidence of piracy (*h*): indeed, where piracy is suspected, it is a common practice for the proprietor of the copyright to print certain errors in his book in order to see if they will be copied (*i*).

It has been seen that where a book is made up of letterpress and designs, it will be the subject of copyright, although there may be no copyright in the letterpress. It follows that to copy the designs will be piracy (*k*). If, however, the purpose of one book is entirely distinct from that of the other, it will not always be piracy to copy a picture or design (*l*).

Representation.—The representation upon the stage of a piece does not constitute an infringement of the copyright in a book (*m*); and a man may recite a poem or dramatise a play, or make any other use he pleases of a book, provided he does not "multiply copies by printing or otherwise." But where the defendant dramatised the plaintiff's novel and made copies of the play, it was held that the making of

(*f*) Brumwell *v.* Halcomb, 3 Myl. & Cr. 737.

(*g*) Lewis *v.* Fullarton, 2 Beav. 6.

(*h*) Murray *v.* Bogue, 1 Drew. 353.

(*i*) *Cf.* Trade Auxiliary Co. *v.* Middlesbrough and District Tradesmen's Trade Protection Association, 40 Ch. D. 425.

(*k*) Bogue *v.* Houlston, 2 De G. & Sm. 267; Maple & Co. *v.* Junior Army and Navy Stores, 21 Ch. D. 369; *cf.* Bradbury *v.* Hotten, L. R., 8 Ex. 1.

(*l*) Bradbury *v.* Hotton, *supra*.

(*m*) Colman *v.* Wathen, 5 T. R. 245; Murray *v.* Elliston, 5 B. & Ald. 657; Reade *v.* Conquest, 30 L. J., C. P. 209.

these copies, although for gratuitous distribution, constituted an infringement of the plaintiff's copyright in the book (*n*).

Importation.—Section 15 sets out certain acts which amount to infringement (*o*), and it is to be noted that importation of a work in which there is copyright is piracy, though not done knowingly; also, that an injunction may be granted though there is no evidence that more than one pirated copy is in existence (*p*).

Notice of Objections.—By Section 16 (*q*) of the Act it is enacted that, in an action for piracy, the defendant, on pleading thereto, must give notice in writing to the plaintiff of the objections on which he intends to rely, and will not be permitted to raise any not specified in the notice.

This notice may be given by setting out the objections in the statement of defence, and if so given no additional notice in writing is necessary (*r*).

It is possible that if the plaintiff's title appears to be defective from his own statement of claim, it may not be necessary for the defendant to give notice of his objections (*s*), and, similarly, if it appears from the plaintiff's own evidence that his title is defective. But this is a very doubtful point (*t*), and the proper course is always to give notice

(*n*) Warne *v.* Seebohm, 39 Ch. D. 73.
(*o*) Cooper *v.* Whittingham, 15 Ch. D. 501.
(*p*) Kelly *v.* Butterworth, 4 Times L. R. 430.
(*q*) See the terms of the Section itself, *post*, p. 122.
(*r*) Finnegan *v.* James, L. R., 19 Eq. 72.
(*s*) Hole *v.* Bradbury, 12 Ch. D. 886.
(*t*) *Cf.* Collette *v.* Goode (7 Ch. D. 842); and Hole *v.* Bradbury, *supra*, where the objections were not allowed to be taken; Coote *v.* Judd (23 Ch. D. 727), where the plaintiff was nonsuited because by his own evidence the registration by him appeared to be defective; Hayward *v.* Lely (56 L. T., N. S. 419), where it was held that an objection to the plaintiff's title was not sufficiently taken by an affidavit on a motion.

of the objections, either in the statement of defence or by a contemporaneous written notice.

Section 17 (*u*) deals with the offence of importing a book in which there is copyright, originally printed in the United Kingdom, and reprinted elsewhere.

Serial Publications.—Section 18 deals with serial publications, encyclopædias, and similar works, and provides, in substance, that where the publisher of such a work employs and pays persons to write articles or portions of the work, on the terms that the copyright therein shall belong to the publisher, the latter is to have the same term of copyright in such articles &c. as is given to authors of books, with the exception that after twenty-eight years the right of publishing the articles separately is to revert to the author, and the publisher is at no time to publish the article separately without the author's consent.

Under this Section it has been held that actual payment, and not a mere contract to pay, must be proved in order to give the publisher copyright (*v*), and it was held insufficient for the proprietor of a periodical to show that he paid his editor a salary and that the latter procured articles to be written for the magazine (*w*), though probably if it had been proved that the editor paid the authors, he would have been considered the agent of the proprietor to make such payments.

The provision contained in the Section that the right to publish articles in a separate form is to revert to the author does not apply to articles in an encyclopædia (*x*).

(*u*) See p. 123, *post*.

(*v*) Richardson *v.* Gilbert, 1 Sim., N. S. 336.

(*w*) Brown *v.* Cooke, 16 L. J., Ch. 142; *cf.* also Stubbs *v.* Howard, 11 Times L. R. 507.

(*x*) See the wording of the Section, p. 123; Hereford *v.* Griffin, 16 Sim. at p. 104.

The question whether an article has been composed on the terms that the copyright therein shall belong to the proprietor often gives rise to difficulty. Thus, where an article was composed by the plaintiff for an encyclopædia, and nothing was said about the copyright, but the proprietors alleged that there was a custom that the copyright in articles so composed should belong to them, it was held that they had not satisfied the requirements of the Statute, and that the plaintiff had not parted with his copyright (*y*).

So, in *Walter v. Howe* (*z*), the Court refused to draw the inference that a memoir of Lord Beaconsfield, written for *The Times*, and paid for, had been composed on the terms that the copyright should belong to the plaintiff.

On the other hand, in *Sweet v. Benning* (*a*), it was held that the proprietors of *The Jurist* had copyright in the reports of cases furnished to them by barristers, although no arrangement was made with reference to such copyright. It is said that where an author is paid for his contribution to a periodical, the proper inference to be drawn, in the absence of an agreement to the contrary, is that the copyright is to belong to the proprietor of the periodical. This view seems to have been adopted in the very recent case of *Lamb v. Evans* (*b*).

The right of the author of an article composed for a serial to restrain the publication of the article in a separate form by the proprietor of the serial is a right independent of and distinct from copyright, and may therefore be enforced by the author without registration of his article (*c*).

An article is separately published when it is published

(*y*) Hereford *v.* Griffin *supra*.
(*a*) 16 C. B. 459.
(*c*) Mayhew *v.* Maxwell, 1 J. & H. 312.
(*z*) 17 Ch. D. 708.
(*b*) [1893] 1 Ch. 218.

apart from the other articles which were included in the number containing the original publication (*d*).

The author of a series of stories, who has not parted with the copyright in them to those who have employed and paid him, may proceed against another for publishing one of his stories in a separate form, although he himself has not separately published it (*e*).

The copyright of the author in a serial story seems to date from the publication of the first number; and where an author of such a story in England registered the first number, and the serial was by his authority subsequently completely published in America before being so published in England, the Court, though declining to directly decide the point, were inclined to the opinion that the author had not lost his copyright (*f*).

The law on this somewhat complicated subject may therefore be summed up as follows:—

If the proprietor of a magazine &c. has employed and paid an author for a literary contribution on the terms that the copyright therein is to belong to the employer—

1. The copyright in the magazine &c. containing such contribution belongs to the employer for the term of literary copyright.

2. For twenty-eight years neither employer nor author is entitled to publish the contribution in a separate form, and the author, without having registered his article, can restrain his employer from so publishing.

3. After twenty-eight years the author has the sole

(*d*) Smith *v.* Johnson, 4 Giff. 632.

(*e*) Johnson *v.* George Newnes, Limited [1894], 3 Ch. 663.

(*f*) Reid *v.* Maxwell, 2 Times L. R. 790; *cf.* Bradbury *v.* Sharp [1891], W. N. 143.

right of publishing his article in a separate form, except in the case of contributions to an encyclopædia.

4. If the author has not been paid, or has by agreement reserved the copyright in his contribution, he has the right of separate publication during the term of literary copyright.

Registration of Periodical Works.—Section 19 deals with the registration of periodical works, and provides that the proprietor of copyright must register—

1. The title of the work.
2. The time of the first publication of the first number.
3. The name and place of abode of the proprietor, and of the publisher, if the proprietor and publisher are different persons.

Sections 20, 21, and 22 may be more appropriately dealt with in connection with the drama and music.

By Section 23 all copies of books in which there is copyright, and which have been duly entered, which are printed or imported without the written consent of the registered proprietor of the copyright, are to be deemed to be his property.

Where, however, the proprietor is not duly registered, although the copies will not become his property within this Section, there is inherent jurisdiction in the Court to order all such copies to be delivered up for destruction, as having been created in violation of the rights of the proprietor (*g*).

Registered proprietors of a copyright take as tenants in common, not as joint tenants (*h*), but any one or more of

(*g*) Hole *v.* Bradbury, 12 Ch. D. 886; *cf.* Prince Albert *v.* Strange, 1 McN. & G. 25, and Kelly *v.* Hodge, 1 Seton [4th ed.] 244.

(*h*) Powell *v.* Head, 12 Ch. D. 686.

such proprietors may maintain an action against a stranger for infringement of the entire copyright (*i*).

Section 24 provides that no proceedings for infringement are to be commenced before registration (*k*).

By Section 25 copyright is to be deemed personal property (*l*).

By Section 26 any action must be brought within twelve months after the offence has been committed. This probably only applies to proceedings under the Act and not to applications for an injunction.

"Full costs" within this Section means party and party costs (*m*), and these are not "other than usual costs" within 5 & 6 Vict. c. 97, s. 2 (*n*).

The copyrights vested in the various Universities specified in Section 27 are left untouched by the Act, but these are few and unimportant (*o*).

By Section 29 the Act is made to extend to the United Kingdom of Great Britain and Ireland, and to every part of the British Dominions.

Article X. of Sir Fitzjames Stephen's "Digest" states: "It is said that Her Majesty and her successors have the right of granting, by patent, from time to time to their printers an exclusive right to print the text of the Authorised Version of the Bible, of the Book of Common Prayer, and possibly the text of Acts of Parliament." Whether this is so or not is somewhat doubtful, and the question does not seem to be one of practical importance. It is treated (as is every branch of the Law of Copyright) with great elaboration by Mr. Copinger in Chapter IX. of his book.

(*i*) Lauri *v.* Renad [1892], 3 Ch. at p. 413.
(*k*) See *ante*, p. 29.
(*l*) *Cf. ex parte* Foss, 2 De G. & J. 230; Longman *v.* Tripp, 2 Bos. & P., N. R. 67.
(*m*) Irwine *v.* Reddish, 5 B. & Ald. 796.
(*n*) Avery *v.* Wood [1891], 3 Ch. 115.
(*o*) Copyright Commission, Arts. 45 to 48.

CHAPTER IV.

DRAMATIC COPYRIGHT.

"DRAMATIC COPYRIGHT" is a term which may be used in two senses, between which it is necessary to distinguish.

1. Literary Copyright in a Drama. This is governed by the same considerations as those applying to copyright in books (*a*), and the same conditions must be complied with.
2. Right of Representation, which is conveniently termed "Playright" by several authors.

This latter right is governed by the Statutes 3 & 4 Will. IV. c. 15, and 5 & 6 Vict. c. 45, ss. 20 to 24.

Common Law Playright.—Whether Playright existed at Common Law, and apart from the Statute of William IV., is a difficult question upon which different views are entertained. It was decided that the representation on the stage of a piece which had been printed and published was not publication within the Statute of Anne (*b*); and it may fairly be inferred from the case of *Warne v. Seebohm* (*c*) that such representation is not a "multiplication of copies of a book by printing or otherwise" within the Statute 5 & 6 Vict. c. 45. It has not, however, been

(*a*) *Cf.* 5 & 6 Vict. c. 45, ss. 20 to 22.
(*b*) Coleman v. Wathen, 5 T. R. 245.
(*c*) 39 Ch. D. 73.

directly decided that the author of a dramatic piece has not playright at Common Law, but it is submitted that this is so for reasons similar to those suggested in the case of literary copyright. It is to be observed that before publication an author has a right to his manuscript, and thus, in the case of *Macklin v. Richardson* (*d*), it was held that where the plaintiff had composed a drama which he had not printed or published, but had permitted to be several times performed upon the stage, and the defendant sent a shorthand writer to one of these performances, and from his notes published the first act of the drama, the plaintiff's right to his manuscript was infringed. In the case of an unpublished dramatic piece it would seem most improbable that piracy could be committed by any person who had not obtained possession of and so infringed the author's right to his manuscript.

In the case of a published dramatic piece the plaintiff's admissions in *Cumberland v. Planché* (*e*) seem to show that no playright existed at Common Law, and this view is somewhat confirmed by the decision in *Murray v. Elliston* (*f*), where it was held that the representation on the stage of one of Lord Byron's dramas was no infringement of the plaintiff's copyright; but the judgment is very short, and the play was abridged before being represented, so that this authority is not satisfactory.

On the other hand, in *Morris v. Kelly* (*g*), an injunction was granted against the defendant, who advertised his intention of performing a piece the copyright in which belonged to the plaintiff, but here again the facts are not fully reported, and the judgment merely grants the injunction.

(*d*) 2 Ambl. 694.
(*e*) 1 Ad. & E., at p. 582.
(*f*) 5 B. & Ald. 657.
(*g*) 1 Jac. & W. 481.

The question, however, is not one of practical importance, more especially since the recent decision in the case of *Warne v. Seebohm* (*h*). In that case the defendant dramatised a novel "Little Lord Fauntleroy," the copyright in which belonged to the plaintiffs.

Four copies of the play had been taken, and on comparing these with the novel it appeared that considerable portions of the latter had been copied almost verbatim. The plaintiffs contended that these copies were an infringement of the copyright, although they admitted that the representation of the play was not; and it was held in accordance with this contention that the copyright had been infringed.

Thus, as in the case of an unpublished drama it is almost impossible that piracy can take place without a defendant surreptitiously obtaining possession of the author's manuscript, so in the case of a published drama piracy seems equally impossible without copies of the drama being used. Moreover, by 6 & 7 Vict. c. 68, s. 12, a copy of every play produced must be sent to the Lord Chamberlain.

Statutory Playright.—By the Statute 3 & 4 Will. IV. c. 15 (which recites that "it is expedient to extend the provisions of 54 Geo. III, c. 56"). it is enacted (Section 1)—

1. That in the case of a dramatic piece not printed or published the author shall have, as his own property, the sole liberty of representing it at any place of dramatic entertainment within certain limits.
2. That in the case of a dramatic piece printed and published within ten years before the passing of the Act, or thereafter printed and published, the

(*h*) 39 Ch. D. 73.

> author is to have a similar right for twenty-eight years, or the residue of his natural life, from the date of the passing of the Act, or the date of publication respectively.

By this Act, therefore, the author of an unpublished dramatic piece has playright in perpetuity.

But by Section 20 of 5 & 6 Vict. (*i*), which recites that it is expedient to extend the term of the sole liberty of representing dramatic pieces given by the Act of Will. IV. to the full term given by the Act of 1842, it is enacted that the playright of any dramatic piece shall be the property of the author for the same term as that of copyright in a book.

The effect of this enactment is not to extend but to cut down the term in the case of an unpublished dramatic piece—a result which may be desirable, but is not consistent with the preamble to the Section.

The right given by Section 1 of the Act 3 & 4 Will. IV. c. 15, is the sole liberty of representing or causing to be represented at any place or places of dramatic entertainment within certain territorial limits any dramatic piece or entertainment composed by the author, &c.

Place of Dramatic Entertainment.—It has not been found easy to define what is a place of dramatic entertainment, but it is clear that it need not be a place habitually so used (*j*).

On the other hand, the performance must have something of a public character (*k*). Thus, where a dramatic piece was represented in the board-room of Guy's Hospital for the

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(*i*) *Post*, p. 125.

(*j*) Russell *v.* Smith, 12 Q. B. 217.

(*k*) Duck *v.* Bates, 12 Q. B. D. 79; 13 Q. B. D. 843.

entertainment only of the nurses, attendants, and persons connected with the hospital, who were all admitted gratis, it was held that the plaintiff's playright was not infringed, because the performance was rather of a domestic than a public character. The fact that no charge was made for admission is an important element in the consideration of such a case, though by no means conclusive, because the injury which the author may suffer has chiefly to be regarded, and this might obviously be equally great where a representation of his piece was given without any charge for admission (*l*).

Author.—Protection is given by Section 1 of the Statute of William IV. to the "author" of a dramatic piece and his assignee.

The term "author" is well defined by Sir John Leach, in a case (*m*) which arose under the Statute of Anne, as follows:—"The person who forms the plan and who embarks in the speculation of a work, and who employs various persons to compose different parts of it adapted to their peculiar requirements—he, the person who so forms the plan and scheme of the work, and pays different artists of his own selection, who, upon certain conditions, contribute to it, is the author and proprietor of the work."

Thus, where the defendant, who adapted one of Shakespeare's plays to the stage, and generally designed the whole representation, dresses, scenery, &c., employed the plaintiff to compose music for the representation on the terms that the music should become part of the piece, and that the defendant should have the sole liberty of

(*l*) Duck *v.* Bates, *supra*. It is to be observed that in the case of music it is not necessary that the representation should have been given at a place of dramatic entertainment in order to entitle a plaintiff to recover the penalty (see Wall *v.* Taylor, 11 Q. B. D. 102; *post*, p. 57).

(*m*) Barfield *v.* Nicholson, 2 Sim. & St. 1.

performing the music as part of the piece. it was held that the music was a mere accessory to the dramatic composition, and that the playright was in the defendant (*n*).

On the other hand, where the plaintiffs employed a writer to adapt a French play for them—they to have the sole right of representation in England and he in the country—it was laid down that, inasmuch as the employers had merely suggested the subject, and had no share in the design or execution of the work, the whole of which, so far as any character of originality belonged to it, flowed from the mind of the person employed, the employers did not become proprietors of the playright (*o*). So also, where the plaintiff employed the defendant to write a play for him, and after it was written the plaintiff altered it considerably, it was held that this did not constitute him a joint author with the defendant, the play not having been written with a "preconcerted joint design" (*p*).

Dramatic Piece.—There is also difficulty in defining the term "dramatic piece." In *Russell v. Smith* (*q*) it was held that a song "The Ship on Fire," which had for its subject the burning of a ship and the escape to another ship, was a dramatic piece, although sung without scenery or costume. On the other hand, in *Fuller v. The Blackpool Winter Gardens* (*r*), it was held by two Judges of the Court of Appeal that a song "Daisy Bell," which was intended to be sung in appropriate costume on the music hall stage, was a mere song and not a dramatic piece.

(*n*) Hatton *v.* Kean, 29 L. J., C. P. 20.

(*o*) Shepherd *v.* Conquest, 25 L. J., C. P. 127; *cf.* Eaton *v.* Lake, 20 Q. B. D. 378.

(*p*) Levy *v.* Rutley, L. R., 6 C. P. 523.

(*q*) 12 Q. B. 217; *cf.* also Clark *v.* Bishop, 25 L. T. 908; Roberts *v.* Bignell, 3 Times L. R. 552.

(*r*) [1895] 2 Q. B. 429.

In each case it must be a question of fact for the jury, and depends upon the character of the composition—*e.g.* whether it is of a dramatic as distinguished from a narrative character. Although a song may be a dramatic piece it is also a musical composition, to which therefore the Musical Copyright Act of 1882 applies (*s*).

Assignment.—It is obvious that both copyright and playright in a dramatic piece must belong to the author of the piece before any assignment by him; and it was held, under the Statute of William IV., that an assignment of the copyright carried with it the playright (*t*).

To meet this decision Section 22 of 5 & 6 Vict. c. 45 was probably framed, which provides that assignment of copyright in a dramatic piece is not to carry with it the playright (*u*).

The assigument need not be by deed or in any particular form (*w*).

It need not be witnessed (*x*). It must, however, be in writing (*y*), so that even if the facts seem to show an agreement by a composer that his work should be represented by another, the composer will be entitled to recover penalties for such representation, unless this is evidenced by writing (*z*).

(*s*) Fuller *v.* The Blackpool Winter Gardens [1895], 2 Q. B. 429; see *per* Kay, L. J., at p. 437.

(*t*) Cumberland *v.* Planché, 1 Ad. & E. 580; *cf. contra*, Marsh *v.* Conquest, 17 C. B., N. S. 418.

(*u*) See *per* North, J., in Chappell *v.* Boosey, 21 Ch. D. 232; and Lacy *v.* Rhys, 33 L. J., Q. B. 157; for the wording of the Section, see p. 126, *post*.

(*w*) Lacy *v.* Toole, 15 L. T., N. S. 512.

(*x*) Cumberland *v.* Copeland, 1 H. & C. 194.

(*y*) Shepherd *v.* Conquest, 17 C. B. 427; Eaton *v.* Lake, 20 Q. B. D. 378; and *cf.* Section 2 of 3 Will. IV. c. 15, which requires "a consent in writing."

(*z*) Eaton *v.* Lake, *supra*.

A licence to perform a piece may be given, which does not amount to an assignment. In such a case the licensor must sue for penalties for infringement of playright (*a*).

The "consent in writing" required by Section 2 of 3 & 4 William IV. c. 15 may be given by an agent of the author (*b*).

One part-owner of the playright in a piece cannot grant to a third person the right to represent such piece without the consent of the other part-owner (*c*).

Dramatisation of Novel.—It seems to be clear law that to dramatise a novel or other literary work is no infringement of literary copyright, whether within the Statute of Anne (*d*), or within the later Statute (*e*). Conversely, where the plaintiff wrote a play and a novel founded on the same subject, and containing many identical passages, and the defendant, who had never seen the play, dramatised the novel and copied considerable portions of it, he was held to have infringed the plaintiff's playright (*f*). It was considered that, although the defendant had only copied directly from the novel, he had indirectly copied from the drama, and that he could not be said to be the "author" of his drama.

On the other hand, where plaintiff and defendant each independently composed a drama, which turned out to be extraordinarily similar, the plaintiff's being composed later but represented earlier than the defendant's, and neither having in fact copied from the work of the other, it was

(*a*) Taylor *v.* Neville, 47 L. J., Q. B. 254.

(*b*) Morton *v.* Copeland, 24 L. J., C. P. 160.

(*c*) Powell *v.* Head, 12 Ch. D. 686.

(*d*) Coleman *v.* Wathen, 5 T. R. 245; Murray *v.* Elliston, 5 B. & Ald. 657.

(*e*) Reade *v.* Conquest, 30 L. J., C. P. 209; *cf.* Warne *v.* Seebohm, 39 Ch. D. 73.

(*f*) Reade *v.* Conquest, 31 L. J., C. P. 153; Reade *v.* Lacey, 30 L. J., N. S., Ch. 655; *cf.* Tinsley *v.* Lacey, 1 H. & M. 747.

held that the defendant by representing his drama had not infringed the plaintiff's playright, and probably, therefore, that each was entitled to playright in his work for the statutory term (*g*).

But where the author of a novel himself dramatised it, but had not printed and published his drama, and the defendant, not having seen the drama, independently dramatised the novel, and produced an entirely different drama to that of the original author, it was held that he had not infringed the other's playright (*h*).

The law, therefore, on this branch of the subject may, perhaps, be summarised as follows:—

1. The author of an unpublished dramatic piece has the sole right to perform it; and any person who represents a play copied from it infringes the author's playright, and probably his right to the manuscript.

2. The author of a dramatic piece which he has printed and published has the sole right of performance; and any person representing a copy of the piece infringes the author's playright, and (if any copies of the infringing play have been made) his copyright.

3. Any person may dramatise another's novel; and where an author dramatises his own novel, his playright will not be infringed by another who dramatises the same novel, but produces an entirely different play.

In Article 14 of the Digest of the Law of Copyright, which was prepared by the late Mr. Justice Stephen for

(*g*) Reichardt *v.* Sapte [1893], 2 Q. B. 308.

(*h*) Toole *v.* Young, L. R., 9 Q. B. 523.

the Copyright Commission of 1878, it is stated that if a piece of music or a dramatic piece is published as a book before being performed or represented, the playright is lost. This view has been decided to be erroneous (*i*).

Infringement.—By Section 2 of 3 Will. IV. c. 15, playright is infringed whenever any person represents or causes to be represented, without the consent in writing of the author or proprietor, at any place of dramatic entertainment within certain limits, "any such production as aforesaid, or any part thereof."

It is not necessary to show that the right has been knowingly infringed (*k*).

To constitute infringement a material portion must have been copied (*l*).

Where a person let the use of his theatre, together with the company of actors, lights, scenery, &c., to his son for a night, and received payment from his son, it was held that he had caused the piece to be represented (*m*). On the other hand, where a defendant let the use of his theatre to another, together with the accessories, and that other person provided the company and selected the pieces to be represented, sharing the profits with the defendant, it was held that the defendant had not caused the pieces to be represented (*n*).

In *Roberts v. Bignell* (*o*) an action for penalties was

(*i*) Chappell *v.* Boosey, 21 Ch. D. 232.

(*k*) Lee *v.* Simpson, 3 C. B. 871; Reade *v.* Conquest, 31 L. J., C. P. 153; Reade *v.* Lacey, 30 L. J., N. S., Ch. 655.

(*l*) Chatterton *v.* Cave, L. R., 10 C. P. 572, 2 C. P. D. 42, and 3 App. Cas. 483; Beere *v.* Ellis, 5 Times L. R. 330.

(*m*) Marsh *v.* Conquest, 33 L. J., C. P. 310; *cf.* Monnghan *v.* Taylor, 2 Times L. R. 685.

(*n*) Lyon *v.* Knowles, L. J., Q. B. 71; *cf.* Russell *v.* Briant, 8 C. B. 836, and 19 L. J., C. P. 33.

(*o*) 3 Times L. R. 552.

brought against the proprietor of a theatre and the accompanyist and singer, and it is stated that judgment was entered for the plaintiff, but, inasmuch as the composition was held to be a dramatic piece, and not a musical composition, presumably judgment was only entered against the proprietor of the theatre.

As has previously been pointed out in the case of books, so in the case of musical and dramatic pieces, a person will be restrained from attempting to pass off his work as that of another (*p*).

By Section 20 of 5 & 6 Vict. c. 45 the earlier provisions of that Act with respect to the property and registration of copyright are to apply to the playright of any dramatic piece or musical composition.

First representation or performance of such piece is to be equivalent to the first publication of a book.

Where such piece is in manuscript it is sufficient for the owner of the playright to register the title, the name, the place of abode of the author or composer, the name and place of abode of the proprietor, and the time and place of the first representation or performance.

Registration.—By Section 21 the proprietor of copyright is to have all the remedies provided by the earlier Act (3 & 4 Will. IV. c. 15).

There is, however, an important distinction between Copyright and Playright in the matter of registration:—The Act of William IV. contains no provision as to registration; while Section 11 of 5 & 6 Vict. c. 45 provides that "the proprietorship in the copyright of books and in dramatic and musical pieces *may* be registered."

By Section 20 the provisions *thereinbefore* enacted

(*p*) Chappell *v.* Sheard, 2 K. & J. 117; Chappell *v.* Davidson, 2 K. & J. 123.

in respect of the property of copyright, and registering the same, are made applicable to musical and dramatic pieces; but the provisions *thereinafter* enacted are not so made applicable.

By Section 24 the owner of copyright in a book must be registered in order to be entitled to sue; but no mention is made of musical and dramatic pieces, and the proviso to the Section seems to except these.

It follows, and it has so been held (*q*), that Section 24, being a later provision than Section 20, does not apply to musical and dramatic pieces, and that the proprietors of playright in such pieces may sue without being registered.

This result seems to a great extent to nullify the provisions as to registration of dramatic pieces contained in Section 20 of 5 & 6 Vict. c. 45, but it is a result which seems to be contemplated by the proviso to Section 24 of that Act. The anomaly is commented on in Article 11 of the Report of the Commission of 1878, but no steps have at present been taken to remedy it.

If proceedings are taken for the infringement of copyright in a musical or dramatic piece treated as a book, and not for infringement of playright, the plaintiff must, no doubt, be registered in order to entitle him to sue.

The Court refused to restrain the performance in Germany of an English dramatic work (*r*).

By Section 2 of the Act of William IV., in case of infringement of playright, the plaintiff is to recover not less than forty shillings for each infringing representation, or the full amount of benefit or advantage arising from such representation, or the injury or loss sustained by the plaintiff

(*q*) Clark *v.* Bishop, 25 L. T. 908; Lacy *v.* Rhys, 33 L. J., Q. B. 157.

(*r*) "Morocco Bound" Syndicate *v.* Harris, 11 Times L. R. 107.

therefrom, together with double costs. But now the right to double costs is taken away, and the plaintiff is entitled to full and reasonable indemnity for costs (*s*).

In any proceedings under this Section the plaintiff is entitled to administer interrogatories (*t*).

Any action for infringement must be brought within twelve calendar months after the offence has been committed. This applies to proceedings under the Act, and probably not to actions for an injunction.

The proprietor of playright has also the same rights as the proprietor of copyright in cases of infringement (*u*).

(*s*) 5 & 6 Vict. c. 97, s. 2; and Reeve *v.* Gibson [1891], 1 Q. B. 652.

(*t*) Adams *v.* Battley, 18 Q. B. D. 625.

(*u*) 5 & 6 Vict. c. 45, s. 20.

CHAPTER V.

MUSICAL COPYRIGHT.

Most of the considerations applying to Dramatic Copyright (both copyright and playright) are applicable to Musical Compositions. It seems, however, more convenient to treat music separately, because there are Statutes dealing specially with it, and because the Dramatic Copyright Act of William IV. does not apply to it.

From an early date a piece of music was held to be a "book or other writing" within the Statute of Anne (*a*), even if printed on only a single sheet (*b*), and although not printed separately, but together with a number of other pieces (*c*); and, by the words of Section 2 of 5 & 6 Vict. c. 45, the term "book" includes a "sheet of music."

The arrangement of the music of an opera for the pianoforte alone is an original work requiring registration (*d*). But the proprietor of copyright in an opera possesses such right in every part of it, and if an air is pirated from the opera, although for the purpose of dance music, this constitutes an infringement (*e*).

The same considerations must be applied to determine the question who is the author of a musical composition as

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(*a*) Bach *v.* Longman, 2 Cowp. 623.

(*b*) Clementi *v.* Goulding, 11 East 244.

(*c*) White *v.* Geroch, 2 B. & Ald. 208.

(*d*) Fairlie *v.* Boosey, 4 App. Cas. 711; Wood *v.* Boosey, L. R., 3 Q. B. 223.

(*e*) D'Almaine *v.* Boosey, 1 Y. & C., Exch. 288; *cf.* Lover *v.* Davidson, 1 C. B., N. S. 182; and Planché *v.* Braham, 8 C. & P. 68.

in the case of dramatic pieces; and it has been held that a man may be the author although he has not composed every part of the work: *e.g.* where a man composed a prelude and words to a piece of music, and got another to write an accompaniment, the former was held entitled to copyright in the whole work (*f*). As has been stated, the Act of William IV. did not apply to musical compositions, but the benefits of that Act were extended so as to apply to them by 5 & 6 Vict. c. 45, s. 20. This Section is retrospective, and therefore gave to the author of a musical composition composed within ten years before 1842 the sole right of performance (*g*).

But musical playright, unlike dramatic playright, may be infringed although the performance does not take place at a place of dramatic entertainment (*h*). Unless, however, the performance partakes of a public as opposed to a domestic character, it will not be an infringement (*i*).

A song may be a dramatic piece as well as a song, and in such a case the owner of the playright must comply with The Musical Copyright Act, 1882.

It is evident that, as with dramatic so with musical compositions, the copyright and playright may be vested either in the same or different persons. In the case of dramatic pieces, the co-existence of the two rights does not give rise to much difficulty; but in the case of music a system of blackmailing was devised, by which owners of musical playright used to send emissaries over the country to find out cases in which this playright had been infringed by persons singing the songs in ignorance that they were infringing any right, and penalties were then

(*f*) Leader *v.* Purday, 18 L. J., C. P. 97.

(*g*) *Ex parte* Hutchins and Romer, 4 Q. B. D. 90 and 483.

(*h*) Wall *v.* Taylor, and Wall *v.* Martin, 9 Q. B. D. 727; 11 Q. B. D. 102.

(*i*) Duck *v.* Bates, 13 Q. B. D. 843.

exacted from such persons (*j*). To meet this system of oppression the Act of 1882 (*k*) was passed, and was not more fortunate in its wording than most of the Acts relating to Copyright.

Act of 1882.—Section 1 provides that the owner of copyright in any musical composition first published after the passing of the Act, who wishes to retain the sole right of performance, must cause a notice that such right is reserved to be printed on the title page of every published copy of the composition (*l*).

By Section 2—

1. Where *before* publication of any copy the copyright and right of performance become vested in different owners, the owner of the latter right shall, if he wishes to retain it, give to the owner of the copyright notice in writing requiring him to print upon every copy a notice that the right of performance is reserved.

2. If *after* publication of copies the two rights become vested in different owners, and if the notice aforesaid has been duly printed until that time on each copy, the owner of the right of performance is to give notice to the owner of copyright to print such notice on every copy thereafter published.

By Section 3, the owner of copyright, if he fail to comply with the above provision, is to pay to the owner of the right of performance twenty pounds.

(*j*) See *per* Smith, L. J., in Fuller *v.* The Blackpool Winter Gardens [1895], 2 Q. B. 429.

(*k*) 45 & 46 Vict. c. 40, *post*, p. 163.

(*l*) Smith, L. J., also points out that the Act does not say what is to happen if this provision is not complied with (Fuller *v.* The Blackpool &c. Gardens, *supra*).

Act of 1888.—In the year 1888 a further Act was passed (*m*), providing, by Section 1, that the amount of the penalty or damages to be awarded for the unauthorised performance of a musical composition was to be in the discretion of the Judge, who might award a less sum than forty shillings.

By Section 2, the Judge has an absolute discretion as to costs.

By Section 3, the proprietor of the place where the unauthorised representation took place is not to be liable to a penalty or damages, unless he permitted the representation to take place with knowledge that it was unauthorised (*n*).

By Section 4, the Act is not to apply to proceedings in respect of the representation of an opera.

Registration.—As regards registration, Section 20 of 5 & 6 Vict. c. 45 applies. The proprietor of copyright in a musical composition regarded as a literary work must comply with the rules as to registration of books.

The proprietor of the sole right of performance must register—

1. The title.
2. The name and place of abode of the author or composer.
3. The name and place of abode of the proprietor (*o*).
4. The time and place of the first representation or performance.

(*m*) 51 & 52 Vict. c. 17, *post*, p. 177. (*n*) *Post*, p. 178.

(*o*) Where the proprietor had no place of abode in England at the date of registration, it was held sufficient to register the address of the publishers, that being a place at which the proprietor could be communicated with (Lover *v.* Davidson, 1 C. B., N. S. 182; *cf.* Nottage *v.* Jackson, 11 Q. B. D. 627).

But as regards the right to take proceedings for infringement of the performing right, apparently the same distinction (previously observed in the case of dramatic pieces) also prevails between music and books: viz., the above registration is not necessary to entitle the proprietor to sue.

The performance of a musical composition is the same as the representation of a dramatic piece (*p*), so that the principles laid down in the cases referred to under the head of "Dramatic Copyright" upon the question whether a defendant has "caused a piece to be represented" are equally applicable to the performance of musical compositions (*q*). But, as has been seen, it is now provided, by Section 3 of 51 & 52 Vict. c. 17, that in the case of musical compositions the proprietor, tenant, or occupier of any place where an unauthorised performance takes place is not to be liable to any penalty or damages, unless he *wilfully* causes or permits the performance knowing it to be unauthorised.

A man will be restrained from so describing and attempting to pass off a musical composition as to deceive the public into thinking that it is the musical composition of another. It has been laid down that there are four characteristics of a song which would be calculated so to mislead: (1) the name of the song; (2) of the singer; (3) of the composer; (4) of the publisher (*r*).

(*p*) Monaghan *v.* Taylor, 2 Times L. R. 685.

(*q*) *Ante*, p. 52.

(*r*) Chappell *v.* Sheard, 2 K. & J. 117; Chappell *v.* Davidson, 2 K. & J. 123.

CHAPTER VI.

ENGRAVINGS.

COPYRIGHT IN ENGRAVINGS is governed by the Acts 8 Geo. II. c. 13, 7 Geo. III. c. 38, 17 Geo. III. c. 57, and 6 & 7 Will. IV. c. 59, commonly known as "the Hogarth Acts"; and the protection is extended to Lithographs by 15 & 16 Vict. c. 12.

The first of these Acts gives protection for fourteen years to every person who shall invent, design, engrave, &c., or from his own work and invention shall cause to be designed, engraved, &c., any historical or other prints.

The Act 7 Geo. III. c. 38 extends the protection to—

1. Every person who invents, designs, &c., or from his own work, design, or invention, causes to be designed, engraved, &c., any historical print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any print whatsoever (*a*).
2. To every person who engraves, &c., or causes to be engraved, &c., any prints taken from any picture, drawing, model, or sculpture, as if such prints had been graved or drawn from the original design of such person.
3. The term of protection is extended to twenty-eight years.

(*a*) This is perhaps merely an amplification and not an extension of the earlier Act.

These two Acts provide that penalties are to be recovered for infringements.

The Act 17 Geo. III. c. 57 provides that damages may be recovered by an action on the case.

The three Statutes must be read together.

Print.—"A print" therefore comprises "any historical print or any print of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print whatsoever" (*b*), whether made from a person's own design or invention, or "taken from any picture, drawing, model, or sculpture, either ancient or modern" (*c*); and also "prints taken by lithography, or any other mechanical process by which prints or impressions of drawings or designs are multiplied indefinitely" (*d*).

In order to entitle the proprietor of a print to the remedies provided by the Acts, no registration is required, but the name of the proprietor and date of the first publication of the print must be engraved on each plate, and on every such print (*e*).

This is not merely directory, as was originally held (*f*), but is a necessary condition (*g*). But it is sufficient if the name of the proprietor in fact appears, although he is not described as such (*h*), and if the proprietor be a trading firm it is sufficient to print such trading name on the engraving, although it does not contain the names of all the partners (*i*).

(*b*) 17 Geo. III. c. 57, *post*, p. 102. (*c*) 7 Geo. III. c. 38, *post*, p. 99.

(*d*) 15 & 16 Vict. c. 12, s. 14, p. 150. (*e*) 8 Geo. II. c. 13, *post*, p. 95.

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

(*g*) Newton *v.* Cowie, 4 Bing. 234; Graves *v.* Ashford, L. R., 2 C. P. 410; Brooks *v.* Cock, 3 A. & E. 138; Colnaghi *v.* Ward, 12 L. J., Q. B. 1.

(*h*) Newton *v.* Cowie, *supra*; Graves *v.* Ashford, *supra*.

(*i*) Rock *v.* Lazarus, L. R., 15 Eq. 105.

A person may be the designer and inventor of a plan within 7 Geo. III. c. 38. though not himself able to execute it.

A bird's-eye view of a locality was held to be a landscape within the above Act (*k*). But it is doubtful whether this decision is correct, because it has been decided that a map, though originally regarded as an artistic work, must now be registered as a book under 5 & 6 Vict. c. 45 (*l*).

Where prints were contained in a book, which also contained letterpress, of which the prints were illustrations, the whole was held to be a book, and the plaintiff, who had not engraved his name and the date of publication on the prints, obtained an injunction restraining the defendant from copying the prints (*m*).

A licence to use blocks does not carry with it an assignment of copyright (*n*).

A person may be the proprietor of the right to make an engraving of a certain size from a picture, the owner of the picture retaining the copyright in the picture, and probably the right to license other persons to make engravings of other sizes (*o*).

To be the subject of copyright a print must be "engraved, etched, drawn, or designed in Great Britain" (*p*) under the Act 17 Geo. III. c. 57, and although these words are not found in the earlier Acts, it was held that they must be implied (*q*).

(*k*) Stannard *v.* Harrison, 24 L. T., N. S. 570.

(*l*) Stannard *v.* Lee, L. R., 6 Ch. 346.

(*m*) Bogue *v.* Houlston, 21 L. J., N. S., Ch. 470.

(*n*) Cooper *v.* Stephens [1895], 1 Ch. 567.

(*o*) Lucas *v.* Cooke, 13 Ch. D. 872.

(*p*) 17 Geo. III. c. 57, *post*, p. 101.

(*q*) Page *v.* Townsend, 5 Sim. 395.

The Statutes define certain acts which constitute infringement of copyright in prints, and prescribe penalties.

It is to be noted that by 8 Geo. II. c. 13 a penalty is only imposed upon those persons who sell infringing copies knowingly.

There is no similar restriction in 17 Geo. III. c. 57. Therefore, under the latter Act, the owner of an infringing copy is liable to *damages* (though not to penalties), whether he knows that it is an infringement or not (*r*).

Infringement.—As regards infringement, the main question in this as in other branches of copyright law is whether the defendant's print is *substantially* a copy of that of the plaintiff (*s*).

Moreover, the intention of the Acts was to protect the engraver from infringing works of an "engraving character," and although the words "or otherwise copy" in 17 Geo. III. c. 57 are wide enough to include any kind of copying, it has been decided that they must receive some limitation.

Thus it was held to be no infringement of an engraving of "The Huguenots" to publish a pattern for Berlin wool work consisting of the figures in the picture, because the work was of an entirely different character, to be used for an entirely different purpose, and could not injure the reputation of the engraver or the commercial value of his work (*t*). The test as to whether the alleged copy will compete commercially with the original is not conclusive, but is a very important circumstance to consider (*u*).

(*r*) West *v.* Francis, 5 B. & Ald. 737; Gambart *v.* Summer, 5 H. & N. 5.

(*s*) Moore *v.* Clarke, 9 M. & W. 682.

(*t*) Dicks *v.* Brooks, 15 Ch. D. 22; *cf.* Martin *v.* Wright, 6 Sim. 297.

(*u*) Hanfstaengl *v.* Empire Palace and Newnes [1894], 3 Ch. 109.

It has likewise been held that where the plaintiff employed the defendant to engrave certain plates (which he did), and some of the first impressions were retained by him, and on his bankruptcy advertised for sale, this was no infringement under the Acts, which apply only to prints struck off from engravings pirated from other engravings, and not to a sale of the original engravings themselves. But the defendant in this case would have been liable, quite apart from the Statutes, upon the breach of an implied obligation to deliver up to the plaintiff all prints struck off for him (*w*).

It has also been suggested by Willes, J., that single copies made by hand and not capable of being reproduced in large quantities would not constitute an infringement (*x*). Where the plaintiff employed an artist to engrave prints from two pictures, and the artist engraved the prints and also made two sketches from the pictures, and engraved two prints from the sketches, which the defendant published, this was held to be no infringement, because the defendant's prints were copied from the pictures and not from the plaintiff's prints (*y*).

On the other hand, to copy a print by means of photography, lithography, or other similar process is piracy. It was suggested that inasmuch as special Statutes had been passed dealing with lithography (*z*) and photography (*a*), it followed that lithographs and photographs were not within the protection, and therefore not within the prohibition, of the earlier Statutes. But it was held that the prohibitory clause was much more extensive than

(*w*) Murray *v.* Heath, B. & Ad. 804.
(*x*) Gambart *v.* Ball, 32 L. J., C. P. 166.
(*y*) De Berenger *v.* Wheble, 2 Stark., N. P. C. 548.
(*z*) 15 & 16 Vict. c. 12, *post*, p. 150.
(*a*) 25 & 26 Vict. c. 68, *post*, p. 151.

the protective clause in the earlier Statutes, and would comprehend copying by processes not known at the time when those Statutes were passed (*b*).

An action may be maintained by an assignee under 17 Geo. III. c 57, and it is not necessary to produce in evidence the plate itself, a print taken from the original plate being sufficient (*c*). It was not decided whether the assignee ought, when he reprints, to print his own name as proprietor or that of the original proprietor.

The limitation of three months prescribed by 8 Geo. II. c. 13, and that of six months prescribed by 7 Geo. III. c. 38, apply only to actions brought for penalties under those Statutes, and not to an action for damages under 17 Geo. III. c. 57 (*d*).

Penalties are recoverable in accordance with the provisions of 25 & 26 Vict. c. 68, s. 8 (*e*).

(*b*) Graves *v.* Ashford, L. R., 2 C. P. 410; Gambart *v.* Ball, 32 L. J., C. P. 166.

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

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

(*e*) See p. 155, *post*.

CHAPTER VII.

PAINTINGS, DRAWINGS, AND PHOTOGRAPHS.

COPYRIGHT in Paintings, Drawings, and Photographs is given by the Act 25 & 26 Vict. c. 68, which recites that "by Law, as now established, the authors of Paintings, Drawings, and Photographs have no Copyright in such their works."

Section 1 (*a*) gives to the author, *being a British subject or resident within the dominions of the Crown*, of every original painting, drawing, and photograph wherever made, and to his assigns, the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing and the design thereof, or such photograph and the negative thereof, by any means and of any size for the term of the natural life of the author and seven years after his death.

Author of Photograph.—The term "author," as applied to a painting or drawing, occasions no difficulty, but as applied to a photograph it has been the subject of several decisions.

The nearest approach to a definition of the word is to be found in the case of *Nottage v. Jackson* (*b*), where it is said that the author of a photograph is the man "who is most nearly the effective cause of the representation when completed." In that case it was decided that where two persons carrying on business as photographers did not personally

(*a*) 25 & 26 Vict. c. 68, s. 1, *post*, p. 151.

(*b*) 11 Q. B. D. 627; *cf.* Wooderson v. Raphael Tuck, 4 Times L. R. 57.

conduct the business, and one of their employés went some distance from their establishment and took a photograph of a group of cricketers, the employé, and not the employers, was the author of the photograph. On the other hand, where a photographer superintended and had a considerable share in the taking of a photograph, although he did not carry out the entire operation, he was considered to be the author (*c*).

It is to be observed that the copyright comprises the right of engraving, and of reproducing by any means and of any size.

A painter may therefore assign to another the right to engrave his picture of a certain size, and retain both the copyright in the picture and the right, probably, to engrave it in other sizes, while his assignee will have the copyright in the engraving of that particular size (*d*).

Design.—The term "design" does not mean "idea," for there cannot be copyright in an idea, but means "the particular forms and arrangements (whether of lines or colouring) which the copyright author has selected as the vehicle for conveying his idea to those who see his work" (*e*). So it was held that a card on which was drawn a hand making a voter's mark with a pencil could not be protected. It was said that if the plaintiff's card had been copied with mathematical exactitude by the defendant, this might have been piracy in respect of the particular design, but that the idea of making the process of voting simple for the illiterate by a similar design could not be the subject of copyright (*f*).

(*c*) Melville *v.* *Mirror of Life* [1895], 2 Ch. 531.
(*d*) Lucas *v.* Cooke, 13 Ch. D. 872; *ante*, p. 63.
(*e*) Hanfstaengl *v.* Baines [1895], App. Cas. 20.
(*f*) Kenrick *v.* Lawrence, 25 Q. B. D. 99.

Sale of Paintings &c.—By the proviso to Section 1 it is enacted in substance—

1. That if a painting or drawing, or the negative of a photograph, is sold or executed on behalf of any other person for good or valuable consideration, the copyright is not to be retained by the vendor or artist, unless expressly reserved to him in writing signed by the purchaser, or person on whose behalf the work is done, but is to belong to the latter.
2. The *vendee* (*g*) is not to be entitled to the copyright, unless there is an agreement in writing to that effect signed by the vendor.

The result of this proviso seems to be that—

1. Upon the *sale* of a picture or drawing, or the negative of a photograph, the purchaser acquires the copyright if there is an agreement to that effect signed by the vendor, and if there is no agreement signed by the purchaser reserving the copyright to the vendor.
2. If a picture, drawing, or photograph is executed on commission, the copyright is to belong to the person who gives the order, if there is no agreement signed by him reserving the copyright to the artist.

It would seem to follow that upon the *sale* of such a work, if there is no agreement in writing as to the copyright, it can belong neither to vendor nor purchaser (*h*).

But in the case of works executed on commission, it is necessary both that there should be good consideration, and that the works should have been executed on behalf of another. In the absence of either of these circumstances

(*g*) This part of the proviso seems to be confined to the case of the *sale* of a picture, &c.

(*h*) See Levi *v.* Champion, 3 Times L. R. 286.

the proviso as to the written reservation of the copyright in favour of the artist does not apply, and he is entitled to copyright in his work.

Thus, where a photograph was taken without charge, the photographer to be at liberty to sell the photographs, it was held that this constituted good and valuable consideration, but on the other hand that the work was not executed on behalf of the sitter. Therefore the proviso as to reservation of the copyright in writing did not apply, and the photographer was owner of the copyright and entitled to restrain any person (including the sitter) from multiplying copies (*i*).

By Section 2, it is provided that any person may copy or use any work in which there is no copyright, or may represent any scene or object, notwithstanding that there may be copyright in some representation of such scene or object.

The latter part of this Section illustrates the principle which has been held applicable in the case of books: viz., that different authors may write on the same subject, provided neither copies from the other (*k*).

Thus, it has been said that if a painter paints pictures to represent such familiar subjects as Love or Courtship, he cannot prevent other artists from treating the same subjects (*l*).

By Section 3, it is provided that all copyright under the Act is personal property, and every assignment of it or licence to use or copy the design or work is to be in writing (*m*).

(*i*) Melville *v.* *Mirror of Life* [1895], 2 Ch. 531; Ellis *v.* Marshall, 11 Times L. R. 522.

(*k*) *Ante*, p. 32.

(*l*) Hanfstaengl *v.* Baines [1895], App. Cas. 20.

(*m*) See Strahan *v.* Graham, 16 L. T., N. S. 87.

It has already been pointed out that a licence to copy a picture—*e.g.* by engraving it of a certain size—does not amount to an assignment of copyright (*n*).

Registration.—Registration is dealt with by Section 4, which is, however, most clumsily worded. The first part of the Section provides that a memorandum is to be entered in the Register of every copyright to which any person shall be entitled under the Act; but the provisions for registration laid down in the second portion of the Section seem applicable only where there has been an assignment of copyright. Probably there has been an attempt to deal with both cases in one sentence, and that there must be registered—

1. The name and place of abode of the author of the work.
2. A short description of the nature and subject of the work. It is a question of fact whether a sufficient description has been registered. The name of the work may be sufficient if it be descriptive of the subject (*o*).
3. A sketch, outline, or photograph of the work if the proprietor of copyright so desires.

Upon an assignment there must *in addition* be registered—

1. The date of the agreement or assignment.
2. The names of the parties thereto.
3. The name and place of abode of the person in whom the copyright is vested by virtue thereof. If this be a firm, the firm's name will suffice (*p*).

(*n*) *Ante*, p. 63.

(*o*) *Ex parte* Beal, L. R., 3 Q. B. 387.

(*p*) Rock *v.* Lazarus, L. R., 15 Eq. 105.

No proprietor of copyright is entitled to the benefit of the Act until registration, nor can he recover in respect of anything done before registration. This is otherwise in the case of Literary Copyright (*q*).

As has been seen under Section 1 of the Act, copyright dates from the time when a picture, drawing, or photograph is executed. It follows that, although not entitled to take proceedings for infringement till after registration, a person is proprietor of the copyright in a picture &c. before registration (*r*).

And, quite independently of statutory copyright, where the proprietor of a work of art lends or entrusts it to another for a specific purpose—*e.g.* to make a certain number of copies—he can, upon general principles, restrain that other from using it for any other purpose (*s*).

It has not been decided, and is a very difficult question, whether the author of a work of art has a Common Law right. In a case before the Statute it was said that an artist had the property in his work as in any other chattel, but that after publication he could not prevent any person from copying it. The question of what amounted to publication of a picture was much discussed; but ultimately it was decided that, whether or not the picture had been published, there had been a breach by the defendant of an implied obligation (*t*).

It has been seen (*u*) that in the case of literary works it has been held that there is no Common Law right existing concurrently with the statutory right, and, in analogy with this decision, it would perhaps be held that, inasmuch as

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(*q*) *Ante*, p. 29; *cf.* Fishburn *v.* Hollingshead [1891], 2 Ch. at 580.

(*r*) Tuck & Sons *v.* Priester, 19 Q. B. D. 629.

(*s*) *Ibid.*

(*t*) Turner *v.* Robinson, 10 Ir. Ch. Rep. 121 and 510.

(*u*) *Ante*, p. 9.

artistic statutory copyright is given from the date when the work of art is executed, and not from the date of publication, there can be no Common Law right. The point, however, does not seem one of much practical importance, because where an unregistered work of art has been copied the proprietor must generally have a right of action for breach of implied obligation.

Thus it was held that, apart from any question of copyright, a photographer may be restrained from exhibiting or selling copies of a photograph which he has taken of another person as being a breach of implied obligation (*x*).

A licensee apparently may sue without being registered; and it has been held that where proprietors of copyright in a picture licensed the plaintiff to copy it in chromo-lithography, and the defendant reproduced the same picture in chromo, having copied it, not from the plaintiff's chromos, but from a sketch of the original picture, the plaintiff was entitled to damages, although his own chromos had not the name of the proprietor and date of publication printed on them in accordance with the Engraving Acts.

The grounds of the decision were—

1. That the plaintiff was not an assignee but a licensee, and that nothing is said about registration of a licensee in 25 & 26 Vict. c. 68.

2. The right infringed was a right to copy the original picture in chromo, and the original picture having been registered the plaintiff was entitled to sue.

If the action had been brought by the plaintiff under the Engraving Acts on the ground that the defendant had copied his chromos, he could not have recovered, inasmuch

(*x*) Pollard *v.* Photographic Co., 40 Ch. D. 345; Mayall *v.* Higbey, 6 L. T., N. S. 302; Turner *v.* Robinson, 10 Ir. Ch. Rep. 121 and 510.

as he had not complied with the requirements of the Acts (*y*). The case, however, was one of difficulty, and doubts may be entertained as to the correctness of the decision.

Section 5 provides that various contracts in 5 & 6 Vict. c. 45 with relation to keeping the Register Book, making false entries, applications to expunge by persons aggrieved, &c are to apply to the case of works of art.

The decisions, therefore, under 5 & 6 Vict. c. 45, as to who is a person aggrieved (*z*) apply.

It seems that there is no appeal from the order of a Judge expunging an entry (*a*).

Penalties.—Section 6 prescribes penalties where—

1. A person who is not the proprietor of copyright in a painting, drawing, or photograph shall, without the consent of the proprietor, repeat, copy, &c., any such work or the design thereof.
2. A person, knowing that such imitation has been unlawfully made, shall import into the United Kingdom, or sell, &c., such imitation of the work or the design thereof.

The penalties are—

1. A sum not exceeding ten pounds for every such offence to be paid to the proprietor of the copyright.
2. All copies and negatives of photographs to be forfeited to such proprietor.

An assignee who has registered is entitled to proceed under this Section, although the original proprietor and subsequent

(*y*) Tuck *v.* Canton, 51 L. J., Q. B. 303.

(*z*) *Ante*, p. 31.

(*a*) In the matter of the Registration of a Picture under the Act of 1862, 8 Times L. R. 41.

assignees were not registered, because the proprietor of copyright can assign it although unregistered (*b*). But a registered proprietor can only proceed in respect of unlawful acts done after his registration, and not for acts done while the previous proprietor was registered (*c*).

A trustee who is registered as the owner may sue as such; but it is impossible for one person to be the owner and another to be on the Register, and for both these persons successfully to sue (*d*). The Section being penal does not apply where the unlawful copies have been made abroad, and in such case the proprietor must proceed for damages under Section 11 (*e*). A conviction under the Section is of a criminal nature (*f*). It is sufficient to produce an engraving of the original picture as evidence (*g*).

Section 7 prohibits certain fraudulent dealings with paintings, drawings, and photographs, and prescribes penalties for the various offences.

Section 8 prescribes the mode in which penalties are to be recovered under this Act and the Acts relating to engravings.

Section 10 prohibits the importation of copies made contrary to the Act, whether in foreign countries or in the British Dominions, and provides for the detention of such copies by Customs officers.

Section 11 gives the proprietor of copyright an action for damages for infringement in addition to penalties, and the right to the delivery up of infringing copies and negatives of photographs.

(*b*) Graves's Case, L. R., 4 Q. B. 715; *cf.* Tuck & Sons *v.* Priester, 19 Q. B. D. 629.

(*c*) Dupuy *v.* Dilkes, 48 L. J., Ch. 682.

(*d*) London Printing and Publishing Alliance, Limited *v.* Cox [1891], 3 Ch. 291.

(*e*) Tuck & Sons *v.* Priester, 19 Q. B. D. 629; see p. 157, *post*.

(*f*) *Ex parte* Graves, L. R., 3 Ch. 642.

(*g*) Lucas *v.* Williams [1892], 2 Q. B. 113.

Infringement.—Thus Sections 6 and 11 deal with infringements of copyright; and, apart from the special provisions of these Sections, which do not require explanation, it is necessary to inquire generally what constitutes a "copy" so as to amount to an infringement.

Definition of a "Copy."—The word "copy" has been defined by Bayley, J., as "that which comes so near to the original as to give every person seeing it the idea of the original" (*h*). It has, however, been pointed out that this definition is too wide because there is no copyright in an idea; and it is not piracy to represent the idea conveyed by a work of art if the representation is not conveyed by a vehicle similar to that of the original (*i*).

Thus, where the plaintiff was the proprietor of certain pictures representing such subjects as Love and Courtship, and the defendants represented on the stage an exact copy of such pictures by means of living pictures, this was held to be no infringement (*k*), and sketches of such living pictures published in a newspaper were held not to be infringements (*l*).

Similarly, patterns for Berlin wool work, consisting of figures copied from a picture of which the plaintiff was the copyright owner, were held not to be an infringement (*m*).

It is necessary to see whether the alleged copy is calculated either to compete commercially with the original or to damage the reputation of the original artist, and if it is clear that neither of these results will be produced there will be no piracy.

(*h*) West *v.* Francis, 5 B. & Ald. 737.

(*i*) Hanfstaengl *v.* Baines [1895], App. Cas. 20.

(*k*) Hanfstaengl *v.* Empire Palace [1894], 2 Ch. 1.

(*l*) Hanfstaengl *v.* Empire Palace and Newnes [1894], 3 Ch. 109; Hanfstaengl *v.* Baines, *supra*.

(*m*) Dicks *v.* Brooks, 15 Ch. D. 22.

On the other hand, a copy may be an infringement, though not taken from the original, but from a sketch made of the original (*n*).

Section 12 incorporates the provisions of the International Copyright Act (7 & 8 Vict. c. 12), which is dealt with in a subsequent Chapter.

(*n*) London Stereoscopic and Photographic Co. *v.* Kelly, 5 Times L. R. 169.

CHAPTER VIII.

SCULPTURE.

THE Act 38 Geo. III. c. 71 was the first Statute giving Copyright in Sculpture. This Act has since been repealed by 54 Geo. III. c. 56, which is the Statute at present in force on this question. The earlier Act was said by Lord Ellenborough to have apparently "been framed with a view to defeat its own object" (*a*).

The later Act (*b*) does not require to be dealt with in detail, and there have been very few decisions upon it.

Under Section 1, which defines the subject matter of the copyright, it has been held that casts of fruits and leaves were casts of "a subject being matter of invention in sculpture" (*c*).

The right dates from publication, which has been defined to be "the moment the eye of the public is allowed to rest on it"—*e.g.* when placed in public squares, or apparently when exhibited in public exhibitions (*d*); and it seems probable that the date which, under Section 1, is to be put, together with the name of the proprietor, on every sculpture must be the date of publication.

(*a*) Gahagan *v.* Cooper, 3 Camp. 111.

(*b*) See the Act itself, *post*, p. 103.

(*c*) Caproni *v.* Alberti [1891], W. N. 200.

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

There is, therefore, a distinction in this respect between paintings and sculptures.

The only further matter to be observed under this head is that the provisions relating to sculpture contained in 13 & 14 Vict. c. 104, ss. 6 and 7, have been repealed by 46 & 47 Vict. c. 57, ss. 60 and 113, as to all sculptures made after that Act came into force.

CHAPTER IX.

INTERNATIONAL COPYRIGHT.

THERE was no protection originally given by English law to the work of foreign authors residing abroad, even if such works were first published in England (*a*). After the passing of 5 & 6 Vict. c. 45, there was a difference of opinion in the House of Lords, in the celebrated case of *Routledge v. Low* (*b*), as to whether the foreign author (resident abroad) of a work first published in England could acquire British copyright, and the only point actually decided was that such copyright could be acquired by an alien friend residing in part of the British Dominions if the work were first published in England.

In the year 1844 an International Copyright Act (*c*) was passed, which repealed an earlier Act (*d*) having relation only to books. The Act provided that Her Majesty might, by Order in Council, direct that authors of books and works of art first published in foreign countries (to be named in the Order) should have copyright therein within Her Majesty's dominions for certain periods, and upon compliance with certain conditions specified in the Order.

It was held, under Section 19 of this Act, that, where it

(*a*) Page *v.* Townsend, 5 Sim. 395; Delondre *v.* Shaw, 2 Sim. 237; Jefferies *v.* Boosey, 4 H. L. Cas. 815; *cf.* D'Almaine *v.* Boosey, 1 Y. & C., Exch. 288; Clementi *v.* Walker, 2 B. & C. 861.

(*b*) 3 E. & I. App. 100.

(*c*) 7 & 8 Vict. c. 12, amended by 15 Vict. c. 12, and 38 Vict. c. 12.

(*d*) 1 & 2 Vict. c. 59.

was impossible for an author to obtain the benefit of the Act, owing to no treaty existing between the United States and England, if a play were first published in New York no copyright could be acquired here (*e*).

It was also held that the proprietor of a foreign print could not acquire British copyright without complying with the provisions of 8 Geo. II. c. 13 (*f*); but it seems very doubtful whether this decision is correct, because it has recently been held (*g*) that the Act of 1844 supersedes the Act of 1842 as to registration, and by parity of reasoning would in the same way supersede 8 Geo. II. c. 13.

It was found that a great many Orders in Council were issued under the Act, and that great difference of practice prevailed in the various countries to which the Orders applied (*h*). To obviate these inconveniences, a conference of the Powers was held at Berne, resulting in the Berne Convention, which was agreed to on the 5th of September, 1887.

Meanwhile, in anticipation of this Convention, the Act of 1886 was passed (*i*), which enabled Her Majesty to issue Orders in Council confirming the Convention; and an Order in Council was so issued on the 28th of November, 1887, to come into operation on the 6th of December, 1887.

The Act of 1886, the Berne Convention, and the Order in Council must accordingly be read together (*k*).

(*e*) Boucicault *v.* Delafield, 43 L. J., Ch. 38; Boucicault *v.* Chatterton, 5 Ch. D. 267; *cf.* Cassell *v.* Stiff, 2 K. & J. 279. As to rights which could be acquired by a foreign composer of music under this Act see Fairlie *v.* Boosey, 4 App. Cas. 711.

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

(*g*) Hanfstaengl *v.* American Tobacco Co. [1895], 1 Q. B. 347; Hanfstaengl Art Publishing Co. *v.* Holloway [1893], 2 Q. B. 1.

(*h*) *Per* Charles, J., in Hanfstaengl Art Publishing Co. *v.* Holloway, *supra*.

(*i*) 49 & 50 Vict. c. 33, *post*, p. 165.

(*k*) Lauri *v.* Renad [1892], 3 Ch. 402.

The rights of foreign authors in the British Dominions rest upon the Order in Council made under the Act of 1886, and sanctioning the Berne Convention; the rights of English authors in the foreign countries of the Union rest upon the Berne Convention, together with any legislation which has been found necessary in any particular country to give effect to that Convention, similar to the English Act of 1886 (*l*).

The countries comprised in the Union are the British Empire, Belgium, France, Germany, Italy, Spain, Switzerland, Tunis, Hayti, Luxembourg, Monaco, and Montenegro.

Under the provisions of the above-mentioned enactments the author (*m*) of any literary or artistic work (*n*) first produced in one of the foreign countries of the Union is to have the same right of copyright throughout her Majesty's dominions as if the work had been first produced in the United Kingdom (*o*).

The expression "produced" must be construed as the case requires (*p*), and will be construed so as to give effect to the Berne Convention (*q*).

Works both published and unpublished are protected (*r*). The enjoyment of the right is subject to the accomplishment of the conditions prescribed by law in the country of origin, and the term is that prescribed by such law (*s*).

(*l*) See "Scrutton on Copyright," 2nd ed., p. 190.

(*m*) Defined 49 & 50 Vict. c 33, s. 11, *post*, p. 170.

(*n*) *Ibid.*, and Convention Article 4, *post*, p. 183.

(*o*) Order, Clause 3, *post*, p. 180.

(*p*) 49 & 50 Vict. c. 33, s. 11.

(*q*) Hanfstaengl *v.* American Tobacco Co. [1895], 1 Q. B. 347.

(*r*) Convention, Article 2, *post*, p. 182.

(*s*) Convention, Article 2; Order, Clause 3.

Country of Origin.—The country of origin (*t*) is—

1. In the case of an unpublished work, that to which the author belongs.
2. In that of a published work, that in which the work is first produced.
3. In that of a work published simultaneously in several countries of the Union, that in which the term prescribed by law is the shortest.

A work published in one of the countries belonging to the Union, but the author of which does not belong to such a country, is equally protected (*u*); but the publisher and not the author is to take proceedings, and is to be deemed to be entitled to the copyright (*w*). The foreign author is not to have any greater right or longer term than is enjoyed by him in the country of origin of the work (*x*).

Registration.—The author must comply with all the formalities required in the country of origin. As regards registration and delivery of copies of works the provisions of the International Copyright Acts are not to apply unless specified in the Order (*y*). The Order adopting the Convention contains no requirements as to registration or delivery of copies. It is, therefore, unnecessary for the foreign author to register or deliver copies in the United

(*t*) Convention, Article 2; *cf.* 49 & 50 Vict. c. 33, s. 3, s.s. 2, and also Order, Clause 5.

(*u*) Convention, Article 3, *post* p. 183.

(*w*) Order, Clause 3, *post*, p. 180.

(*x*) Order, Clause 3. If this means that not only the term but also the rights are to be those of the country of origin great confusion may arise, as it may be extremely difficult to ascertain what such rights are. They may be greater or less than those enjoyed by a British author.

(*y*) 49 & 50 Vict. c. 33, s. 4, s.s. 1, *post*, p. 167.

Kingdom; he acquires copyright throughout the British Dominions provided that he has satisfied all formalities prescribed by the country of origin of his work (*z*).

The author and publisher of a work first produced before 6th December, 1887, in *one of these foreign countries*—such work not having fallen into the public domain in the country of origin (*a*)—is to be entitled to the same protection as if the International Copyright Acts and the Order in Council had applied to such foreign country at the time when such work was produced (*b*).

The word "interest" means something different from "right" (*c*). It must be a "direct subsisting pecuniary interest in the continuation of the production" (*d*).

Extent of Right.—The copyright extends through the whole of the British Dominions (*e*). Proof of the existence of copyright in a work produced in one of the foreign countries is to be by an extract from a Register, or by a *certificate* or other *document* duly authenticated (*f*). But, by Article 11 of the Convention, it is sufficient if the name of the author be indicated on the work in the accustomed way, though the tribunals may, if necessary, require production of a certificate from the competent authority to the effect that the formalities prescribed in the country of origin have been complied with (*g*).

(*z*) Hanfstaengl Art Publishing Co. *v.* Holloway [1893], 2 Q. B. 1; Hanfstaengl *v.* American Tobacco Co. [1895], 1 Q. B. 347, overruling Fishburn *v.* Hollingshead [1891], 2 Ch. 371.

(*a*) Convention, Article 14, *post*, p. 186.

(*b*) 49 & 50 Vict. c. 33, s. 6, *post*, p. 102.

(*c*) Moul *v.* Groenings [1891], 2 Q. B. 443.

(*d*) Hanfstaengl Art Publishing Co. *v.* Holloway [1893], 2 Q. B. 1; however, *cf.* Schauer *v.* Field [1893], 1 Ch. 35.

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

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

(*g*) Convention, Article 11; *cf.* Article 2.

This provision applies to all works entitled to copyright produced before 6th December, 1887 (*h*), and not merely to works produced between the passing of the Act of 1886 and 6th December, 1887, as seems to have been suggested (*i*).

But where any person has lawfully produced a work in the United Kingdom before 6th December, 1887, the above Section is not to diminish or prejudice any rights or interests arising from such production which are subsisting and valuable at the said date (*k*). In other words if a man has, in the United Kingdom, produced a work without infringing any copyright the Order in Council is not to give to any foreign author rights which would affect injuriously any rights or interests attaching to such production.

In the case of anonymous or pseudonymous works the publisher is entitled to represent the author (*l*).

Translations.—Authors are protected against the production in or importation into the United Kingdom (which includes all British Possessions, by 49 & 50 Vict. c. 33, s. 9) of translations of their works (*m*). But this right is to cease if, after ten years from the end of the year in which a work has been produced, no authorised translation in the English language of such work has been produced. In the case of a book published in numbers, the ten years run—according to the Act of 1886, from the end of the year when each number was produced; according to the

(*h*) Hanfstaengl Art Publishing Co. *v.* Holloway [1893], 2 Q. B. 1.

(*i*) See *per* Kay, L. J., in Lauri *v.* Renad [1892], 3 Ch. 402. In this cas however, the right had fallen into the public domain.

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

(*l*) Convention, Article 11.

(*m*) 49 & 50 Vict. c. 33, s. 5, s.s. 1; Convention, Article 5.

Convention, from the end of the year when the last number was produced (*n*).

A translation within the meaning of this provision must be a translation of the whole work, and substantially accurate; and the mere fact that the author sanctions a certain translation will not make it such a translation as the Acts contemplate (*o*).

If an authorised translation is produced within ten years it is protected in the same manner as an original work (*p*).

There is possibly a distinction between the rights as regards translation of foreign authors in England and British authors abroad (*q*); but this seems very doubtful.

The rights of the British author in foreign countries are similar to those of the foreigner in British Possessions —*i.e.* he must comply with the formalities prescribed by English law, and will obtain copyright for the term prescribed by the country of origin of the work. Where the copyright of a British author is infringed in one of the foreign countries he must seek redress in the Courts of that country (*r*).

The only difference seems to be that, in respect of translations, the author may have less extensive rights abroad than the foreigner has here, if the view indicated by Mr. Scrutton is correct.

Articles from newspapers or periodicals may be reproduced in any country of the Union, whether in the original or a translation, unless the authors or publishers have expressly

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(*n*) 40 & 50 Vict. c. 33, s. 5, s.s. 2; Convention, Article 5.

(*o*) Wood *v.* Chart, L. R., 10 Eq. 193 (a decision under 15 Vict. c. 12, but applicable in principle to the later enactments).

(*p*) 40 & 50 Vict. c. 33., s. 5, s.s. 3; Convention, Article 6.

(*q*) See "Scrutton on Copyright," 3rd. ed., p. 214.

(*r*) "Morocco Bound" Syndicate *v.* Harris [1895], 1 Ch. 535.

forbidden their reproduction; but no such prohibition can extend to political articles or to comments on current topics (*s*).

Pirated works may be seized on importation into any of the countries where the original is protected, the seizure to be regulated by the domestic laws of each State (*t*). But if the infringing copies were printed in the country where the original work was first published, the prohibition against importation does not apply (*u*).

Adaptations of Dramatic Pieces.—As regards *dramatic pieces*, Section 6 of 15 Vict. c. 12 is not to apply (*x*). That Section provided that fair adaptations to the English stage of dramatic pieces or musical compositions published abroad were not to be prevented by the Act.

By 38 Vict. c. 12, s. 1, it was enacted that the above Section might be made inapplicable by Orders in Council which gave protection to translations of dramatic pieces first represented abroad.

The Order of November, 1887, does give such protection, and Section 6 of 15 Vict. c. 12 is therefore excluded under the provisions of Section 1 of 38 Vict. c. 12.

The result seems to be that the author of a dramatic piece first published in one of the foreign countries is protected against the adaptation of his piece to the English stage; but presumably this protection will cease to exist if the author does not comply with the requirements as to translations previously dealt with (*y*).

(*s*) Convention, Article 7.

(*t*) Convention, Article 7; *cf.* 5 & 6 Vict. c. 45, s. 17; 7 Vict. c. 12, s. 10; 15 Vict. c. 12, s. 9; 25 & 26 Vict. c. 68, ss. 6, 10, and 11; and Customs Act, 1876, ss. 42 and 44.

(*u*) 7 & 8 Vict. c. 12, s. 10; Pitts *v.* George, 12 Times L. R. 269.

(*x*) Order, Clause 6; Convention, Article 10.

(*y*) *Ante*, p. 85.

Countries not in the Union.—Austria and Hungary have a separate Convention similar to the Berne Convention, and applying to the United Kingdom and all the Colonies, except India, Canada, the Cape, New South Wales, and Tasmania (*z*).

Other countries may, under certain circumstances, be admitted to the Berne Convention (*a*).

As regards countries which are not named in any Order in Council the International Copyright Acts will be inapplicable, and the ordinary law will apply. It is probable, however, that British copyright can be acquired in a work first published here, although the author be a native of one of those countries and resident there (*b*).

United States.—The United States stands in a somewhat different position. Until the year 1891 there was no international copyright treaty with that country. In that year an Act (*c*) was passed to amend Title 60, Chapter 3, of the Revised Statutes of the United States relating to Copyright, and to come into force on the 1st of July, 1891.

The Act is only to apply to a citizen of a foreign State when such State permits to citizens of the United States the benefit of copyright on substantially the same basis as its own citizens, or when such State is a party to an international agreement which provides for reciprocity in the granting of copyright, and to which agreement the United States may, at its pleasure, become a party (*d*). The existence of either of these conditions is to be

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(*z*) "Scrutton on Copyright," 3rd ed., p. 204.

(*a*) Convention, Article 18, *post*, p. 187.

(*b*) Routledge *v.* Low, 3 E. & I. App. 100 (opinions of Lord Cairns and Lord Westbury).

(*c*) *Post*, p. 103.

(*d*) Section 13, *post*, p. 108.

determined by the President of the United States, by proclamation made from time to time.

The Act applies to (among other nations) Great Britain and the British Possessions.

The effect of the Act is substantially as follows:—An English author may secure copyright in the United States for twenty-eight years, and for an additional fourteen years in certain events (*e*), in any literary or artistic work: provided that—

1. On or before the day of first publication he delivers to the Librarian of Congress a printed copy of the title of the literary work, dramatic or musical composition, engraving, photograph, or chromo, or a description of the painting, drawing, statuary, &c. (*f*).
2. Not later than the day of first publication he delivers to the Librarian of Congress two copies of such literary work, dramatic or musical composition, engraving, &c.; or in the case of a painting, &c., a photograph of the same. And in the case of a book, photograph, chromo, or lithograph, the two copies must be printed within the limits of the United States (*g*).

Upon complying with these conditions the English author is protected against infringement in the United States, and every infringing copy of a book is to be forfeited to the proprietor of the copyright (*h*).

The English author is likewise protected against importation of pirated copies into the United States, subject to a few unimportant exceptions (*i*). A copy of

(*e*) Section 4954.
(*f*) Section 4956.
(*g*) Section 4956.
(*h*) Sections 4964 and 4965.
(*i*) Sections 4957, 4964, and 4965.

every subsequent edition of a book in which substantial alterations are made is to be delivered to the Librarian of Congress (*k*).

If, therefore, an English author wishes to acquire both British and American copyright he must publish simultaneously in the United Kingdom and the United States.

If an American author desires to obtain British copyright he must publish simultaneously in the two countries, and must comply with the formalities prescribed by English law in respect of his publication here.

It is not quite certain whether a dramatic or musical composition must (like a book) be printed in the United States in order to obtain copyright there, but probably that is not necessary (*l*).

It is important to observe that, whereas by English law the representation of a dramatic piece upon the stage is "publication" (*m*), the contrary has been held in America (*n*).

In order, therefore, for an American dramatic piece to become the subject of British copyright, it must be printed or performed in the United Kingdom contemporaneously with its production in the United States.

Mr. Scrutton (*o*) points out that in the case of paintings the work must, in order to obtain copyright under the Act of 1862, be by a British subject or a person resident within the dominions of the Crown: the effect of which is that an American painting &c. cannot receive the benefit of copyright here, whereas similar English works of art do receive protection in America.

(*k*) Section 4959. (*l*) Copinger's "Law of Copyright," 3rd ed., p. 915.

(*m*) *Ante*, p. 36.

(*n*) Palmer v. De Witt, 23 L. T. R., N. S. 823; (American) 47 N. Y. 532.

(*o*) 3rd ed., p. 219.

CHAPTER X.

COLONIAL COPYRIGHT.

COLONIAL COPYRIGHT is fully dealt with in the Report of the Copyright Commission of 1878 (*a*).

Although a Colonial author who first published his work in the United Kingdom was (like an English author) entitled to copyright throughout the British Possessions (*b*), if the work were first published in the Colony of which he was a native he could only obtain copyright in accordance with the law (if any) of such Colony. Moreover, works which were the subject of copyright in the United Kingdom could not be imported into the Colonies (*c*). Shortly after the passing of the Act of 1842 urgent representations were made by the North American Provinces in favour of admitting into those Colonies cheap reprints of English works made in the United States, between whom and the United Kingdom there was at that time no international copyright treaty.

The result of the representations of the Colonies, and especially of Canada, was the passing, in the year 1847, of the Foreign Reprints Act (*d*), the object of which was to suspend the restrictions against the importation of foreign

(*a*) Report, Paragraph 182 *et seq.*

(*b*) Routledge *v.* Low, L. R., 3 E. & I. App. 100.

(*c*) See as to Books, 5 & 6 Vict. c. 45, s. 17, *post*, p. 123.

(*d*) 10 & 11 Vict. c. 95, *post*, p. 144.

reprints into such Colonies as, in the opinion of Her Majesty, had made due legislative provision for securing reasonable protection within their jurisdiction to British authors. The Canadian Legislature provided that Twelve-and-a-half per cent. should be paid for the benefit of the authors interested in all American reprints of English copyright works, the amount to be collected by the Canadian and paid over to the British Government. Other Colonies made similar provisions, and were admitted to the benefit of the Act; but it was found that the duty collected was so absurdly small, owing to various difficulties, that the Act proved a complete failure, at any rate as regards English authors.

Complaints arose both on the part of the English and of the Canadians, and ultimately in 1875 the Canadian Dominion passed an Act, which was sanctioned by an Imperial Act of the same year, and which provided that any person domiciled in Canada or any part of the British Possessions, or being a citizen of any country having an international copyright treaty with the United Kingdom, might obtain copyright in Canada for twenty-eight years for any literary or artistic work by printing or reprinting, producing or reproducing such work in Canada. This copyright was to be in addition to and concurrent with the copyright possessed by such authors through the British Dominions under the Imperial Act.

This Act has not proved thoroughly satisfactory; and, as is well known, proposals for a new Act are now under discussion.

Thus, up to the present time, Canada has played the most prominent part in the Colonial Copyright question. But, as regards the Colonies generally, it has been seen that under the recent Act of 1888 literary and artistic works

produced in the Colonies are to enjoy the benefit of the English Copyright Acts, as if such works had been first produced in the United Kingdom (*e*).

These works are also entitled to copyright in the countries which are parties to the Berne Convention (*f*), and works produced in these countries are likewise entitled to copyright in the Colonies.

But, by an Order in Council made under the Act of 1888 in respect to a foreign country, Her Majesty may exclude any Colonies named from the benefit of the Act. If not expressly excluded they are included (*g*). As has been pointed out (*h*), this power of exclusion has in certain cases been exercised.

The United States has, by proclamation of the President, admitted the British Possessions to the benefits of the Act of 1891 (*i*), and Colonial authors must, of course, comply with the conditions there prescribed.

Registration of Colonial Works.—As regards the registration of Colonial works, it is enacted that where the law of the Colony provides for registration those provisions, and not the regulations contained in the Act of 1886, are to be complied with (*k*); that a duly certified extract from the Colonial Register shall be admissible as evidence of the contents without further proof (*l*); and that in the case of a book no delivery of copies is required in the United Kingdom (*m*).

(*e*) 49 & 50 Vict. c. 33, s. 8, s.s. 1.

(*f*) *Ibid.* s. 9; *cf.* Berne Convention, Article 19.

(*g*) *Ibid.*

(*h*) *Ante*, p. 88.

(*i*) *Ante*, p. 80.

(*k*) 49 & 50 Vict. c. 33, s. 8, s.s. 1 (A).

(*l*) *Ibid.* s.s. 2.

(*m*) *Ibid.* s.s. 1 (B).

Importation.—It is pointed out by Mr. Scrutton that, in view of the Customs Act of 1876, it is safer for an English proprietor of copyright to give notice in writing to the Customs Commissioners that such copyright exists, in order to prevent unauthorised importations into the Colonies (*n*). But there can be little doubt that apart from such notice the importation can be restrained (*o*).

(*n*) "Scrutton on Copyright," 3rd ed., p. 201. See 39 & 40 Vict. c. 36, s. 152 (*Customs Act*).

(*o*) See 5 & 6 Vict. c. 45, ss. 17 and 20.

APPENDIX OF STATUTES.

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.

(8 GEORGE II., CHAPTER 13.)

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: Preamble.

And whereas printsellers and other persons have, of late, without the consent of the inventors, designers, and proprietors of such prints, frequently taken the liberty of copying, engraving, and publishing, or causing to be copied, engraved, and published, base copies of such works, designs, and prints, to the very great prejudice and detriment of the inventors, designers, and proprietors thereof:

For remedy thereof, and for preventing such practices for the future, may it please Your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the Twenty-fourth day of June, which shall be in the Year of Our Lord One thousand seven hundred and thirty-five, every person who shall invent and design, engrave, etch, or work in mezzotinto or chiaro oscuro, or from his own works and invention shall cause to be

After 24th June, 1735, the property of historical and other prints

vested in the inventor for Fourteen Years.

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,

Proprietor's name to be affixed to each print.

Penalty on printsellers or others pirating same.

by action of debt, bill, plaint, or information, in which no wager of law, essoign, privilege, or protection, or more than one imparlance, shall be allowed :

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

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.

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,

General issue.

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 :

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.

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.

(7 GEORGE III., CHAPTER 38.)

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 &c. of historical and other prints, and such who shall cause prints to be done from works &c. of their own invention,

and also such as shall engrave &c. any print taken from

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 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 draughtsman; and if any person shall engrave, print, and publish, or import for sale, any copy of any such print, contrary to the true intent and meaning of this and the said former Act, every such person shall be liable to the penalties contained in the said Act, to be recovered as therein and hereinafter is mentioned.

any picture, drawing, model, or sculpture, are entitled to the benefit and protection of the recited and present Acts; and those who shall engrave or import for sale copies of such prints are liable to penalties.

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.

Penalties may be sued for as by the recited Act is directed; and be recovered with full costs;

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

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

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

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

Limitation of actions.

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

Full costs.

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.

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.

(17 George III., Chapter 57.)

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 therein-after mentioned, in like manner as if such print had been graved or drawn from the original design of such graver, etcher, or draughtsman: And whereas the said Acts have not effectually answered the purposes for which they were intended, and it is necessary, for the encouragement of artists, and for securing to them the property of and in their works, and for the advancement and improvement of the aforesaid arts, that such further provisions should be made as are 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 24th, 1777, if any engraver &c. shall, within the time limited by the aforesaid Acts, engrave or etch &c. any print without the consent of the proprietor, he shall be liable to damages and double costs.

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.

(54 George III., Chapter 56).

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 hereinbefore mentioned, or any cast from nature of the human figure, or of any part or parts of the human figure, or of any cast from nature of any animal, or of any

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

part or parts of any animal, or of any such subject containing or representing any of the matters and things hereinbefore mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture, model, copy, and cast of the human figure or human figures, and of all and in every such bust or busts, and of all and in every such part or parts of the human figure clothed in drapery or otherwise, and of all and in every such new and original sculpture, model, copy, and cast, representing any animal or animals, and of all and in every such work representing any part or parts of any animal combined with the human figure or otherwise, and of all and in every such new and original sculpture, model, copy, and cast of any subject, being matter of invention in sculpture, and of all and in every such new and original sculpture, model, copy, and cast in alto or basso-relievo representing any of the matters or things hereinbefore mentioned, and of every such cast from nature, for the term of Fourteen Years from first putting forth or publishing the same: provided in all and in every case the proprietor or proprietors do cause his, her, or their name or names, with the date, to be put on all and every such new and original sculpture, model, copy, or cast, and on every such cast from nature, before the same shall be put forth or published.

Works published under the recited Act vested in the proprietor for Fourteen Years.

2. 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.

3. 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.

4. 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.

Purchasers of copyright secured in the same.

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

Limitation of actions.

An additional term of Fourteen Years in case the maker of the original sculpture &c. shall be living.

6. 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 the matters or things hereinbefore mentioned shall return to the person or persons who originally made or caused to be made the same, if he or they shall be then living, for the further term of Fourteen Years, excepting in the case or cases where such person or persons shall by sale or otherwise have divested himself, herself, or themselves, of such right of making or disposing of any new and original sculpture, or model, or copy, or cast of any of the matters or things hereinbefore mentioned, previous to the passing of this Act.

An Act to Amend the Laws relating to Dramatic Literary Property. [10th June, 1833.

(3 WILLIAM IV., CHAPTER 15).

54 Geo. III. c. 56.

WHEREAS by an Act passed in the Fifty-fourth Year of the Reign of His late Majesty King George the Third, intituled, "An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of Printed Books to the Authors of such Books, or their Assigns," it was amongst other things provided and enacted, that from and after the passing of the said Act the author of any book or books composed, and not printed or published, or which should thereafter be composed and printed and published, and his assignee or assigns, should have the sole liberty of printing and reprinting such book or books for the full term of Twenty-eight Years, to commence from the day of first publishing the same, and also, if the author should be living at the end of that period, for the residue of his natural life: And whereas it is expedient to extend the provisions of the said Act: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act the author of any tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment, composed, and not printed and published by the author thereof or his assignee, or which hereafter shall be composed, and not printed or published by the author thereof or his assignee, or the assignee of such author, shall have as his own property the sole liberty of representing, or causing to be represented, at any place or places of dramatic entertainment whatsoever, in any part of the United Kingdom of Great Britain and Ireland, in the Isles of Man, Jersey, and Guernsey, or in any part of the British Dominions, any such

The author of any dramatic piece shall have as his property the sole liberty of representing it or causing it to be represented at any place of dramatic entertainment.

production as aforesaid, not printed and published by the author thereof or his assignee, and shall be deemed and taken to be the proprietor thereof; and that the author of any such production, printed and published within ten years before the passing of this Act by the author thereof or his assignee, or which shall hereafter be so printed and published, or the assignee of such author, shall, from the time of passing this Act, or from the time of such publication respectively, until the end of Twenty-eight Years from the day of such first publication of the same, and also, if the author or authors, or the survivor of the authors, shall be living at the end of that period, during the residue of his natural life, have as his own property the sole liberty of representing, or causing to be represented, the same at any such place of dramatic entertainment as aforesaid, and shall be deemed and taken to be the proprietor thereof: provided, nevertheless, that nothing in this Act contained shall prejudice, alter, or affect the right or authority of any person to represent or cause to be represented, at any place or places of dramatic entertainment whatsoever, any such production as aforesaid, in all cases in which the author thereof or his assignee shall, previously to the passing of this Act, have given his consent to or authorised such representation, but that such sole liberty of the author or his assignee shall be such right or authority.

Proviso as to cases where previous to the passing of this Act a consent has been given.

Penalty on persons performing pieces contrary to this Act.

2. And be it further enacted that if any person shall, during the continuance of such sole liberty as aforesaid, contrary to the intent of this Act, or right of the author or his assignee, represent, or cause to be represented, without the consent in writing of the author or other proprietor first had and obtained, at any place of dramatic entertainment within the limits aforesaid, any such production as aforesaid, or any part thereof, every such offender shall be liable for each and every such representation to the payment of an amount not less than Forty Shillings, or to the full amount of the benefit or advantage arising from such representation, or the injury or loss sustained by the plaintiff therefrom, whichever shall be the greater damages, to the author or other proprietor of such

production so represented, contrary to the true intent and meaning of this Act, to be recovered, together with double costs of suit, by such author or other proprietors, in any Court having jurisdiction in such cases in that part of the said United Kingdom or of the British Dominions in which the offence shall be committed; and in every such proceeding where the sole liberty of such author or his assignee as aforesaid shall be subject to such right or authority as aforesaid, it shall be sufficient for the plaintiff to state that he has such sole liberty, without stating the same to be *subject to such right or authority*, or otherwise mentioning the same.

Limitation of actions.

3. Provided, nevertheless, and be it further enacted, that all actions or proceedings for any offence or injury that may be committed against this Act shall be brought, sued, and commenced within twelve months next after such offence committed, or else the same shall be void and of no effect.

Explanation of words.

4. And be it further enacted that whenever authors, persons, offenders, or others are spoken of in this Act in the singular number or in the masculine gender, the same shall extend to any number of persons and to either sex.

An Act for Preventing the Publication of Lectures without Consent. [9th September, 1835.

(5 & 6 WILLIAM IV., CHAPTER 65.)

WHEREAS printers, publishers, and other persons have frequently taken the liberty of printing and publishing lectures delivered upon divers subjects, without the consent of the authors of such lectures, or the persons delivering the same in public, to the great detriment of such authors and lecturers: Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the First day of September, One thousand eight hundred and thirty-five, the author of any lecture or lectures, or the person to whom he hath sold or otherwise conveyed the copy thereof, in order to deliver the same in any school, seminary, institution, or other place, or for any other purpose, shall have the sole right and liberty of printing and publishing such lecture or lectures; and that if any person shall, by taking down the same in shorthand or otherwise in writing, or in any other way, obtain or make a copy of such lecture or lectures, and shall print or lithograph or otherwise copy and publish the same, or cause the same to be printed, lithographed, or otherwise copied and published, without leave of the author thereof, or of the person to whom the author thereof hath sold or otherwise conveyed the same, and every person who, knowing the same to have been printed or copied and published without such consent, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such lecture or lectures, shall forfeit such printed or otherwise copied lecture or lectures, or parts thereof, together with One Penny for every sheet thereof which shall be found in his custody, either printed, lithographed, or copied, or printing, lithographing, or copying, published or exposed to sale, contrary

Authors of lectures, or their assigns, to have the sole right of publishing them.

Penalty on other persons publishing &c. lectures without leave.

to the true intent and meaning of this Act, the one moiety thereof to His Majesty, his heirs or successors, and the other moiety thereof to any person who shall sue for the same, to be recovered in any of His Majesty's Courts of Record in Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoign, privilege, or protection or more than one imparlance, shall be allowed.

Penalty on printers or publishers of newspapers publishing lectures without leave.

2. And be it further enacted that any printer or publisher of any newspaper who shall, without such leave as aforesaid, print and publish in such newspaper any lecture or lectures, shall be deemed and taken to be a person printing and publishing without leave within the provisions of this Act, and liable to the aforesaid forfeitures and penalties in respect of such printing and publishing.

Persons having leave to attend lectures not on that account licensed to publish them.

3. And be it further enacted that no person allowed for certain fee and reward, or otherwise, to attend and be present at any lecture delivered in any place, shall be deemed and taken to be licensed or to have leave to print, copy, and publish such lectures only because of having leave to attend such lecture or lectures.

Act not to prohibit the publishing of lectures after expiration of the copyright.

4. Provided always, that nothing in this Act shall extend to prohibit any person from printing, copying, and publishing any lecture or lectures which have or shall have been printed and published with leave of the authors thereof or their assignees, and whereof the time hath or shall have expired within which the sole right to print and publish the same is given by an Act passed in the Eighth Year of the Reign of Queen Anne, intituled "An Act for the Encouragement of Learning by vesting the Copies of Printed Books in the Authors or Purchasers of such Copies during the times therein mentioned," and by another Act passed in the Fifty-fourth Year of the Reign of King George the Third, intituled "An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of Printed Books to the Authors of such Books, or their Assigns," or to any lectures which have been printed or published before the passing of this Act.

8 Anne, c. 19.

54 Geo. III. c. 56.

Act not to extend to lectures delivered in unlicensed places &c.

5. Provided further, that nothing in this Act shall extend to any lecture or lectures, or the printing, copying, or publishing any lecture or lectures, or parts thereof, of the delivering of which notice in writing shall not have been given to two justices living within five miles from the place where such lecture or lectures shall be delivered two days at the least before delivering the same, or to any lecture or lectures delivered in any university or public school or college, or on any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation; and that the law relating thereto shall remain the same as if this Act had not been passed.

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

(6 & 7 William IV., Chapter 59.)

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.

17 Geo. III. c. 57.

Provisions of recited Act extended to Ireland.

2. 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.

An Act to Amend the Law of Copyright.

[1st July, 1842.

(5 & 6 Victoria, Chapter 45.)

WHEREAS it is expedient to amend the Law relating to Copyright, and to afford greater encouragement to the production of Literary Works of lasting benefit to the world: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same,

Repeal of former Acts:

8 Anne, c. 19.

41 Geo. III. c. 107.

54 Geo. III. c. 56.

that from the passing of this Act an Act passed in the Eighth Year of the Reign of Her Majesty Queen Anne, intituled "An Act for the Encouragement of Learning by vesting the Copies of Printed Books in the Authors or Purchasers of such Copies during the times therein mentioned"; and also an Act passed in the Forty-first Year of the Reign of His Majesty King George the Third, intituled "An Act for the further Encouragement of Learning in the United Kingdom of Great Britain and Ireland, by securing the Copies and Copyright of Printed Books to the Authors of such Books or their assigns, for the time therein mentioned"; and also an Act passed in the Fifty-fourth Year of the Reign of His Majesty King George the Third, intituled "An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of Printed Books to the Authors of such Books or their assigns," be and the same are hereby repealed, except so far as the continuance of either of them may be necessary for carrying on or giving effect to any proceedings at law or in equity pending at the time of passing this Act, or for enforcing any cause of action or suit, or any right or contract, then subsisting.

Interpretation of Act.

2. And be it enacted that in the construction of this Act the word "book" shall be construed to mean and include every volume, part or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan separately published; that the words "dramatic piece" shall be construed to mean and include every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment; that the word "copyright" shall be construed to mean the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied; that the words "personal representative" shall be construed to mean and include every executor, administrator, and next of kin entitled to administration; that the word "assigns" shall be construed to mean and include every person in whom the interest of an author in copyright shall be vested, whether derived from such author before or after the publication of any book, and whether acquired by sale, gift, bequest, or by operation of law, or otherwise; that the words "British Dominions" shall be construed to mean and include all parts of the United Kingdom of Great Britain and Ireland, the islands of Jersey and Guernsey, all parts of the East and West Indies, and all the Colonies, Settlements, and Possessions of the Crown which now are or hereafter may be acquired; and that whenever in this Act, in describing any person, matter, or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and to be applied to several persons as well as one person, and females as well as males, and several matters or things as well as one matter or thing, respectively, unless there shall be something in the subject or context repugnant to such construction.

Endurance of term of copyright in any book hereafter to be published in the lifetime of the author;

3. And be it enacted that the copyright in every book which shall after the passing of this Act be published in the lifetime of its author shall endure for the natural life of such author, and for the further term of Seven Years, commencing at the time of his death, and shall be the property of such author and his assigns: provided always, that if the said term of Seven Years shall expire before the end of Forty-two

Years from the first publication of such book, the copyright shall in that case endure for such period of Forty-two Years; and that the copyright in every book which shall be published after the death of its author shall endure for the term of Forty-two Years from the first publication thereof, and shall be the property of the proprietor of the author's manuscript from which such book shall be first published, and his assigns.

if published after the author's death.

4. And whereas it is just to extend the benefits of this Act to authors of books published before the passing thereof, and in which copyright still subsists: Be it enacted that the copyright which at the time of passing of this Act shall subsist in any book theretofore published (except as hereinafter mentioned) shall be extended and endure for the full term provided by this Act in cases of books thereafter published, and shall be the property of the person who at the time of passing of this Act shall be the proprietor of such copyright: Provided always, that in all cases in which such copyright shall belong in whole or in part to a publisher or other person who shall have acquired it for other consideration than that of natural love and affection, such copyright shall not be extended by this Act, but shall endure for the term which shall subsist therein at the time of passing of this Act, and no longer, unless the author of such book, if he shall be living, or the personal representative of such author, if he shall be dead, and the proprietor of such copyright, shall, before the expiration of such term, consent and agree to accept the benefits of this Act in respect of such book, and shall cause a minute of such consent in the form in that behalf given in the Schedule to this Act annexed to be entered in the Book of Registry hereinafter directed to be kept, in which case such copyright shall endure for the full term by this Act provided in cases of books to be published after the passing of this Act, and shall be the property of such person or persons as in such minute shall be expressed.

In cases of subsisting copyright the term to be extended, except when it shall belong to an assignee for other consideration than natural love and affection; in which case it shall cease at the expiration of the present term, unless its extension be agreed to between the proprietor and the author.

Judicial Committee of the Privy Council may license

5. And whereas it is expedient to provide against the suppression of books of importance to the public: Be it enacted that it shall be lawful for the Judicial Committee of

Her Majesty's Privy Council, on complaint made to them that the proprietor of the copyright in any book after the death of its author has refused to republish or to allow the republication of the same, and that by reason of such refusal such book may be withheld from the public, to grant a licence to such complainant to publish such book, in such manner and subject to such conditions as they may think fit, and that it shall be lawful for such complainant to publish such book according to such licence.

the republication of books which the proprietor refuses to republish after death of the author.

6. And be it enacted that a printed copy of the whole of every book which shall be published after the passing of this Act, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same shall be published, and also of any second or subsequent edition which shall be so published with any additions or alterations, whether the same shall be in letterpress, or in the maps, prints, or other engravings belonging thereto, and whether the first edition to such book shall have been published before or after the passing of this Act, and also of any second or subsequent edition of every book of which the first or some preceding edition shall not have been delivered for the use of the British Museum, bound, sewed, or stitched together, and upon the best paper on which the same shall be printed, shall, within one calendar month after the day on which any such book shall first be sold, published, or offered for sale within the Bills of Mortality, or within three calendar months if the same shall first be sold, published, or offered for sale in any other part of the United Kingdom, or within twelve calendar months after the same shall first be sold, published, or offered for sale in any other part of the British Dominions, be delivered, on behalf of the publisher thereof, at the British Museum.

Copies of books published after the passing of this Act, and of all subsequent editions, to be delivered within certain times at the British Museum.

7. And be it enacted that every copy of any book which under the provisions of this Act ought to be delivered as aforesaid shall be delivered at the British Museum between the hours of ten in the forenoon and four in the afternoon

Mode of delivering at the British Museum.

on any day except Sunday, Ash Wednesday, Good Friday, and Christmas Day, to one of the officers of the said Museum, or to some person authorised by the trustees of the said Museum to receive the same, and such officer or other person receiving such copy is hereby required to give a receipt in writing for the same, and such delivery shall to all intents and purposes be deemed to be good and sufficient delivery under the provisions of this Act.

A copy of every book to be delivered within a month after demand to the officer of the Stationers' Company for the following libraries:—the Bodleian at Oxford, the Public Library at Cambridge, the Faculty of Advocates at Edinburgh, and that of Trinity College, Dublin.

8. And be it enacted that a copy of the whole of every book, and of any second or subsequent edition of every book containing additions and alterations, together with all maps and prints belonging thereto, which after the passing of this Act shall be published, shall, on demand thereof in writing, left at the place of abode of the publisher thereof at any time within twelve months next after the publication thereof, under the hand of the officer of the Company of Stationers, who shall from time to time be appointed by the said company for the purposes of this Act, or under the hand of any other person thereto authorised by the persons or bodies politic and corporate, proprietors and managers of the libraries following (*videlicet*), the Bodleian Library at Oxford, the Public Library at Cambridge, the Library of the Faculty of Advocates at Edinburgh, the Library of the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, be delivered, upon the paper on which the largest number of copies of such book or edition shall be printed for sale, in the like condition as the copies prepared for sale, by the publisher thereof respectively, within one month after demand made thereof in writing as aforesaid, to the said officer of the said Company of Stationers for the time being, which copies the said officer shall and he is hereby required to receive at the Hall of the said Company, for the use of the library for which such demand shall be made within such twelve months as aforesaid; and the said officer is hereby required to give a receipt in writing for the same, and within one month after any such book shall be so delivered to him as aforesaid to deliver the same for the use of such library.

Publishers may deliver the copies to the libraries, instead of at the Stationers' Company.

9. Provided also, and be it enacted, that if any publisher shall be desirous of delivering the copy of such book as shall be demanded on behalf of any of the said libraries at such library, it shall be lawful for him to deliver the same at such library, free of expense to such librarian or other person authorised to receive the same (who is hereby required in such case to receive and give a receipt in writing for the same), and such delivery shall to all intents and purposes of this Act be held as equivalent to a delivery to the said officers of the Stationers' Company.

Penalty for default in delivering copies for the use of the libraries.

10. And be it enacted that if any publisher of any such book, or of any second or subsequent edition of any such book, shall neglect to deliver the same, pursuant to this Act, he shall for every such default forfeit, besides the value of such copy of such book or edition which he ought to have delivered, a sum not exceeding Five Pounds, to be recovered by the librarian or other officer (properly authorised) of the library for the use whereof such copy should have been delivered, in a summary way, on conviction before two Justices of the Peace for the county or place where the publisher making default shall reside, or by action of debt or other proceeding of the like nature, at the suit of such librarian or other officer, in any Court of Record in the United Kingdom, in which action, if the plaintiff shall obtain a verdict, he shall recover his costs reasonably incurred, to be taxed as between attorney and client.

Book of Registry to be kept at Stationers' Hall.

11. And be it enacted that a Book of Registry, wherein may be registered, as hereinafter enacted, the proprietorship in the copyright of books, and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licences affecting such copyright, shall be kept at the Hall of the Stationers' Company by the officer appointed by the said Company for the purposes of this Act, and shall at all convenient times be open to the inspection of any person on payment of One Shilling for every entry which shall be searched for or inspected in the said book; and that such officer shall, whenever thereunto reasonably required,

give a copy of any entry in such book, certified under his hand, and impressed with the stamp of the said Company, to be provided by them for that purpose, and which they are hereby required to provide, to any person requiring the same, on payment to him of the sum of Five Shillings; and such copies so certified and impressed shall be received in evidence in all Courts, and in all summary proceedings, and shall be *primâ facie* proof of the proprietorship or assignment of copyright or licence as therein expressed, but subject to be rebutted by other evidence, and in the case of dramatic or musical pieces shall be *primâ facie* proof of the right of representation or performance, subject to be rebutted as aforesaid.

Making false entry in the Book of Registry a misdemeanour.

12. And be it enacted that if any person shall wilfully make or cause to be made any false entry in the Registry Book of the Stationers' Company, or shall wilfully produce or cause to be tendered in evidence any paper falsely purporting to be a copy of any entry in the said Book, he shall be guilty of an indictable misdemeanour, and shall be punished accordingly.

Entries of copyright may be made in the Book of Registry.

13. And be it enacted that after the passing of this Act it shall be lawful for the proprietor of copyright in any book heretofore published, or in any book hereafter to be published, to make entry in the Registry Book of the Stationers' Company of the title of such book, the time of the first publication thereof, the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright, in the form in that behalf given in the Schedule to this Act annexed, upon payment of the sum of Five Shillings to the officer of the said Company; and that it shall be lawful for every such registered proprietor to assign his interest, or any portion of his interest therein, by making entry in the said Book of Registry of such assignment, and of the name and place of abode of the assignee thereof, in the form given in that behalf in the said Schedule, on payment of the like sum; and such assignment so entered

shall be effectual in law to all intents and purposes whatsoever, without being subject to any stamp or duty, and shall be of the same force and effect as if such assignment had been made by deed.

Persons aggrieved by any entry in the Book of Registry may apply to a Court of Law in term, or Judge in vacation, who may order such entry to be varied or expunged.

14. And be it enacted that if any person shall deem himself aggrieved by any entry made under colour of this Act in the said Book of Registry, it shall be lawful for such person to apply by motion to the Court of Queen's Bench, Court of Common Pleas, or Court of Exchequer, in term time, or to apply by summons to any Judge of either of such Courts in vacation, for an Order that such entry may be expunged or varied; and that upon any such application by motion or summons to either of the said Courts, or to a Judge as aforesaid, such Court or Judge shall make such Order for expunging, varying, or confirming such entry, either with or without costs, as to such Court or Judge shall seem just; and the officer appointed by the Stationers' Company for the purposes of this Act shall, on the production to him of any such Order for expunging or varying any such entry, expunge or vary the same according to the requisitions of such Order.

Remedy for the piracy of books by action on the case.

15. And be it enacted that if any person shall, in any part of the British Dominions, after the passing of this Act, print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall import for sale or hire any such book so having been unlawfully printed from parts beyond the sea, or knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose to sale or hire, or cause to be sold, published, or exposed to sale or hire, or shall have in his possession, for sale or hire, any such book so unlawfully printed or imported, without such consent as aforesaid, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright, to be brought in any Court of Record in that part of the British Dominions in which the offence shall be committed: Provided always, that in Scotland such offender shall be liable to an action in the

Court of Session in Scotland which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there.

In actions for piracy the defendant to give notice of the objections to the plaintiff's title on which he means to rely.

16. And be it enacted that after the passing of this Act in any action brought within the British Dominions against any person for printing any such book for sale, hire, or exportation, or for importing, selling, publishing, or exposing to sale or hire, or causing to be imported, sold, published, or exposed to sale or hire, any such book, the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action; and if the nature of his defence be that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when and the place where such book was first published, otherwise the defendant in such action shall not at the trial or hearing of such action be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright therein; and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the copyright therein, than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication with the title, time, and place specified in such notice.

17. And be it enacted that after the passing of this Act it shall not be lawful for any person, not being the proprietor of the copyright, or some person authorised by him, to import into any part of the United Kingdom, or into any other part of the British Dominions, for sale or hire, any printed book first composed or written or printed and published in any part of the said United Kingdom wherein there shall be copyright, and reprinted in any country or place whatsoever out of the British Dominions; and if any person, not being such proprietor or person authorised as aforesaid, shall import or bring, or cause to be imported or brought for sale or hire, any such printed book into any part of the British Dominions, contrary to the true intent and meaning of this Act, or shall knowingly sell, publish, or expose to sale or let to hire, or have in his possession for sale or hire any such book, then every such book shall be forfeited, and shall be seized by any officer of customs or excise, and the same shall be destroyed by such officer; and every person so offending, being duly convicted thereof before two Justices of the Peace for the county or place in which such book shall be found, shall also for every such offence forfeit the sum of Ten Pounds, and double the value of every copy of such book which he shall so import or cause to be imported into any part of the British Dominions, or shall knowingly sell, publish, or expose to sale or let to hire, or shall cause to be sold, published, or exposed to sale, or let to hire, or shall have in his possession for sale or hire, contrary to the true intent and meaning of this Act, Five Pounds to the use of such officer of customs or excise, and the remainder of the penalty to the use of the proprietor of the copyright in such book.

No person except the proprietor &c. shall import into the British Dominions for sale or hire any book first composed &c. within the United Kingdom and re-printed elsewhere under penalty of forfeiture thereof, and also of £10 and double the value.

Books may be seized by officers of Customs or Excise.

18. And be it enacted that when any publisher or other person shall, before or at the time of the passing of this Act, have projected, conducted, and carried on, or shall hereafter project, conduct, and carry on, or be the proprietor of any encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, or any book whatsoever, and shall have employed or shall employ any

As to the copyright in encyclopædias, periodicals, and works published in a series, reviews, or magazines.

persons to compose the same, or any volumes, parts, essays, articles, or portions thereof, for publication in or as part of the same, and such work, volumes, parts, essays, articles, or portions shall have been or shall hereafter be composed under such employment, on the terms that the copyright therein shall belong to such proprietor, projector, publisher, or conductor, and paid for by such proprietor, projector, publisher, or conductor, the copyright in every such encyclopædia, review, magazine, periodical work, and work published in a series of books or parts, and in every volume, part, essay, article, and portion so composed and paid for, shall be the property of such proprietor, projector, publisher, or other conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by this Act; except only that in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature, after the term of Twenty-eight Years from the first publication thereof respectively, the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act: Provided always, that during the term of Twenty-eight Years the said proprietor, projector, publisher, or conductor shall not publish any such essay, article, or portion separately or singly without the consent previously obtained of the author thereof or his assigns:

Proviso for authors who have reserved the right of publishing their articles in a separate form.

Provided also, that nothing herein contained shall alter or affect the right of any person who shall have been or who shall be so employed as aforesaid to publish any such his composition in a separate form, who by any contract, express or implied, may have reserved or may hereafter reserve to himself such right; but every author reserving, retaining, or having such right shall be entitled to the copyright in such composition when published in a separate form, according to this Act, without prejudice to the right of such proprietor, projector, publisher, or conductor as aforesaid.

Proprietors of encyclopædias,

19. And be it enacted that the proprietor of the copyright in any encyclopædia, review, magazine, periodical

work, or other work published in a series of books or parts, shall be entitled to all the benefits of the registration at Stationers' Hall under this Act, on entering in the said Book of Registry the title of such encyclopædia, review, periodical work, or other work published in a series of books or parts, the time of the first publication of the first volume, number, or part thereof, or of the first number or volume first published after the passing of this Act in any such work which shall have been published heretofore, and the name and place of abode of the proprietor thereof, and of the publisher thereof, when such publisher shall not also be the proprietor thereof.

periodicals, and works published in a series may enter at once at Stationers' Hall, and thereon have the benefit of the registration of the whole.

20. And whereas an Act was passed in the Third Year of the Reign of His late Majesty to amend the law relating to dramatic literary property, and it is expedient to extend the term of the sole liberty of representing dramatic pieces given by that Act to the full times by this Act provided for the continuance of copyright: And whereas it is expedient to extend to musical compositions the benefits of that Act and also of this Act: Be it therefore enacted that the provisions of the said Act of His late Majesty, and of this Act, shall apply to musical compositions, and that the sole liberty of representing or performing, or causing or permitting to be represented or performed, any dramatic piece or musical composition, shall endure and be the property of the author thereof and his assigns, for the term in this Act provided for the duration of copyright in books; and the provisions hereinbefore enacted in respect of the property of such copyright, and of registering the same, shall apply to the liberty of representing or performing any dramatic piece or musical composition, as if the same were herein expressly re-enacted and applied thereto, save and except that the first public representation or performance of any dramatic piece or musical composition shall be deemed equivalent, in the construction of this Act, to the first publication of any book: Provided always, that in case of any dramatic piece or musical composition in manuscript, it shall be sufficient for the persons having the sole liberty of representing or performing, or causing to be represented or performed the

The provisions of 3 & 4 Will. IV. c. 15 extended to musical compositions, and the term of copyright, as provided by this Act, applied to the liberty of representing dramatic pieces and musical compositions.

same, to register only the title thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor thereof, and the time and place of its first representation or performance.

Proprietors of right of dramatic representations shall have all the remedies given by 3 & 4 Will. IV. c. 15.

21. And be it enacted that the person who shall at any time have the sole liberty of representing such dramatic piece or musical composition shall have and enjoy the remedies given and provided in the said Act of the Third and Fourth Years of the Reign of His late Majesty King William the Fourth, passed to amend the laws relating to dramatic literary property, during the whole of his interest therein, as fully as if the same were re-enacted in this Act.

Assignment of copyright of a dramatic piece not to convey the right of representation.

22. And be it enacted that no assignment of the copyright of any book consisting of or containing a dramatic piece or musical composition shall be holden to convey to the assignee the right of representing or performing such dramatic piece or musical composition, unless an entry in the said Registry Book shall be made of such assignment, wherein shall be expressed the intention of the parties that such right should pass by such assignment.

Books pirated shall become the property of the proprietor of the copyright, and may be recovered by action.

23. And be it enacted that all copies of any book wherein there shall be copyright, and of which entry shall have been made in the said Registry Book, and which shall have been unlawfully printed or imported without the consent of the registered proprietor of such copyright, in writing, under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright, and who shall be registered as such, and such registered proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same, or damages for the detention thereof, in an action of detinue, from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of trover.

No proprietor of copyright

24. And be it enacted that no proprietor of copyright in any book which shall be first published after the

passing of this Act shall maintain any action or suit, at law or in equity, or any summary proceeding, in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made, in the Book of Registry of the Stationers' Company, of such book pursuant to this Act: Provided always, that the omission to make such entry shall not affect the copyright in any book, but only the right to sue or proceed in respect of the infringement thereof as aforesaid: Provided also, that nothing herein contained shall prejudice the remedies which the proprietor of the sole liberty of representing any dramatic piece shall have by virtue of the Act passed in the Third Year of the Reign of His late Majesty King William the Fourth to amend the law relating to dramatic literary property, or of this Act, although no entry shall be made in the Book of Registry aforesaid.

commencing after this Act shall sue or proceed for any infringement before making entry in the Book of Registry.

Proviso for dramatic pieces.

25. And be it enacted that all copyright shall be deemed personal property, and shall be transmissible by bequest, or, in case of intestacy, shall be subject to the same law of distribution as other personal property, and in Scotland shall be deemed to be personal and moveable estate.

Copyright shall be personal property.

26. And be it enacted that if any action or suit shall be commenced or brought against any person or persons whomsoever for doing or causing to be done anything in pursuance of this Act, the defendant or defendants in such actions may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff shall become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendent in any case by law hath; and that all actions, suits, bills, indictments, or informations for any offence that shall be committed against this Act shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of none effect:

General issue.

Limitation of actions:

not to extend to actions &c. in respect of the delivery of books.

provided that such limitation of time shall not extend or be construed to extend to any actions, suits, or other proceedings which, under the authority of this Act, shall or may be brought, sued, or commenced for or in respect of any copies of books to be delivered for the use of the British Museum, or of any one of the four libraries hereinbefore mentioned.

Saving the rights of the Universities and the Colleges of Eton, Westminster, and Winchester.

27. Provided always, and be it enacted, that nothing in this Act contained shall affect or alter the rights of the two Universities of Oxford and Cambridge, the Colleges or Houses of Learning within the same, the four Universities in Scotland, the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, and the several Colleges of Eton, Westminster, and Winchester, in any copyrights heretofore and now vested or hereafter to be vested in such Universities and Colleges respectively, anything to the contrary herein contained notwithstanding.

Saving all subsisting rights, contracts, and engagements.

28. Provided also, and be it enacted, that nothing in this Act contained shall affect, alter, or vary any right subsisting at the time of passing of this Act, except as herein expressly enacted; and all contracts, agreements, and obligations made and entered into before the passing of this Act, and all remedies relating thereto, shall remain in full force, anything herein contained to the contrary notwithstanding.

Extent of the Act.

29. And be it enacted that this Act shall extend to the United Kingdom of Great Britain and Ireland, and to every part of the British Dominions.

SCHEDULE

TO WHICH THE PRECEDING ACT REFERS.

No. 1.

FORM OF MINUTE OF CONSENT to be entered at Stationers' Hall.

We, the undersigned, *A.B.*, of , the Author of a certain Book, intituled *Y.Z.* [*or* the personal representative of the Author, *as the case may be*], and *C.D.*, of , do hereby certify, That we have consented and agreed to accept the benefits of the Act passed in the Fifth Year of the Reign of Her Majesty Queen Victoria, Cap. , for the Extension of the Term of Copyright therein provided by the said Act, and hereby declare that such extended term of Copyright therein is the property of the said *A.B.* or *C.D.*

Dated this day of 18 .

Witness (Signed) *A.B.*
C.D.

To the Registering Officer appointed by the Stationers' Company.

No. 2.

FORM OF REQUIRING ENTRY OF PROPRIETORSHIP.

I, *A.B.*, of , do hereby certify that I am the Proprietor of the Copyright of a Book, intituled *Y.Z.*, and I hereby require you to make entry in the Register Book of the Stationers' Company of my Proprietorship of such Copyright, according to the particulars underwritten.

Title of Book.	Name of Publisher and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
Y.Z.		*A.B.*	

Dated this day of 18 .

Witness, *C.D.* (Signed) *A.B.*

No. 3.

ORIGINAL ENTRY OF PROPRIETORSHIP OF COPYRIGHT OF A BOOK.

Time of making the Entry.	Title of Book.	Name of the Publisher, and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
	Y.Z.	*A.B.*	*C.D.*	

No. 4.

FORM OF CONCURRENCE OF THE PARTY ASSIGNING IN ANY BOOK PREVIOUSLY REGISTERED.

I, *A.B.*, of , being the Assigner of the Copyright of the Book hereunder described, do hereby require you to make Entry of the Assignment of the Copyright therein.

Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
Y.Z.	*A.B.*	*C.D.*

Dated this day of , 18 .

(Signed) *A.B.*

No. 5.

FORM OF ENTRY OF ASSIGNMENT OF COPYRIGHT IN ANY BOOK PREVIOUSLY REGISTERED.

Date of Entry.	Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
	[*Set out the Title of the Book, and refer to the page of the Registry Book in which the original entry of the Copyright thereof is made.*]	*A.B.*	*C.D.*

An Act to Amend the Law relating to International Copyright.

[10th May, 1844.

(7 VICTORIA, CHAPTER 12.)

WHEREAS by an Act passed in the Session of Parliament held in the First and Second Years of the Reign of Her present Majesty, intituled "An Act for securing to Authors in certain cases the Benefit of International Copyright" (and which Act is hereinafter, for the sake of perspicuity, designated as "the International Copyright Act"), Her Majesty was empowered by Order in Council to direct that the authors of books which should after a future time, to be specified in such Order in Council (*a*), be published in any Foreign Country, to be specified in such Order in Council, and their executors, administrators, and assigns, should have the sole liberty of printing and reprinting such books within the British Dominions for such term as Her Majesty should by such Order in Council direct, not exceeding the term which authors, being British subjects, were then (that is to say) at the time of passing the said Act, entitled to in respect of books first published in the United Kingdom; and the said Act contains divers enactments securing to authors and their representatives the copyright in the books to which any such Order in Council should extend: And whereas an Act was passed in the Session of Parliament held in the Fifth and Sixth Years of the Reign of Her present Majesty, intituled "An Act to Amend the Law of Copyright" (and which Act is hereinafter, for the sake of perspicuity, designated as "the Copyright Amendment Act"), repealing various Acts therein mentioned relating to the copyright of printed books, and extending, defining, and securing to authors and their representatives the copyright of books: And whereas an Act was passed in the Session of Parliament

1 & 2 Vict. c. 59.

5 & 6 Vict. c. 45.

(*a*) See 49 & 50 Vict. c. 33, *post*, p. 165.

held in the Third and Fourth Years of the Reign of His late Majesty King William the Fourth, intituled "An Act to Amend the Laws relating to Dramatic Literary Property" (and which Act is hereinafter, for the sake of perspicuity, designated as "the Dramatic Literary Property Act"), whereby the sole liberty of representing or causing to be represented any dramatic piece in any place of dramatic entertainment in any part of the British Dominions, which should be composed and not printed or published by the author thereof or his assignee, was secured to such author or his assignee; and by the said Act it was enacted that the author of any such production which should thereafter be printed and published, or his assignee, should have the like sole liberty of representation until the end of Twenty-eight Years from the first publication thereof: And whereas by the said Copyright Amendment Act, the provisions of the said Dramatic Literary Property Act and of the said Copyright Amendment Act were made applicable to musical compositions; and it was thereby also enacted that the sole liberty of representing or performing, or causing or permitting to be represented or performed, in any part of the British Dominions, any dramatic piece or musical composition should endure and be the property of the author thereof and his assigns for the term in the said Copyright Amendment Act provided for the duration of the copyright in books, and that the provisions therein enacted in respect of the property of such copyright should apply to the liberty of representing or performing any dramatic piece or musical composition: And whereas under or by virtue of the four several Acts next hereinafter mentioned (that is to say,) an Act passed in the Eighth Year of the Reign of His late Majesty King George the Second, intituled "An Act for the Encouragement of the Arts of Designing, Engraving, and Etching Historical and other Prints, by vesting the properties thereof in the Inventors or Engravers during the time therein mentioned"; an Act passed in the Seventh Year of His late Majesty King George the Third, intituled "An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of King George the Second, for Encouragement of the Arts of Designing, Engraving, and

3 & 4 Will. IV. c. 15.

8 Geo. II. c. 13.

7 Geo. III. c. 38.

Etching Historical and other Prints"; an Act passed in the Seventeenth Year of the Reign of His late Majesty King George the Third, intituled "An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain cases"; and an Act passed in the Session of Parliament held in the Sixth and Seventh Years of the Reign of His late Majesty King William the Fourth, intituled "An Act to extend the Protection of Copyright in Prints and Engravings to Ireland" (and which said four several Acts are hereinafter, for the sake of perspicuity, designated as the Engraving Copyright Acts); every person who invents or designs, engraves, etches, or works in mezzotinto or chiaro oscuro, or from his own work, design, or invention causes or procures to be designed, engraved, etched, or worked in mezzotinto or chiaro oscuro any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, and every person who engraves, etches, or works in mezzotinto or chiaro oscuro, or causes to be engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture either ancient or modern, notwithstanding such print shall not have been graven or drawn from the original design of such graver, etcher, or draughtsman, is entitled to the copyright of such print for the term of Twenty-eight Years from the first publishing thereof; and by the said several Engraving Copyright Acts it is provided that the name of the proprietor shall be truly engraved on each plate, and printed on every such print, and remedies are provided for the infringement of such copyright: And whereas under and by virtue of an Act passed in the Thirty-eighth Year of the Reign of His late Majesty King George the Third, intituled "An Act for encouraging the Art of making new Models and Casts of Busts and other things therein mentioned," and of an Act passed in the Fifty-fourth Year of the Reign of His late Majesty King George the Third, intituled "An Act to amend and render more effectual an Act of His present Majesty, for encouraging the Art of making new Models and Casts of Busts and other things therein mentioned, and for giving

17 Geo. III. c. 57.

6 & 7 Will. IV. c. 59.

38 Geo. III. c. 71.

54 Geo. III. c. 56.

further encouragement to such Arts" (and which said Acts are, for the sake of perspicuity, hereinafter designated as the Sculpture Copyright Acts), every person who makes or causes to be made any new and original sculpture, or model or copy or cast of the human figure, any bust or part of the human figure clothed in drapery or otherwise, any animal or part of any animal combined with the human figure or otherwise, any subject, being matter of invention in sculpture, any alto or basso relievo, representing any of the matters aforesaid, or any cast from nature of the human figure or part thereof, or of any animal or part thereof, or of any such subject representing any of the matters aforesaid, whether separate or combined, is entitled to the copyright in such new and original sculpture, model, copy, and cast, for Fourteen Years from first putting forth and publishing the same, and for an additional period of Fourteen Years in case the original maker is living at the end of the first period; and by the said Acts it is provided that the name of the proprietor, with the date of the publication thereof, is to be put on all such sculptures, models, copies, and casts, and remedies are provided for the infringement of such copyright: And whereas the powers vested in Her Majesty by the said International Copyright Act are insufficient to enable Her Majesty to confer upon authors of books first published in foreign countries copyright of the like duration, and with the like remedies for the infringement thereof, which are conferred and provided by the said Copyright Amendment Act with respect to authors of books first published in the British Dominions; and the said International Copyright Act does not empower Her Majesty to confer any exclusive right of representing or performing dramatic pieces or musical compositions first published in foreign countries upon the authors thereof, nor to extend the privilege of copyright to prints and sculpture first published abroad; and it is expedient to vest increased powers in Her Majesty in this respect, and for that purpose to repeal the said International Copyright Act, and to give such other powers to Her Majesty, and to make such further provisions, as are hereinafter contained: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of

the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the said recited Act herein designated as the International Copyright Act shall be and the same is hereby repealed.

Repeal of International Copyright Act.

2. And be it enacted that it shall be lawful for Her Majesty, by any Order of Her Majesty in Council, to direct that, as respects all or any particular class or classes of the following works, (namely) books, prints, articles of sculpture, and other works of art, to be defined in such Order, which shall after a future time, to be specified in such Order, be first published in any foreign country to be named in such Order, the authors, inventors, designers, engravers, and makers thereof respectively, their respective executors, administrators, and assigns, shall have the privilege of copyright therein during such period or respective periods as shall be defined in such Order, not exceeding, however, as to any of the above-mentioned works, the term of copyright which authors, inventors, designers, engravers, and makers of the like works respectively first published in the United Kingdom may be then entitled to under the hereinbefore recited Acts respectively, or under any Acts which may hereafter be passed in that behalf.

Her Majesty, by Order in Council, may direct that authors &c. of works first published in foreign countries shall have copyright therein within Her Majesty's Dominions.

3. And be it enacted that in case any such Order shall apply to books, all and singular the enactments of the said Copyright Amendment Act, and of any other Act for the time being in force with relation to the copyright in books first published in this country, shall, from and after the time so to be specified in that behalf in such Order, and subject to such limitation as to the duration of the copyright as shall be therein contained, apply to and be in force in respect of the books to which such Order shall extend, and which shall have registered as hereinafter is provided, in such and the same manner as if such books were first published in the United Kingdom, save and except such of the said enactments, or such parts thereof, as shall be excepted in

If the Order applies to books, the Copyright Law as to books first published in this country shall apply to the books to which the Order relates, with certain exceptions.

such Order, and save and except such of the said enactments as relate to the delivery of copies of books at the British Museum, and to or for the use of the other libraries mentioned in the said Copyright Amendment Act.

If the Order applies to prints, sculptures &c. the Copyright Law as to prints or sculptures first published in thiscountry shall apply to the prints, sculptures &c. to which such Order relates.

And be it enacted that in case any such Order shall apply to prints, articles of sculpture, or to any such other works of art as aforesaid, all and singular the enactments of the said Engraving Copyright Acts and the said Sculpture Copyright Acts, or of any other Act for the time being in force with relation to the copyright in prints or articles of sculpture first published in this country, and of any Act for the time being in force with relation to the copyright in any similar works of art first published in this country, shall, from and after the time so to be specified in that behalf in such Order, and subject to such limitation as to the duration of the copyright as shall be therein contained respectively, apply to and be in force in respect of the prints, articles of sculpture, and other works of art to which such Order shall extend, and which shall have been registered as hereinafter is provided, in such and the same manner as if such articles and other works of art were first published in the United Kingdom, save and except such of the said enactments or such parts thereof as shall be excepted in such Order.

Her Majesty may, by Order in Council, direct that authors and composers of dramatic pieces and musical compositions first publicly represented and performed in foreign countries shall have similar

5. And be it enacted that it shall be lawful for Her Majesty, by any Order of Her Majesty in Council, to direct that the authors of dramatic pieces and musical compositions which shall after a future time, to be specified in such Order, be first publicly represented or performed in any foreign country to be named in such Order, shall have the sole liberty of representing or performing in any part of the British Dominions such dramatic pieces or musical compositions during such period as shall be defined in such Order, not exceeding the period during which authors of dramatic pieces and musical compositions first publicly represented or performed in the United Kingdom may for the time be entitled by law to the sole liberty of representing and performing the same; and from and after

rights in the British Dominions.

the time so specified in any such last-mentioned Order the enactments of the said Dramatic Literary Property Act and of the said Copyright Amendment Act, and of any other Act for the time being in force with relation to the liberty of publicly representing and performing dramatic pieces or musical compositions, shall, subject to such limitation as to the duration of the right conferred by any such Order as shall be therein contained, apply to and be in force in respect of the dramatic pieces and musical compositions to which such Order shall extend, and which shall have been registered as hereinafter is provided, in such and the same manner as if such dramatic pieces and musical compositions had been first publicly represented and performed in the British Dominions, save and except such of the said enactments or such parts thereof as shall be excepted in such Order.

Particulars to be observed as to registry and to delivery of copies.

6. Provided always, and be it enacted, that no author of any book, dramatic piece, or musical composition, or his executors, administrators, or assigns, and no inventor, designer, or engraver of any print, or maker of any article of sculpture, or other work of art, his executors, administrators, or assigns, shall be entitled to the benefit of this Act, or of any Order in Council to be issued in pursuance thereof, unless, within a time or times to be in that behalf prescribed in each such Order in Council, such book, dramatic piece, musical composition, print, article of sculpture, or other work of art, shall have been so registered, and such copy thereof shall have been so delivered as hereinafter is mentioned, (that is to say) as regards such book, and also such dramatic piece or musical composition (in the event of the same having been printed), the title to the copy thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the copyright thereof, the time and place of the first publication, representation, or performance thereof, as the case may be, in the foreign country named in the Order in Council under which the benefits of this Act shall be claimed, shall be entered in the Register Book of the Company of Stationers in London, and one printed copy of

the whole of such book, and of such dramatic piece or musical composition, in the event of the same having been printed, and of every volume thereof, upon the best paper upon which the largest number or impression of the book, dramatic piece, or musical composition shall have been printed for sale, together with all maps and prints relating thereto, shall be delivered to the officer of the Company of Stationers at the Hall of the said company; and as regards dramatic pieces and musical compositions in manuscript, the title to the same, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the right of representing or performing the same, and the time and place of the first representation or performance thereof in the country named in the Order in Council under which the benefit of the Act shall be claimed, shall be entered in the said Register Book of the said Company of Stationers in London; and as regards prints, the title thereof, the name and place of abode of the inventor, designer, or engraver thereof, the name of the proprietor of the copyright therein, and the time and place of the first publication thereof in the foreign country named in the Order in Council under which the benefits of the Act shall be claimed, shall be entered in the said Register Book of the said Company of Stationers in London, and a copy of such print, upon the best paper upon which the largest number or impressions of the print shall have been printed for sale, shall be delivered to the officer of the Company of Stationers at the Hall of the said company; and as regards any such article of sculpture, or any such other work of art as aforesaid, a descriptive title thereof, the name and place of abode of the maker thereof, the name of the proprietor of the copyright therein, and the time and place of its first publication in the foreign country named in the Order in Council under which the benefit of this Act shall be claimed shall be entered in the said Register Book of the said Company of Stationers in London; and the officer of the said Company of Stationers receiving such copies so to be delivered as aforesaid shall give a receipt in writing for the same, and such delivery shall to all intents and purposes be a sufficient delivery under the provisions of this Act.

In case of books published anonymously the name of the publisher to be sufficient.

7. Provided always, and be it enacted, that if a book be published anonymously, it shall be sufficient to insert in the entry thereof in such Register Book the name and place of abode of the first publisher thereof, instead of the name and place of abode of the author thereof, together with a declaration that such entry is made either on behalf of the author or on behalf of such first publisher, as the case may require.

The provisions of the Copyright Amendment Act as regards entries in the Register Book of the Company of Stationers &c. to apply to entries under this Act.

8. And be it enacted that the several enactments in the said Copyright Amendment Act contained with relation to keeping the said Register Book, and the inspection thereof, the searches therein, and the delivery of certified and stamped copies thereof, the reception of such copies in evidence, the making of false entries in the said book, and the production in evidence of papers falsely purporting to be copies of entries in the said book, the applications to the Courts and Judges by persons aggrieved by entries in the said book, and the expunging and varying such entries, shall apply to the books, dramatic pieces, and musical compositions, prints, articles of sculpture, and other works of art, to which any Order in Council issued in pursuance of this Act shall extend, and to the entries and assignments of copyright and proprietorship therein, in such and the same manner as if such enactments were here expressly enacted in relation thereto, save and except that the forms of entry prescribed by the said Copyright Amendment Act may be varied to meet the circumstances of the case, and that the sum to be demanded by the officer of the said Company of Stationers for making any entry required by this Act shall be One Shilling only.

As to expunging or varying entry grounded on wrongful first publication.

9. And be it enacted that every entry made in pursuance of this Act of a first publication shall be *primâ facie* proof of a rightful first publication; but if there be a wrongful first publication, and any party have availed himself thereof to obtain an entry of a spurious work, no Order for expunging or varying such entry shall be made unless it be proved to the satisfaction of the Court or of the Judge taking cognizance of the application for expunging

or varying such entry, first, with respect to a wrongful publication in a country to which the author or first publisher does not belong, and in regard to which there does not subsist with this country any Treaty of International Copyright, that the party making the application was the author or first publisher, as the case requires; second, with respect to a wrongful first publication either in the country where a rightful first publication has taken place, or in regard to which there subsists with this country a Treaty of International Copyright, that a Court of competent jurisdiction in any such country where such wrongful first publication has taken place has given judgment in favour of the right of the party claiming to be the author or first publisher.

Copies of books wherein copyright is subsisting under this Act printed in foreign countries other than those wherein the book was first published prohibited to be imported.

10. And be it enacted that all copies of books wherein there shall be any subsisting copyright under or by virtue of this Act, or of any Order in Council made in pursuance thereof, printed or reprinted in any foreign country except that in which such books were first published, shall be and the same are hereby absolutely prohibited to be imported into any part of the British Dominions, except by or with the consent of the registered proprietor of the copyright thereof, or his agent authorised in writing, and if imported contrary to this prohibition the same and the importers thereof shall be subject to the enactments in force relating to goods prohibited to be imported by any Act relating to the Customs; and as respects any such copies so prohibited to be imported, and also as respects any copies unlawfully printed in any place whatsoever of any books wherein there shall be any such subsisting copyright as aforesaid, any person who shall in any part of the British Dominions import such prohibited or unlawfully printed copies, or who, knowing such copies to be so unlawfully imported or unlawfully printed, shall sell, publish, or expose to sale or hire, or shall cause to be sold, published, or exposed to sale or hire, or have in his possession for sale or hire, any such copies so unlawfully imported or unlawfully printed, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright, to be brought and

prosecuted in the same Courts and in the same manner, and with the like restrictions upon the proceedings of the defendant, as are respectively prescribed in the said Copyright Amendment Act with relation to actions thereby authorised to be brought by proprietors of copyright against persons importing or selling books unlawfully printed in the British Dominions.

Officer of Stationers' Company to deposit books &c. in the British Museum.

11. And be it enacted that the said officer of the said Company of Stationers shall receive at the Hall of the said Company every book, volume, or print so to be delivered as aforesaid, and within one calendar month after receiving such book, volume, or print shall deposit the same in the Library of the British Museum.

Second or subsequent editions.

12. Provided always, and be it enacted, that it shall not be requisite to deliver to the said officer of the said Stationers' Company any printed copy of the second or of any subsequent edition of any book or books so delivered as aforesaid, unless the same shall contain additions or alterations.

Orders in Council may specify different periods for different foreign countries and for different classes of works.

13. And be it enacted that the respective terms to be specified by such Orders in Council respectively for the continuance of the privilege to be granted in respect of works to be first published in foreign countries may be different for works first published in different foreign countries and for different classes of such works; and that the times to be prescribed for the entries to be made in the Register Book of the Stationers' Company, and for the deliveries of the books and other articles to the said officer of the Stationers' Company, as hereinbefore is mentioned, may be different for different foreign countries and for different classes of books or other articles.

14. *Repealed by 49 & 50 Vict. c. 33, s. 12.*

Orders in Council to be published in *Gazette*,

15. And be it enacted that every Order in Council to be made under the authority of this Act shall as soon as may be after the making thereof by Her Majesty in Council

and to have same effect as this Act.

be published in the *London Gazette*, and from the time of such publication shall have the same effect as if every part thereof were included in this Act.

Orders in Council to be laid before Parliament.

16. And be it enacted that a copy of every Order of Her Majesty in Council made under this Act shall be laid before both Houses of Parliament within six weeks after issuing the same, if Parliament be then sitting, and if not, then within six weeks after the commencement of the then next Session of Parliament.

17 *and* **18.** *Repealed by 49 & 50 Vict. c. 33, s. 12.*

Authors of works first published in foreign countries not entitled to copyright except under this Act

19. And be it enacted that neither the author of any book, nor the author or composer of any dramatic piece or musical composition, nor the inventor, designer, or engraver of any print, nor the maker of any article of sculpture, or of such other work of art as aforesaid, which shall after the passing of this Act be first published out of Her Majesty's Dominions, shall have any copyright therein respectively, or any exclusive right to the public representation or performance thereof, otherwise than such (if any) as he may become entitled to under this Act.

Interpretation Clause.

20. And be it enacted that in the construction of this Act the word "book" shall be construed to include "volume," "pamphlet," "sheet of letterpress," "sheet of music," "map," "chart," or "plan"; and the expression "articles of sculpture" shall mean all such sculptures, models, copies, and casts as are described in the said Sculpture Copyright Acts, and in respect of which the privileges of copyright are thereby conferred; and the words "printing" and "reprinting" shall include engraving and any other method of multiplying copies; and the expression "Her Majesty" shall include the heirs and successors of Her Majesty; and the expressions "Order of Her Majesty in Council," "Order in Council," and "Order," shall respectively mean Order of Her Majesty acting by and with the advice of Her Majesty's Most Honourable Privy Council; and the expression "Officer of the Company of Stationers" shall mean the officer

appointed by the said Company of Stationers for the purposes of the said Copyright Amendment Act; and in describing any persons or things any word importing the plural number shall mean also one person or thing, and any word importing the singular number shall include several persons or things, and any word importing the masculine shall include also the feminine gender, unless in any of such cases there shall be something in the subject or context repugnant to such construction.

An Act to Amend the Law relating to the Protection in the Colonies of Works entitled to Copyright in the United Kingdom. [22nd July, 1847.

(10 & 11 Victoria, Chapter 95.)

WHEREAS by an Act passed in the Session of Parliament holden in the Fifth and Sixth Years of Her present Majesty, intituled "An Act to Amend the Law of Copyright," it is amongst other things enacted that it shall not be lawful for any person not being the proprietor of the copyright, or some person authorised by him, to import into any part of the United Kingdom, or into any other part of the British Dominions, for sale or hire, any printed book first composed or written or printed or published in any part of the United Kingdom wherein there shall be copyright, and reprinted in any country or place whatsoever out of the British Dominions: And whereas by an Act passed in the Session of Parliament holden in the Eighth and Ninth Years of the Reign of Her present Majesty, intituled "An Act to Regulate the Trade of the British Possessions abroad," books wherein the copyright is subsisting, first composed or written or printed in the United Kingdom, and printed or reprinted in any other country, are absolutely prohibited to be imported into the British Possessions abroad: And whereas by the said last-recited Act it is enacted that all laws, bye-laws, usages, or customs in practice, or endeavoured or pretended to be in force or practice, in any of the British Possessions in America, which are in anywise repugnant to the said Act or to any Act of Parliament made or to be made in the United Kingdom, so far as such Act shall relate to and mention the said Possessions, are and shall be null and void to all intents and purposes whatsoever: Now be it enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

5 & 6 Vict. c. 45.

8 & 9 Vict. c. 93.

and Commons, in this present Parliament assembled, and by the authority of the same, that in case the Legislature or proper legislative authorities in any British Possession shall be disposed to make due provision for securing or protecting the rights of British authors in such Possession, and shall pass an Act or make an Ordinance for that purpose, and shall transmit the same in the proper manner to the Secretary of State, in order that it may be submitted to Her Majesty, and in case Her Majesty shall be of opinion that such Act or Ordinance is sufficient for the purpose of securing to British authors reasonable protection within such Possession, it shall be lawful for Her Majesty, if She think fit so to do, to express Her royal approval of such Act or Ordinance, and thereupon to issue an Order in Council declaring that so long as the provisions of such Act or Ordinance continue in force within such Colony the prohibitions contained in the aforesaid Acts, and hereinbefore recited, and any prohibitions contained in the said Acts or in any other Acts against the importing, selling, letting out to hire, exposing for sale or hire, or possessing foreign reprints of books first composed, written, printed, or published in the United Kingdom, and entitled to copyright therein, shall be suspended so far as regards such Colony; and thereupon such Act or Ordinance shall come into operation, except so far as may be otherwise provided therein, or as may be otherwise directed by such Order in Council, anything in the said last-recited Act or in any other Act to the contrary notwithstanding.

HerMajesty may suspend in certain cases the prohibitions against the admission of pirated books into the Colonies in certain cases.

2. And be it enacted that every such Order in Council shall, within one week after the issuing thereof, be published in the *London Gazette*, and that a copy thereof, and of every such Colonial Act or Ordinance so approved as aforesaid by Her Majesty, shall be laid before both Houses of Parliament within six weeks after the issuing of such Order, if Parliament be then sitting, or if Parliament be not then sitting, then within six weeks after the opening of the next Session of Parliament.

Orders in Council to be published in *Gazette*.

Orders in Council and the Colonial Acts or Ordinances to be laid before Parliament.

An Act to enable Her Majesty to carry into effect a Convention with France on the Subject of Copyright; to extend and explain the International Copyright Acts; and to explain the Acts relating to Copyright in Engravings. [28th May, 1852.

(15 VICTORIA, CHAPTER 12.)

7 & 8 Vict. c. 12.

WHEREAS an Act was passed in the Seventh Year of the Reign of Her present Majesty, intituled "An Act to Amend the Law relating to International Copyright" (hereinafter called "The International Copyright Act"): And whereas a Convention has lately been concluded between Her Majesty and the French Republic for extending in each country the enjoyment of copyright in works of Literature and the Fine Arts first published in the other, and for certain reductions of duties now levied on books, prints, and musical works published in France: And whereas certain of the stipulations on the part of Her Majesty contained in the said Treaty require the authority of Parliament: And whereas it is expedient that such authority should be given, and that Her Majesty should be enabled to make similar stipulations in any Treaty on the subject of copyright which may hereafter be concluded with any Foreign Power: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Translations

Partial Repeal of 7 & 8 Vict. c. 12, s. 18.

1. The Eighteenth Section of the said Act of the Seventh Year of Her present Majesty, Chapter Twelve, shall be repealed so far as is inconsistent with the provisions hereinafter contained.

2.
3.
4.
5. } *Repealed by 49 & 50 Vict. c. 33, s. 12.*

Adaptations &c. of dramatic pieces to the English stage not prevented.

6. Nothing herein contained shall be so construed as to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country (*a*).

All articles in newspapers &c. relating to politics may be republished or translated; and also all similar articles on any subject unless the author has notified his intention to reserve the right.

7. Notwithstanding anything in the said International Copyright Act or in this Act contained, any article of political discussion which has been published in any newspaper or periodical in a foreign country may, if the source from which the same is taken be acknowledged, be republished or translated in any newspaper or periodical in this country; and any article relating to any other subject which has been so published as aforesaid may, if the source from which the same is taken be acknowledged, be republished or translated in like manner, unless the author has signified his intention of preserving the copyright therein, and the right of translating the same, in some conspicuous part of the newspaper or periodical in which the same was first published, in which case the same shall, without the formalities required by the next following Section, receive the same protection as is by virtue of the International Copyright Act or this Act extended to books.

8. *Repealed by 49 & 50 Vict. c. 33, s. 12.*

Pirated copies prohibited to be imported, except with consent of proprietor.

9. All copies of any works of Literature or Art wherein there is any subsisting copyright by virtue of the International Copyright Act and this Act, or of any Order in Council made in pursuance of such Acts or either of them, and which are printed, reprinted, or made in any foreign country except that in which such work shall be first published, and all unauthorised translations of any book or dramatic piece the publication or public representation in the British Dominions of translations whereof not authorised as in this

(*a*) *cf.* 38 & 39 Vict. c. 12, and Order in Council of 1887, Clause 6, *post*, p. 181.

Act mentioned shall for the time being be prevented under any Order in Council made in pursuance of this Act, are hereby absolutely prohibited to be imported into any part of the British Dominions, except by or with the consent of the registered proprietor of the copyright of such work or of such book or piece, or his agent authorised in writing; and the provisions of the Act of the Sixth Year of Her Majesty "To Amend the Law of Copyright," for the forfeiture, seizure, and destruction of any printed book first published in the United Kingdom, wherein there shall be copyright, and reprinted in any country out of the British Dominions, and imported into any part of the British Dominions by any person not being the proprietor of the copyright, or a person authorised by such proprietor, shall extend and be applicable to all copies of any works of Literature and Art, and to all translations the importation whereof into any part of the British Dominions is prohibited under this Act.

Provisions of 5 & 6 Vict. c. 45 as to forfeiture &c. of pirated works &c. to extend to works prohibited to be imported under this Act.

Foregoing provisions and 7 & 8 Vict. c. 12 to be read as one Act.

10. The provisions hereinbefore contained shall be incorporated with the International Copyright Act, and shall be read and construed therewith as one Act.

11. *Repealed by 49 & 50 Vict. c. 33, s. 12.*

Reduction of Duties.

Recital of 9 & 10 Vict. c. 58.

12. And whereas an Act was passed in the Tenth Year of Her present Majesty, intituled "An Act to Amend an Act of the Seventh and Eighth Years of Her present Majesty, for Reducing, under certain circumstances, the Duties payable upon Books and Engravings": And whereas by the said Convention with the French Republic it was stipulated that the duties on books, prints, and drawings published in the territories of the French Republic should be reduced to the amounts specified in the Schedule to the said Act of the Tenth Year of Her present Majesty, Chapter Fifty-eight: And whereas Her Majesty has, in pursuance of the said Convention, and in exercise of the powers given by the said Act, by Order in Council declared that such duties shall be reduced accordingly: And whereas by the said Convention it was further stipulated that the said rates of duty should not be raised during the continuance of the said Convention;

and that if during the continuance of the said Convention any reduction of those rates should be made in favour of books, prints, or drawings published in any other country, such reduction should be at the same time extended to similar articles published in France: And whereas doubts are entertained whether such last-mentioned stipulations can be carried into effect without the authority of Parliament:

Be it enacted that the said rates of duty so reduced as aforesaid shall not be raised during the continuance of the said Convention; and that if during the continuance of the said Convention any further reduction of such rates is made in favour of books, prints, or drawings published in any other foreign country, Her Majesty may, by Order in Council, declare that such reduction shall be extended to similar articles published in France, such Order to be made and published in the same manner, and to be subject to the same provisions as Orders made in pursuance of the said Act of the Tenth Year of Her present Majesty, Chapter Fifty-eight.

Rates of duty not to be raised during continuance of Treaty, and if further reduction is made for other countries it may be extended to France.

13. And whereas doubts have arisen as to the construction of the Schedule of the Act of the Tenth Year of Her present Majesty, Chapter Fifty-eight:

It is hereby declared that for the purposes of the said Act every work published in the country of export, of which part has been originally produced in the United Kingdom, shall be deemed to be and be subject to the duty payable on "works originally produced in the United Kingdom, and republished in the country of export," although it contains also original matter not produced in the United Kingdom, unless it shall be proved to the satisfaction of the Commissioners of Her Majesty's Customs by the importer, consignee, or other person entering the same that such original matter is at least equal to the part of the work produced in the United Kingdom, in which case the work shall be subject only to the duty on "works not originally produced in the United Kingdom."

For removal of doubts as to construction of Schedule to 9 & 10 Vict. c. 58.

Lithographs &c.

14. And whereas by the four several Acts of Parliament following (that is to say), an Act of the Eighth Year of the Reign of King George the Second, Chapter Thirteen; an

Recital of 8 Geo. II. c. 13,

7 Geo. III. c. 38, 17 Geo. III. c. 57, 6&7 Will. IV. c. 59.

Act of the Seventh Year of the Reign of King George the Third, Chapter Thirty-eight; an Act of the Seventeeth Year of the Reign of King George the Third, Chapter Fifty-seven; and an Act of the Seventh Year of King William the Fourth, Chapter Fifty-nine, provision is made for securing to every person who invents, or designs, engraves, etches, or works in mezzotinto or chiaro oscuro, or, from his own work, design, or invention, causes or procures to be designed, engraved, etched, or worked in mezzotinto or chiaro oscuro, any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, and to every person who engraves, etches, or works in mezzotinto or chiaro oscuro, or causes to be engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture, notwithstanding such print has not been graven or drawn from his own original design, certain copyrights therein defined: And whereas doubts are entertained whether the provisions of the said Acts extend to lithographs and certain other impressions, and it is expedient to remove such doubts:

For removal of doubts as to the provisions of the said Acts including lithographs, prints, &c.

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.

An Act for Amending the Law relating to Copyright in Works of the Fine Arts, and for repressing the Commission of Fraud in the Production and Sale of such Works. [29th July, 1862.

(25 & 26 Victoria, Chapter 68.)

WHEREAS by Law, as now established, the Authors of Paintings, Drawings, and Photographs have no copyright in such their works, and it is expedient that the Law should in that respect be amended: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Copyright in works hereafter made or sold to vest in the author for his life and for Seven Years after his death.

1. The author, being a British subject or resident within the Dominions of the Crown, of every original painting, drawing, and photograph which shall be or shall have been made either in the British Dominions or elsewhere, and which shall not have been sold or disposed of before the commencement of this Act, and his assigns, shall have the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing, and the design thereof, or such photograph, and the negative thereof, by any means and of any size, for the term of the natural life of such author, and Seven Years after his death; provided that when any painting or drawing, or the negative of any photograph, shall for the first time after the passing of this Act be sold or disposed of, or shall be made or executed for or on behalf of any other person for a good or a valuable consideration, the person so selling or disposing of or making or executing the same shall not retain the copyright thereof, unless it be expressly reserved to him by agreement in writing, signed at or before the time of such

sale or disposition, by the vendee or assignee of such painting or drawing, or of such negative of a photograph, or by the person for or on whose behalf the same shall be so made or executed, but the copyright shall belong to the vendee or assignee of such painting or drawing, or of such negative of a photograph, or to the person for or on whose behalf the same shall have been made or executed; nor shall the vendee or assignee thereof be entitled to any such copyright, unless at or before the time of such sale or disposition, an agreement in writing, signed by the person so selling or disposing of the same, or by his agent duly authorised, shall have been made to that effect.

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

2. Nothing herein contained shall prejudice the right of any person to copy or use any work in which there shall be no copyright, or to represent any scene or object, notwithstanding that there may be copyright in some representation of such scene or object.

Assignments, licences, &c., to be in writing.

3. All copyright under this Act shall be deemed personal or moveable estate, and shall be assignable at law, and every assignment thereof, and every licence to use or copy by any means or process the design or work which shall be the subject of such copyright, shall be made by some note or memorandum in writing, to be signed by the proprietor of the copyright, or by his agent appointed for that purpose in writing.

Register of Proprietors of Copyright in Paintings, Drawings, and Photographs to be kept at Stationers' Hall as in 5 & 6 Vict. c. 45.

4. There shall be kept at the Hall of the Stationers' Company by the officer appointed by the said Company for the purposes of the Act passed in the Sixth Year of Her present Majesty, intituled "An Act to Amend the Law of Copyright," a book or books, entitled "The Register of Proprietors of Copyright in Paintings, Drawings, and Photographs," wherein shall be entered a memorandum of every copyright to which any person shall be entitled under this Act, and also of every subsequent assignment of any such copyright; and such memorandum shall contain a statement of the date of such agreement or assignment, and of the

names of the parties thereto, and of the name and place of abode of the person in whom such copyright shall be vested by virtue thereof, and of the name and place of abode of the author of the work in which there shall be such copyright, together with a short description of the nature and subject of such work, and in addition thereto, if the person registering shall so desire, a sketch, outline, or photograph of the said work, and no proprietor of any such copyright shall be entitled to the benefit of this Act until such registration, and no action shall be sustainable nor any penalty be recoverable in respect of anything done before registration.

Certain enactments of 5 & 6 Vict. c. 45 to apply to the books to be kept under this Act.

5. The several enactments in the said Act of the Sixth Year of Her present Majesty contained, with relation to keeping the Register Book thereby required, and the inspection thereof, the searches therein, and the delivery of certified and stamped copies thereof, the reception of such copies in evidence, the making of false entries in the said book, and the production in evidence of papers falsely purporting to be copies of entries in the said book, the application to the Courts and Judges by persons aggrieved by entries in the said book, and the expunging and varying such entries shall apply to the book or books to be kept by virtue of this Act, and to the entries and assignments of copyright and proprietorship therein under this Act, in such and the same manner as if such enactments were here expressly enacted in relation thereto, save and except that the forms of entry prescribed by the said Act of the Sixth Year of Her present Majesty may be varied to meet the circumstances of the case, and that the sum to be demanded by the officer of the said Company of Stationers for making any entry required by this Act shall be One Shilling only.

Penalties on infringement of copyright.

6. If the author of any painting, drawing, or photograph in which there shall be subsisting copyright, after having sold or disposed of such copyright, or if any other person, not being the proprietor for the time being of copyright in any painting, drawing, or photograph, shall, without the consent of such proprietor, repeat, copy, colourably imitate,

or otherwise multiply for sale, hire, exhibition, or distribution, or cause or procure to be repeated, copied, colourably imitated, or otherwise multiplied for sale, hire, exhibition, or distribution, any such work or the design thereof, or, knowing that any such repetition, copy, or other imitation has been unlawfully made, shall import into any part of the United Kingdom, or sell, publish, let to hire, exhibit, or distribute, or offer for sale, hire, exhibition, or distribution, or cause or procure to be imported, sold, published, let to hire, distributed, or offered for sale, hire, exhibition, or distribution, any repetition, copy, or imitation of the said work, or of the design thereof, made without such consent as aforesaid, such person for every such offence shall forfeit to the proprietor of the copyright for the time being a sum not exceeding Ten Pounds; and all such repetitions, copies, and imitations made without such consent as aforesaid, and all *negatives of photographs made for the purpose of* obtaining such copies, shall be forfeited to the proprietor of the copyright.

Penalties on fraudulent productions and sales.

7. No person shall do or cause to be done any or either of the following Acts: that is to say—

FIRST.—No person shall fraudulently sign or otherwise affix, or fraudulently cause to be signed or otherwise affixed, to or upon any painting, drawing, or photograph, or the negative thereof, any name, initials, or monogram:

SECONDLY.—No person shall fraudulently sell, publish, exhibit, or dispose of, or offer for sale, exhibition, or distribution, any painting, drawing, or photograph, or negative of a photograph, having thereon the name, initials, or monogram of a person who did not execute or make such work:

THIRDLY.—No person shall fraudulently utter, dispose of, or put off, or cause to be uttered or disposed of, any copy or colourable imitation of any painting, drawing, or photograph, or negative of a photograph, whether there shall be subsisting copyright

therein or not, as having been made or executed by the author or maker of the original work from which such copy or imitation shall have been taken:

FOURTHLY.—Where the author or maker of any painting, drawing, or photograph, or negative of a photograph, made either before or after the passing of this Act, shall have sold or otherwise parted with the possession of such work, if any alteration shall afterwards be made therein by any other person, by addition or otherwise, no person shall be at liberty, during the life of the author or maker of such work, without his consent, to make or knowingly to sell or publish, or offer for sale, such work or any copies of such work so altered as aforesaid, or of any part thereof, as or for the unaltered work of such author or maker:

Every offender under this Section shall, upon conviction, forfeit to the person aggrieved a sum not exceeding Ten Pounds, or not exceeding double the full price, if any, at which all such copies, engravings, imitations, or altered works shall have been sold or offered for sale; and all such copies, engravings, imitations, or altered works shall be forfeited to the person, or the assigns or legal representatives of the person, whose name, initials, or monogram shall be so fraudulently signed or affixed thereto, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid: Provided always, that the penalties imposed by this Section shall not be incurred unless the person whose name, initials, or monogram shall be so fraudulently signed or affixed, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid, shall have been living at or within Twenty Years next before the time when the offence may have been committed. Penalties.

Recovery of pecuniary penalties.

8. All pecuniary penalties which shall be incurred, and all such unlawful copies, imitations, and all other effects and things as shall have been forfeited by offenders,

pursuant to this Act, and pursuant to any Act for the protection of copyright engravings, may be recovered by the person hereinbefore and in any such Act as aforesaid empowered to recover the same respectively, and hereinafter called the complainant or the complainer, as follows:

In England and Ireland. In England and Ireland, either by action against the party offending, or by summary proceeding before any two Justices having jurisdiction where the party offending resides:

In Scotland. In Scotland by action before the Court of Session in ordinary form, or by summary action before the Sheriff of the County where the offence may be committed, or the offender resides, who, upon proof of the offence or offences, either by confession of the party offending, or by the oath or affirmation of one or more credible witnesses, shall convict the offender, and find him liable to the penalty or penalties aforesaid, as also in expenses, and it shall be lawful for the Sheriff, in pronouncing such judgment for the penalty or penalties and costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding: provided always, that it shall be lawful to the Sheriff in the event of his dismissing the action and assoilzieing the defender, to find the complainer liable in expenses, and any judgment so to be pronounced by the Sheriff in such summary application shall be final and conclusive, and not subject to review by advocation, suspension, reduction, or otherwise.

Superior Courts of Record in which any action is pending may make an Order for an injunction, inspection, or account.

9. In any action in any of Her Majesty's Superior Courts of Record at Westminster and in Dublin, for the infringement of any such copyright as aforesaid, it shall be lawful for the Court in which such action is pending, if the Court be then sitting, or if the Court be not sitting then for a Judge of such Court, on the application of the plaintiff or defendant respectively, to make such

Order for an injunction, inspection, or account, and to give such directions respecting such action, injunction, inspection, and account, and the proceedings therein respectively, as to such Court or Judge may seem fit.

Importation of pirated works prohibited.

10. All repetitions, copies, or imitations of paintings, drawings, or photographs, wherein or in the design whereof there shall be subsisting copyright under this Act, and all repetitions, copies, and imitations of the design of any such painting or drawing, or of the negative of any such photograph, which, contrary to the provisions of this Act, shall have been made in any Foreign State, or in any part of the British Dominions, are hereby absolutely prohibited to be imported into any part of the United Kingdom, except by or with the consent of the proprietor of the copyright thereof, or his agent authorised in writing; and if the proprietor of any such copyright, or his agent, shall declare that any goods imported are repetitions, copies, or imitations of any such painting, drawing, or photograph, or of the negative of any such photograph, and so prohibited as aforesaid, then such goods may be detained by the officers of Her Majesty's Customs.

Application in such cases of Customs Acts.

Saving of right to bring action for damages.

11. If the author of any painting, drawing, or photograph, in which there shall be subsisting copyright, after having sold or otherwise disposed of such copyright, or if any other person, not being the proprietor for the time being of such copyright, shall, without the consent of such proprietor, repeat, copy, colourably imitate, or otherwise multiply, or cause or procure to be repeated, copied, colourably imitated, or otherwise multiplied, for sale, hire, exhibition, or distribution, any such work or the design thereof, or the negative of any such photograph, or shall import or cause to be imported into any part of the United Kingdom, or sell, publish, let to hire, exhibit, or distribute, or offer for sale, hire, exhibition, or distribution, or cause or procure to be sold, published, let to hire, exhibited, or distributed, or offered for sale, hire, exhibition, or distribution, any repetition, copy, or imitation, of such work, or

the design thereof, or the negative of any such photograph, made without such consent as aforesaid, then every such proprietor, in addition to the remedies hereby given for the recovery of any such penalties, and forfeiture of any such things as aforesaid, may recover damages by and in a special action on the case, to be brought against the person so offending, and may in such action recover and enforce the delivery to him of all unlawful repetitions, copies, and imitations, and negatives of photographs, or may recover damages for the retention or conversion thereof: Provided that nothing herein contained, nor any proceeding, conviction, or judgment, for any act hereby forbidden, shall affect any remedy which any person aggrieved by such act may be entitled to either at law or in equity.

Provisions of 7 & 8 Vict. c. 12 to be considered as included in this Act.

12. This Act shall be considered as including the provisions of the Act passed in the Session of Parliament held in the Seventh and Eighth Years of Her present Majesty, intitnled "An Act to Amend the Law relating to International Copyright," in the same manner as if such provisions were part of this Act.

An Act to Amend the Law relating to International Copyright. [13th May, 1875.

(38 VICTORIA, CHAPTER 12.)

WHEREAS by an Act passed in the Fifteenth Year of the Reign of Her present Majesty, Chapter Twelve, intituled "An Act to enable Her Majesty to carry into effect a Convention with France on the Subject of Copyright; to extend and explain the International Copyright Acts; and to explain the Acts relating to Copyright in Engravings," it is enacted that "Her Majesty may, by Order in Council, direct that authors of dramatic pieces which are, after a future time to be specified in such Order, first publicly represented in any foreign country, to be named in such Order, their executors, administrators, and assigns, shall, subject to the provisions thereinafter mentioned or referred to, be empowered to prevent the representation in the British Dominions of any translation of such dramatic pieces not authorised by them, for such time as may be specified in such Order, not extending beyond the expiration of Five Years from the time at which the authorised translations of such dramatic pieces are first published and publicly represented": 15 Vict. c. 12.

And whereas by the same Act it is further enacted "that, subject to any provisions or qualifications contained in such Order, and to the provisions in the said Act contained or referred to, the laws and enactments for the time being in force for ensuring to the author of any dramatic piece first publicly represented in the British Dominions the sole liberty of representing the same shall be applied for the purpose of preventing the representation of any translations of the dramatic pieces to which such Order extends, which are not sanctioned by the authors thereof":

And whereas by the Sixth Section of the said Act it is provided that "nothing in the said Act contained shall be so construed as to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country":

And whereas it is expedient to alter or amend the last-mentioned provision under certain circumstances:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: viz.,

Section 6 of recited Act not to apply to dramatic pieces in certain cases.

1. In any case in which, by virtue of the enactments hereinbefore recited, any Order in Council has been or may hereafter be made, for the purpose of extending protection to the translations of dramatic pieces first publicly represented in any foreign country, it shall be lawful for Her Majesty by Order in Council to direct that the Sixth Section of the said Act shall not apply to the dramatic pieces to which protection is so extended; and thereupon the said recited Act shall take effect with respect to such dramatic pieces and to the translation thereof as if the said Sixth Section of the said Act were hereby repealed (*a*).

(a) See Order of November, 1887, Clause 6, *post*, p. 181.

An Act to give effect to an Act of the Parliament of the Dominion of Canada respecting Copyright.

[2nd August, 1875.

(38 & 39 VICTORIA, CHAPTER 53.)

WHEREAS by an Order of Her Majesty in Council, dated the 7th day of July, 1868, it was ordered that all prohibitions contained in Acts of the Imperial Parliament against the importing into the Province of Canada, or against the selling, letting out to hire, exposing for sale or hire, or possessing therein foreign reprints of books first composed, written, printed, or published in the United Kingdom, and entitled to copyright therein, should be suspended so far as regarded Canada:

And whereas the Senate and House of Commons of Canada did, in the second Session of the third Parliament of the Dominion of Canada, held in the Thirty-eighth Year of Her Majesty's Reign, pass a Bill intituled "An Act respecting Copyrights," which Bill has been reserved by the Governor-General for the signification of Her Majesty's pleasure thereon:

And whereas by the said reserved Bill provision is made, subject to such conditions as in the said Bill are mentioned, for securing in Canada the rights of authors in respect of matters of copyright, and for prohibiting the importation into Canada of any work for which copyright under the said reserved Bill has been secured; and whereas doubts have arisen whether the said reserved Bill may not be repugnant to the said Order in Council, and it is expedient to remove such doubts and to confirm the said Bill:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title of Act.

1. This Act may be cited for all purposes as "The Canada Copyright Act, 1875."

Definition of terms.

2. In the construction of this Act the words "book" and "copyright" shall have respectively the same meaning as in the Act of the Fifth and Sixth Years of Her Majesty's Reign, Chapter Forty-five, intituled "An Act to Amend the Law of Copyright."

Her Majesty may assent to the Bill in Schedule.

3. It shall be lawful for Her Majesty in Council to assent to the said reserved Bill, as contained in the Schedule to this Act annexed, and if Her Majesty shall be pleased to signify Her assent thereto, the said Bill shall come into operation at such time and in such manner as Her Majesty may by Order in Council direct; anything in the Act of the Twenty-eighth and Twenty-ninth Years of the Reign of Her Majesty, Chapter Ninety-three, or in any other Act to the contrary notwithstanding.

Colonial reprints not to be imported into United Kingdom.

4. Where any book in which, at the time when the said reserved Bill comes into operation, there is copyright in the United Kingdom, or any book in which thereafter there shall be such copyright, becomes entitled to copyright in Canada in pursuance of the provisions of the said reserved Bill, it shall be unlawful for any person, not being the owner, in the United Kingdom, of the copyright in such book, or some person authorised by him, to import into the United Kingdom any copies of such book reprinted or republished in Canada; and for the purposes of such importation the Seventeenth Section of the said Act of the Fifth and Sixth Years of the Reign of Her Majesty, Chapter Forty-five, shall apply to all such books in the same manner as if they had been reprinted out of the British Dominions.

Order in Council of 7th July, 1868, to continue in force subject to this Act.

5. The said Order in Council, dated the Seventh day of July, One thousand eight hundred and sixty-eight, shall continue in force so far as relates to books which are not entitled to copyright for the time being, in pursuance of the said reserved Bill.

The Schedule sets out the Canadian Act.

An Act to Amend the Law of Copyright relating to Musical Compositions.

[10th August, 1882.

(45 & 46 VICTORIA, CHAPTER 40.)

WHEREAS it is expedient to amend the Law relating to Copyright in Musical Compositions, and to protect the public from vexatious proceedings for the recovery of penalties for the unauthorised performance of the same:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Printed notice restraining public performance.

1. On and after the passing of this Act the proprietor of the copyright in any musical composition first published after the passing of this Act, or his assignee, who shall be entitled to and be desirous of retaining in his own hands exclusively the right of public representation or performance of the same, shall print or cause to be printed upon the title-page of every published copy of such musical composition a notice to the effect that the right of public representation or performance is reserved.

Provision when right of performance and copyright are vested in different owners.

2. In case, after the passing of this Act, the right of public representation or performance of, and the copyright in, any musical composition shall be or become vested before publication of any copy thereof in different owners, then, if the owner of the right of public representation or performance shall desire to retain the same, he shall, before any such publication of any copy of such musical composition, give to the owner of the copyright therein notice in writing requiring him to print upon every copy of such musical composition a notice to the effect that the right of public representation or performance is reserved; but in case the right of public representation or performance of, and the copyright in, any musical composition shall, after publication of any copy thereof subsequently to the passing of this Act,

first become vested in different owners, and such notice as aforesaid shall have been duly printed on all copies published after the passing of this Act previously to such vesting, then, if the owner of the right of performance and representation shall desire to retain the same, he shall, before the publication of any further copies of such musical composition, give notice in writing to the person in whom the copyright shall be then vested, requiring him to print such notice as aforesaid on every copy of such musical composition to be thereafter published.

Penalty on owner of copyright for non-compliance with notice from owner of right of performance.

3. If the owner for the time being of the copyright in any musical composition shall, after due notice being given to him or his predecessor in title at the time, and generally in accordance with the last preceding Section, neglect or fail to print legibly and conspicuously upon every copy of such composition published by him or by his authority, or by any person lawfully entitled to publish the same, and claiming through or under him, a note or memorandum stating that the right of public representation or performance is reserved, then and in such case the owner of the copyright at the time of the happening of such neglect or default, shall forfeit and pay to the owner of the right of public representation or performance of such composition the sum of Twenty Pounds, to be recovered in any Court of competent jurisdiction.

Costs.

3 & 4 Will. IV. c. 15.

4. Notwithstanding the provisions of the Act passed in the Third and Fourth Years of His Majesty King William the Fourth, to amend the laws relating to dramatic literary property, or any other Act in which those provisions are incorporated, the costs of any action or proceedings for penalties or damages in respect of the unauthorised representation or performance of any musical composition published before the passing of this Act shall, in cases in which the plaintiff shall not recover more than Forty Shillings as penalty or damages, be in the discretion of the Court or Judge before whom such action or proceedings shall be tried.

Short title.

5. This Act may be cited as "The Copyright (Musical Compositions) Act, 1882."

An Act to Amend the Law respecting International and Colonial Copyright.

[25th June, 1886.

(49 & 50 VICTORIA, CHAPTER 33.)

WHEREAS by the International Copyright Acts Her Majesty is authorised by Order in Council to direct that as regards literary and artistic works first published in a foreign country the author shall have copyright therein during the period specified in the Order, not exceeding the period during which authors of the like works first published in the United Kingdom have copyright:

And whereas at an International Conference held at Berne in the month of September, One thousand eight hundred and eighty-five, a draft of a Convention was agreed to for giving to authors of literary and artistic works first published in one of the countries parties to the Convention copyright in such works throughout the other countries parties to the Convention:

And whereas, without the authority of Parliament, such Convention cannot be carried into effect in Her Majesty's Dominions and consequently Her Majesty cannot become a party thereto, and it is expedient to enable Her Majesty to accede to the Convention:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short titles and construction.

1. (1) This Act may be cited as "The International Copyright Act, 1886."

(2) The Acts specified *in the First Part of the* First Schedule to this Act are in this Act referred to, and may be cited by the short titles in that Schedule mentioned, and those Acts, together with the enactment specified in the Second Part of the said Schedule, are in this Act collectively referred to as the International Copyright Acts.

The Acts specified in the Second Schedule to this Act may be cited by the short titles in that Schedule mentioned, and those Acts are in this Act referred to, and may be cited collectively as the Copyright Acts.

(3) This Act and the International Copyright Acts shall be construed together, and may be cited together as "The International Copyright Acts, 1844 to 1886."

Amendment as to extent and effect of Order under International Copyright Acts.

2. The following provisions shall apply to an Order in Council under the International Copyright Acts:—

(1) The Order may extend to all the several foreign countries named or described therein:

(2) The Order may exclude or limit the rights conferred by the International Copyright Acts in the case of authors who are not subjects or citizens of the foreign countries named or described in that or any other Order, and if the Order contains such limitation and the author of a literary or artistic work first produced in one of those foreign countries is not a British subject, nor a subject or citizen of any of the foreign countries so named or described, the publisher of such work, unless the Order otherwise provides, shall for the purpose of any legal proceedings in the United Kingdom for protecting any copyright in such work be deemed to be entitled to such copyright as if he were the author, but this enactment shall not prejudice the rights of such author and publisher as between themselves:

(3) The International Copyright Acts and an Order made thereunder shall not confer on any person any greater right or longer term of copyright in any work than that enjoyed in the foreign country in which such work was first produced.

Simultaneous publication.

3. (1) An Order in Council under the International Copyright Acts may provide for determining the country in which a literary or artistic work first produced simultaneously in two or more countries is to be deemed, for the purpose of copyright, to have been first produced, and for the purposes of this Section "country" means the United Kingdom and a country to which an Order under the said Acts applies.

(2) Where a work produced simultaneously in the United Kingdom and in some foreign country or countries is, by virtue of an Order in Council under the International Copyright Acts, deemed for the purpose of copyright to be first produced in one of the said foreign countries, and not in the United Kingdom, the copyright in the United Kingdom shall be such only as exists by virtue of production in the said foreign country, and shall not be such as would have been acquired if the work had been first produced in the United Kingdom.

Modification of certain provisions of International Copyright Acts.

4. (1) When an Order respecting any foreign country is made under the International Copyright Acts the provisions of those Acts with respect to the registry and delivery of copies of works shall not apply to works produced in such country, except so far as provided by the Order.

(2) Before making an Order in Council under the International Copyright Acts in respect of any foreign country, Her Majesty in Council shall be satisfied that that foreign country has made such provisions (if any) as it appears to Her Majesty expedient to require for the protection of authors of works first produced in the United Kingdom.

Restriction on translation.

5. (1) Where a work, being a book or dramatic piece, is first produced in a foreign country to which an Order in Council under the International Copyright Acts applies, the author or publisher, as the case may be, shall, unless otherwise directed by the Order, have the same right of preventing the production in and importation into the United Kingdom of any translation not authorised by him of the said work as he has of preventing the production and importation of the original work.

(2) Provided that if after the expiration of Ten Years, or any other term prescribed by the Order, next after the end of the year in which the work, or, in the case of a book published in numbers, each number of the book, was first produced, an authorised translation in the English language of such work or number has not been produced, the said right to prevent the production in and importation into the

United Kingdom of an unauthorised translation of such work shall cease.

(3) The law relating to copyright, including this Act, shall apply to a lawfully produced translation of a work in like manner as if it were an original work.

(4) Such of the provisions of The International Copyright Act, 1852, relating to translations as are unrepealed by this Act shall apply in like manner as if they were re-enacted in this section.

Application of Act to existing works.

6. Where an Order in Council is made under the International Copyright Acts with respect to any foreign country, the author and publisher of any literary or artistic work first produced before the date at which such Order comes into operation shall be entitled to the same rights and remedies as if the said Acts and this Act and the said Order had applied to the said foreign country at the date of the said production: Provided that where any person has before the date of the publication of an Order in Council lawfully produced any work in the United Kingdom, nothing in this Section shall diminish or prejudice any rights or interests arising from or in connection with such production which are subsisting and valuable at the said date.

Evidence of foreign copyright.

7. Where it is necessary to prove the existence or proprietorship of the copyright of any work first produced in a foreign country to which an Order in Council under the International Copyright Acts applies, an extract from a register, or a certificate, or other document stating the existence of the copyright, or the person who is the proprietor of such copyright, or is for the purpose of any legal proceedings in the United Kingdom deemed to be entitled to such copyright, if authenticated by the official seal of a Minister of State of the said foreign country, or by the official seal or the signature of a British diplomatic or consular officer acting in such country, shall be admissible as evidence of the facts named therein, and all Courts shall take judicial notice of every such official seal and signature as is in this Section mentioned, and shall admit in evidence, without proof, the documents authenticated by it.

Application of Copyright Acts to Colonies.

8. (1) The Copyright Acts shall, subject to the provisions of this Act, apply to a literary or artistic work first produced in a British Possession in like manner as they apply to a work first produced in the United Kingdom:

Provided that—

(A) The enactments respecting the registry of the copyright in such work shall not apply if the law of such Possession provides for the registration of such copyright; and

(B) Where such work is a book the delivery to any persons or body of persons of a copy of any such work shall not be required.

(2) Where a Register of Copyright in books is kept under the authority of the Government of a British Possession, an extract from that register purporting to be certified as a true copy by the officer keeping it, and authenticated by the public seal of the British Possession, or by the official seal or the signature of the governor of a British Possession, or of a colonial secretary, or of some secretary or minister administering a department of the Government of a British Possession, shall be admissible in evidence of the contents of that register, and all Courts shall take judicial notice of every such seal and signature, and shall admit in evidence, without further proof, all documents authenticated by it.

(3) Where before the passing of this Act an Act or Ordinance has been passed in any British Possession respecting copyright in any literary or artistic works, Her Majesty in Council may make an Order modifying the Copyright Acts and this Act, so far as they apply to such British Possession, and to literary and artistic works first produced therein, in such manner as to Her Majesty in Council seems expedient.

(4) Nothing in the Copyright Acts or this Act shall prevent the passing in a British Possession of any Act or Ordinance respecting the copyright within the limits of such Possession of works first produced in that Possession.

Application of International Copyright Acts to Colonies.

9. Where it appears to Her Majesty expedient that an Order in Council under the International Copyright Acts made after the passing of this Act as respects any foreign country should not apply to any British Possession, it shall be lawful for Her Majesty by the same or any other Order in Council to declare that such Order and the International Copyright Acts and this Act shall not, and the same shall not, apply to such British Possession, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order; and the expressions in the said Acts relating to Her Majesty's Dominions shall be construed accordingly; but save as provided by such declaration the said Acts and this Act shall apply to every British Possession as if it were part of the United Kingdom.

Making of Orders in Council.

10. (1) It shall be lawful for Her Majesty from time to time to make Orders in Council for the purposes of the International Copyright Acts and this Act, for revoking or altering any Order in Council previously made in pursuance of the said Acts, or any of them.

(2) Any such Order in Council shall not affect prejudicially any rights acquired or accrued at the date of such Order coming into operation, and shall provide for the protection of such rights.

Definitions.

11. In this Act, unless the context otherwise requires—

The expression "literary and artistic work" means every book, print, lithograph, article of sculpture, dramatic piece, musical composition, painting, drawing, photograph, and other work of literature and art to which the Copyright Acts or the International Copyright Acts, as the case requires, extend.

The expression "author" means the author, inventor, designer, engraver, or maker of any literary or artistic work, and includes any person claiming through the author; and in the case of a posthumous work means the proprietor of the manuscript of such work and any person claiming through him; and in the case of an encyclopædia,

review, magazine, periodical work, or work published in a series of books or parts, includes the proprietor, projector, publisher, or conductor.

The expressions "performed" and "performance" and similar words include representation and similar words.

The expression "produced" means, as the case requires, published or made, or performed or represented, and the expression "production" is to be construed accordingly.

The expression "book published in numbers" includes any review, magazine, periodical work, work published in a series of books or parts, transactions of a society or body, and other books of which different volumes or parts are published at different times.

The expression "treaty" includes any Convention or arrangement.

The expression "British Possession" includes any part of Her Majesty's Dominions exclusive of the United Kingdom; and where parts of such Dominions are under both a central and a local legislature, all parts under one central legislature are for the purposes of this definition deemed to be one British Possession.

Repeal of Acts.

12. The Acts specified in the Third Schedule to this Act are hereby repealed as from the passing of this Act to the extent in the third column of that Schedule mentioned:

Provided as follows:

(A) Where an Order in Council has been made before the passing of this Act under the said Acts as respects any foreign country the enactments hereby repealed shall continue in full force as respects that country until the said Order is revoked.

(B) The said repeal and revocation shall not prejudice any rights acquired previously to such repeal or revocation, and such rights shall continue and may be enforced in like manner as if the said repeal or revocation had not been enacted or made.

FIRST SCHEDULE.

INTERNATIONAL COPYRIGHT ACTS.

PART I.

Session and Chapter.	Title.	Short Title.
7 & 8 Vict. c. 12 -	An Act to amend the law relating to International Copyright.	The International Copyright Act, 1844.
15 & 16 Vict. c. 12 -	An Act to enable Her Majesty to carry into effect a Convention with France on the subject of copyright, to extend and explain the International Copyright Acts, and to explain the Acts relating to copyright in engravings.	The International Copyright Act, 1852.
38 & 39 Vict. c. 12 -	An Act to amend the law relating to International Copyright.	The International Copyright Act, 1875.

PART II.

Session and Chapter.	Title.	Enactment referred to.
25 & 26 Vict. c. 68 -	An Act for amending the law relating to copyright in works of the fine arts, and for repressing the commission of fraud in the production and sale of such works.	Section Twelve.

SECOND SCHEDULE.

COPYRIGHT ACTS.

Session and Chapter.	Title.	Short Title.
8 Geo. II. c. 13	An Act for the encouragement of the arts of designing, engraving, and etching historical and other prints by vesting the properties thereof in the inventors and engravers during the time therein mentioned.	The Engraving Copyright Act, 1734.
7 Geo. III. c. 38	An Act to amend and render more effectual an Act made in the eighth year of the reign of King George the Second, for encouragement of the arts of designing, engraving, and etching historical and other prints.	The Engraving Copyright Act, 1766.
15 Geo. III. c. 53	An Act for enabling the two Universities in England, the four Universities in Scotland, and the several Colleges of Eton, Westminster, and Winchester, to hold in perpetuity their copyright in books given or bequeathed to the said universities and colleges for the advancement of useful learning and other purposes of education; and for amending so much of an	The Copyright Act, 1775.

Session and Chapter.	Title.	Short Title.
	Act of the eighth year of the reign of Queen Anne, as relates to the delivery of books to the warehouse keeper of the Stationers' Company for the use of the several libraries therein mentioned.	
17 Geo. III. c. 57 -	An Act for more effectually securing the property of prints to inventors and engravers by enabling them to sue for and recover penalties in certain cases.	The Prints Copyright Act, 1777.
54 Geo. III. c. 56 -	An Act to amend and render more effectual an Act of His present Majesty for encouraging the art of making new models and casts of busts and other things therein mentioned, and for giving further encouragement to such arts.	The Sculpture Copyright Act, 1814.
3 Will. IV. c. 15 -	An Act to amend the laws relating to dramatic literary property.	The Dramatic Copyright Act, 1833.
5 & 6 Will. IV. c. 65 -	An Act for preventing the publication of lectures without consent.	The Lectures Copyright Act, 1835.
6 & 7 Will. IV. c. 59 -	An Act to extend the protection of copyright in prints and engravings to Ireland.	The Prints and Engravings Copyright Act, 1836.
6 & 7 Will. IV. c. 110	An Act to repeal so much of an Act of the fifty-fourth year of King George the Third, respecting copyrights, as requires the delivery of	The Copyright Act, 1836.

Session and Chapter.	Title.	Short Title.
	a copy of every published book to the libraries of Sion College, the four Universities of Scotland, and of the King's Inns in Dublin.	
5 & 6 Vict. c. 45 -	An Act to amend the law of copyright.	The Copyright Act, 1842.
10 & 11 Vict. c. 95 -	An Act to amend the law relating to the protection in the Colonies of works entitled to copyright in the United Kingdom.	The Colonial Copyright Act, 1847.
25 & 26 Vict. c. 68 -	An Act for amending the law relating to copyright in works of the fine arts, and for repressing the commission of fraud in the production and sale of such works.	The Fine Arts Copyright Act, 1862.

THIRD SCHEDULE.

ACTS REPEALED.

Session and Chapter.	Title.	Extent of Repeal.
7 & 8 Vict. c. 12 -	An Act to amend the law relating to International Copyright.	Sections Fourteen, Seventeen, and Eighteen.
15 & 16 Vict. c. 12 -	An Act to enable Her Majesty to carry into effect a Convention with France on the subject of copyright; to extend and explain the International Copyright Acts, and to explain the Acts relating to copyright in engravings.	Sections One to Five, both inclusive, and Sections Eight and Eleven.
25 & 26 Vict. c. 68 -	An Act for amending the law relating to copyright in works of the fine arts, and for repressing the commission of fraud in the production and sale of such works.	So much of Section Twelve as incorporates any enactment repealed by this Act.

An Act to Amend the Law relating to the Recovery of Penalties for the unauthorised Performance of Copyright Musical Compositions. [5th July, 1888.

(51 & 52 Victoria, Chapter 17.)

WHEREAS it is expedient to further amend the Law relating to Copyright in Musical Compositions, and to further protect the public from vexatious proceedings for the recovery of Penalties for the unauthorised performance of the same:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Provision as to damages.

1. Notwithstanding the provisions of the Act of the Session held in the Third and Fourth Years of His Majesty King William the Fourth, Chapter Fifteen, to amend the laws relating to dramatic literary property, or any other Act in which those provisions are incorporated, the penalty or damages to be awarded upon any action or proceedings in respect of each and every unauthorised representation or performance of any musical composition, whether published before or after the passing of this Act, shall be such a sum or sums as shall, in the discretion of the Court or Judge before whom such action or proceedings shall be tried, be reasonable, and the Court or Judge before whom such action or proceedings shall be tried may award a less sum than Forty Shillings in respect of each and every such unauthorised representation or performance as aforesaid, or a nominal penalty or nominal damages as the justice of the case may require.

Costs to be in discretion of Judge.

2. The costs of all such actions or proceedings as aforesaid shall be in the absolute discretion of the Judge before whom such actions and proceedings shall be tried, and Section Four of The Copyright (Musical Compositions) Act, 1882, is hereby repealed.

45 & 46 Vict. c. 40.

Proprietor not wilfully permitting such performance to be exempt.

3. The proprietor, tenant, or occupier of any place of dramatic entertainment, or other place at which any unauthorised representation or performance of any musical composition, whether published before or after the passing of this Act, shall take place, shall not by reason of such representation or performance be liable to any penalty or damages in respect thereof, unless he shall wilfully cause or permit such unauthorised representation or performance, knowing it to be unauthorised.

Saving for operas and plays.

4. The provisions of this Act shall not apply to any action or proceedings in respect of a representation or performance of any opera or stage play in any theatre or other place of public entertainment duly licensed in that respect.

Short title.

5. This Act may be cited as "The Copyright (Musical Compositions) Act, 1888."

ORDER IN COUNCIL, 28th NOVEMBER, 1887.

At the Court at Windsor, the 28th day of November, 1887.

WHEREAS the Convention of which an English translation is set out in the First Schedule to this Order has been concluded between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the foreign countries named in this Order, with respect to the protection to be given by way of copyright to the authors of literary and artistic works:

And whereas the ratifications of the said Convention were exchanged on the Fifth day of September, One thousand eight hundred and eighty-seven, between Her Majesty the Queen and the Governments of the foreign countries following, that is to say:

Belgium; France; Germany; Hayti; Italy; Spain; Switzerland; Tunis:

And whereas Her Majesty in Council is satisfied that the foreign countries named in this Order have made such provisions as it appears to Her Majesty expedient to require for the protection of authors of works first produced in Her Majesty's Dominions:

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and by virtue of the authority committed to Her by The International Copyright Acts, 1844 to 1886, doth order, and it is hereby ordered, as follows:

1. The Convention as set forth in the First Schedule to this Order, shall, as from the commencement of this Order, have full effect throughout Her Majesty's Dominions, and all persons are enjoined to observe the same.

2. This Order shall extend to the foreign countries following, that is to say:

Belgium; France; Germany; Hayti; Italy; Spain; Switzerland; Tunis;

and the above countries are in this Order referred to as the foreign

countries of the Copyright Union, and those foreign countries together with Her Majesty's Dominions are in this Order referred to as the countries of the Copyright Union.

3. The author of a literary or artistic work which, on or after the commencement of this Order, is first produced in one of the foreign countries of the Copyright Union shall, subject as in this Order and in The International Copyright Acts, 1844 to 1886, mentioned, have as respects that work throughout Her Majesty's Dominions the same right of copyright, including any right capable of being conferred by an Order in Council under Section 2 or Section 5 of The International Copyright Act, 1844, or under any other enactment, as if the work had been first produced in the United Kingdom, and shall have such right during the same period:

Provided that the author of a literary or artistic work shall not have any greater right or longer term of copyright therein than that which he enjoys in the country in which the work is first produced.

The author of any literary or artistic work first produced before the commencement of this Order shall have the rights and remedies to which he is entitled under Section 6 of The International Copyright Act, 1886.

4. The rights conferred by The International Copyright Acts, 1844 to 1886, shall, in the case of a literary or artistic work first produced in one of the foreign countries of the Copyright Union by an author who is not a subject or citizen of any of the said foreign countries, be limited as follows: that is to say, the author shall not be entitled to take legal proceedings in Her Majesty's Dominions for protecting any copyright in such work, but the publisher of such work shall, for the purpose of any legal proceedings in Her Majesty's Dominions for protecting any copyright in such work, be deemed to be entitled to such copyright as if he were the author, but without prejudice to the rights of such author and publisher as between themselves.

5. A literary or artistic work first produced simultaneously in two or more countries of the Copyright Union shall be deemed for the purpose of copyright to have been first produced in that one of those countries in which the term of copyright in the work is shortest.

6. Section Six of The International Copyright Act, 1852, shall not apply to any dramatic piece to which protection is extended by virtue of this Order.

7. The Orders mentioned in the Second Schedule to this Order are hereby revoked:

Provided that neither such revocation, nor anything else in this Order, shall prejudicially affect any right acquired or accrued before the commencement of this Order, by virtue of any Order hereby revoked, and any person entitled to such right shall continue entitled thereto, and to the remedies for the same, in like manner as if this Order had not been made.

8. This Order shall be construed as if it formed part of The International Copyright Act, 1886.

9. This Order shall come into operation on the Sixth day of December, One thousand eight hundred and eighty-seven, which day is in this Order referred to as the commencement of this Order.

And the Lords Commissioners of Her Majesty's Treasury are to give the necessary orders herein accordingly.

C. L. PEEL.

FIRST SCHEDULE.

THE BERNE CONVENTION.

Convention for protecting effectively and in as uniform a manner as possible the rights of authors over their literary and artistic works. Made on the Fifth day of September, One thousand eight hundred and eighty-seven, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the German Emperor, King of Prussia; His Majesty the King of the Belgians; Her Majesty the Queen Regent of Spain, in the name of His Catholic Majesty the King of Spain; the President of the French Republic; the President of the Republic of Haïti; His Majesty the King of Italy; the Federal Council of the Swiss Confederation; His Highness the Bey of Tunis.

ARTICLE I.

The Contracting States [*which are Great Britain, Germany, Belgium, Spain, France, Haïti, Switzerland, and Tunis*] are constituted into an Union for the protection of the rights of authors over their literary and artistic works.

ARTICLE II.

Authors of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries, for their works, whether published in one of those countries or unpublished, the rights which the respective laws do now or may hereafter grant to natives.

The enjoyment of these rights is subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work, and cannot exceed in the other countries the term of protection granted in the said country of origin.

The country of origin of the work is that in which the work is first published, or if such publication takes place simultaneously in several countries of the Union, that one of them in which the shortest term of protection is granted by law.

For unpublished works the country to which the author belongs is considered the country of origin of the work.

ARTICLE III.

The stipulations of the present Convention apply equally to the publishers of literary and artistic works published in one of the countries of the Union, but of which the authors belong to a country which is not a party to the Union.

ARTICLE IV.

The expression "literary and artistic works" comprehends books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions with or without words; works of design, painting, sculpture, and engraving; lithographs, illustrations, geographical charts; plans, sketches, and plastic works relative to geography, topography, architecture, or science in general; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction.

ARTICLE V.

Authors of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorising the translation of their works until the expiration of ten years from the publication of the original work in one of the countries of the Union.

For works published in incomplete parts (*livraisons*) the period of Ten Years commences from the date of publication of the last part of the original work.

For works composed of several volumes published at intervals, as well as for bulletins or collections (*cahiers*) published by literary or scientific societies, or by private persons, each volume, bulletin, or collection is, with regard to the period of Ten Years, considered as a separate work.

In the cases provided for by the present Article, and for the calculation of the period of protection, the 31st December of the year in which the work was published is admitted as the date of publication.

Article VI.

Authorised translations are protected as original works. They consequently enjoy the protection stipulated in Articles II. and III. as regards their unauthorised reproduction in the countries of the Union.

It is understood that, in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.

Article VII.

Articles from newspapers or periodicals published in any of the countries of the Union may be reproduced in original or in translation in the other countries of the Union, unless the authors or publishers have expressly forbidden it. For periodicals it is sufficient if the prohibition is made in a general manner at the beginning of each number of the periodical.

This prohibition cannot in any case apply to articles of political discussion, or to the reproduction of news of the day or *current topics*.

Article VIII.

As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational or scientific purposes, or for chrestomathies, the matter is to be decided by the legislation of the different countries of the Union, or by special arrangements existing or to be concluded between them.

Article IX.

The stipulations of Article II. apply to the public representation of dramatic or dramatico-musical works, whether such works be published or not.

Authors of dramatic or dramatico-musical works, or their lawful representatives, are, during the existence of their exclusive right of translation, equally protected against the unauthorised public representation of translations of their works.

The stipulations of Article II. apply equally to the public performance of unpublished musical works, or of published works in which the author has expressly declared on the title-page or commencement of the work that he forbids the public performance.

ARTICLE X.

Unauthorised indirect appropriations of a literary or artistic work of various kinds, such as *adaptations, arrangements of music, &c.*, are specially included amongst the illicit reproductions to which the present Convention applies, when they are only the reproduction of a particular work, in the same form, or in another form, with non-essential alterations, additions, or abridgments, so made as not to confer the character of a new original work.

It is agreed that, in the application of the present Article, the tribunals of the various countries of the Union will, if there is occasion, conform themselves to the provisions of their respective laws.

ARTICLE XI.

In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against pirates before the Courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work is entitled to protect the rights belonging to the author. He is, without other proof, reputed the lawful representative of the anonymous or pseudonymous author.

It is, nevertheless, agreed that the tribunals may, if necessary, require the production of a certificate from the competent authority to the effect that the formalities prescribed by law in the country of origin have been accomplished, as contemplated in Article II.

ARTICLE XII.

Pirated works may be seized on importation into those countries of the Union where the original work enjoys legal protection.

The seizure shall take place conformably to the domestic law of each State.

ARTICLE XIII.

It is understood that the provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit, by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.

ARTICLE XIV.

Under the reserves and conditions to be determined by common agreement (*a*), the present Convention applies to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin.

ARTICLE XV.

It is understood that the Governments of the countries of the Union reserve to themselves respectively the right to enter into separate and particular arrangements between each other, provided always that such arrangements confer upon authors or their lawful representatives more extended rights than those granted by the Union, or embody other stipulations not contrary to the present Convention.

ARTICLE XVI.

An International Office is established, under the name of "Office of the International Union for the Protection of Literary and Artistic Works."

(*a*) See Paragraph 4 of Final Protocol, *post*, p. 180.

This office, of which the expenses will be borne by the Administrations of all the countries of the Union, is placed under the high authority of the Superior Administration of the Swiss Confederation, and works under its direction. The functions of this office are determined by common accord between the countries of the Union.

ARTICLE XVII.

The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union.

Questions of this kind, as well as those which are of interest to the Union in other respects, will be considered in Conferences to be held successively in the countries of the Union by delegates of the said countries.

It is understood that no alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries composing it.

ARTICLE XVIII.

Countries which have not become parties to the present Convention, and which grant by their domestic law the protection of rights secured by this Convention, shall be admitted to accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention.

ARTICLE XIX.

Countries acceding to the present Convention shall also have the right to accede thereto at any time for their colonies or foreign possessions.

They may do this either by a general declaration comprehending all their colonies or possessions within the accession, or by specially naming those comprised therein, or by simply indicating those which are excluded.

ARTICLE XX.

The present Convention shall be put in force three months after the exchange of the ratifications, and shall remain in effect for an indefinite period until the termination of a year from the day on which it may have been denounced.

Such denunciation shall be made to the Government authorised to receive accessions, and shall only be effective as regards the country making it, the Convention remaining in full force and effect for the other countries of the Union.

ARTICLE XXI.

The present Convention shall be ratified, and the ratifications exchanged at Berne, within the space of one year at the latest.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Berne, the 9th day of September, 1886.

Additional Article.

The Plenipotentiaries assembled to sign the Convention concerning the creation of an International Union for the protection of literary and artistic works have agreed upon the following additional Article, which shall be ratified together with the Convention to which it relates :—

The Convention concluded this day in no wise affects the maintenance of existing Conventions between the Contracting States, provided always that such Convention confers on authors, or their lawful representatives, rights more extended than those secured by the Union, or contain other stipulations which are not contrary to the said Convention.

In witness whereof, the respective Plenipotentiaries have signed the present additional Article.

Done at Berne, the 9th day of September, 1886.

Final Protocol.

In proceeding to the signature of the Convention concluded this day, the undersigned Plenipotentiaries have declared and stipulated as follows :—

1. As regards Article IV. it is agreed that those countries of the Union where the character of artistic works is not refused to photographs engage to admit them to the benefits of the Convention concluded to-day from the date of its coming into effect. They are, however, not bound to protect the authors of such works further than is permitted by their own legislation, except in the case of international engagements already existing, or which may hereafter be entered into by them.

It is understood that an authorised photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the said Convention, for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private arrangements between those who have legal rights.

2. As regards Article IX. it is agreed those countries of the union whose legislation implicitly includes choregraphic works amongst dramatico-musical works expressly admit the former works to the benefits of the Convention concluded this day.

It is, however, understood that questions which may arise on the application of this clause shall rest within the competence of the respective tribunals to decide.

3. It is understood that the manufacture and sale of instruments for the mechanical reproduction of musical airs which are copyright shall not be considered as constituting an infringement of musical copyright.

4. The common agreement alluded to in Article XIV. of the Convention is established as follows:—

The application of the Convention to works which have not fallen into the public domain at the time when it comes into force shall operate according to the stipulations on this head which may be contained in special Conventions either existing or to be concluded.

In the absence of such stipulations between any countries of the Union, the respective countries shall regulate, each for itself, by its domestic legislation, the manner in which the principle contained in Article XIV. is to be applied.

5. The organisation of the International Office established in virtue of Article XVI. of the Convention shall be fixed by a Regulation which shall be drawn up by the Government of the Swiss Confederation.

The official language of the International Office will be French.

The International Office will collect all kinds of information relative to the protection of the rights of authors over their literary and artistic works. It will arrange and publish such information. It will study questions of general utility likely to be of interest to the Union, and, by the aid of documents placed at its disposal by the different Administrations, will edit a periodical publication in the French language treating questions which concern the Union. The Governments of the countries of the Union reserve to themselves the faculty of authorising, by common accord, the publication by the Office of an edition in one or more other languages, if experience should show this to be requisite.

The International Office will always hold itself at the disposal of Members of the Union, with the view to furnish them with any special information they may require relative to the protection of literary and artistic works.

The Administration of the country where a Conference is about to be held will prepare the programme of the Conference with the assistance of the International Office.

The Director of the International Office will attend the sittings of the Conferences, and will take part in the discussions without a deliberative voice. He will make an annual report on his administration, which shall be communicated to all the Members of the Union.

The expenses of the Office of the International Union shall be shared by the Contracting States. Unless a fresh arrangement be made, they cannot exceed a sum of 60,000 fr. a year. This sum may be increased by the decision of one of the Conferences provided for in Article XVII.

The share of the total expense to be paid by each country shall be determined by the division of the contracting and acceding States into

six classes, each of which shall contribute in the proportion of a certain number of units, viz.:—

First Class	- - - -	25 units.
Second	„ - - - -	20 „
Third	„ - - - -	15 „
Fourth	„ - - - -	10 „
Fifth	„ - - - -	5 „
Sixth	„ - - - -	3 „

These co-efficients will be multiplied by the number of States of each class, and the total product thus obtained will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unity of expense.

Each State will declare, at the time of its accession, in which of the said classes it desires to be placed.

The Swiss Administration will prepare the budget of the Office, superintend its expenditure, make the necessary advances, and draw up the annual account, which shall be communicated to all the other Administrations.

6. The next Conference shall be held at Paris between four and six years from the date of the coming into force of the Convention.

The French Government will fix the date within these limits after having consulted the International Office.

7. It is agreed that, as regards the exchange of ratifications contemplated in Article XXI., each contracting party shall give a single instrument, which shall be deposited, with those of the other States, in the Government Archives of the Swiss Confederation. Each party shall receive in exchange a copy of the *procès-verbal* of the exchange of ratifications, signed by the Plenipotentiaries present.

The present Final Protocol, which shall be ratified with the Convention concluded this day, shall be considered as forming an integral part of the said Convention, and shall have the same force, effect, and duration.

In witness whereof the respective Plenipotentiaries have signed the same.

Done at Berne, the 9th day of September, 1886.

SECOND SCHEDULE.

ORDERS IN COUNCIL REVOKED.

Orders in Council of the dates named below for securing the privileges of copyright in Her Majesty's dominions to authors of works of literature and the fine arts and dramatic pieces, and musical compositions, first produced in the following foreign countries: namely—

Foreign Country.	Date of Order.
Prussia	27th August, 1846.
Saxony	26th September, 1846.
Brunswick	24th April, 1847.
The States of the Thuringian Union	10th August, 1847.
Hanover	30th October, 1847.
Oldenburg	11th February, 1848.
France	10th January, 1852.
Anhalt, Dessau, and Anhalt Bernbourg	11th March, 1853.
Hamburg	25th November, 1853, and 8th July, 1855.
Belgium	8th February, 1855.
Prussia, Saxony, Saxe-Weimar	19th October, 1855.
Spain	24th September, 1857, and 20th November, 1880.
The States of Sardinia	4th February, 1861.
Hesso Darmstadt	5th February, 1862.
Italy	9th September, 1865.
German Empire	24th September, 1886.

The Order in Council of 5th August, 1875, revoking the application of Section Six of 15 & 16 Victoria and Chapter Twelve to dramatic pieces referred to in the Order in Council of 10th January, 1852, with respect to works first published in France.

AMERICAN ACT, 1891.

An Act to Amend Title 60, Chapter 3, of the Revised Statutes of the United States, relating to Copyrights.

[March 3rd, 1891.

BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 4952 of the Revised Statutes be, and the same is hereby, amended so as to read as follows:—

Section 4952. The author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of fine arts, and the executors, administrators, or assigns of any such person, shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same, and in the cases of dramatic composition of publicly performing or representing it, or causing it to be performed or represented by others; and authors or their assigns shall have exclusive right to dramatise and translate any of their works for which copyright shall have been obtained under the laws of the United States.

2. That Section 4954 of the Revised Statutes be, and the same is hereby, amended so as to read as follows:—

Section 4954. The author, inventor, or designer, if he be still living, or his widow or children, if he be dead, shall have the same exclusive right continued for the further term of Fourteen Years, upon recording the title of the work or description of the article so secured a second time, and complying with all other regulations in regard to original copyrights within six months before the expiration of the

first term; and such persons shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more newspapers printed in the United States for the space of four weeks.

3. That Section 4956 of the Revised Statutes be, and the same is hereby, amended so that it shall read as follows:—

Section 4956. No person shall be entitled to a copyright unless he shall, on or before the day of publication in this or any foreign country, deliver at the office of the Librarian of Congress, or deposit in the mail within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or chromo, or a description of the painting, drawing, statue, statuary, or a model or design for a work of the fine arts, for which he desires a copyright, nor unless he shall also, not later than the day of the publication thereof in this or any foreign country, deliver at the office of the Librarian of Congress, at Washington, District of Columbia, or deposit in the mail within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, two copies of such copyright book, map, chart, dramatic or musical composition, engraving, chromo, cut, print or photograph, or in case of a painting, drawing, statue, statuary, model, or design for a work of the fine arts, a photograph of the same: Provided that in the case of a book, photograph, chromo, or lithograph, the two copies of the same required to be delivered or deposited as above shall be printed from type set within the United States, or from plates made therefrom, or from negatives or drawings on stone made within the limits of the United States, or from transfers made therefrom. During the existence of such copyright the importation into the United States of any book, chromo, lithograph, or photograph so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set, negatives or drawings on stone made, within the limits of the United States, shall be, and it is hereby, prohibited, except in the cases specified in Paragraphs 512 to

560 inclusive in Section 2 of the Act entitled "An Act to reduce the Revenue and equalise the Duties on Imports, and for other purposes," approved October 1, 1890; and except in the case of persons purchasing for use and not for sale, who import, subject to the duty thereon, not more than two copies of such book at any one time, and except in the case of newspapers and magazines not containing in whole or in part matter copyrighted under the provisions of this Act, unauthorised by the author, which are hereby exempted from prohibition of importation: Provided, nevertheless, that in the case of books in foreign languages of which only translations in English are copyrighted, the prohibition of importation shall apply only to the translation of the same, and the importation of the books in the original language shall be permitted.

4. That Section 4958 of the Revised Statutes be, and the same is hereby, amended so that it will read as follows:—

Section 4958. The Librarian of Congress shall receive from the persons to whom the services designated are rendered the following fees—

FIRST.—For recording the title or description of any copyright book or other article, Fifty Cents.

SECOND.—For every copy under seal of such record actually given to the person claiming the copyright, or his assigns, Fifty Cents.

THIRD.—For recording and certifying any instrument of writing for the assignment of a copyright, One Dollar.

FOURTH.—For every copy of an assignment, One Dollar.

All fees so received shall be paid into the Treasury of the United States: Provided that the charge for recording the title or description of any article entered for copyright, the production of a person not a citizen or resident of the United States, shall be One Dollar, to be paid as above into the Treasury of the United States, to defray the expenses of the lists of copyrighted articles as hereinafter provided for. And

it is hereby made the duty of the Librarian of Congress to furnish to the Secretary of the Treasury copies of the entries of titles of all books and other articles wherein the copyright has been completed by the deposit of two copies of such book printed from type set within the limits of the United States, in accordance with the provisions of this Act, and by the deposit of two copies of such other article made or produced in the United States; and the Secretary of the Treasury is hereby directed to prepare and print, at intervals of not more than a week, catalogues of such title entries for distribution to the collectors of customs of the United States and to the postmasters of all post offices receiving foreign mails, and such weekly lists, as they are issued, shall be furnished to all parties desiring them, at a sum not exceeding Five Dollars per annum; and the Secretary and the Postmaster-General are hereby empowered and required to make and enforce such rules and regulations as shall prevent the importation into the United States, except upon the conditions above specified, of all articles prohibited by this Act.

5. That Section 4959 of the Revised Statutes be, and the same is hereby, amended so as to read as follows:—

Section 4959. The proprietor of every copyright book or other article shall deliver at the office of the Librarian of Congress, or deposit in the mail, addressed to the Librarian of Congress, at Washington, District of Columbia, a copy of every subsequent edition wherein any substantial charges shall be made. Provided, however, that the alterations, revisions, and additions made to books by foreign authors heretofore published, of which new editions shall appear subsequently to the taking effect of this Act, shall be held and deemed capable of being copyrighted as above provided for in this Act, unless they form a part of the series in course of publication at the time this Act shall take effect.

6. That Section 4963 of the Revised Statutes be, and the same is hereby, amended so as to read as follows:—

Section 4963. Every person who shall insert or impress such notice, or words of the same purport, in or upon any book,

map, chart, dramatic or musical composition, print, cut, engraving, or photograph, or other article, for which he has not obtained a copyright shall be liable to a penalty of One Hundred Dollars, recoverable one half for the person who shall sue for such penalty, and one half to the use of the United States.

7. That Section 4964 of the Revised Statutes be, and the same is hereby, amended so as to read as follows:—

Section 4964. Every person who, after the recording of the title of any book and the depositing of two copies of such book, as provided by this Act, shall, contrary to the provisions of this Act, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, dramatise, translate, or import, or knowing the same to be so printed, published, dramatised, translated, or imported, shall sell or expose to sale any copy of such book shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any Court of competent jurisdiction.

8. That Section 4965 of the Revised Statutes be, and the same is hereby, amended so as to read as follows:—

Section 4965. If any person, after the recording of the title of any map, chart, dramatic or musical composition, print, cut, engraving or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts, as provided by this Act, shall within the term limited, contrary to the provisions of this Act, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish, dramatise, translate, or import, either in whole or in part, or by varying the main design with intent to evade the law, or knowing the same to be so printed, published, dramatised, translated, or imported, should sell or expose to sale any copy of such map or other article as aforesaid, he shall forfeit to the

proprietor all the plates on which the same shall be copied and every sheet thereof, either copied or printed, and shall further forfeit One Dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported, or exposed for sale, and in case of a painting, statue, or statuary, he shall forfeit Ten Dollars for every copy of the same in his possession, or by him sold or exposed for sale, one half thereof to the proprietor and the other half to the use of the United States.

9. That Section 4967 of the Revised Statutes be, and the same is hereby, amended so as to read as follows:—

Section 4967. Every person who shall print or publish any manuscript whatever without the consent of the author or proprietor first obtained, shall be liable to the author or proprietor for all damages occasioned by such injury.

10. That Section 4971 of the Revised Statutes be and the same is hereby repealed.

11. That for the purpose of this Act each volume of a book in two or more volumes, when such volumes are published separately, and the first one shall not have been issued before this Act shall take effect, and each number of a periodical, shall be considered an independent publication, subject to the form of copyrighting as above.

12. That this Act shall go into effect on the First day of July, Anno Domini Eighteen Hundred and Ninety-one.

13. That this Act shall only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens, or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States of America may, at its pleasure, become a party to such agreement. The existence of either of the conditions aforesaid shall be determined by the President of the United States by proclamation made from time to time as the purposes of this Act may require.

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