7726

COPY-RIGHT MANUAL:

DESIGNED FOR

MEN OF BUSINESS, AUTHORS, SCHOLARS, AND MEMBERS OF THE LEGAL PROFESSION.

PREPARED BY

WILLIAM W. ELLSWORTH,

LATE JUDGE OF THE SUPREME COURT OF ERRORS OF CONNECTICUT.

BOSTON:
OLIVER ELLSWORTH.
1862.

4

Z642
.E42

Entered according to Act of Congress, in the year 1862,
BY OLIVER ELLSWORTH,
In the Clerk's Office of the District Court of the District of Massachusetts.

PRESS OF GEO. C. RAND & AVERY, 3 CORNHILL.

INTRODUCTORY REMARKS.

THE following Manual has been prepared at the suggestion of a gentleman long conversant with copy-right property, and the publication of books secured under the act of Congress. It is suggested by him and others, that something of the nature of this manual — something more brief, compact, and simple, and less expensive than the larger works which treat of literary property, and the steps to be pursued under the acts of Congress for the security and enjoyment of copy-rights — is needed for men of business, and perhaps for literary and professional gentlemen who wish to avoid laborious research, to see what the laws of Congress require in taking out or assigning a copy-right, and what the rights of an author are under the principles of the Common Law, or the decisions of the courts of justice under the Statute Law.

The various topics and questions involved in the subject of literary property are briefly stated and discussed in the Manual, and the most important decisions, at home and abroad, are cited and commented upon.

The author has embraced in this Manual the essential laws of Congress on this subject, which of itself is a great convenience to persons who have not ready access to the volumes of the United States Laws.

THE PUBLISHER.

OCTOBER 8TH, 1862.

A COPY-RIGHT MANUAL.

Of the nature and duration of literary property, we do not propose to speak in this brief Manual. These topics have been most fully discussed in the English courts and in Parliament, in the cases of Millar *v.* Taylor, and Donaldson *v.* Beckwith, reported in 4 Burr, 2303, until the law is no longer open to dispute, although it is quite possible, we may not be altogether satisfied with the views of all the judges. But, however this may be, we suppose the law is absolutely settled in England, and by the more recent case of Wheaton *v.* Peters, 8 Pet. R. 592, wherein the court adopted the views of the English judges, we suppose the law is equally settled in this country.

From these cases it appears, that although an author has, at the common law, an exclusive right to his *manuscript*, and the same right to publish and multiply copies, for sale (the only way in which he can, to any considerable extent, avail himself of his labor), yet the common law right is held to be modified and limited by the statute of Anne in England, and in this country by the Act of Congress, February 3, 1831. It is curious to see, what refinement and subtlety have been indulged in by grave and learned judges, in their reasonings upon the nature, duration,

and enjoyment of this species of property; and wherein it differs from other property which is the result of labor, invention and study; but a distinction has been effectually established, and we receive the law as promulgated; bowing, as we must, to its supreme authority.

Were it true, indeed, as some have intimated, that the common law right is founded in an exclusive appropriation to one's self of *ideas* or *sentiments*, there would be force in the views of Lord Camden and Justice Yates, expressed in the English cases, that authors have no exclusive property, after publication; but this is not the fact. The property of an author, as claimed, is an exclusive right to publish for *sale* his thoughts and sentiments, peculiarly arranged, and clothed in language of his own.

CHAPTER I.

TO WHAT CASES DOES THE ACT OF 3 FEBRUARY, 1831, EXTEND, OR FOR WHAT MAY A COPY-RIGHT BE OBTAINED?

A copy-right may be obtained on an *original, unpublished* manuscript, map, chart, musical composition, design, print, or engraving.

As the copy-right secures the whole of an original manuscript, it, of course, secures every material part, *i. e.*, every part which is original and hitherto unpublished.

Although a copy-right is sufficient evidence of property in the author or proprietor who has taken out the copy-right, it does not always follow that a court of justice will become *active* and lend its aid to protect the property; as, if its character is in conflict with morality or public policy. In such a case the court may refuse its aid, in the exercise of a sound discretion. It will, in a clear case, refuse to injoin the supposed piracy; nor will it allow of the recovery of damages at law. This is well settled in England, and, we doubt not, is equally the law of this country; for it is but carrying out a well settled principle of the common law, that courts will not actively assist wrong-doers, or recognize a right of property in that which is a violation of law. It is true, there is no provision to this effect in the English statute, or our own; nor is this necessary; for no man can claim the protection of what is mischievous and immoral. 2 Sto. Eq., p. 936. Lord

Chief Justice Abbot, in a case of this kind, the history of the amours of a courtesan, said it would be a disgrace to the common law could a doubt be entertained upon the subject. Stockdale *v.* Onwhyn, 5 Ba. and Cr., p. 193. Bayley, J., said, "If a work be not innocent, in such a sense as that an action would lie in case of its having been published by the author, and subsequently pirated, courts of equity will not grant an injunction." Holroyd, J., said, "In my judgment, it would be preposterous for a court of law to say, that a right of action is acquired by being the first publisher of a book, when that publication is liable to be punished as an offence." Not that a court assumes the censorship of the press, and prescribes its own notions as the test of truth and morality, but it will not render its *active* assistance in behalf of authors who violate the law of the land.

The same rule is applicable to musical compositions, and to all sorts of immoral and unchaste designs, prints or engravings.

Care must, however, be taken, that this rule of law, indefinite, as from the nature of the subject it must be, is not unreasonably applied by courts in their supervision of public morals, or the public press. Nor is there danger it will be. But the rule itself is most salutary in its character, and should be extended to embrace all books, songs, devices and engravings which promote licentiousness or immorality of any kind. In England, courts refuse to protect authors whose writings are injurious to the public peace and quiet, such as excite to riots, rebellion and treason, or to such as are libellous, or are any way unlawful. The rule may not, as we have

just intimated, be carried so far as to embarrass the freedom of the press, or hinder the publication of books of science, history, travels, fiction, and the like. The language of Judge Story is, "No copy-right can exist, consistently with principles of public policy, in any work of a clearly irreligious, immoral, libellous, or obscene description."

It has been decided that courts will not actively protect a book which purports to be written by a deceased author, when it is not so; for it is a species of *crimen falsi;* using the name of a person of good fame, to obtain money by selling the book as made by him. But the rule does not embrace books assuming a *fictitious* authorship, for in such a case no false reliance is placed upon the reputation of a *real* author, and so the book does not come within the reason of the rule. In Wright *v.* Tallis, 1 Man. Com. B. Rep. 894, p. 907, Chief Justice Tilden said, "The object of the plaintiff is not merely to conceal the name of the genuine author, and to publish opinions to the world under an innocent disguise, but to deceive the public, by inducing them to believe that the work is the original work of the author whom he names, when he himself knows it not to be so, to obtain from the purchaser a greater price than he would otherwise obtain."

Nothing can be secured which is not *original* in the person seeking a copy-right; if the author has sold or parted with the manuscript, to an assignee, whether by contract, devise, or operation of law, the assignee may act. The reason of this is too obvious to need extended remarks. Such is the very language of the act of Congress itself; and, further, it

is the only reason why any law at all is called for to encourage science, literature and art. A mechanical copyist does not need and does not merit any copy-right security of his labors.

But what may be said to be original, within the language and spirit of the act, is not so easily settled. As to some manuscripts there can be no question or difficulty; while as to others, or parts of others, it is quite otherwise, and it is just here that a serious question arises.

Now, a *verbatim* copy of the whole, or of a material part of another's book, map, chart, &c., is obviously wanting in originality; but it is otherwise if the writer has done no more than incorporate with his own, the thoughts and sentiments of another, clothing them in his own language; for there is no exclusive proprietorship in mere thoughts and sentiments. We must look further, — to the form, the dress, the language adopted; herein we shall find, if anywhere, the originality or intellectual labor which can be secured by law; for all courts agree, that the exclusive property of an author consists in the *form* or relation of his ideas, as expressed in the language selected by him. (Any narrower rule than this, will inevitably embarrass future authors who derive their thoughts from reading and studying the writings of other persons; which all may do with propriety and impunity.)

It is not easy, in advance, to state with distinctness *all* the characteristics which belong to this rule of law. This much, however, is certain: mere *mechanical* labor will not suffice; intellectual labor or invention is indispensable. But as even this, too,

is consistent, and often is combined with the sentiments and labors of other persons, to some extent, we need to know how much invention there must be to satisfy the rule. Now, the narration of one's own travels, observations or experience would be absolutely original; so would any new narrative, biography, essay, poem, or piece of music. But much less than this will suffice. An old book may be re-written; it may be enlarged by the addition of new chapters, sections, illustrations, notes, and the like. The originality and novelty here consist in what is added to the old book. It is just this new matter, and this new combination, which can be well secured by copyright; and a good illustration of the rule is found in a new edition of a book already copy-righted. The old matter, by itself, is not again secured, but only the new, and the combination of the new with the old.

Few men, however original, attempt to write books of any size, without availing themselves of the intellectual labors of others. It would be next to impossible to write books of value or compose treatises on any subject of science without doing so. Is the historian, the lexicographer, the geographer, and the like, to be absolutely original, taking nothing from the labors of his predecessors? Certainly, this would be to convert a law designed to encourage literary men, by securing to them the exclusive sale of their works, into the greatest hindrance to the progress and diffusion of knowledge among men. Authors, if they will do the world any good by their books, must, of necessity, seek for knowledge wherever it is to be found,—as from Bacon, Newton, Hooker, Blackstone and others; and may build on such acquirements, when obtained,

with entire freedom and propriety. They may even resort to books and treatises secured by copy-right; provided, however, no more of the particular form and language of the author is taken than is warranted by the nature of the case. By which last expression we mean, the purpose or object for which it is taken; as for illustration, or criticism, or refutation. But more on this topic in the sequel. Gray *v.* Russell, 1 Sto. R. 11.

The question is often asked whether an *abridgment* of a book, has the element of originality to such a degree as to be the subject of copy-right; or is it a piracy, in the case of a copy-righted book, which can be arrested by injunction in equity? Now, if by this term we understand an abridgment of another's *ideas* and *thoughts* (which is the true meaning of the word), and not a *literal copying* of parts of the original work, reducing the original by a facile use of the scissors, still leaving it in a condition to be put to the same general use, in a more cheap and economical form, the abridgment has originality, and may well be secured in its *new dress*. It is a *bona fide* abridgment of thought, by the exercise of reason, judgment and taste (which constitutes originality), in *a new* form and language, and in new combinations. The distinction, though somewhat nice and metaphysical at first view, is nevertheless a true one, and may not be overlooked without confounding well-settled principles of law, and suppressing the efforts of genius and science. In Folsome *et al. v.* Marsh *et al.*, 2 Sto. R. 100, the rule of law is laid down in the syllabus as follows: "An abridgment in which there is a substantial condensation of the materials of

the original work, and which requires intellectual labor and judgment, does not constitute a piracy of copy-right; but an abridgment consisting of extracts of the essential or most valuable parts of the original work is a piracy." So far, then, as it is a piracy, it certainly is not an original work. Sto. Com. 939; 2 Swan R. 428; Tomson *v.* Walker, 3 Swan R. 672; Curtis on Copy-Right, 190, 265, 290.

In Emerson *v.* Davies, 3 Sto. R. p. 778, according to the syllabus,—and such is the plain doctrine of the entire case,—the learned judge held that any new and original plan, arrangement, or combination of materials will entitle the author to a copy-right therein, whether the materials themselves be new or old; and, further, that whoever, by his own skill, labor and judgment, writes a new work, may have a copy-right thereon, unless it be directly copied, or evasively imitated, from another work. Curtis, on page 240, sums up his extended remarks on this point by saying that the doctrine ought to be — and we infer, from what he says of the decisions in England and the United States, would be now held to be — as expressed in the decision of Judge Story just cited.

Compilations and selections requiring learning, study, taste and judgment, especially accompanied with explanatory remarks, as notes, references, and indexes, constitute originality enough to be secured by copy-right. It is the special *combination* of the pieces selected, which chiefly imparts this quality to the work; for the separate pieces remain open to [illegible]mon use, as before. Gray *v.* Russell, 1 Sto. [illegible]1. This doctrine is likewise fully established in the French courts. See, further, the opinion of Judge

Story in Folsome *v.* Marsh, 3 Sto. R. 100, and Emerson *v.* Davies, 3 Sto. R. 768. We think the great criterion, running through all the cases, seems to be this, expressed in the shortest form,— *intellectual* labor, as distinguished from that which is *mechanical*.

Another question sometimes raised is, whether *letters* addressed to real correspondents, as from a tourist giving an account of his travels, letters upon science, politics, religion, business, or of a merely social character, can be secured by copy-right. If so, by which of the parties — the writer, or the person to whom they are addressed? In the case of Folsome *v.* Marsh, 2 Sto. p. 100, Judge Story held they remained the property of the former, and could by him be secured, but could not by the latter; that, although sent to a correspondent, for him to read and use as far as he had occasion, they did not become his property, and had not been published by the transmission, so but that they could be secured as the writer's own manuscript. The case before Judge Story arose out of the publication of the letters of General Washington. These letters had been purchased of the executor of General Washington, and published in several volumes by Folsome *et al.*, being first secured by copy-right. Marsh *et al.* copied or printed verbatim from those volumes, the most important of the letters, in two volumes, upon the idea, that they were not the proper subject-matter of a copy-right, and could not therefore be rightly secured. The copy-right was sustained.

At first view, it might seem as if a letter-writer, by transmitting his thoughts to another, had given them wings to escape beyond his control, so that any fur-

ther circulation of them would be only a further publication, especially if the letters did not partake of the character of a confidential communication; and that such a right might well be held to vest in the person to whom the letter is addressed. But, as we have said, the law is clearly otherwise in this country and in England. In England this principle was settled in the case of Mr. Pope, whose letters to Swift were published by one Curll, a bookseller; and in the case of Lord Chesterfield's letters to his son. The doctrine is placed on the ground, that *transmitting* a letter is not an act of publication, — it is using the manuscript for a precise and defined purpose, beyond which it is understood the correspondent is not at liberty to go, any more than one's friend, to whom had been committed a work in manuscript for his inspection and criticism, — he could not lawfully give it greater publicity. Pope *v.* Curll, 2 Atk. 342. Thompson *v.* Stanhope, Amb. 737. Curtis on Copy-Right, 90. 2 Sto. Eq. pp. 944 and 211.

It must be conceded that, although the above rule of law may seem somewhat peculiar, its origin is to be traced to high moral and social considerations. Most private letters are but the spontaneous outpouring of sentiments to a confiding friend, which confidence is often expressed or obviously apparent in the letters themselves. It is therefore better, on every account, as a general rule, that no further publicity shall be allowed them, without the knowledge and consent of the author himself, or those to whom, in case of his death, he has committed such discretion.

Public and official letters may stand on a different ground. They are the property of the government

to whom or whose agents they were originally addressed, and must therefore ever remain subject to the pleasure of the government, to be made public or otherwise, according to its views of the public interest. Subject to this restriction, Judge Story, in Folsome *v.* Marsh, expressed an opinion that such letters could, with the approbation of the government, become the subject of copy-right in the writer. 2 Sto. Eq. p. 949.

The same unimpaired right of property is recognized in other original writings, though they may have been publicly read or spoken, — as sermons, lectures, addresses, speeches, and the like. Such special use of the manuscript is held not to be a publication, any more than the transmission to a friend of a private letter, which we have seen is not. 2 Sto. Eq. p. 949.

The same may be said of dramatic pieces and musical composition. Their being acted or sung on the stage is not a publication. In England this is expressly provided by act of Parliament, since the early statute of Anne; and it would be so without such a provision, we presume, in this country, upon general principles, already discussed.

At one time there was not a little dispute whether the word "*book*," in the statute of Anne,—and we have the same word in the act of 3 February, 1831, — included a sheet of music. It was said not to be a book, and could not therefore be secured; but the question is no longer of any importance in England or here, for if at first there was force in the objection, it no longer exists. The true doctrine is, that the form of the publication is not the criterion; for a single sheet is a book within the spirit and language of the

law. Besides, the language of the statute is now explicit. Lord Mansfield held, in Bach *v.* Longman, Cowp. p. 624, that music was a "*writing*," within the statute of Anne.

A copy-right may be had on periodicals, reviews, and original publications relating to science, the arts, agriculture, commerce, manufactures, finance, politics, and the like; so on price-currents, almanacs, registers, directories, guide-books, reports of assemblies and judicial tribunals. These all are the product of intellectual labor, and may have as much originality in them as treatises and books of higher pretension. But then a copy-right must be taken out on them, or they are made common, by such publication.

The question whether a *translation* of a book into another language can be the subject of a copy-right, or whether, if the book translated is itself secured, the translating and selling is mere piracy, subjecting the offender to damages, has, at times, been very much discussed in courts and elsewhere, though it is now settled that a copy-right may be had in a translation. Both questions, *i. e.*, the originality of a work, and breach of copy-right, may depend very much on the same principle, for if no mere translation possesses originality sufficient to obtain a copy-right, it would seem to follow that to sell the book, in its new dress, must be ar infringement of the copy-right of another, if that be still existing. Perhaps the questions may, in certain cases, involve considerations somewhat different, which we need not now examine.

Certainly, to translate a book requires learning, study, judgment and taste, the very elements of originality. Besides, the dress or language of the

translator are entirely his own. It is true the thoughts are not his own, but thoughts must be embodied in language to be secured by copy-right. This doctrine was elaboratoly examined in the late case of Stowe *v.* Thomas, in the Circuit Court of the United States for Pennsylvania Circuit, reported in 2 Wallace, 547. "Uncle Tom's Cabin" had been translated into the German language by the defendant, and sold in its new dress. Mrs. Stowe complained of this as a violation of her copy-right. The court decided it was not so. Not because the translator did not minutely follow the original, for he did with perfect exactness and *literally* (if that may be said of a translation at all), in its plan, thought and order, but because the copy-right of Mrs. Stowe did not secure to her exclusively her plan, thoughts and order, *irrespective* of the language made use of by her in the original.

At first, this doctrine appears over-nice and technical, if not absolutely unreasonable and unfair; but on second thought, this view may be found to be less severe and most consistent with, if not the unavoidable consequence of, the principle, already examined, that the language, garb and dress of the author's thoughts is an indispensable requisite in obtaining a copy-right. A translation certainly is not the original book, according to common parlance among men, or within the meaning of the statute law. The translations of Homer, Demosthenes and Virgil are certainly not *their* books, though made out of their books, with more or less original thought on the part of the translators. In translating, as already stated, there is necessarily called into exercise much learning, taste

and judgment, which, together with the language selected to convey the translator's meaning, constitute the peculiar property allowed to be vested in him for a copy-right. Besides, a translation need not be, and usually is not, a close imitation of the original, word for word. The effort may, and sometimes does, admit of as high an exercise of genius, as if it were an original work, or as if nothing had preceded the translator's labors, beyond the plan and general thoughts of the author; though such latitude in translating is incompatible with a faithful translation of the original book. In the case last cited, Judge Greer, in giving the opinion of the court, held "that when a person has given his thoughts to the world, he has no longer an exclusive possession of them; it would be inconsistent with the object of publication. The author's conceptions have become the common property of his readers, who cannot be deprived of the use of them, nor of their right to communicate them to another, *clothed in their own language.* It follows that after publication an author has no exclusive right to his ideas, sentiments and creations, though he owns the concrete form of them, and has an exclusive right to multiply future copies of that form for sale. And hence, in questions of infringement of copy-right, the inquiry is not whether the defendant has used the thoughts, conceptions, or discoveries promulgated by the original work, but whether his composition may be considered a new book, showing learning, invention and judgment."

The foregoing views of the nature of literary property and the rights of authors, secured to them by statute law, are traceable to the celebrated discus-

sions which took place in the English courts and the British Parliament, nearly a century ago, in the cases of Millar *v.* Taylor, and Donaldson *v.* Beckwith, 4 Burr R. 2311. The same subject has been discussed and passed upon in the Supreme Court of the United States, in Wheaton *v.* Peters, 8 Pet. R. 591. Few cases in our books evince so much collision of great and acute minds as these, so much refinement and professional metaphysics, or so much research and learning; and yet, all the principles settled therein have never met with universal acceptance, either in England or this country.

The common-law right of authors after publication, in England and here, is regulated by statute; in England by the statute of Anne and some more modern statutes; in the United States by the statute of February 3, 1831, and two subsequent statutes, one of June 30, 1834, and one of August 10, 1846. These three statutes are published at the end of this treatise. To them, then, we must look to learn what are the rights and remedies of authors in the United States; for we suppose it is generally agreed that the power to regulate the entire subject of literary property is, under the Constitution of the United States, exclusively vested in Congress. If it is not so, and the legislatures of the States have concurrent jurisdiction with Congress, there may serious conflict arise between the right and remedies prescribed by the one and those proscribed by the other; and, further, the very object and end of Congressional action, in recognizing and protecting the rights of authors for a term of time, is, that after the term expires their works shall become common to the public.

See Sto. on Com. Law, p. 1149, 3 Vol. p. 50; Curtis on Copy-Right, 81.

If, then, we hold that statute law alone gives the rule of law in relation to this species of property, as was held by a majority of the judges in England, the common-law right practically becomes of no importance, and we must turn our attention to the statutory provisions, to discover what an author must do, in the United States, to obtain a copy-right on his book.

Previous to the formation of the present government, some of the States had passed laws to protect the rights of authors, but since then they have ceased to legislate on the subject, and no State has, at this time, any statute whatever. Wheaton *v.* Peters, 8 Peters R. 591. Curtis on Copy-Right, 77.

The statute 3 February, 1831, the one of most importance, is chiefly distinguished for two new provisions, very greatly enlarging the interest of authors in their publications. We mean the extension of the first term to twenty-eight years, instead of fourteen years; and the right of renewal, in the author or his widow and children, for fourteen years more; making the whole term of time forty-two years. These provisions are a great and deserved boon to authors, and for it they are more indebted to the late Noah Webster than to any other person, either in or out of Congress. Mr. Webster spent the winter of 1830–31 in Washington, and brought the subject directly before the leading men in both houses of Congress, and, by one or more lectures in the Hall of Representatives on this and kindred subjects, in effect secured the passage of the act of that session. When it was passed, and signed by President Jackson, Mr. Webster

said to the writer he was *satisfied*, and immediately left for his home in New Haven. After this, in 1843, he gave a history of this statute in a book of essays published by Webster & Clark in New York.

It may not be amiss, at this place, to mention that before the new parts of the bill were drawn up and reported to the House of Representatives, the laws of foreign governments, touching the period or extent of copy-rights, were carefully examined and compared by the writer, from which he compiled the most favorable provisions which it was believed could be carried through Congress. These laws are, or were, substantially as follows. In England an author may have a copy-right for his life, and for seven years after to his family; in a certain event it may last forty-two years. In France it may be had for the life of the author or his widow, and, after the death of both, twenty years more for children. In Holland and Belgium it may be had for the author's life, and to his heirs and representatives twenty years. The Germanic Diet directed that, in all the States, it may be had for ten years at least. In Prussia it may be had for life and thirty years after. In Russia, for life and twenty-five years after, and five years more in a certain event. In Denmark, Norway, Sweden and Spain, it may be had in perpetuity.

As our statute relates to *manuscripts* which are published, being secured according to its provisions, it is obvious, the common-law right of the writer, *before* publication, to his manuscript, remains untouched, and is subject exclusively to his pleasure. As yet, not having given his manuscript to the world, he alone may decide whether he ever will, and, if so,

in what form, and at what time; because, to use the language of Lord Mansfield, in Millar *v.* Taylor, the author should reap the profits of his ingenuity and labor. It is *just* that another should not use his name without consent. It is *fit* that he should judge when to publish, or whether he ever will. It is *fit* he should not only choose the time, but the manner of publication, how many, what volume, what to print. It is fit he should choose to whose care he will trust the accuracy and correctness of the impression; to whose honesty he will confide not to foist in additions. 4 Bur. p. 2398.

All the books agree that unpublished manuscripts, like other property, may be given by will, and will pass to executors, administrators and assignees, who may take out a copy-right in their own names, for the benefit of those who have the real interest therein.

But unpublished manuscripts cannot be taken on execution, nor do they pass under a commission in bankruptcy; there is no provision in the law to that effect; and, besides, no man is obliged to have his manuscripts made public.

Nor is the publisher's right in a book secured by copy-right taken by creditors seizing the stereotype plates, though the plates are taken, and may be sold as so much metal. So may any printed books on hand, made on said plates, be seized and sold. Millar *v.* Taylor, 4 Burr, 2311. Godson on Patents and Copy-Right. Stevens *v.* Gladding *et al.*, 17 How. 453.

Legislatures and courts of justice have a right to control, and, where the public good requires it, prevent the publication of their proceedings.

Though a copy-right could otherwise have been

obtained, the author of a book may have so conducted with it as to have forfeited the benefit of the statute; as, if he has abandoned it to the world by allowing it to be published first in some public journal, newspaper or repository, that is not secured by copy-right. Having published it, unsecured, it cannot afterwards be reclaimed as an unpublished manuscript, as required by the act of 3 February, 1831.

A copy-right cannot be had on a book which has been already published in a foreign country. *That*, likewise, is not an unpublished manuscript; it has become common to the public. This evil, if it be one, can be remedied by an international copy-right law, or, indeed, without it, should it be the pleasure of Congress, by modifying the present law.

CHAPTER II.

HAVING CONSIDERED IN WHAT CASES A COPY-RIGHT MAY BE TAKEN UNDER THE STATUTE, WE WILL NEXT INQUIRE *BY WHOM* THIS MAY BE DONE.

It is obvious, and such is the language of the act, that the author is the proper person, in the first instance; after this, in case of his death, his executor, administrator, or assignee. If, however, the author has made sale of the manuscript before publication, it may be taken out in the name of the purchaser, as proprietor. If, however, it has not been assigned in *form*, but equitably, it may be taken out in the name of the author, if living, for the benefit of the equitable owner.

It sometimes happens that a book, &c., is got up by one person, at the request and for the benefit of another, to become the property of the latter when finished and ready for publication, — in which case equity will see that he has the benefit of it, according to the understanding of the parties. How it would be if there is nothing more than an executory agreement to prepare and transfer a manuscript, we need not say. Possibly, in such a case, an action at law only would lie to recover damages.

A manuscript, in order to be entitled to a copyright, must belong to a person who is a citizen of the United States by birth, or by adoption under the law of naturalization, or it will suffice if he be a *resident* in the United States, — which term is open perhaps

to some criticism and doubt. 'Strictly, a *resident* of a country is one who *resides* in it, irrespective of the place of birth or motive of residency, and will include a person who comes to the United States and lives here for the very purpose of obtaining a copyright. A liberal construction of the act will certainly include such a resident; founded, as perhaps was intended it should be by *the act*, upon the idea of favoring the publication of manuscripts *first* in the United States. We are not aware that this question has, at any time, arisen in the courts of this country. The place where a manuscript is *written* is of no importance,—it may be abroad, it may be in the United States.

In all these respects, what has been said of books or manuscripts is equally true of maps, charts, and musical compositions. They must each possess originality, invention, and judgment, and must be carefully secured, as herein pointed out in relation to books and manuscripts.

If anything has been etched or engraved by an artist, the statute requires it should be from the artist's own design. This must be the visible form, whoever has done the manual labor. Binns *v.* Woodruff, 4 Wash. R. 48.

CHAPTER III.

HOW SHALL A COPY-RIGHT BE TAKEN OUT, AND IN WHAT MANNER SHALL IT BE RENEWED?

Of necessity, the particular steps pointed out in the law must be carefully pursued or no copy-right is acquired under it. Under the old statutes, which are now repealed by the statute of 3 February, 1831, at least one of them, it became a litigated question whether the statute requisites were to be held to be precedent conditions to the vesting of any right by the statutes, or only conditions subsequent; but no such question can now arise, for by the statute 3 February, 1831, it is expressly provided that the requisites therein prescribed shall be held precedent to the acquisition of any interest whatever in a copy-right. The duty of the clerk of the district court, however, is not of this character. If the *author* does all the statute requires of *him*, that is sufficient to secure to him the full benefit of the statute.

1. The author or proprietor must deposit a *printed* copy of the *title* of his book, map, chart, musical composition, print, cut or engraving, in the clerk's office of the district court of the district where the author or proprietor *resides*. Then, the clerk is to make a record of the same, in the words of the printed copy, and give the author or proprietor a certified copy of the record, if he desires it.

2. The author or proprietor must next, within three calendar months from the time of *publication* of said book, &c., deliver a copy of the same to the clerk of

the district; which copy shall by the clerk be transmitted, with the title and date of record, to the Secretary of State at Washington. By the act of August, 1846, copies of the book, &c., are by the author or proprietor to be sent within six months to the Smithsonian Institute and to the Library of Congress. This, however, is not deemed to be a prerequisite of title, nor is it so considered or treated practically by the large publishing houses in this country. Such is the opinion of Curtis, expressed in a note in his treatise, p. 193, and such was intimated by Nelson J. in Folley *v.* Jaques, 1 Blatch. R. 618, though both of the learned gentlemen suggest that the book, &c., should be forwarded, so long as this question remains unsettled by an adjudication.

So in renewing a copy-right at the expiration of the first term, care must be taken to follow the steps of the statute, as given in the second section of the statute 3 February, 1831, otherwise the further title may be lost and the work become common; for these likewise are of the nature of precedent conditions. The steps are chiefly the same as those just pointed out in securing a copy-right for the first term. The renewer must be a citizen or resident of the United States; get his title recorded a second time in the district where he is *now* residing within the six months before the first term expires; and within two months from the date of said renewal must cause a copy of the record to be published in some newspaper in the United States for the space of four weeks. And, as in the first instance, the book must be forwarded to the district clerk, to the Smithsonian Institute, and the Library of Congress.

If the author be dead at the time the first term of copy-right expires, his widow and children, or such of them as are living at *that time*, may jointly renew the copy-right, by pursuing the steps already pointed out. Minority or marriage is no objection to getting a copy-right. The term *children* does not include *grandchildren.*

After renewal, the renewed term of the copy-right has all the qualities of property in the person or persons obtaining the renewal, as fully as the first term had in the author or proprietor who obtained that term. Before the renewal takes effect, there is nothing but a possibility in the persons or person who shall live to renew; which possibility, perhaps, is not capable of being alienated as property, unless, possibly, by the author himself, he being the owner of the manuscript; but if a sale cannot in law be made at that time, those who are anticipating this possible interest may bind themselves, by covenant, that whatever interest they may live to acquire, shall become the proper estate of the person so purchasing,—which covenant will be enforced in a court of equity.

We may here dispose of a question sometimes made between authors and those who hold under them by purchase of the copy-right. Does a sale of the copy-right carry with it a right to *renew* at the expiration of the existing copy-right, or is the effect of the sale to be confined to the first term of the book? This must depend upon a fair and just interpretation of the agreement between the parties. It *may* certainly be included and enforced in equity, but it need not be included. This possibility certainly may be contracted for in purchasing the copy-

right, but it is not so of necessity, nor of course, nor *prima facie*. The mere sale of a copy-right already obtained would not seem to embrace anything more than the copy-right mentioned in the sale. That satisfies the terms of the sale, and courts are not inclined to a forced construction, on this delicate point, when it could easily have been made clear and certain, if more than the existing copy-right was intended. Lord Eldon said, in Burr *v.* Murray, Jacobs R. 315: "I conceive that an author will not be taken to have assigned his contingent right in case of his surviving the fourteen years, unless the assignment is so expressed as to purport to pass it." The same is held by Woodbury, J., in Pierpont *v.* Fowle, Woodbury's R.

Where a copy-right can no longer be extended, because the whole forty-two years are exhausted, or there is no person in being to renew the second term, a further enjoyment of the property is, in *effect*, secured to the proprietor by means of a revision of the work, such as a new edition; this, however, secures only the new combination, not the contents of the old book. If the old book is greatly improved, as it may be, by the addition of new sections, new illustrations, new chapters, new references and notes, or is re-written, bringing down the work to a later period, the old book, though open to common use, will not greatly embarrass the sale of the new work; still, any person can take the old book and build upon it with impunity.

We come next to speak of the notice in the book itself which must be given that a copy-right has been taken.

The taking out of a copy-right will avail nothing, unless notice of that fact is given by inserting on the title-page, or the page next following, of the several copies of each edition, or, if a map, chart, musical composition, print, cut, or engraving, on the face thereof, the words following: "Entered, according to act of Congress, in the year ——, by A. B., in the clerk's office of the District Court of——." This is required by the 5th section of the act of February 3, 1831.

Nothing need be said on this point, as any person of ordinary understanding can apprehend this requisition of the act, and see the necessity of following this statute with exactness.

The next question is, how a copy-right may be assigned.

Between the parties themselves no formality of transfer is required of the manuscript before publication, or the copy-right afterwards. There should, however, be a writing to that effect, but beyond this nothing more is required than is common in the transfer of personal property at the common law. The agreement between the parties should be clear and explicit. But as to third persons, — subsequent purchasers and mortgagees having no notice of the prior sale, — the act of June 30, 1834, provides that the sale and transfer of an *existing copy-right* shall be by an instrument under seal, executed, witnessed and acknowledged in the manner deeds of land are required to be, in the State or district where the instrument of assignment is executed. The assignment, when completed and acknowledged, must

be recorded within sixty days in the office where the *original* title was deposited.

We will, in this place, remark upon what constitutes an infringement of copy-right.

Much controversy has arisen as to what constitutes an unlawful use of another's copy-right.

The rule of law, in substance, may be easily enough laid down; but its application to cases, as they arise in practice, is often attended with no little difficulty. It clearly is not unlawful for one person to avail himself of the researches and literary labors of another. Generally speaking, this may be and is done perpetually by the best of men, and no one can object to the practice. A person may inform himself by examining and studying any book, treatise, or narrative, though it be secured to another by copy-right, and may possess himself of the knowledge, ideas and sentiments of the author. Indeed, any man, to be informed of the progress of science, inventions, or the arts, or of literature and knowledge generally, must do this. That portion of our knowledge which is not derived from personal observation and experience cannot be expected to be obtained from any other source; and when it is obtained may be digested and incorporated into one's own thoughts and sentiments, and thus the second book may be the better for the labors and developments of the first. But then the second cannot be *copied* from the first. The writer must clothe his thoughts in his own language, or his book is not original, but a piracy. It would otherwise, in effect, be laying another's book open on the table, and mechanically making use of his thoughts and the

peculiar dress in which they had been presented to the public. The *spirit* of the rule is that every author must make use of his own intellectual rather than his mechanical powers, — his reason, his judgment, his invention, — and not rely on the language, order and invention of another, transcribing them into a book of his own composition. Any other meaning of the rule would debar men of genius and capacity from availing themselves of the discoveries and labors of their predecessors, or, on the other hand, rob authors of the aid and protection intended for them by the copy-right law.

The rule thus understood, it will be seen, does not discriminate between the copying of the whole or parts of a book, — a distinction, it will be noticed, of some little importance to authors. In case the book copied has never been secured by copy-right, or if it has, and the copy-right has expired, the question is of no kind of importance to any one, since the whole book, being now open and common to the public, may be used without restriction by anybody; but if the old book is still secured, we must inquire further as to the effect of the rule in such a case; and in seeking for a test as to how much in any case may be copied with impunity, we shall perhaps be forced to pass by the inquiry *how much* is taken, and look chiefly to the *value* of what is taken, and the effect of the new work upon the sale of the old one. There are here, however, exceptions and circumstances not to be overlooked. The inquiry will be for what *purpose* are the parts of the old book transferred to the new. If for purposes of criticism or comment, the quantity cannot be material, for the criticism may

require large extracts, in order that the criticism itself be understood and appreciated. Thus, a work may be copied by sections or pages in a review, if done for the purpose above mentioned; but then this may not be done as a cover for pirating the contents of the work, thereby introducing the work, in its most important parts, to the public in a more economical form, so as essentially to impair the value or sale of the entire work. There is generally but little danger of this, since the parts so copied must be very numerous and extended to equal the entire book itself; but it is what may be done, and perhaps, in an extreme case, with advantage to the public, especially if the entire book be voluminous and costly.

It may, however, be carrying the rule too far, or rather giving it too rigorous an application, to hold that every copying, however small or unimportant, is an infringement of copy-right. This would be throwing around authors and literary men restrictions equally embarrassing and useless, and judges have differed somewhat in the conclusions to which they have come in particular cases under the rule. In Wilkins *v.* Aikin, 17 Ver. 420, p. 424, the Lord Chancellor said,—"There is no doubt that a man cannot, under the pretence of quotation, publish either the whole or part of another's work, though he may use — what it is in all cases very difficult to define — fair quotation." In Folsom *v.* Marsh, 2 Sto. R. p. 115, Judge Story says,—"It is not necessary, to constitute an invasion of copy-right, that the whole of a work should be copied, or even a large portion of it, in form or in substance; if so much is taken that

the value of the original is seriously diminished, or the labors of the original author are substantially, to an injurious extent, appropriated by another, that is sufficient, in point of law, to constitute a piracy *pro tanto.*" This question is ably discussed, and cases cited, by Godson in his treatise on patents and copy-rights, and by Curtis in his treatise on copy-rights. We know of no fuller discussion than is to be found in the opinion of Judge Story in Emerson *v.* Davies, 3 Sto. R. p. 768. We extract a single passage from page 787: "The case, therefore, comes back at last to the naked consideration whether the book of Davies, in the parts complained of, has been copied substantially from that of Emerson or not. It is not sufficient to show that it may have been suggested by Emerson's, or that some parts or pages of it have resemblances in method and details and illustrations to Emerson's. It must be further shown that the resemblances in those parts and pages are so close, so full, so uniform, so striking, as fairly to lead to the conclusion that the one is a substantial *copy* of the other, or mainly borrowed from it; in short, that there is substantial identity between them. A copy is one thing, an imitation or resemblance another." To this we would venture to add, to avoid a false inference, the supposed copy must be substantially in the language of the original book.

We have already said that since the same sources of information are open alike to all persons, every person may go freely to those sources, and use them *verbatim et literatim*, where those sources consist of other writings not secured by copy-right; for no

author gains a precedence to use them exclusively by having first made use of the extracts.

It is obvious a copy-right may be violated by copying from a book in other printed forms than an ordinary book, as in an encyclopedia, volume of biography, history or other series of writings. Such a use of an author's work is inconsistent with an *exclusive* right in the author himself, although it may possibly be true that the encyclopedia, or collection of biographies, or other series, may not very much interfere with the sale of the original work.

The question how far an abridgment of a book is a violation of the copy-right of the book has been noticed in an early part of our comments, and need not here be further discussed. We will only repeat that it is a doctrine of the law attended in practice with some considerable difficulty. Certain it is that the mere omission of parts of a work by the use of the scissors, *i. e.*, cutting it down and reducing the book, is not an abridgment in the eye of the law. It is not that kind of intellectual labor—if it deserves to be so called at all — which is intended to be secured and encouraged by the copy-right law. A real abridgment requires new combinations of thoughts, new inventions, and new language; in fact, it must be substantially a new work, designed to fill a new place.

We have likewise already expressed our views as to translations, — how far they are or are not a violation of copy-right, — and will not repeat them in this place.

CHAPTER IV.

HAVING considered in what cases a copy-right may be obtained, the manner in which it may be obtained, and what is an infringement of copy-right, we will next inquire what remedy is afforded the author to protect his property from violation.

We do not suppose, since the case of Wheaton & Donaldson *v.* Peters & Grigg, 8 Pet. Rep. 591, there is any question that the only remedy for a violation of copy-right is founded on the statutes 3 February, 1831, and an earlier one 15 February, 1819. If there ever was, or otherwise could have been, a common-law right in an author, as it was claimed there was in England, before the decision of Donaldson *v.* Becket, it is certain no common-law right is recognized and enforced at the present time. The whole question seems to be referred to the provisions of the statute, both in England and in this country.

By the sixth section of the statute 3 February, 1831, if a person shall, without authority, in writing, obtained from the proprietor, signed in the presence of two witnesses, print, publish, or import a book duly secured in the United States by the statute, or shall, knowing this fact, publish or sell the same, without consent so obtained, then every copy of said book shall be forfeited to said proprietor, and the offender shall forfeit and pay fifty cents for every sheet *found in his possession*, — the one moiety thereof to the owner of the copy-right, and the other to

the United States, to be recovered in an action of debt; and if it be an engraving, map, chart, or musical composition, the offender shall forfeit the plates and every sheet, besides one dollar for every sheet found in his possession.

By the ninth section of the act it is provided if any person shall, without consent obtained as aforesaid, publish or print another's *manuscript*, he shall be liable for all damages occasioned by said injury. Equity, too, will doubtless give the needed relief by injunction or otherwise.

By the eleventh section it is provided if any one shall insert a false notice on the title-page or the one following, or on his map, chart, &c., of his copyright, he shall forfeit one hundred dollars.

By the thirteenth section it is provided no action for damages shall be brought but within two years after the cause of action shall have occurred.

By the sixteenth section it is provided that the benefit of the statute shall be extended to such copyrights as were unexpired at the passage of this act,—practically extending the term of such copy-rights to twenty-eight years, with right of renewal to the author if alive; if not, to his widow and children.

The most common and only adequate remedy for authors against those who infringe their copy-rights is by an injunction in a court of equity. Damages at law and forfeitures, as already mentioned, have, in most cases, hitherto been found altogether inadequate, and it is obvious, from examining the provisions of this part of the law, that such a result — evasion by a trespasser — is attended with little difficulty.

Wherever, upon an application in equity for an injunction, the title or right of the complainant, and the fact of infringement itself, are not attended with doubt or difficulty, either as to the facts or law of the case, it is customary for the court to grant an injunction at once, and make it absolute after the hearing, in the discretion of the court; but if it be otherwise, and the facts are numerous, complicated, or difficult, the case will be sent to a master in chancery to investigate and report the facts to the court for its future action.

40

STATUTES OF THE UNITED STATES.

CHAP. XVI.

An Act to amend the several Acts respecting copy-rights.

[VOL. IV. P. 436, U. S. STATUTES AT LARGE.]

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That from and after the passing of this act, any person or persons, being a citizen or citizens of the United States, or resident therein, who shall be the author or authors of any book or books, map, chart, or musical composition, which may be now made or composed, and not printed and published, or shall hereafter be made or composed, or who shall invent, design, etch, engrave, work, or cause to be engraved, etched, or worked from his own design, any print or engraving, and the executors, administrators, or legal assigns of such person or persons, shall have the sole right and liberty of printing, reprinting, publishing, and vending such book or books, map, chart, musical composition, print, cut, or engraving, in whole or in part, for the term of twenty-eight years from the time of recording the title thereof, in the manner hereinafter directed.

SEC. 2. *And be it further enacted*, That if, at the expiration of the aforesaid term of years, such author, inventor, designer, engraver, or any of them, where the work had been originally composed and made by more than one person, be still living, and a citizen or citizens of the United States, or resident therein, or, being dead, shall have left a widow, or child, or children, either or all then living, the same exclusive right shall be continued to such author, designer, or engraver, or, if dead, then to such widow and child, or children, for the further term of fourteen years: *Pro-*

vided, That the title of the work so secured shall be a second time recorded, and all such other regulations as are herein required in regard to original copy-rights, be complied with in respect to such renewed copy-right, and that within six months before the expiration of the first term.

SEC. 3. *And be it further enacted*, That in all cases of renewal of copy-right under this act, said author or proprietor shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more of the newspapers printed in the United States, for the space of four weeks.

SEC. 4. *And be it further enacted*, That no person shall be entitled to the benefit of this act, unless he shall, before publication, deposit a printed copy of the title of such book, or books, map, chart, musical composition, print, cut, or engraving, in the clerk's office of the district court of the district wherein the author or proprietor shall reside, and the clerk of such court is hereby directed and required to record the same thereof forthwith, in a book to be kept for that purpose, in the words following (giving a copy of the title, under the seal of the court, to the said author or proprietor, whenever he shall require the same): "District of to wit: Be it remembered, that on the day of anno domini A. B., of the said district, hath deposited in this office the title of a book (map, chart, or otherwise, as the case may be), the title of which is in the words following, to wit: (here insert the title): the right whereof he claims as author (or proprietor, as the case may be), in conformity with an act of Congress entitled, 'An act to amend the several acts respecting copy-rights.' C. D., clerk of the district." For which record the clerk shall be entitled to receive, from the person claiming such right as aforesaid, fifty cents, and the like sum for every copy, under seal, actually given to such person or his assigns. And the author or proprietor of any such book, map, chart, musical composition, print, cut, or engraving, shall, within three months from the publication of said book, map, chart, musical composition, print, cut, or engraving, deliver, or cause to be delivered, a copy of the same to the clerk of said district. And it shall be the duty of the clerk of each district court, at least once in every year, to transmit a certified list of all such records of copy-right, including the titles so recorded, and the dates of

record, and also all the several copies of books or other works deposited in his office according to this act, to the Secretary of State, to be preserved in his office.

SEC. 5. *And be it further enacted*, That no person shall be entitled to the benefit of this act, unless he shall give information of copy-right being secured, by causing to be inserted, in the several copies of each and every edition published during the term secured, on the title page, or the page immediately following, if it be a book, or, if a map, chart, musical composition, print, cut, or engraving, by causing to be impressed on the face thereof, or if a volume of maps, charts, music, or engravings, upon the title or frontispiece thereof, the following words, viz.: "Entered according to act of Congress, in the year by A. B., in the clerk's office of the district court of " (as the case may be).

SEC. 6. *And be it further enacted*, That if any other person or persons, from and after the recording the title of any book or books, according to this act, shall, within the term or terms herein limited, print, publish, or import, or cause to be printed, published, or imported, any copy of such book, or books, without the consent of the person legally entitled to the copy-right thereof, first had and obtained in writing, signed in presence of two or more credible witnesses, or shall, knowing the same to be so printed or imported, publish, sell, or expose to sale, or cause to be published, sold, or exposed to sale, any copy of such book without such consent in writing; then such offender shall forfeit every copy of such book to the person legally, at the time, entitled to the copy-right thereof; and shall also forfeit and pay fifty cents for every such sheet which may be found in his possession, either printed, or printing, published, imported, or exposed to sale, contrary to the intent of this act, the one moiety thereof to such legal owner of the copy-right as aforesaid, and the other to the use of the United States, to be recovered by action of debt in any court having competent jurisdiction thereof.

SEC. 7. *And be it further enacted*, That if any person or persons, after the recording the title of any print, cut, or engraving, map, chart, or musical composition, according to the provisions of this act, shall, within the term or terms limited by this act, engrave, etch, or work, sell, or copy, or cause to be engraved, etched, worked, or sold, or copied, either on the whole, or by varying,

adding to, or diminishing the main design with intent to evade the law; or shall print, or import for sale, or cause to be printed, or imported for sale, any such map, chart, musical composition, print, cut, or engraving, or any parts thereof, without the consent of the proprietor or proprietors of the copy-right thereof, first obtained in writing, signed in the presence of two credible witnesses; or, knowing the same to be so printed or imported without such consent, shall publish, sell, or expose to sale, or in any manner dispose of any such map, chart, musical composition, engraving, cut, or print, without such consent, as aforesaid; then such offender or offenders shall forfeit the plate or plates on which such map, chart, musical composition, engraving, cut, or print, shall be copied, and also all and every sheet thereof so copied or printed as aforesaid, to the proprietor or proprietors of the copyright thereof; and shall further forfeit one dollar for every sheet of such map, chart, musical composition, print, cut, or engraving, which may be found in his or their possession, printed or published, or exposed to sale, contrary to the true intent and meaning of this act: the one moiety thereof to the proprietor or proprietors, and the other moiety to the use of the United States, to be recovered in any court having competent jurisdiction thereof.

SEC. 8. *And be it further enacted*, That nothing in this act shall be construed to extend to prohibit the importation or vending, printing, or publishing, of any map, chart, book, musical composition, print, or engraving, written, composed, or made, by any person not being a citizen of the United States, nor resident within the jurisdiction thereof.

SEC. 9. *And be it further enacted*, That any person or persons who shall print or publish any manuscript whatever without the consent of the author or legal proprietor first obtained as aforesaid (if such author or proprietor be a citizen of the United States, or resident therein), shall be liable to suffer and pay to the author or proprietor all damages occasioned by such injury, to be recovered by a special action on the case founded upon this act, in any court having cognizance thereof; and the several courts of the United States empowered to grant injunctions to prevent the violation of the rights of authors and inventors, are hereby empowered to grant injunctions, in like manner, according to the principles of equity, to restrain such publication of any manuscript as aforesaid.

SEC. 10. *And be it further enacted*, That if any person or persons shall be sued or prosecuted, for any matter, act, or thing done under or by virtue of this act, he or they may plead the general issue and give the special matter in evidence.

SEC. 11. *And be it further enacted*, That if any person or persons, from and after the passing of this act, shall print or publish any book, map, chart, musical composition, print, cut, or engraving, not having legally acquired the copy-right thereof, and shall insert or impress that the same hath been entered according to act of Congress, or words purporting the same, every person so offending shall forfeit and pay one hundred dollars; one moiety thereof to the person who shall sue for the same, and the other to the use of the United States, to be recovered by action of debt, in any court of record having cognizance thereof.

SEC. 12. *And be it further enacted*, That in all recoveries under this act, either for damages, forfeitures, or penalties, full costs shall be allowed thereon, anything in any former act to the contrary notwithstanding.

SEC. 13. *And be it further enacted*, That no action or prosecution shall be maintained, in any case of forfeiture or penalty under this act, unless the same shall have been commenced within two years after the cause of action shall have arisen.

SEC. 14. *And be it further enacted*, That the "Act for the encouragement of learning, by securing the copies of maps, charts, and books to the authors and proprietors of such copies during the times therein mentioned," passed May thirty-first, one thousand seven hundred and ninety, and the act supplementary thereto, passed April twenty-ninth, one thousand eight hundred and two, shall be, and the same are hereby, repealed: saving, always, such rights as may have been obtained in conformity to their provisions.

SEC. 15. *And be it further enacted*, That all and several the provisions of this act, intended for the protection and security of copy-rights, and providing remedies, penalties, and forfeitures in case of violation thereof, shall be held and construed to extend to the benefit of the legal proprietor or proprietors of each and every copy-right heretofore obtained, according to law, during the term thereof, in the same manner as if such copy-right had been entered and secured according to the directions of this act.

SEC. 16. *And be it further enacted*, That whenever a copy-right has been heretofore obtained by an author or authors, inventor, designer, or engraver, of any book, map, chart, print, cut, or engraving, or by a proprietor of the same; if such author or authors, or either of them, such inventor, designer, or engraver, be living at the passage of this act, then such author or authors, or the survivor of them, such inventor, engraver, or designer, shall continue to have the same exclusive right to his book, chart, map, print, cut, or engraving, with the benefit of each and all the provisions of this act, for the security thereof, for such additional period of time as will, together with the time which shall have elapsed from the first entry of such copy-right, make up the term of twenty-eight years, with the same right to his widow, child, or children, to renew the copy-right, at the expiration thereof, as is above provided in relation to copy-rights originally secured under this act. And if such author or authors, inventor, designer, or engraver, shall not be living at the passage of this act, then his or their heirs, executors and administrators shall be entitled to the like exclusive enjoyment of said copy-right, with the benefit of each and all the provisions of this act for the security thereof, for the period of twenty-eight years from the first entry of said copy-right, with the like privilege of renewal to the widow, child, or children, of author or authors, designer, inventor, or engraver, as is provided in relation to copy-rights originally secured under this act: *Provided*, That this act shall not extend to any copy-right heretofore secured, the term of which has already expired.

APPROVED, February 3, 1831.

CHAP. CLVII.

An Act supplementary to the Act to amend the several Acts respecting copy-rights.

[VOL. IV., P. 728.]

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That all deeds or instruments in writing for the transfer or assignment of copy-rights, being proved or acknowledged in such manner as deeds for the conveyance of land are required by law to be proved

or acknowledged in the same State or district, shall and may be recorded in the office where the original copy-right is deposited and recorded; and every such deed or instrument that shall in any time hereafter be made and executed, and which shall not be proved or acknowledged and recorded as aforesaid, within sixty days after its execution, shall be judged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration without notice.

SEC. 2. *And be it further enacted*, That the clerk of the district court shall be entitled to such fees for performing the services herein authorized and required as he is entitled to for performing like services under existing laws of the United States.

APPROVED, June 30, 1834.

Extract from a Statute approved 10 *August*, 1846.

[VOL. IX., P. 106.]

SEC. 10. *And be it further enacted*, That the author or proprietor of any book, map, chart, musical composition, print, cut, or engraving, for which a copy-right shall be secured under the existing acts of Congress, or those which shall hereafter be enacted respecting copy-rights, shall, within three months from the publication of said book, map, chart, musical composition, print, cut, or engraving, deliver, or cause to be delivered, one copy of the same to the librarian of the Smithsonian Institution, and one copy to the librarian of Congress Library, for the use of the said libraries.

INDEX.

AN ABRIDGMENT.

What is it? When has it originality? When is it piracy? When is it lawful? 12, 13, 36.

ASSIGNEE.

Whether by contract, or operation of law, may take out a copy-right in his own name, 9.

ASSIGNMENT OF COPY-RIGHT.

How made, 31.

BOOK.

Meaning of the term in the statute, 16.

CHANCERY.

It alone affords an effectual remedy for violation of copy-right, 38, 39.

CHILDREN.

This term does not include grandchildren, under the statute, 29.

COMPILATION.

What is it? What is secured by a copy-right upon it? 13.

COPY-RIGHT.

When may it be had? 7, 16, 17.
In whose name? 25.
It covers every part of the book that is original, 7.
Cannot be taken out after the author has abandoned his work or manuscript, 24, 15, 16.
When is it abandoned? 24, 15, 16.
Cannot be taken out after the book has been published in a foreign country, 24.
Who may take out a copy-right? 25.

COURTS.

Do not lend their aid to protect books. works, or productions of any kind, if immoral or illegal, 7, 8, 9.

INFRINGEMENT OF COPY-RIGHT.

What is it? What acts amount to it? The rule of law, 32, 33, 34, 36.

LAWS OF FOREIGN COUNTRIES.

Copy-right laws of European States, 22.

LETTERS.
When, and by whom, may a copy-right be had on? 14, 15, 16.
LITERARY PROPERTY.
Nature and duration of, at the common law; and how affected by statute, 5, 20.
Law of, as laid down in Millar v. Taylor, and Donaldson v. Beckwith, and Wheaton v. Peters, 19, 20.
In this country it exists only under, and in conformity to, the acts of Congress, 20, 21.
MANUSCRIPTS.
Exclusively the property of the author until published, 23.
Pass like other property by sale, 23.
Cannot be taken on execution, 23.
Do not pass under a commission of bankruptcy, 23.
Must be original and unpublished to allow of a copy-right, 7, 9.
Minority and marriage no objection to obtaining a copy-right, 29.
NOTICE.
Every edition must contain notice that a copy-right is secured, 30, 31.
ORIGINALITY.
Necessary in every copy-right, 11, 9, 10, 12.
What is it? and what it includes, 10, 11.
PUBLICATION.
What is it? 16, 17.
REMEDY.
What given for a violation of copy-right? 37, 38.
Limitation of time for suing, 38.
Chancery affords the best, 38.
RENEWAL.
Steps necessary to renew a copy-right, 28.
REQUISITES OF THE STATUTE.
They are precedent conditions; see the steps required, 27, 28.
SALE OF COPY-RIGHT.
Does it carry a right to renew? 29, 30.
SPEECHES, LECTURES, ETC.
May be secured by copy-right, 14 15, 16.
STATUTE OF 3 FEBRUARY, 1831.
Its two new provisions. To whom the public are indebted for them, 21, 22.
TRANSLATION.
It has originality, and is not piracy, 17, 18, 19.
WIDOW AND CHILDREN.
When may they renew? 29.