A TREATISE UPON

THE LAW OF COPYRIGHT

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IN THE UNITED KINGDOM AND THE DOMINIONS OF THE CROWN, AND IN THE UNITED STATES OF AMERICA

CONTAINING A FULL APPENDIX OF ALL ACTS OF PARLIAMENT
INTERNATIONAL CONVENTIONS, ORDERS IN COUNCIL
TREASURY MINUTE AND ACTS OF CONGRESS
NOW IN FORCE

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TO

THOMAS EDWARD SCRUTTON, Esq., K.C.

IN GRATITUDE FOR

MUCH INSTRUCTION AND KINDNESS

PREFACE

THE foundations of this work were laid by my endeavours to understand what is perhaps the most complicated and obscure series of statutes in the statute book. In working from time to time at the Law of Copyright I found great want of a text-book which should be exhaustive of the case law, and at the same time contain a concise and clearly arranged epitome of the statutory provisions. This want I have tried to supply for myself in the present compilation, and it is now published in the hope that it may prove useful to others. The present law is bad both in substance and form, but it is the more essential that those who have anything to do with literary or artistic property should comprehend it in so far as it is comprehensible. There are probably more pitfalls for the unwary in dealing with Copyright than with any other branch of the law.

We have for some time been on the eve of a general codification and amendment of the Law of Copyright. It is, however, an eve of long and indefinite duration. It is now twenty-eight years since the Royal Commission on Copyright was appointed, and still nothing has been done to ameliorate the lamentable condition in which the Commissioners then found the law. Dissensions among those who are interested in Copyright, failure to come to a satisfactory arrangement with the colonies, and want of time at the disposal of the legislature are mainly responsible for this delay. In the meantime it is well that all those who are interested in Copyright should made themselves conversant

with the law as it now is, so that when the time for legislation does at last come the result may be the more satisfactory.

I have added to this work Part II., dealing with Copyright in the United States, and I hope it may prove useful not only to English but to American lawyers and publishers.

I have to acknowledge much assistance in the preparation of this work and many invaluable suggestions from my friends, Mr. Langridge, of the Middle Temple, and Mr. Mackinnon, of the Inner Temple.

E. J. MACGILLIVRAY.

3 TEMPLE GARDENS,
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PART I

THE LAW OF COPYRIGHT IN THE UNITED KINGDOM AND THE DOMINIONS OF THE CROWN

CHAPTER I

INTRODUCTORY

THE history of copyright has been exhaustively dealt with by Mr. Copinger, Mr. Scrutton, and Mr. Drone in their respective treatises on copyright law. I feel that I can add nothing useful to this branch of the subject, and as a detailed account of the evolution of the law of literary and artistic property is of little value to the practitioner except as academic knowledge, I propose merely to pass briefly in review the various epochs through which the author and his publisher have passed in their struggle to obtain from the public what they consider to be the just and adequate remuneration for their labours. For a complete historical introduction to the law of copyright I cannot do better than refer to Mr. Birrell's delightful lectures.[1]

The Royal Prerogative.

The first record which we have of any monopoly in the reproduction of literary work is in the exercise of the alleged prerogative of the Crown to control the printing-press. No book whatsoever was allowed to be printed without a licence or grant of monopoly from the Crown. One of the principal objects in the exercise of this prerogative was the prevention of the dissemination of religious doctrines contrary to the accepted faith.

The Company of Stationers.

Henry VIII. created the Company of Stationers to supervise and control the publication of books. This company made various rules and regulations as to the printing of books, and from them licences could be obtained by an author to print his copy. The Stationers' Company was first incorporated in the reign of Philip and Mary in 1556. The Crown enforced its

[1] "The Law and History of Copyright in Books," by Augustine Birrell, 1899.

The Star Chamber.

prerogative and the rules of the Stationers' Company by means of the Court of Star Chamber, which from time to time passed various decrees, and punished offenders by fine and imprisonment.

By this means the Crown until 1640 exercised an unlimited jurisdiction over the press. In this there was no recognition of a right of property in the author of a work, but merely an enforcement of the royal prerogative to control the press. Incidentally, however, a kind of property sprang up, since the Stationers' Company in granting licences recognised the right of the author or his assignee to his copy. Licences were granted to those who showed that they had a right in the manuscript, and all others were prohibited from infringing the monopoly. An entry in the records of the Stationers' Company in 1562, for instance, enacts "That if it be found any other has a right to any of the copies, then the licence touching such of the copies so belonging to another shall be void."

The germ of Copyright.

Licences.

The Long Parliament.

When the Star Chamber was abolished in 1640 the two Houses made an ordinance prohibiting printing unless the book was first licensed and entered in the register of the Stationers' Company, and further prohibiting printing without the consent of the owner.

Licensing Statute.

At the Restoration a licensing statute [1] was passed similarly prohibiting printing without licence and without the consent of the owner. The statute finally expired in 1694.

On the expiry of the licensing statute, authors and publishers thought that all protection for literary work was gone, and made strenuous efforts for new legislation. Bills were brought into Parliament in 1703 and 1706, and finally in 1709 the copyright statute of Anne became law.

8 Anne, c. 19. The beginning of Statutory Copyright.

The Act of Anne created for the first time a statutory property in books. The author of any book and his assignee or assigns were given the sole liberty of printing and reprinting such book for the term of fourteen years from publication "and no longer," and if at the end of that period the author was still living, then such right returned to the author for

[1] 13 and 14 Car. 2, c. 33.

another term of fourteen years. The Act provided that an offender should forfeit pirated copies and sheets to the proprietor of the copyright, who was enjoined to "forthwith damask and make waste paper of them." The Act further imposed a penalty of one penny for every sheet found in the offender's possession, one half of the penalties to go to the Crown and the other half to any person who should sue for the same. The Act made registration in the Register Book of the Company of Stationers before publication a condition precedent to an action for the infringement of any book. A provision was made in this Act for an adjustment of the price of books by complaint to the Archbishop of Canterbury, the Lord Chancellor and others, if booksellers or printers set too high a price upon their publications. Provision was also made for the delivery of nine copies at the warehouse of the Stationers' Company for the use of various libraries.

41 Geo. III., ch. 107.

The Act of Anne was amended in some particulars in 1801 by 41 Geo. III. c. 107. This Act gave the proprietor of the copyright an action of damages against an offender as well as providing forfeiture and penalties.

54 Geo. III., ch. 156.

The Act of Anne was again amended in 1814 by 54 Geo. III. c. 156. This latter statute extended the period of copyright to twenty-eight years certain, and the residue of the author's life thereafter.

Copyright at Common Law.

After the passing of the statute of Anne those booksellers who were in the habit of purchasing and publishing authors' manuscripts were not satisfied with the limited protection accorded to them by that Act. They discovered, by the aid no doubt of legal advice, that a further protection might be secured by setting up a common law right of literary property which would ensure not merely a paltry term of twenty-eight years, but a perpetual monopoly. The result of this discovery led to half a century of litigation between the authors' booksellers and those other smaller booksellers who contended that they might without licence print those books in which the statutory copyright had expired. At first the authors' men were successful, and from 1735 there is a series of cases in Chancery in which a common law right in published books was undoubtedly recog-

Injunctions in Chancery.

nised and a preliminary injunction granted, notwithstanding that the period of protection given by 8 Anne, c. 19, had expired.[1]

Tonson v. Collins.

These injunctions appear to have been acquiesced in, and the cases did not proceed to hearing. In 1760, in the case of *Tonson* v. *Collins*,[2] the great question of common law right was argued at law before Lord Mansfield, C.J. The action was in respect of the *Spectator*, the statutory copyright in which had expired. It was twice argued before Lord Mansfield, who then ordered that it should stand over for further argument before all the twelve judges. No judgment was ever given in the case. Before it could be argued before the whole Court, information reached the judges that the action was collusive, brought for the purpose of obtaining a precedent to support the contention of the authors' men. The Court refused to proceed further with the cause.

A collusive action.

Osborne v. Donaldson.

It was not long, however, until the question was again raised. In 1765 Messrs. Osborne & Millar, assignees of the copyright in Thomson's "Seasons," filed their Bills in Chancery against Donaldson, an Edinburgh bookseller, who had, without their authority, reprinted the book after the statutory copyright had expired.[3] A preliminary injunction was obtained, but subsequently dissolved. Lord Chancellor Northington said it was a point of so much difficulty and consequence that he should not determine it at the hearing, but should send it to law for the opinion of the judges. The question therefore again came to law, and, in *Millar* v. *Taylor*,[4] was argued at great length before Lord Mansfield and Justices Aston, Willis and Yates. The authors' men were victorious. The Court decided (Yates, J., dissenting) that there was copyright at common law, and that the period of protection thereunder was not cut down by the statute of Anne. This great victory, however, afforded but a short-lived triumph to literary men. In 1774, in *Donaldson* v. *Beckett*,[5] the matter came before the House of Lords on appeal from an order in Chancery, with

Millar v. Taylor.

Donaldson v. Beckett.

[1] *Eyre* v. *Walker* (1735), 4 Burr., 2325; *Motte* v. *Falkner* (1735), 4 Burr., 2326; *Walthoe* v. *Walker* (1736), 4 Burr., 2326; *Tonson* v. *Walker* (1752), 4 Burr., 2326.

[2] (1760), 1 W. Black, 301.

[3] *Osborne* v. *Donaldson* (1765), 2 Eden, Ch. Cas., 327.

[4] (1769), 4 Burr., 2303.

[5] (1774), 2 Bro. P. C., 129.

the result that the decision in *Millar* v. *Taylor*[1] was overruled. In this case all the judges were consulted. Eleven consulted judges gave their opinion. The questions put to the judges, and the answers given by them, are as follows :—

Opinions of the judges.

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 ?

Eight answered . . .	Yes.
One answered	No.
Two answered	That an action would only lie if the MS. were taken by fraud or violence.

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

Seven answered . . .	No.
Four answered . . .	Yes.

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 ?

Six answered	Yes.
Five answered	No.

4. Whether the author of any literary composition and his assigns had the sole right of printing and publishing the same in perpetuity by the common law ?

Seven answered . . .	Yes.
Four answered . . .	No.

5. Whether this right is in any way impeached or taken away by the statute of 8th Anne ?

Six answered	Yes.
Five answered . . .	No.

[1] (1769), 4 Burr., 2303.

Decision of the House of Lords.

The House of Lords on a division, which included several lay members of the House, decided by 22 to 11 against the contention that the common law right survived the statute of Anne and was unrestricted by it. So the authors and their champions the booksellers were finally defeated, and had to remain satisfied with the term of protection afforded to them by statute.

Defeat of the Authors' booksellers.

Relief for the Universities.

The Universities obtained from Parliament statutory relief against the decision in *Donaldson* v. *Beckett*. In 1775, the Act of 15 Geo. III. c. 53 was passed giving them a perpetual copyright in all books which might be bequeathed to them. This right they still retain.

5 & 6 Vict. c. 45.

In 1842 the present literary Copyright Act was passed and the statute of Anne and the two amending statutes of Geo. III. repealed. The principal reform is the extension of the term of protection to a period of forty-two years certain, or for the author's life and seven years if that should prove longer. Perhaps the other most important change (it cannot decently be called a reform) is the reduction of registration at Stationers' Hall to a mere useless and troublesome technicality. Instead of being as formerly a condition precedent to protection, and therefore a useful index from which one could ascertain whether a book was copyright or not, it is now made merely a condition precedent to action, and registration can be effected the same day as that on which a writ is issued.

Engravings.

Meanwhile the engravers as well as the authors had been working for the proper protection of their art. In 1734 they first obtained a statute which, together with the amending statutes passed in 1766, 1776, and 1836 respectively, still contains the law of copyright in engravings, prints, etchings, and similar productions.

Sculpture.

In 1798 the sculptors obtained an Act. This was repealed by another Act obtained in 1813. This latter Act still contains the whole law as to copyright in sculpture.

Dramatic Work.

In 1833 authors of dramatic work obtained from Parliament an exclusive right to perform their plays whether published or unpublished. By the Literary Copyright Act, 1842, the provisions of that Act are made applicable to performing

rights in dramatic work, and performing rights are still regulated by both these Acts, which together contain the law on this subject. The Literary Copyright Act, 1842, also applied the provisions of both these Acts to performing rights in musical compositions hitherto unprotected in this respect. As regards musical composition, the law is amended by two subsequent Acts which must be read with the two older Acts.

Musical Work.

In 1835 an Act was passed for the protection of copyright in lectures. This Act, although still in force, has become a dead letter since the requisite notice to two Justices of the Peace is troublesome, and lectures receive full protection from copying by common law and under the Literary Copyright Act, 1842. The Lectures Act never purported to give anything in the nature of a performing or lecturing right, but merely a protection from unauthorised reproduction in print.

Lectures.

The artists were the last to obtain protection for their work. It was not until 1862 that an Act was passed giving statutory protection to paintings, drawings, and photographs. This Act contains the present law on the "Fine Arts."

Paintings, Drawings, and Photographs.

From 1844 onwards there is a series of Acts known as the International Copyright Acts which extend the protection of the copyright law to works published in certain foreign countries. The last and principal international copyright Act is the International Copyright Act, 1886. That Act was passed in view of the Berne Convention of 1887 which was then in contemplation. The Berne Convention is an international copyright agreement whereby those states which are signatory to it agree that, subject to its terms, a work first published in any one of those states shall have copyright in all the others. The Berne Convention is now amended by the Paris Convention, 1898, and read together they form the present international agreement.

International Acts.

The Berne Convention.

The Paris Convention.

There are several statutes dealing with the colonies dating from 1847.

Colonial Acts.

CHAPTER II

WHAT BOOKS ARE PROTECTED

THE following books are protected by statute throughout the British Dominions :[1]—

1. Every original book :[2]
2. First published within the British Dominions :[3]
3. [The author of which is a British subject or resident within the British Dominions at the time of first publication :[4]]
4. Which is innocent :[5]
5. And has been registered before action :[6]
6. For 42 years, or the author's life and 7 years, whichever period is the longer.[7]

SECTION I.—WHAT IS AN ORIGINAL BOOK.

Definition of a Book.—"Book" is defined by 5 & 6 Vict. c. 45, sec. 2, "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."

As an exhaustive definition this is of little value. It only indicates what the outward visible form of the "book" must be, and gives no indication of the nature or quality of the literary matter which it must contain. Even as a guide to the form it is defective, since it is only a definition by example and not exhaustively descriptive. In the absence of an accurate statutory definition of a "book," the Courts have given a very wide interpretation to the term, and both as to the form and the matter have strained the ordinary dictionary meaning of the word

[1] 5 & 6 Vict. c. 45, secs. 15, 2. [2] *Infra*, Section I.

[3] *Infra*, Section II., p. 36. Foreign works first published in certain foreign countries are protected subject to the conditions of the International Copyright Acts, and are dealt with in a separate chapter. Chapter X., p. 193.

[4] This requisite for protection is extremely doubtful. Probably there is no restriction as to nationality of the author. See *infra*, Section III., p. 42.

[5] *Infra*, Section IV., p. 46. [6] *Infra*, Section V., p. 46. [7] *Infra*, Section VII., p. 56.

to the uttermost. In the light of the decided cases a "book" might be defined as *original literary matter in such tangible form as readily conveys ideas or information to the mind of a reader.*

Essential Elements of a Book.—There are three essential elements which must be found in every book, viz. :—

I. A certain physical form.
II. Literary matter.
III. Originality.

I. *Physical Form.*—The form of the book need not necessarily constitute what in common parlance is known as a book or volume. Thus a single sheet of music[1] or a printed leaflet such as an application form[2] are both books within the meaning of the Copyright Acts.

In one case[3] it was held that a newspaper was not a book, but that decision was not followed,[4] and there can now be no doubt that a newspaper comes within the definition of a book as a sheet of letterpress.[5]

The form must be adapted for conveniently conveying to the mind of a reader the intellectual matter which the book contains. It will not be sufficient that it can possibly be used for conveying intellectual matter to the mind, it must be conveniently adapted for that purpose. Thus music in the form of a perforated scroll for use in an æolian or pianola is not a "book,"[6] for although it can be deciphered and read by the eye no one in his senses would use it instead of an ordinary sheet of music. On the other hand literary matter may nevertheless be in "book" form although it requires a special training to decipher it. For instance a story written in shorthand characters is in book form,[7] and no doubt also a story impressed in raised characters for the blind.[8]

The substance on which the literary matter is depicted and

[1] *Clementi* v. *Golding* (1809), 2 Camp., 25; *Storace* v. *Longman* (1788), 2 Camp., 26 *n.*; *Hime* v. *Dale* (1803), 2 Camp., 27 *n.*; *White* v. *Geroch* (1819), 2 B. and Ald., 298.

[2] *Southern* v. *Bailes* (1894), 38 Sol. J., 681.

[3] *Cox* v. *Land and Water* (1869), L. R. 9 Eq. 324.

[4] *Walter* v. *Howe* (1881), 17 Ch. D., 708; and see *Platt* v. *Walter* (1867), 17 L. T., 157.

[5] *Trade Auxiliary* v. *Middlesborough* (1889), 40 Ch. D., 425; *Cate* v. *Devon* (1889), 40 Ch. D., 500.

[6] *Boosey* v. *Whight* [1900], 1 Ch., 122.

[7] *Nicols* v. *Pitman* (1884), 26 Ch. D., 374. Both this case and *Boosey* v. *Whight* are cases of infringement, but they would seem equally to apply to a question whether a certain scroll or document would be a "book" entitled to copyright under the Acts.

[8] See Stirling, J., in *Boosey* v. *Whight* [1899], 1 Ch., at p. 842.

the manner of depicting it are probably immaterial; but presumably a "book" must be at least *ejusdem generis* as an ordinary printed volume or leaflet. It must be "something in the nature of a book."[1] Thus although copies in ordinary manuscript[2] or even engraved on thin slips of ivory would be in "book" form, an epitaph on a tombstone probably would not.

The meaning of the words "separately published" in section 2 is by no means clear. They do not mean that the matter in which copyright is claimed must be issued physically separate from any non-copyright literary matter. In the statute of Anne the words "separately published" are not used in the definition of a book, but it was nevertheless argued that a "book" must be entirely the original work of the author and not bound up with other matter. In *Cary* v. *Longman* Lord Kenyon rejected such an argument. In giving judgment he said:—

> "The courts of justice have long been labouring under an error if an author have no copyright in any part of a work unless he have an exclusive right to the whole book."[3]

Under the statute of Victoria parts of a book bound up with non-copyright matter have frequently been protected; notes to non-copyright works,[4] illustrations to non-copyright works,[5] a small portion of a serial story,[6] a small part of a time table,[7] have all been protected. Clearly therefore a person may have copyright in a book although he has not copyright in every part of it.[8]

In *Johnson* v. *Newnes*[9] Romer, J., takes the view that "separately" published means clearly distinguishable. He says:—

> "Now in my opinion if you find in a volume separate parts, and distinguished or perfectly distinguishable from the other parts, and the volume is published, each part that is separate and clearly distinguished in the volume itself is separately published within the meaning of section 2."

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[1] See Stirling, J., in *Boosey* v. *Whight* [1899], 1 Ch., at p. 842.
[2] *White* v. *Geroch* (1819), 2 B. and Ald., 298. See p. 38.
[3] (1801), 1 East., 358; and see *White* v. *Geroch* (1819), 2 B. and Ald., 298; *Tonson* v. *Walker* (1752), 3 Swanst., 672.
[4] *Black* v. *Murray* (1870), 9 M., 341; *Sweet* v. *Benning* (1855), 16 C. B., 459.
[5] *Bogue* v. *Houlston* (1852), 5 De Gex and Smale, 267.
[6] *Low* v. *Ward* (1868), L. R., 6 Eq., 415.
[7] *Leslie* v. *Young* [1894], A. C., 335.
[8] Lindley, L.J., in *Lamb* v. *Evans* [1893], 1 Ch., at p. 223.
[9] [1894], 3 Ch., 663.

If we accept this as correct we exclude the case of a revised edition of an old work, the corrections and additions to which forming the new work are not clearly distinguishable from the old. I am inclined to think that the real explanation and meaning of "separately published" is that it does not apply to "volume, part, or division of a volume" at all, but only to "sheet of letterpress, sheet of music, map, chart, or plan" which are to be protected, even although they are "separately published," *i.e.* not bound up into a volume. It was no doubt inserted as declaratory of the case law under the statute of Anne, which laid down that a single printed sheet was a "book" within the meaning of the Act.

II. *Literary Matter.*—No literary merit or great labour is required to be shown. Lord Halsbury, L.C., in *Walter* v. *Lane*,[1] referring to the verbatim reports of Lord Rosebery's speeches which were the subject-matter of that action, said:—

"Although I think in these compositions (*i.e.* the work of the stenographer) there is literary merit and intellectual labour, yet the statute seems to me to require neither—nor originality either in thought or language . . . the right in my view is given by the statute to the first producer of a book, whether that book be wise or foolish, accurate or inaccurate, of literary merit, or of no merit whatever."[2]

In many of the cases great stress was laid in argument at the bar on the preamble of the Copyright Act, 5 & 6 Vict. c. 45. The preamble runs as follows:—

"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. . . ."

From this it is argued that the Act intends to protect only those works which are likely to prove a substantial addition to the world's literature. Jessel, M.R., in his judgment in *Maple* v. *Junior Army and Navy Stores*,[3] points out the fallacy of this argument:—

"The Act does not say that it is expedient to afford greater encouragement to the production of literary works of lasting benefit to the world, and to amend the law of copyright relating thereto, but that it is expedient

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[1] [1900], A. C., 539. [2] [1900], A. C., p. 548. [3] (1882), 21 Ch. D., 369.

to amend the law of copyright generally, merely adding the principal reason for doing so. There is therefore nothing in the preamble to cut down the enacting part, even if the enacting part had not been clear."[1]

Road-books,[2] directories,[3] tradesmen's catalogues,[4] mercantile statistics,[5] telegraph codes,[6] time tables,[7] verbatim reports of speeches[8] are all books within the meaning of the Act.

It is quite immaterial for what purpose the matter was composed or published. Personal correspondence,[9] advertisements,[10] and a mining report[11] are all subjects of copyright if published.

There must be some composition or arrangement of words, figures, sentences, or paragraphs which by itself will convey to the mind of the reader some intelligible proposition.[12] There cannot be copyright in a single word,[13] even although it expresses a man's opinion: there is no composition or arrangement. Neither can there be copyright in a pattern sleeve[14] or the face of a barometer,[15] because both are really instruments to be used in conjunction with something else, and although there may be words and sentences on them, by themselves they convey no intelligible proposition to the reader. Probably a drunken scrawl, absolutely unintelligible, would not be protected. A jury having found that such a document was not a literary composition, the Court of Appeal refused to interfere with their verdict.[16]

The illustrations in a book are protected as part of the book,[17] and a number of drawings bound up together without any letterpress would be protected as a book,[18] compliance with the provisions of the artistic Copyright Acts being in such a case unnecessary; but a single drawing or engraving separately issued can only be protected under the artistic Acts.

A map, whether bound in a volume or separately issued, is

[1] 21 Ch. D., at p. 378.
[2] *Infra*, p. 16.
[3] *Infra*, p. 16.
[4] *Infra*, p. 18.
[5] *Infra*, p. 20.
[6] *Infra*, p. 20.
[7] *Infra*, p. 22.
[8] *Infra*, p. 29.
[9] *Infra*, p. 225.
[10] *Infra*, p. 19.
[11] *Kenrick* v. *Danube Collieries* (1891), 39 W. R., 473.
[12] *Hollinrake* v. *Truswell* [1894], 3 Ch., 420.
[13] *Chilton* v. *Progress* [1895], 2 Ch., 29; *Maxwell* v. *Hogg* (1867), L. R., 2 Ch., at p. 318.
[14] *Hollinrake* v. *Truswell* [1894], 3 Ch., 420.
[15] *Davis* v. *Comitti* (1885), 52 L. T. (N. S.), 539.
[16] *Fourmat* v. *Pearson* (1897), 14 T. L. R., 82.
[17] *Infra*, p. 34.
[18] *Maple* v. *Junior Army and Navy Stores* (1882), 21 Ch. D., 369.

a book within the meaning of the Literary Copyright Act, and will be protected thereunder.[1]

III. *Originality* as an essential element of a book means that the composition in the "book" must not have been copied from some other literary composition in "book" form. Originality does not necessarily imply an original composition on the part of the author.[2] Copyright is given not necessarily to the first composer, but to the first producer in "book" form of a literary composition.[3] Thus a book would be an original book if the literary matter contained therein were taken by the author verbatim from the oral utterances of a public speaker,[4] or probably if copied from some ancient monument or mural writing. It would not, however, be original if the author had merely transcribed the literary matter from some public manuscripts, even although difficult of access.[5] Again, originality does not necessarily imply novelty. Another book exactly the same in every respect, word for word, may have been previously published, and yet a later book will be original if derived from common sources, and not copied from the earlier book. Thus two mathematicians may have independently made the same calculations,[6] two travellers may have made a chart of the same island or district,[7] or two reporters may have taken short-hand reports of the same speech.[8] In each case there would be independent copyright,[9] and the later book, even although published ten years after the first, would be original.

Composition may consist in composition in the ordinary sense of piecing together words, figures, sentences, and paragraphs, in order to convey certain intellectual ideas, or it may consist in the arrangement of material, as in the case of directories, lists of statistics, &c. Sometimes part may be copied and part may be original, as in the case of new editions,[10] translations,[11] abridgments,[12] selections from non-copyright

[1] *Stannard* v. *Lee* (1871), L. R., 6 Ch., 346; see *infra*, p. 148.
[2] *Walter* v. *Lane* [1900], A. C., 539. [3] Ibid. [4] Ibid.
[5] *Wyatt* v. *Barnard* (1814), 3 V. and B., 77.
[6] *Baily* v. *Taylor* (1829), 1 Tamlyn, at p. 299 *n*.
[7] *Matthewson* v. *Stockdale* (1806), 12 Ves., 270.
[8] *Walter* v. *Lane* [1900], A. C., 539.
[9] *Walter* v. *Lane* [1900], A. C., 539. See Brougham, L., in *Jefferys* v. *Boosey* (1854), 4 H. L. C., at p. 965.
[10] *Infra*, p. 26. [11] *Infra*, p. 25. [12] *Infra*, p. 25.

authors,[1] precedents of conveyancing, &c.[2] The new matter only is the subject of copyright.

Road Books.

Examples of what are Books.—Road-books[3] were among the first works in the protection of which by the Courts it was recognised that copyright did not necessarily depend on the evidence of any high mental qualities in the composition. In 1786 an injunction was granted to restrain the piracy of "Paterson's Road-Book."[4] Lord Chancellor Loughborough in his judgment said that a book in order to acquire copyright did not require to be an operation of the mind like the "Essay on Human Understanding." There might be copyright even although the subject-matter lay *in medio*, so that every man with eyes could trace it, and the whole merit of the work depended upon the accuracy of the observation. In 1776 the Court of Session in Scotland protected a "Traveller's Pocket-Book," which contained nothing but a mere list of stages and their distances.[5] The compiler of such a work may arrive at the same, or nearly the same, result as some other compiler working over the same country, but if each has made his own compilation, "counting the milestones for himself,"[6] he will have copyright and can prevent any one else from infringing such copyright.

Directories.

Directories[7] soon followed road-books in their claim for protection. Lord Chancellor Erskine in 1806 hesitated somewhat, "thinking it dangerous to carry this doctrine of copyright too far," but ultimately decided that an East India calendar or directory[8] containing the names and appointments on the Indian establishment, obtained with considerable labour and expense from the repositories in India House, was the subject of copyright. This decision was followed by Lord

[1] *Infra*, p. 24.

[2] *Infra*, p. 23.

[3] *Taylor* v. *Bayne* (1776), Mor. Dic., 8308; *Carnan* v. *Bowles* (1786), 2 Bro. C. C., 80; *Cary* v. *Faden* (1799), 5 Ves., 24; *Cary* v. *Longman* (1801), 1 East., 358; *Cary* v. *Kearsley* (1802), 4 Esp., 168.

[4] *Carnan* v. *Bowles* (1786), 2 Bro. C. C., 80; 1 Cox. Ch. Cas., 283.

[5] *Taylor* v. *Bayne* (1776), Mor. Dic., 8308.

[6] *Kelly* v. *Morris* (1866), L. R., 1 Eq., 697; Page Wood, V.C., at p. 701.

[7] *Matthewson* v. *Stockdale* (1806), 12 Ves., 270; *Longman* v. *Winchester* (1809), 16 Ves., 269; *Kelly* v. *Morris* (1866), L. R., 1 Eq., 697; *Morris* v. *Ashbee* (1868), L. R., 7 Eq., 34; *Morris* v. *Wright* (1870), L. R., 5 Ch., 279; *Kelly's Directories* v. *Gavin & Lloyds* [1901], 1 Ch., 374; *Garland* v. *Gemmill* (1887), 14 S. C. R. (Canada), 321.

[8] *Matthewson* v. *Stockdale* (1806), 12 Ves. 270.

Chancellor Eldon in 1809 in the case of "A Court Calendar."[1] In 1861 a street directory of Birmingham was protected,[2] and in 1866 "Kelly's Post Office London Directory."[3] In this last-mentioned case it was suggested in defence that the various residents had given their names for public use, and that therefore any one could copy them; this contention, however, was rejected, and it was held that the information contained in a directory was similar to that in a road-book or map; it was open to all mankind, but that he who collected and described it was entitled to prevent any one else from taking the results of his labours. In *Morris* v. *Ashbee*,[4] a trade directory, called "The Business Directory of London," was protected. This work contained the names and occupations of merchants and traders carrying on business in or about London. Those traders who paid the proprietor of the directory one shilling annually were entitled to have their names printed in capital letters, and a further payment entitled them to "extra lines" descriptive of their vocations. The defendants took from this work the names in capital letters and the "extra lines," and contended that they were entitled to do so; but it was held that the payment by the several persons whose names were inserted had not the effect of making the names and descriptions when inserted common property, and that as the plaintiff had incurred the labour and expense of getting the necessary information and arranging it, he was entitled to protection.

Trade Directory.

In *Lamb* v. *Evans*[5] the defendants had copied extensively from a trade directory. The directory consisted of a list of tradesmen in various localities. In some cases their names and addresses only were entered, and in others more elaborate advertisements containing descriptions of articles in which the advertiser dealt. The entries in the directory were classified under headings, giving short descriptions of the particular trades; each separate heading was arranged so that the proper catch-words occurred first in alphabetical order, and each

[1] *Longman* v. *Winchester* (1809), 16 Ves., 269.
[2] *Cornish* v. *Upton* (1861), 4 L. T. (N.S.), 862.
[3] *Kelly* v. *Morris* (1866), L. R., 1 Eq., 697.
[4] *Morris* v. *Ashbee* (1868), L. R., 7 Eq., 34.
[5] [1893], 1 Ch., 218.

heading was repeated in three other languages after the English heading. The Court of Appeal held that although the plaintiffs had no copyright in each individual entry, they had copyright at least in the headings. They were the result of literary labour both as regards the composition of the headings themselves and their collocation and concatenation in the book.[1] Their Lordships were also of opinion, although they said it was unnecessary to decide the question, that there was copyright in the mass of advertisements as collected and arranged. Lindley, L.J., said :—

Sheet of Advertisements.

> "I do not see myself the difficulty in the publishers having a copyright in a sheet of advertisements. I do see a difficulty in his having a copyright in one advertisement, because, as Mr. Justice Chitty pointed out, that might prevent the advertiser from republishing his advertisements in another paper, which is absurd. But to say that it follows from that that the proprietor, say of the *Times*, has no copyright in a sheet of advertisements so that he cannot restrain anybody from copying that sheet appears to me a very different proposition."[2]

Catalogues.

Tradesmen's catalogues, consisting of lists descriptive or otherwise of the articles in which they deal, have been often attacked as being devoid of literary merit. In *Hotten* v. *Arthur*[3] the plaintiff's copyright in a descriptive catalogue of old books which he had in stock was challenged. This catalogue was not a mere list of the books by name, but contained short notices of the contents and general nature of the various volumes. Page Wood, V.C., found no difficulty in deciding that such a catalogue was the subject of copyright, notwithstanding that the catalogues were for the purpose of advertising the plaintiff's stock-in-trade, and were not themselves offered for sale. In *Cobbett* v. *Woodward*[4] the doctrine laid down by Page Wood, V.C., received a check. In that case the plaintiff had published a catalogue containing numerous engravings and illustrations of designs and articles of furniture which were sold by his firm. Lord Romilly, M.R., refused to grant an injunction against a rival tradesman who, in a

[1] Bowen, L.J. [1893], 1 Ch., at p. 227.
[2] Lindley, L.J. [1893], 1 Ch., at p. 222; and see *Morris* v. *Ashbee* (1868), L. R., 7 Eq., 34.
[3] (1863), H. and M., 603.
[4] (1872), L. R., 14 Eq., 407.

similar publication, appropriated at least fifty of the plaintiff's illustrations, and in his judgment he said :—

Advertisements.

"But at the last it always comes round to this, that there is no copyright in an advertisement. If you copy the advertisement of another, you do him no wrong, unless in doing so you lead the public to believe that you sell the articles of the person whose advertisement you copy."[1]

The next case in which this question came before the Courts was *Grace* v. *Newman*.[2] The book infringed was a volume containing lithographic sketches of monumental designs, and a little letterpress. The sole object of the book was to serve as an advertisement in the plaintiff's business of "Cemetery Stone and Marble Mason." Hall, V.C., granted an injunction, evading *Cobbett* v. *Woodward*[3] and following *Hotten* v. *Arthur*.[4] In 1882 *Cobbett* v. *Woodward*[5] was expressly overruled in the Court of Appeal in the case of *Maple & Co.* v. *Junior Army and Navy Stores*.[6] The plaintiffs published an illustrated catalogue consisting almost entirely of engravings of furniture with short descriptions and prices. The catalogue was prepared by selecting articles of furniture which were drawn by artists in their employment and then engraved. The Court of Appeal sustaining the opinion of Hall, V.C., in the Court below, held that the catalogue was the subject of copyright as a book. Jessel, M.R., said :—

"The case which has done all the mischief is *Cobbett* v. *Woodward*.[7] . . . I think that is not law. I am not aware that the use to which a proprietor puts his book makes any difference in his rights. His copyright gives him the exclusive right of multiplying copies, and he may use them as he pleases. I think, therefore, that *Cobbett* v. *Woodward*[8] will not bear legal examination."[9]

Alphabetical Catalogue of Tradesmen's Goods.

In *Collis* v. *Cater*[10] North, J., protected a catalogue of medicinal articles which the plaintiff kept for sale. The articles were arranged by their common names in alphabetical order under various headings and sub-headings. The learned judge strongly negatived the contention that a tradesman's catalogue would

[1] L. R., 14 Eq., at p. 414.
[2] (1875), L. R., 19 Eq., 623.
[3] (1872), L. R., 14 Eq., 407.
[4] (1863), 1 H. and M., 603.
[5] (1872), L. R., 14 Eq., 407.
[6] (1882), 21 Ch. D., 369.
[7] (1872), L. R., 14 Eq., 407.
[8] *Ibid.*
[9] 21 Ch. D., at p. 379; and see *Church* v. *Linton* (1894), 25 Ont. Rep., 131.
[10] (1898), 78 L. T. (N.S.), 613.

only be protected when, as in *Holten* v. *Arthur*,[1] some amount of skill or literary merit was shown. He said :—

"A distinction is made between copyright in a large catalogue by a clever author which gives a great deal of information, and is interesting to persons who read it, and a catalogue like the plaintiff's, which is nothing whatever but a simple list of certain articles described by their common names, which every one is entitled to use with respect to them with the addition of the prices at which they are sold. . . . In one way or another a man engaged in preparing a catalogue of this sort has incurred labour in its preparation, or it may be expense and trouble in its preparation, and has done it for the advantage of having his own catalogue. . . . I cannot see any distinction between this and the publication of a directory. It seems to me to be exactly *in pari materia*."

Telegraph Codes.

A list of telegraphic code words carefully selected so that, in their transmission by the Morse system of dots and dashes, they would not be liable to be mistaken or misspelt was admitted to be a copyright work in *Ager* v. *P. & O. Steam Navigation Co.*[2] The same book, "The Standard Telegram Code," was again protected in *Ager* v. *Collingridge*.[3]

Shipping Statistics.

Lists of statistics compiled from various sources of information are well recognised as original books. "The Clyde Bill of Entry and Shipping List," containing a compilation of statistics collected from the official records and documents in the Custom houses, was protected in Scotland in 1846[4] and again in 1858.[5]

Mineral Statistics.

The "Mineral Statistics of the United Kingdom of Great Britain and Ireland" was protected in England in 1867.[6] It consisted of an annual statement of returns in the City of London coal market, showing the quantity of coal imported into London from the various collieries, and was compiled by the clerk and registrar of the coal market from the day-books in the office. Page Wood, V.C., said :—

"A great deal of time and labour must have been spent in this compilation, more, indeed, than in the case of a directory or guide, and there can be no doubt that he is entitled to be protected in the fruits of his labour."[7]

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[1] (1863), 1 H. and M., 603.
[2] (1884), 26 Ch. D., 637.
[3] (1886), 2 T. L. R., 291.
[4] *Walford* v. *Johnston*, 20 D., 1160.
[5] *Maclean* v. *Moody*, 20 D., 1154; and see *Kelly's Directories* v. *Gavin & Lloyds* [1901], 1 Ch., 374.
[6] *Scott* v. *Stanford* (1867), L. R., 3 Eq., 718.
[7] L. R., 3 Eq., at p. 723.

Lists taken from public documents.

Compilations made from public documents and records are protected in so far as there is selection or arrangement. A mere verbatim copy of a public document would not be protected.[1] In *Trade Auxiliary Co.* v. *Middlesborough*,[2] "Stubbs' Weekly Gazette" was protected from infringement. The gazette contained a list of bills of sale registered under the Bills of Sale Act and of deeds of arrangement registered under the Deeds of Arrangement Act. The particulars of each bill of sale had been taken from the official records, not merely from the indexes on the official register but from the instruments themselves, for the inspection of each of which a charge of 1s. or 2s. 6d. is made. The same and other similar lists were also protected in *Cate* v. *Devon*.[3]

List of Bills of Sale.

Specifications of Patents.

In *Wyatt* v. *Barnard*[4] Lord Chancellor Eldon refused protection to a copy of specifications of patents taken from the patent office. If this decision meant that a selection, arrangement, or abridgment of the specifications in the patent office would not be protected, it cannot be considered sound law.

List of Foxhounds.

In *Cox* v. *Land and Water*[5] Malins, V.C., although he refused to grant an injunction on the grounds of its probable inefficacy, expressed a strong opinion that a list of packs of foxhounds, with the hunting days of each pack and their respective masters and huntsmen, was the subject of property. The information contained in the list was obtained by issuing circulars requesting the masters of the hunt to fill up the required information. The Vice-Chancellor in his judgment said:—

"It is clear that in this case the getting of the names of masters of hunts, the number of hounds, the huntsmen and whips, and so forth is information open to all those who seek to obtain it; but it is information they must get at their own expense, as the result of their own labour, and they are not to be entitled to the results of the labours undergone by others."

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[1] *Wyatt* v. *Barnard* (1814), 3 V. and B., 77; *Trade Auxiliary Co.* v. *Middlesborough* (1889), 40 Ch. D., 425.

[2] (1889), 40 Ch. D., 425; and see *Hall* v. *Whittinglon* (1892), 15 Vic. L. R., 525.

[3] (1889), 40 Ch. D., 500.

[4] (1814), 3 V. and B., 77.

[5] (1869), L. R., 9 Eq., 324.

Time Tables.

One of the leading cases in this branch of copyright law is *Leslie* v. *Young*,[1] a Scotch appeal case. The pursuer's book consisted of a monthly penny railway time table, published in Perth. It was compiled from the various railway companies' time tables. Some of these were taken verbatim and some were abridged by the smaller stations being omitted, and to the whole was added a list of convenient circular tours around Perth compiled by the pursuer. The defender in compiling a rival time table, copied many of these tables and all of the circular tours from the pursuer's book, either literally or with colourable differences only. As regards the time tables the House of Lords sustained the judgment of the Inner House in refusing an interdict. The mere publication, they said, in any particular order of the time tables which are to be found in railway guides and the publications of the different railway companies, could not be claimed as a subject-matter of copyright. In dealing with the abridged time tables Lord Herschell, L.C., said :—

"Looking at these tables as a whole, and having regard to the fact that it is admitted that the defender's work is, as regards these tables, not by any means in all respects a copy of the pursuer's work, that it was not denied that there was a certain amount of original work done by them in compiling these tables, and that these are the differences which have been pointed out, I do not think that it can be said that as regards these tables there has been an appropriation by the defender of the pursuer's work such as to entitle the pursuer to complain and to obtain the interdict which he claims. The real truth is that although it is not to be disputed that there may be copyright in a compilation or abstract involving independent labour, yet when you come to such a subject-matter as that with which we are dealing, it ought to be clearly established that, looking at these tables as a whole, there has been a substantial appropriation by the one party of the independent labour of the other before any proceeding on the ground of copyright can be justified."

As regards the circular tours the House of Lords reversed the judgment of the Court of Session and granted an interdict. The Lord Chancellor said :—

"It appears to me the only part of the work which can be said to indicate any considerable amount of independent labour and be entitled

[1] [1894], A. C., 335.

to be regarded as an original work. . . . It seems to me that this was a compilation containing an abridgment of information of a very useful character, and such as was likely to be taken advantage of by those who were travelling in the neighbourhood of Perth."

Tables of Calculation.

Mathematical calculations are undoubtedly subjects of copyright. In *Baily* v. *Taylor*[1] Sir John Leach, M.R., evidently assumed that they were, although in that case he refused an injunction on the grounds that a very small part had been copied, that what was copied could have been calculated again in a few hours, and that there was unreasonable delay in bringing the action. In *M'Neill* v. *Williams*[2] protection was sought for "Comprehensive Tables for the Calculation of Earthwork as connected with Railways," &c. Knight Bruce, V.C., refused an interim injunction, but he did not suggest that the calculations were not the subject of copyright.

Forms and Precedents.

Forms and Precedents and similar works are made and published for the very purpose that they should be bought and used in business or other transactions. To this extent copying is of course no infringement, but they will be protected from any copying other than that which is impliedly permitted by their publication. In *Webb* v. *Rose*[3] precedents of conveyancing were stolen from a barrister's chambers and printed against his will. The Court had not the least hesitation in restraining the defendant from printing and publishing them. In the Scotch case of *Alexander* v. *Mackenzie*[4] the claim of "Styles and Precedents of Conveyancing" to protection under the Copyright Acts was recognised by the Inner House. The forms in question were drawn up from general directions contained in the "Heritable Securities and Infeftments Acts," and it was contended that, as all who followed these directions must arrive at almost identically the same result, there could be no copyright in a precedent so produced. The Court was unanimously of opinion that although such work did not require the exercise of original or creative genius, yet it implied industry and knowledge, and was undoubtedly the subject of copyright.

Conveyancing Precedents.

[1] (1829) 1 R. and M., 73; see also *King* v. *Reed* (1804), 8 Ves., 223.
[2] (1847), 11 Jur., 344.
[3] (1732), cited 2 Bro. P. C. 138; and Ambl., 694.
[4] (1847), 9 D., 748.

Application Form.

In *Southern* v. *Bailes*[1] a form of application by intending students to a "Lessons by Correspondence Department" was protected by Chitty, J. The learned judge granted an injunction against copying the plaintiff's form, but thought it would be dangerous to extend the injunction in such a matter to colourable imitations, as there was a great deal in the form any one could have put together for himself.

Selections and Extracts from Non-copyright Works.

It was very early recognised that the skill and labour of selecting and arranging extracts from previously published books was sufficient to entitle the compiler to copyright in the new work thereby produced.[2] Copyright can thus be obtained without the composition of a single sentence. There is composition, but the composition is of new arrangement and not of new matter. In *Rundell* v. *Murray*[3] Lord Chancellor Eldon expressed his opinion that a collection of cookery recipes would have entitled the plaintiff who collected them to copyright, even if she had merely embodied and arranged them in a book. If, however, she had only collected them and handed them over to the publishers, he did not think that would give her copyright. In *Lewis* v. *Fullarton*[4] "The Topographical Dictionary of England," which consisted partly of compilations and selections from former works, was recognised as being the subject of copyright. In *Lennie* v. *Pillans*[5] the Court of Session in Scotland were of opinion that "The Child's A B C," consisting in a great degree of extracts from and repetition of previous publications by other authors, was entitled to protection on account of the original arrangement, selection, abridgment, or amplification of such borrowed materials. In *Jarrold* v. *Houlston*[6] Page Wood, V.C., granted an injunction against the piracy of Dr. Brewer's "Guide to Science." The book was intended for the instruction of tiros in science, and was composed largely from previous works, aided by notes taken from time to time of popular ideas concerning various scientific phenomena. The Vice-Chancellor said :—

Collection of Cookery Recipes.

Topographical Dictionary.

Child's A B C.

"Guide to Science."

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[1] *Southern* v. *Bailes* (1894), 38 Sol. J., 681 ; see *Church* v. *Linton* (1894), 25 Ont. Rep., 131.

[2] See *Longman* v. *Winchester* (1809), 16 Ves., at p. 271.

[3] (1821), Jac., 311 ; and see *Marzials* v. *Gibbons* (1874), L. R., 9 Ch., 518.

[4] (1839), 2 Beav., 6.

[5] (1843), 5 D., 416.

[6] (1857), 3 K. and J., 708.

"That an author has a copyright in a work of this description is beyond all doubt. If any one by pains and labour collects and reduces into the form of a systematic course of instruction those questions which he may find ordinary persons asking in reference to the common phenomena of life, with answers to these questions and explanations of these phenomena, whether such explanations and answers are furnished by his own recollection of his former general reading or out of works consulted by him for the express purpose, the reduction of questions so collected, with such answers under certain heads and in a scientific form, is amply sufficient to constitute an original work of which the copyright will be protected."

French Dictionary.

The same judge, in *Spiers* v. *Brown*,[1] in considering an alleged infringement of "Spiers' School Dictionary," said :—

"In a large part of his work Dr. Spiers could have no copyright as to words and expressions, though he might have it as to new words introduced or new acceptations, or as to the order and arrangement by which he improved the particular work he had in hand."

Selections of Poetry.

In an Indian case Palgrave's "Golden Treasury of Songs and Lyrics" was protected. It consisted in a selection and arrangement of poems and fragments of poems from the non-copyright works of many poets. The defendant took the selected portions, rearranged them, and made a few additions. His book was condemned as an infringement.[2]

Abridgments.

Lawfully made abridgments are protected on account of the judgment which the abridger must exercise in order to do his work well.[3]

Translations.

Lawfully made translations are also protected as if they were original works.[4] The protection will only extend to the work of the translator. A translator by translating a non-copyright work acquires no exclusive right to translate. Others may do the same from the original non-copyright source.

Adaptations.

An author is entitled to copyright by reason of lawful adaptation of a book from one form to another; thus, if he dramatizes a novel, or by material alteration and rearrange-

[1] (1858), 31 L. T. (O.S.), 18; 6 W. R., 352.
[2] *Macmillan* v. *Suresh Chunder Deb* (1890), Ind. L. R., 17 Calc., 951; see *Moffat and Paige* v. *Gill* [1902], C. A., April 25.
[3] *Gyles* v. *Wilcox* (1740), 2 Alk., 142.
[4] *Wyatt* v. *Barnard* (1814), 3 V. and B., 77; *Chatterton* v. *Cave* (1875), 10 C. P., 572; (1878), 3 A. C., 483.

ment produces a new version of an old play.[1] The adaptation of music, for instance an opera score for the pianoforte,[2] or the rearrangement of an old tune,[3] is the subject of copyright.

New Editions and Notes.

New editions either of copyright or non-copyright works are protected as original books, but only to the extent to which they consist of original material in the way of notes to, or substantial revision and alteration of the old text. Lord Chancellor Hardwicke[4] granted an injunction against the piracy of a new edition of Milton's "Paradise Lost" containing original notes by Dr. Newton. In *Cary* v. *Longman*[5] new material added to an old road-book was protected. In *Murray* v. *Bogue*[6] in the case of a subsequent edition of a guide-book, Kindersley, V.C., said :—

"If a man prints a second edition, not being a mere reprint of the first edition, but containing considerable and material alterations and additions, *quoad* those, it is a new work."[7]

In *Cadell* v. *Anderson*[8] the Court of Session in Scotland held that the pursuers had the sole right of printing and reprinting "Blackstone's Commentaries;" and as regards those editions in which there were corrections and continuations, their term of copyright began to run afresh with respect to such new material. In *Black* v. *Murray & Son*[9] the notes in Lockhart's edition of Scott's "Border Minstrelsy" were protected, the copyright in the original edition of the "Border Minstrelsy" having expired. Lord President Inglis, in the course of a long and elaborate judgment, said :—

"Questions of great nicety and difficulty may arise as to how far a new edition of a work is a proper subject of copyright at all; but that must always depend upon circumstances. A new edition of a book

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[1] *Tree* v. *Bourkett* (1896), 74 L. T., 77; *Hatton* v. *Kean* (1859), 7 C. B. (N.S.), 268; *Chatterton* v. *Cave* (1875), L. R., 10 C. P., 572; (1878), 3 A. C., 483.

[2] *Wood* v. *Boosey* (1867), 7 B. and S., 869; *Boosey* v. *Fairlie* (1877), 7 Ch. D., 301; (1868), 9 B. and S., 175.

[3] *Lover* v. *Davidson* (1856), 1 C. B. (N.S.), 182; *Leader* v. *Purday* (1849), 7 C. B., 4.

[4] *Tonson* v. *Walker* (1752), 3 Swanst., 672.

[5] (1801), 1 East., 358; and see *Mason* v. *Murray* cited, 1 East., 360 (Gray's Poems).

[6] (1852), 1 Drew, 353.

[7] 1 Drew, at p. 365.

[8] (1787), Mor. Dic., 8310.

[9] (1870), 9 M., 341; and see *Maple* v. *Junior Army and Navy Stores* (1882), 21 Ch. D., 369, at p. 373; *Hayward* v. *Lely* (1887), 56 L. T. (N.S.), 418; *Moffat & Paige* v. *Gill* [1902], C. A., April 25.

may be a mere reprint of an old edition, and plainly that would not entitle the author to a new term of copyright running from the date of the new edition. On the other hand, the new edition of a book may be so enlarged and improved as to constitute in reality a new work, and that just as clearly will entitle the author to a copyright running from the date of the new edition. . . . That there may be copyright in the notes, even when the book is not under the protection of copyright, is quite a fixed principle in the law, and most desirably so. There is no doubt that the compilation of good notes to a standard work is a task worthy of the highest literary talents and reputation. . . . Of the 200 notes the defender's counsel tells us that 15 only consist of original matter, while the remaining 185 are quotations from other books and authors. Now this seemed to be considered to be a sort of disparagement of the value of the notes, in which I cannot at all agree. . . . The quotations are, in many places, most apposite, and highly illustrative of the text, and exceedingly interesting to the reader, and certainly the selection and application of such quotations from other books may exercise as high literary faculties as the composition of original matter."

If a new edition is a mere reprint of what has been published in "book" form before, it is obvious that no new or independent copyright can be claimed in it.[1] So also if there are only slight corrections, verbal alterations, and the like. Lord Mackenzie, in the Scotch case of *Hedderwick* v. *Griffin*,[2] said :—

"I doubt very much if there can be right of literary property in the exclusion from an edition of the works of any author of articles not truly written or published by that author, or in the correction of accidental errors, or in the mere order and titles of articles which seem to be all, or nearly all, that can be claimed by the pursuers in this case."[3]

The publication of an old work with an index not previously published would undoubtedly be copyright as to the index.[4]

In *Black* v. *Murray*[5] Lord Deas was of opinion that the alteration of a single word in a poem was sufficient to give a new edition an independent copyright, inasmuch as the alteration was very important and entirely altered the meaning of the line in which it was used. The other judges, however,

[1] *Thomas* v. *Turner* (1886), 33 Ch. D., 292.
[2] (1841), 3 D., 383.
[3] 3 D., at p. 387.
[4] *Carnan* v. *Bowles* (1786), 2 Bro. C. C., 80, per L. C., at p. 83.
[5] (1870), 9 M., at p. 352.

did not altogether concur in Lord Deas' opinion; and it would seem that his lordship stretched the law as to new editions too far.

Reports.

The question whether a verbatim report of oral proceedings is a "book" within the meaning of the Copyright Acts was long a moot question. That there might be copyright in law reports and similar matter, in so far as they consisted of a summary of the proceedings in the author's own language, was early recognised. In *Butterworth* v. *Robinson*[1] the "Term Reports"; in *Sweet* v. *Shaw*,[2] Meeson and Welsby's reports, and others; and in *Sweet* v. *Maughan*[3] the reports in the "Jurist" were protected; but it does not appear in the reports of these cases whether any copyright was claimed in the verbatim reports of the judgment of the Court. In *Saunders* v. *Smith*[4] Lord Cottenham, L.C., refused an injunction against "Smith's Leading Cases" on equitable grounds, but said he would not decide the legal question as to whether that publication infringed the copyright in the "Term Reports" and others. In *Sweet* v. *Benning*[5] the defendants published a "Monthly Digest" into which were copied numerous head notes of cases taken bodily from the "Jurist." The Court held that these head notes were copyright, and that the defendant's work was an infringement.

Law Reports.

> "The head note or the side or marginal note of a report is a thing upon which much skill and exercise of thought are required to express in clear and concise language the principle of law to be deduced from the decision to which it is prefixed, or the facts and circumstances which bring the case in hand within some principle or rule of law or of practice."[6]

So far, therefore, as appears from the reports of these cases our Courts had only recognised copyright in the matter of reports to the extent to which that matter was the composition of the author, only, in short, when it was a description in his own language of what had taken place. The American Courts had held[7] that there was no copyright in the verbatim report

[1] (1801), 5 Ves., 709.
[2] (1839), 3 Jur., 217.
[3] (1840), 11 Sim., 51.
[4] (1838), 3 My. and Cr., 711.
[5] (1855), 16 C. B., 459; see *Hodges* v. *Welsh* (1840), 2 Ir. Eq. R., 266.
[6] 16 C. B., Crowder, J., at p. 491.
[7] See *infra*, p. 240.

of a judgment of the Court, but their decisions were based to a large extent on the ground of public policy. The judgments of the Court, they said, were published to the whole of the people of the United States, and no individual could acquire a monopoly with respect to them. *Walter* v. *Lane*[1] has to a large extent cleared up the doubtful state of our law as regards reports, but it cannot be said that it has done so entirely. *Walter* v. *Lane*[2] decides that a reporter can have copyright in a verbatim report of the oral utterances of another from whom he derives no title. In that case certain reporters of the *Times* were present at various meetings at which Lord Rosebery made speeches. These speeches were taken down in short-hand and appeared in the *Times* the following morning, reproducing as nearly as possible verbatim the words which Lord Rosebery had spoken. Lane, a publisher, subsequently published a book entitled "Appreciations and Addresses: Lord Rosebery," and purporting to be a collection of some of Lord Rosebery's speeches. Five of the speeches in this book were taken from the reports in the *Times*, as was admitted by the defendant, substantially verbatim. The House of Lords reversing the judgment of the Court of Appeal and restoring the judgment of North, J., held that the reports in the *Times* were copyright, and that the reporters' assignees, the proprietors of the *Times*, were the owners of the copyright. Lord Chancellor Halsbury in his judgment said:—

Verbatim Reports.

"My Lords, I should very much regret it if I were compelled to come to the conclusion that the state of the law permitted one man to make profit and to appropriate to himself the labour, skill, and capital of another. And it is not denied that in this case the defendant seeks to appropriate to himself what has been produced by the skill, labour, and capital of others. In the view I take of this case I think the law is strong enough to restrain what to my mind would be a grievous injustice. . . . The speeches and the sheets of letterpress in which they were contained were books first published in this country; and I confess, upon looking at the definition and the right conferred, I am wholly unable to discern why they are not protected by the statute from being pirated by unauthorised persons. The sole ground, as I understand the judgment of the Court of Appeal, is that in their judgment the producer of a written speech,

[1] [1900], A. C., 539. [2] Ibid.

unless he is the original speaker, cannot be an 'author' within the meaning of the Act. My Lords, it seems to me that this argument is based upon too narrow and misleading a use of the word 'author.' . . . The producer of this written composition is, to my mind, the person who is the author of the book within the meaning of the statute. . . . I do not find the word 'original' in the statute, or any word which imparts it as a condition precedent, or makes originality of thought or idea necessary to the right."[1]

We must be careful not to carry the doctrine of *Walter* v. *Lane*[2] further than the actual decision warrants. It should be noticed, for instance, that the essence of the case is that the reporter was entitled to copyright, because it was he who first reduced to "book" form the literary composition contained in Lord Rosebery's speeches. If, therefore, Lord Rosebery had, before delivering his speeches, done as some statesmen and many clergymen do, *i.e.* reduced them to writing, the reporter would probably not have had copyright, since his report would then have been a mere copy of the speaker's original manuscript, a very different thing from being the first manuscript.[3] Again, it must be noticed that Lord Rosebery claimed no proprietary right in his speeches. It was admitted by counsel that he had freely abandoned his words to the world so that any one might make of them what use he pleased. Lord Rosebery might have secured a right in his own speeches if he had cared to do so. He might have delivered them to a limited audience[4] under an implied contract that those who heard his speeches should make no other use of them except by listening to them and benefiting by the entertainment and general information conveyed. Possibly he might also have secured a statutory copyright in them as lectures by giving notice in writing two days before delivering the same to two justices living within four miles of the place of delivery.[5] If in either of these ways Lord Rosebery had secured a proprietary right for himself it is doubtful whether a reporter unauthorised by him could have acquired copyright in his report. The report would have been an infringement of Lord Rosebery's rights, but the reporter might

[1] [1900], A. C., at p. 545.
[2] [1900], A. C., 539.
[3] See p. 15.
[4] See pp. 37, 223.
[5] 5 & 6 Will. IV. c. 65.

nevertheless be held to have a copyright against the rest of the world. It should also be noticed in connexion with this case that it was expressly stated by the judges in the House of Lords that any number of reporters could make a report of the same speech, and each would have a separate copyright. In *Walter* v. *Lane*[1] the defendant admitted that he took his book from the *Times'* report. It is obvious, however, that if a speech were reported in, say, six newspapers, any one could reprint it, and by careful correction of the parts in which the reports varied baffle any one of the newspaper proprietors in an attempt to prove that the speech was taken from his newspaper. Another question with regard to verbatim reports, which is not necessarily covered by *Walter* v. *Lane*,[2] is in reference to verbatim reports of judgments in the Courts. Will the American doctrine be adopted that it is against public policy that there should be any monopoly in them ?[3]

Mechanical Devices.

The law of copyright does not protect anything in the nature of a mechanical device, except in so far as apart from any mechanical application it conveys ideas or information to the person reading it.

Cricket Scoring Card.

In *Page* v. *Wisden*[4] it was claimed by the plaintiff that he had literary copyright in a cricket-scoring card, the only novelty in which was a line along which could be indicated "Runs at the fall of each wicket." Malins, V.C., held that such a thing was not a book within the Act, and characterised it as absurd to contend that a particular mode of ruling a book constituted an object for a copyright.[5]

Shadow Trick.

In *Cable* v. *Mark*,[6] Bacon, V.C., refused to protect under the Literary Act "The Christograph—the Christian's Puzzle: suitable for all sects and denominations." This consisted of an envelope on which the above title was inscribed. Inside the envelope was a card perforated in such a way that when held up in a strong light it threw upon the wall a shadow which was supposed to represent the picture "Ecce Homo." The Vice-Chancellor in his judgment described it as a mere child's trick

[1] [1900], A. C., 539.
[2] Ibid.
[3] See *infra*, p. 240.
[4] (1869), 20 L. T. (N.S.), 435.
[5] Such an article as this, a mere scheme or plan for arranging material, would not be protected under the law of patents; *in re Cooper* (1902), 19 Pat. Des. and Trade Mark Cases, 53; *in re Johnson* (1902), 19 Pat. Des. and Trade Mark Cases, 56.
[6] (1882), 47 L. T. (N.S.), 432.

Barometer Face.

and nothing else. The face of a barometer was held by Chitty, J., in *Davis* v. *Comitti*[1] not to be a book. It consisted of a circular card on which were printed various words such as "set fair," "high winds," &c., and on which the hands of the barometer moved. The learned judge said:—

"Separated from the instrument it was not intended to have and has no use or meaning whatever. Regarded as a card apart from the instrument it not only foretells nothing, but tells nothing. By reading the printed matter on the card alone, no intelligible proposition is arrived at."

Sleeve Chart.

Protection was claimed in *Hollinrake* v. *Truswell*[2] for a cardboard pattern sleeve called the "Cosmopolitan Sleeve Chart." It consisted of a piece of cardboard cut to suitable shape and size and marked with figures and directions, such as "measure round the thick part of the arm," and it was intended to be used for the purpose of measuring and cutting out sleeves. The Court of Appeal reversed the judgment of Wright, J., and dismissed the action. Lord Herschell said:—

"The object of the Copyright Act was to prevent any one publishing a copy of the particular form of expression in which an author conveyed ideas or information to the world. These may be retained by any one, although the book, map, or chart which embodied them has passed out of his possession. If he were to commit to memory the contents of the book or the information disclosed by the map or chart, he would be as much in possession of the author's ideas or information as if the book, map, or chart were physically in his hands. But this is not the case with the words or figures upon the sleeve chart. They are intended to be used, and can only be used in connection with that upon which they are inscribed. . . . I think it clear, therefore, that what the plaintiff has sought to protect under the Act for the protection of literary productions is not a literary production, but an apparatus for the use of which certain words and figures must necessarily be inscribed upon it."[3]

Railway Ticket.

In a Canadian case a railway ticket containing the names of stations on the line and dates so arranged that when punched it indicated where the holder was entitled to travel, was refused

[1] (1885), 52 L. T. (N.S.), 539.

[2] [1894], 3 Ch., 420; see American Law, p. 242, *infra*, where a similar article was protected. It has also been protected in Victoria, *Hanbury* v. *Dumsday* (1884), 10 Vic. L. R., Eq., 272.

[3] Lord Herschell, L.C. [1894], 3 Ch., 420, at p. 424.

protection. It was said that without the application of the conductor's punch, the ticket was senseless and meaningless.[1]

Scroll for Mechanical Instrument and Directions thereon.

In *Boosey* v. *Whight*[2] it was held that a sheet of music was not infringed by a perforated scroll for use in a mechanical instrument; and further, that the directions in the printed music, *e.g. pp.*, *crescendo*, were not the subject of copyright apart from the printed sheet, and therefore might be taken and used in conjunction with the perforated scroll. It seems to follow that neither the perforated scroll nor the directions thereon would constitute a "book" within the meaning of the Act.

Sporting Tips.

Chilton's Special Guide published weekly sporting information. Among other matter it contained their sporting prophet's "tips" for the big races in the ensuing week. This was contained in a list, thus:—

ONE HORSE SELECTIONS.

Tuesday	Keelson.
Wednesday	Priestholm.
Thursday	Cœlus.
Friday	Dromonby.

The Progress Printing and Publishing Company published daily at the various race meetings racing sheets with the day's "tips" from various sporting papers, thus:—

THE SPECIALS, ONE HORSE TRIALS.

The Jockey . .	Rusina	*Chilton* . .	Keelson.
Racing World .	Keelson	*Grant's Opinion*	Juda.
Gale's . . .	Keelson	*Turf Marvel* .	Kenney.

The Court of Appeal held[3] that there could be no copyright in the individual selections for each day, but suggested that there might be copyright in the list of selections for the week, and that it would be an infringement to take it bodily. Lindley, L.J., in giving judgment, said:—

"Unless you find the one horse selection and that block which is headed by the title "One Horse Selections" in the shape in which the plaintiff

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[1] *Griffin* v. *Kingston* (1889), 17 Ont. Rep., 660; see *Church* v. *Linton* (1894), 25 Ont. Rep., 131, where some of the dicta in the above case were disapproved.

[2] [1900], 1 Ch., 122.

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

has published it, I doubt whether you can bring it within literary composition at all. Perhaps the whole of that might be called literary composition; but there is no literary composition in the word 'Priestholm.'"[1]

Illustrations.

Engravings, prints, designs, or other reproductions of artistic matter will be protected under the law of literary copyright either when published in the form of a volume or when published in connexion and together with letterpress. By this means compliance with the stringent requirements of the Acts relating to artistic copyright is avoided. The first case where an illustration was held to be part of a book, and therefore protected under 5 & 6 Vict. c. 45, was *Bogue* v. *Houlston*.[2] The plaintiff published some old non-copyright tales, including "Reynard the Fox," and illustrated them with original drawings of animals. These woodcuts were pirated by the defendants, and used as illustrations in their serial publication, "The Story-Book for Young People, by Aunt Mary." The plaintiff did not claim copyright in any letterpress.[3] The defendants maintained that the woodcuts not having been published so as to comply with the provisions of the Engravings Acts, could not be protected from piracy. It was held, however, that they were part of a book. Parker, V.C., in giving judgment, quoted the definition of a book from the Act 5 & 6 Vict. c. 45, and continued:—

To Non-copyright Letterpress.

"This definition does not extend to prints or designs separately published, but only to the prints and designs forming part of a book, and the book is not less a book because it contains prints or designs or other illustrations of the letterpress. This Act vested in the proprietor of such book duly registered the right to sue in respect of any invasion or infringement of the copyright of his book. It appears to me that a book must include every part of the book; it must include every print, design, or engraving which forms part of the book as well as the letterpress therein which is another part of it."[4]

No Letterpress.

In *Maple & Co.* v. *Junior Army and Navy Stores*,[5] the engravings in an illustrated catalogue, containing almost no letterpress, were protected under 5 & 6 Vict. c. 45. "There may

[1] Lindley, L.J. [1895], 2 Ch., at p. 34.

[2] (1852), 5 De Gex and Smale, 267; see *Roworth* v. *Wilkes* (1807), 1 Camp., 94; *Newton* v. *Cowie* (1827), 4 Bing., 234.

[3] See 21 Ch. D., 380.

[4] Parker, V.C., 5 De Gex and Smale, at p. 274.

[5] (1882), 21 Ch. D., 369; and see *Cooper* v. *Stephens* [1895], 1 Ch., 567; *Marshall* v. *Petty* (1900), 17 T. L. R., 501.

be such things," said Jessel, M.R., "as picture-books for those who cannot read letterpress." [1] In *Hildesheimer & Faulkner* v. *Dunn & Co.*,[2] protection was claimed for a Christmas card cut out and painted in the form of a lady's hand. It opened out book-wise, and inside were delineated the lines of life according to the rules of palmistry, and on one side there was an original verse. This work was registered both under 5 & 6 Vict. c. 45 as a book and 25 & 26 Vict. c. 68 as a painting. Kekewich, J., in granting an injunction against a piracy, said he would not decide whether the work was a picture or a book, but as it was well registered under both Acts, an action lay. In *Comyns* v. *Hyde*,[3] a coloured plate representing an Orpington cock was issued with the weekly number of a serial publication called *The Feathered World*. The plate was not in any way physically connected with the rest of the publication, but it was illustrative of an article in the journal, and a copy was given to every purchaser. Stirling, J., held that it must be protected as part of the book. If a plate or picture has been previously published in separate form, without complying with the provisions of the Engravings Acts, it will not subsequently receive protection by reason of its incorporation into a volume.[4] In *Strong* v. *Worskett*[5] a magazine was before publication advertised by means of illustrated posters. The same illustration as appeared on the posters was afterwards reproduced in the magazine. It was held that it could not be protected as part of the magazine. The result of these decisions appears to be that an artistic work will be protected under the Literary Copyright Act, 1842, if it is bound up with other artistic works in the form of a volume, or if it is published in connexion with letterpress. The picture on a Christmas card on which there are also verses, would, it is submitted, be protected as a book, and, it would seem, whether or not the verses were copyright, and whether or not (but this is more doubtful) the picture was in any way illustrative of the verses. It is also submitted that an engraving published in a magazine without

Christmas Card.

Plate issued separately.

[1] At p. 377.
[2] (1891), 64 L. T. (N.S.), 452.
[3] (1895), 43 W. R., 266; and see *Guggenheim* v. *Leng* (1896), 12 T. L. R., 491.
[4] *Strong* v. *Worskett* (1896), 12 T. L. R., 532; *Fisher* v. *Folds* (1834), 1 Jones, Ir. Ex., 12.
[5] (1896), 12 T. L. R., 532.

any relation to the letterpress, except that of physical connexion, would be protected as part of the book ; but an engraving or print which had neither any relation to the letterpress nor physical connexion would probably not be protected even although issued gratis with every copy of the magazine.

It need hardly be said that anonymous works are entitled to copyright. The publication of a work without the author's name is not to be construed as an abandonment of the literary property.[1]

Maps. Maps, charts, and plans are expressly included in the definition of a "book." If incorporated in a volume they will be protected with the rest of the volume under its general title ; if published separately they will be protected as "books" by themselves. The meaning of "maps," &c., will be literally construed ; but it must be something which in itself conveys information to the person studying it. Davey, L.J., in speaking of maps, said :[2]—

> "I agree . . . that a 'map' is not confined to what is popularly known as a map—viz. a geographical map ; and that a 'chart' is not confined to what is popularly called a chart—viz. a map of a portion of the seas showing the rocks, soundings, and such-like information for the use of navigators. . . . There may, no doubt, be an anatomical and physiological plan showing the structure and distribution of the muscles and bones of the human arm, or any other part of the human frame, which would be protected by the Copyright Act."

Music. The exclusive right of making copies of original music is expressly protected by the Act of 5 & 6 Vict. c. 45 under the definition of a book. Under the statute of Anne it was protected by case law, "book" being held to include a volume or sheet of music.[3]

Section II.—Publication.

Publication divests the author or proprietor of an unpublished work of his common law rights therein. After

[1] *Beckford* v. *Hood* (1798), 7 T. R., 620.
[2] *Hollinrake* v. *Truswell* [1894], 3 Ch., at p. 427.
[3] *Bach* v. *Longman* (1777), 2 Camp., 623 ; *Clementi* v. *Golding* (1809), 2 Camp., 25 ; *White* v. *Geroch* (1819), 2 B. and Ald., 298 ; *D'Almaine* v. *Boosey* (1835), 1 Y. and C. Ex., 288 ; *Jeffreys* v. *Boosey* (1854), 4 H. L. C., 815.

publication his right to protection depends solely upon the statute. Publication must be looked at from two points of view —divestitive, *i.e.* as taking away the author's common law right; and investitive, *i.e.* as clothing him with the statutory right.

Divestitive Publication.—If a literary work is communicated to the public without restriction, the common law right of the author terminates. This may be done orally or by written or printed manuscript. Either kind of communication, however, may be so limited as not to amount to a publication. A drama or musical work is not published by being publicly performed in a theatre or concert room,[1] since the communication is limited to those who have paid their price for admission, and they are admitted under an implied contract that they will not make any use of what they hear except for their own entertainment and instruction. The same applies to lectures delivered at a University [2] or by a private lecturer.[3] The question as to when a public speaker or preacher publishes the speech or sermon which he delivers is one of extreme difficulty, and depends on the relation of the speaker to his audience.[4] If a literary composition is orally communicated in a place to which all have admission as of right, or to which all are admitted without distinction, and where there are no circumstances from which a contractual relationship between the speaker and his audience can be inferred, the matter so communicated will be abandoned to the public to make what use of it they please. Similarly communication by means of manuscript or print may be limited or unlimited. Private distribution of copies of a book is not publication, because the essence of publication is that the matter must be available to all comers and not only to a class ;[5] but the issue of a book to subscribers only would

[1] *Coleman* v. *Wathen* (1793), 5 T. R., 245; *Macklin* v. *Richardson* (1770), Amb., 694; *D'Almaine* v. *Boosey* (1835), 1 Y. and C. Ex., 288.

[2] *Caird* v. *Sime* (1887), 12 A. C., 326; *Abernethy* v. *Hutchinson* (1825), 3 L. J. (O.S.), Ch., 309. See p. 222, *infra*.

[3] *Nicols* v. *Pitman* (1884), 26 Ch. D., 374. [4] See *Walter* v. *Lane* [1900], H. C., 539.

[5] *Kenrick* v. *Danube Collierie*. (1891), 39 W. R., 473; *Prince Albert* v. *Strange* (1849), 2 De G. and Sm., 652; *Jefferys* v. *Boosey* (1854), 4 H. L. C., 815; *Exchange Telegraph* v. *Gregory* [1896], 1 Q. B., 147; *Exchange Telegraph* v. *Central News* [1897], 2 Ch., 48; *Millar* v. *Taylor* (1769), 4 Burr., at p. 2417; *Turner* v. *Robinson* (1860), 10 Ir. Ch. R., 121, 510.

be publication if the subscription list was open to the public at large, and even although the number of copies available was very small. In one case [1] the words of a song were held to be published by being printed on a music-hall programme and distributed in the streets as an advertisement. Exhibition in a public place without distribution of copies would undoubtedly be divestitive publication. Divestitive publication must be with the consent of the proprietor; an unlicensed publication would merely be an infringement of his rights.

Investitive Publication.—Publication vests the statutory right of copyright, but a publication which divests the common law right does not necessarily invest the statutory right. An investitive publication is of necessity also a divestitive publication, but not *vice versâ*. The principal distinction is that an investitive publication must be a publication of a book, while a divestitive publication is a publication of the literary composition which is or may be contained in a book. Thus the delivery of a lecture does not vest copyright, although under certain circumstances it may divest the common law right. The book itself must be given to the public, and not merely the contents, in order to secure copyright. It has been suggested that a book will not be published within the meaning of the Copyright Act unless it is also printed. There is certainly some colour for this suggestion. The Act 5 & 6 Vict. c. 45 gives protection to all books which are "published" without any express restriction to printed books. It seems to be assumed, however, throughout the Act that a book when published must necessarily be in print. For instance, section 6 requires "That a printed copy . . . shall be delivered at the British Museum." In section 11 again, where provision is made for registration, it is not contemplated that a book in which there is copyright could be in manuscript, although the section makes express provision for the registration of manuscript dramatic and musical pieces, in respect of performing right. There is no authority on this point. In *White* v. *Geroch* [2] it was said that publication of a musical piece in manuscript

[1] *Blanchett* v. *Ingram* (1887), 3 T. L. R., 687.
[2] (1819), 2 B. and Ald., 298.

vested the statutory copyright; but this was under the statute of Anne, which seems expressly to contemplate publication in manuscript which 5 & 6 Vict. certainly does not. In *Boucicault* v. *Chatterton*[1] James, L.J., says: "a book is published by being printed and issued to the public;" but this was said only in illustration of the point he was then making, viz. that publication does not necessarily mean the same thing in dealing with copyright as it does in dealing with performing right. On the whole, although the point is extremely doubtful, I am of opinion that printing is not required. Suppose an illuminated hand-made book, fifty copies put on the market, is that to be denied copyright? If it is, the result seems to be that it is unprotected from piracy, since the common law right terminates with unconditional publication. Another point on publication has been raised but not decided, viz.: Must there be a distribution of copies to the public, or will it be sufficient if one or more copies are made accessible to the public; for instance, by deposit of a copy at the British Museum or in other public libraries. Sir James Stephen, in his Digest appended to the "Report of the Copyright Commission, 1878," Art. 4, says: "publication . . . means in reference to books, publication for sale;" and James, L.J., as cited above, suggests that there must be an "issuing to the public." On the other hand, the disjunctive use of the terms "published" and "offered for sale" in section 6 of 5 & 6 Vict. c. 45 is rather in favour of the view that there can be investitive publication without "offering for sale." Analogy from other branches of the law is unreliable; the exhibition of a picture in a public gallery is publication of the picture,[2] but that is the only way in which a picture can be published. On the whole, I think that if the public have free and unrestricted access to a book there will be publication, even although they may not be able to procure copies for themselves. Something might depend on the rules of a library where the book was deposited.

There is a common practice among publishers to accept as proof of first publication a receipt given on the sale of a single

[1] (1876), 5 Ch. D., 267.
[2] *Turner* v. *Robinson* (1860), 10 Ir. Ch. R., 121, 510.

copy of the book. No doubt this is *primâ facie* proof of publication, but the sale of a single copy does not necessarily imply publication, and it would be open to any one disputing the date of the publication to say that the sale was collusive, and that the book was not at that time, as it must be in order to constitute publication, offered to the public. It would be sufficient publication for the publisher to place copies, or even one copy of the book, in his window for sale. The record in his books should be sufficient evidence of the date if it is disputed.

In a case[1] under the statute of Anne it was held that publication must be by or on behalf of the proprietor, or at least with the view of conferring copyright upon him. The publication in that case was made by an oral assignee to whom the author had purported to convey the exclusive right of publication in the United Kingdom. It was held that the assignee had no copyright because there was no written assignment, and that the author did not acquire copyright because the publication was not on his behalf. The result seems to be that the copyright was lost. If the principle is sound, which is extremely doubtful, it might be applied to the case of first publication by a licensee, unless it could be implied from the contract between the licensor and licensee that the licensee was not acting entirely on his own behalf, but also on behalf of his licensor to secure copyright.

First Publication within the British Dominions.—Under the Act of 5 & 6 Vict. c. 45, it was held essential that first publication should be within the United Kingdom;[2] but since the International Act of 1886[3] first publication anywhere within the British dominions will equally secure copyright. If a book is published simultaneously within and without the dominions it is sufficient.[4] Publication a day later than publication abroad would probably lose the copyright; but if on the same day, even although an hour or two later, it would be deemed simultaneous. If a serial story in a periodical is

[1] *Clementi* v. *Walker* (1824), 2 Bar and Cres., 861.

[2] *Routledge* v. *Low* (1868), L. R., 3 H. L., 100; *Jefferys* v. *Boosey* (1854), 4 H. L. C., 815; *Boosey* v. *Purday* (1849), 4 Ex., 145; *Chappell* v. *Purday* (1845), 14 M. and W., 303; *Cocks* v. *Purday* (1848), 5 C. B., 860.

[3] 49 & 50 Vict. c. 33, sec. 8 (1).

[4] *Cocks* v. *Purday* (1848), 5 C. B., 860; *Buxton* v. *James* (1851), 5 De G. and S., 80.

being published simultaneously, say here and in the United States, some parts may have lost their copyright by too hasty publication in America, but this would not deprive the whole serial of copyright if the other parts were "first published" within the British dominions.[1] The date on the title-page of an American book has been held not to be conclusive evidence of the time of publication in the United States.[2] It is quite immaterial where the manuscript is written;[3] and probably equally immaterial where the book is printed. It has been suggested, however, that under 5 & 6 Vict. c. 45, printing within the United Kingdom was necessary, and that now since the "International Copyright Act, 1886," printing within the British dominions is a condition precedent to protection. I do not think the suggestion is of any weight. It is founded on two *obiter dicta*—one of Lord St. Leonards in *Jefferys* v. *Boosey*,[4] and the other of Bayley, J., in *Clementi* v. *Walker*.[5]

If a book is first published outside the British dominions there will be no copyright[6] in it except under the International Statutes.[7] Section 19 of 7 & 8 Vict. has been held to apply to publication in all foreign countries, and not only to those with which an international convention is in existence;[8] and it has been further held to apply to the works of a British subject as well as to those of a foreigner.[9]

If a dramatic or musical work is first performed abroad before publication as a book, although that may destroy the performing right within the British dominions, it probably will not affect the author's right to acquire copyright by first publication here in "book" form. It may be said that "first published" in 7 & 8 Vict. c. 12, sec. 19, has been held to include "first performed."[10] That decision,

[1] *Reid* v. *Maxwell* (1886), 2 T. L. R., 790.

[2] *Lover* v. *Davidson* (1856), 1 C. B. (N.S.), 182.

[3] *Buxton* v. *James* (1851), 5 De. G. and S., 80; as to author's nationality or residence, see p. 42.

[4] (1854), 4 H. L. C., at p. 983.

[5] (1824), 2 B. and C., 861, at p. 867.

[6] 7 & 8 Vict. c. 12, sec. 19.

[7] See p. 193.

[8] *Boucicault* v. *Delafield* (1863), 1 H. and M., 597; *Boucicault* v. *Chatterton* (1876), 5 Ch. D., 267.

[9] *Boucicault* v. *Delafield* (1863), 1 H. and M., 597; *Boucicault* v. *Chatterton* (1876), 5 Ch. D., 267; *Ex p. Dobson* (1892), 12 N.Z. L. R., 171.

[10] *Boucicault* v. *Chatterton* (1876), 5 Ch. D., 267.

however, dealt only with a question of performing right. In *Boosey* v. *Davidson*[1] there was first performance abroad, and it was held that copyright was obtained here by first publication; but there was no argument on section 19.

Section III.—Author's Nationality.

It must still be considered doubtful whether or not the author of a book must be a British subject, or at least resident within the British dominions at the time of publication. This point is the subject of a considerable body of case law under the statute of Anne; but there has been no definite and authoritative decision under the statute of Victoria. The question was first seriously argued in the case of *D'Almaine* v. *Boosey*,[2] when it was decided in the Court of Exchequer that the work of a foreigner would be entitled to protection if first published in England by an English assignee. The next case was *Bentley* v. *Foster*,[3] before Shadwell, V.C., who decided that the foreigner himself could acquire a copyright by first publication in this country. After that there is a series of confused and conflicting cases,[4] terminating with the decision of *Jefferys* v. *Boosey*[5] in the House of Lords. The plaintiff in that case was the English assignee of the unpublished work of a non-resident foreigner. The first publication was in England. The judges were consulted, and of these six were in favour of the plaintiff's right and four against it. The House of Lords, however, were unanimous against the plaintiff's right. They decided that the work of a non-resident foreigner could not acquire copyright in this country.

Lord Cranworth, L.C., said:—

"The statute (8 Anne) must be construed as referring to British authors only. *Primâ facie* the legislature of this country must be taken

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[1] (1849), 13 Q. B., 257.

[2] *D'Almaine* v. *Boosey* (1835), 1 Y. and C. Ex., 288; see Willes, J., in *Millar* v. *Taylor* (1769), 4 Burr., at p. 2310; *Delondre* v. *Shaw* (1828), 2 Sim., 240.

[3] (1839), 10 Sim., 329.

[4] *Chappell* v. *Purday* (1845), 14 M. and W., 303; *Cocks* v. *Purday* (1848), 5 C. B., 860; *Boosey* v. *Davidson* (1849), 13 Q. B., 257; *Boosey* v. *Purday* (1849), 4 Ex., 145; *Ollendorff* v. *Black* (1850), 20 L. T., 165; *Boosey* v. *Jefferys* (1851), 6 Ex., 580; *Buxton* v. *James* (1851), 5 De G. and Sm., 80.

[5] (1854), 4 H. L. C., 815.

to make laws for its own subjects exclusively, and where, as in the statute now under consideration, an exclusive privilege is given to a particular class at the expense of the rest of her Majesty's subjects, the object of giving that privilege must be taken to have been a national object and the privileged class to be confined to a portion of that community for the general advantage of which the enactment is made. When I say that the legislature must *primâ facie* be taken to legislate only for its own subjects, I must be taken to include under the word 'subjects' all persons who are within the Queen's dominions, and who thus owe to her a temporary allegiance. I do not doubt but that a foreigner resident here, and composing and publishing a book here, is an author within the meaning of the statute: he is within its words and spirit. I go further: I think that if a foreigner having composed but not having published a work abroad were to come to this country, and the week or day after his arrival were to print and publish it here, he would be within the protection of the statute."

Jefferys v. *Boosey*[1] then definitely decided that under the statute of Anne a foreigner, unless at the time of publication he was resident within the jurisdiction of the crown, could not be an author within the meaning of the Act, and therefore neither he nor his assigns before or after publication could acquire copyright. It would seem to follow that the construction of 5 & 6 Vict. c. 45 would lead to a similar decision. This, however, has been doubted in the House of Lords in the case of *Routledge* v. *Low*.[2] The actual decision in that case went no further than holding that a foreign author who was resident for a few days in Canada expressly for the purpose of acquiring copyright while her book was published in London was an author within the Act, a proposition which had not been disputed in *Jefferys* v. *Boosey*.[3] Their Lordships, however, discussed the wider issue whether even temporary residence was necessary. Lord Cairns, L.C., and Lord Westbury were of opinion that it was not. Lord Cairns, after pointing out that *Jefferys* v. *Boosey*[4] was a decision under the Act of Anne, said :—

"It was impossible not to see that the *ratio decidendi* in that case proceeded mainly, if not exclusively, on the wording of the preamble of the statute of Anne, and on a consideration of the general character and

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[1] (1854), 4 H. L. C., 815.
[2] (1868), L. R., 3 H. L., 100.
[3] (1854), 4 H. L. C., 815.
[4] Ibid.

scope of the legislation of Great Britain at that period. The present statute had repealed that Act, and professed to aim at affording greater encouragement to the production of literary works of lasting benefit to the world. And accepting this decision of the House as to the construction of the statute of Anne, it is, I think, impossible not to see that the present statute would be incompatible with a policy so narrow as that expressed in the statute of Anne." [1]

Lords Cranworth and Chelmsford agreed that temporary residence within the dominions was sufficient to give a foreigner the right to acquire copyright as a British author, and therefore concurred in the judgment of the House. They, however, differed strongly from the view that a non-resident foreigner could be an author within the Act. Lord Cranworth said :—

"I have no hesitation in concurring with my noble and learned friend in thinking that the decree below was right. I find it difficult to concur with him in the opinion that the present statute extends its protection to all foreigners wherever they may be resident without saying that the case of *Jefferys* v. *Boosey* [2] is not good law—a conclusion at which I should be very unwilling to come as to any case decided in this House, more especially as to one so elaborately considered as that of *Jefferys* v. *Boosey*.[3] That case, as my noble friend has pointed out, was decided not on the construction of the Act of 5 & 6 Vict. c. 45, but on the statute of Queen Anne; but I own I do not as at present advised see any difference between the two statutes so far as relates to the subject of the residence of foreign authors."

Routledge v. *Low* [4] is followed as to its actual decision in *Low* v. *Ward*;[5] but as to the rights of a non-resident foreign author the law remains, as left by *Routledge* v. *Low*,[6] truly in a most unsatisfactory state. It is difficult to escape from the conclusion, however willingly one would, that there is really no distinction between the application of the statute of Anne and that of Victoria, and that, therefore, a case arising on this point under the Act of Victoria is governed by *Jefferys* v. *Boosey*,[7] a decision which, if erroneous, was not so for want of deliberate research and consideration. The general opinion,

[1] The Fine Arts Act, 1862, is expressly confined to the works of authors who are British subjects or resident within the Dominions of the Crown; 25 & 26 Vict. c. 68.

[2] (1854), 4 H. L. C., 815.

[3] Ibid.

[4] (1868), L. R., 3 H. L., 100.

[5] (1868), L. R., 6 Eq., 415.

[6] (1868), L. R., 3 H. L., 100.

[7] (1854), 4 H. L. C., 815.

however, seems to be that Lords Cairns and Westbury were right and Lords Cranworth and Chelmsford wrong. This view is adopted by Stephen, J., in his digest.[1] Mr. Scrutton is of the same opinion, and cites the Naturalisation Act and the proviso that copyright is personal property.[2] Mr. Chamier does the same.[3] It is respectfully submitted that the provisions of the Naturalisation Act and the indisputable fact that a foreigner wherever resident can acquire a British copyright are entirely beside the mark, and do not in the least help one to decide whether the legislature is to be presumed to have applied the Act of 5 & 6 Vict. to the works of foreign authors. The decision that the work of a non-resident foreign author will not be protected is in no way contrary to the provision of the Naturalisation Act that an alien friend may acquire and hold personal property in the same way in all respects as a British subject. The logical conclusion from that provision is that an alien friend as well as a British subject may acquire British copyright wherever it exists; but it does not necessarily follow that British copyright exists in the work of a foreign author, and that either an alien friend or a British subject can acquire it. After the passing of the Chace Act (1891) in the United States, the law officers of the Crown in England were consulted by the American law officers, and they advised that an American author could acquire copyright in his work by simultaneous publication in this country and America, even although he was not at any time resident within the British dominions. Consequently on that advice the President of the United States proclaimed Great Britain as one of the countries which gave by their law reciprocal rights to American authors; and English authors are thereby entitled to acquire copyright in the United States. It would certainly be most unsatisfactory if the law of England were now to be declared contrary to the advice then given by our law officers, but it cannot be said that this should influence our Courts if their decision on the point was called for.

[1] Art. 6, "Report Copyright Commission," 1878, p. lxix.
[2] Scrutton on "Copyright," 3rd ed., p. 121.
[3] Chamier on "Literary Copyright," p. 13.

SECTION IV.—IMMORAL WORKS.

Profane,[1] indecent,[2] seditious,[3] and libellous[4] books will not be protected. Neither will those which are a fraud upon the public.[5] For instance, a book published as translated from the German of Sturm, which was entirely untrue and induced purchasers to buy it, was refused protection.[6] *Quære* whether a piratical book would be protected in so far as it was original. Probably it would.[7] If a book is not wholly mischievous, but only in part, it will probably be protected except as to that part;[8] and if a book is subsequently published purged of its immoral matter or fraudulent nature it would be protected.[9] If an action is brought in respect of a mischievous publication the practice of the Court is to dismiss the action without costs.[10] In one case[11] Mathew, J., would not take cognisance of immorality *mero motu*, and when it was not pleaded by the defendant he gave the plaintiff his remedy. Notwithstanding this, there can be no doubt that the Court may refuse to interfere even when both parties are willing to waive the question of immorality. The Court cannot be compelled to sit to take an account between public malefactors.

SECTION V.—REGISTRATION.

Before Action.—Before an owner of copyright sues for infringement his book must be registered at Stationers' Hall.[12]

[1] *Lawrence* v. *Smith* (1822), Jac., 471; *Murray* v. *Benbow* (1822), Jac., 474 *n.*; *Cowan* v. *Milbourn* (1867), L. R., 2 Exch., 230; *Burnett* v. *Chetwood* (1720), 2 Mer., 441; see 9 Will. III. c. 35 (1698).

[2] *Stockdale* v. *Onwhyn* (1826), 5 B. and Cr., 173; *Dodson* v. *Martin* (1880), 24 Sol. J., 572.

[3] *Hime* v. *Dale* (1803), 2 Camp., 27 *n.*; *Dr. Priestley's case*, cited 2 Mer., 437.

[4] *Hime* v. *Dale* (1803), 2 Camp., 27 *n.*; *Walcot* v. *Walker* (1802), 7 Ves., 1.

[5] *Wright* v. *Tallis* (1845), 1 C. B., 893; *Hogg* v. *Kirby* (1803), 8 Ves., 215; *MacFarlane* v. *Oak Foundry* (1883), 10 R., 801; *Hayward* v. *Lely* (1887), 56 L. T. (N.S.), 418; *Ward* v. *Beeton* (1874), L. R., 19 Eq., 207; *Metzler* v. *Wood* (1878), 8 Ch. D., 606; *Chappell* v. *Davidson* (1856), 2 K. and J., 123.

[6] *Wright* v. *Tallis* (1845), 1 C. B., 893.

[7] *Cary* v. *Faden* (1799), 5 Ves., 24; *Reade* v. *Conquest* (1862), 11 C. B. (N.S.), at p. 492.

[8] *Baschet* v. *London Illustrated* [1900], 1 Ch., 73; *Hayward* v. *Lely* (1887), 56 L. T. (N.S.), 418.

[9] See point suggested, 1 C. B., 902.

[10] *Baschet* v. *London Illustrated* [1900], 1 Ch., 73; *Newman* v. *Pinto* (1887), L. T. (N.S.), 31.

[11] *Dodson* v. *Martin* (1880), 24 Sol. J., 572.

[12] 5 & 6 Vict. c. 45, secs. 11, 13, 24.

The omission to register does not affect the copyright in a book, but it is a condition precedent to the right to sue in respect of the infringement thereof.[1] At one time it was thought that registration was only a condition precedent to an action for the particular remedies given by the statute, and that whether registration was effected or not the common law right of action for damages lay.[2] This, however, is not law. Registration is a condition precedent to any right of action for infringement of copyright. If an action is brought without proper registration, that action must fail; but a correct entry may then be made and a fresh action commenced.[3]

No registration is necessary to maintain an action for the infringement of performing rights in a book which is a dra' ic or musical work.[4]

Registration need not be made before infringement: .. may be effected at any time before the writ is issued.[5] In one case it was held a good registration when entry was made on the same day, but a few hours before the issue of the writ.[6] In *Hole* v. *Bradbury*,[7] Fry, J., held that registration after infringement did not entitle the plaintiff to delivery up of copies for his own use under the 23rd section of the Act of 1842, but that under its general jurisdiction the Court had power to order delivery up for destruction. In *Isaacs* v. *Fiddemann*,[8] Jessel, M.R., thought that even although infringement was before registration the plaintiff was entitled to have delivery up for his own benefit, and that the 23rd section applied to such a case. Which is the correct view it is difficult to say. The argument of Fry, J., in support of his view is elaborate and appears sound, whereas Jessel, M.R., seems to have gone more on the ground of convenience.

Registration must be effected after the publication of the

[1] 5 & 6 Vict. c. 45, sec. 24.

[2] *Beckford* v. *Hood* (1798), 7 T. R., 620; *Roworth* v. *Wilkes* (1807), 1 Camp., 94.

[3] *Low* v. *Routledge* (1864), L. R., 1 Ch., 42; *Stannard* v. *Lee* (1871), L. R., 6 Ch., 346; *Hogg* v. *Scott* (1874), L. R., 18 Eq., 444.

[4] *Russell* v. *Smith* (1848), 12 Q. B., 217; *Lacy* v. *Rhys* (1864), 4 B. and S., 873; *Marsh* v. *Conquest* (1864), 17 C. B. (N.S.), 418; *Clark* v. *Bishop* (1872), 25 L. T., 908.

[5] *Goubaud* v. *Wallace* (1877), 36 L. T. (N.S.), 704; *Macmillan* v. *Suresh Chunder Deb* (1890), Ind. L. R., 17 Calc., 951.

[6] *Warne* v. *Lawrence* (1886), 34 W. R., 452.

[7] (1879), 12 Ch. D., 886.

[8] (1880), 49 L. J. Ch., 412.

book.[1] In several cases an attempt has been made to secure a monopoly in a title by registration before the book was published or even written.[2] Such registration is entirely inoperative to secure a monopoly in the title or the right to sue in respect of the copyright in the book when published. Registration does not give the plaintiff any right (except perhaps as to delivery of copies) which he would not equally have had without registration.[3] All registration does is to perfect the right and give a title to sue on it.

It must be remembered that it is the book which is to be registered and not the copyright. It is common but erroneous to talk of "registering copyright." The distinction was pointed out in *Trade Auxiliary* v. *Middlesborough*.[4] The three several proprietors of three periodicals had employed and paid a contributor under section 18 on the terms that the matter contributed should belong to these three proprietors. The matter appeared in each of the three newspapers and each registered his own newspaper in his own name. It was argued that the registration was bad, since they should have been registered as joint proprietors, but the Court of Appeal held that the registration was good, since each had registered his "book," and section 19 was literally complied with.

A newspaper is a sheet of letterpress within the Act and must be registered.[5] In one case[6] Malins, V.C., protected a newspaper which was not registered, but that case has been expressly overruled[7] and is clearly unsound. No registration is necessary other than that required by the Act of 1842. In *Cate* v. *Devon*[8] it was contended that a newspaper would not be protected unless it had been registered under the Newspaper Libel Act, 1881. This contention was held erroneous, and registration under the Act of 1842 was alone required. Similarly

[1] *Henderson* v. *Maxwell* (1877), 5 Ch. D., 892; *Dicks* v. *Yates* (1881), 18 Ch. D., 76.

[2] *Hogg* v. *Maxwell* (1866), L. R., 2 Ch., 307; *Correspondent* v. *Saunders* (1865), 11 Jur. (N.S.), 540; *Primrose Press* v. *Knowles* (1886), 2 T. L. R., 404.

[3] *Talbot* v. *Judges* (1887), 3 T. L. R., 398; *Schove* v. *Schminckè* (1886), 33 Ch. D., 546.

[4] (1889), 40 Ch. D., 425.

[5] *Walter* v. *Howe* (1881), 18 Ch. D., 708; *Trade Auxiliary* v. *Middlesborough* (1889), 40 Ch. D., 425; *Cate* v. *Devon* (1889), 40 Ch. D., 500.

[6] *Cox* v. *Land and Water* (1878), L. R., 9 Eq., 324.

[7] *Trade Auxiliary* v. *Middlesborough* (1889), 40 Ch. D., 425.

[8] (1889), 40 Ch. D., 500; see also *Prowett* v. *Mortimer* (1856), 2 Jur. (N.S.), 414.

it is not a good defence to an action for infringement that the publisher's name and address is not printed on the first or last page of a book as required by 2 & 3 Vict. c. 12.[1]

The Requisite Entry.—Registration is made in the Book of Registry which the Act enacts[2] shall be kept at the Hall of the Stationers' Company. The fee for registration is five shillings. The Book of Registry must at all convenient times be open to the inspection of any person on payment of one shilling for every entry searched for or inspected. This, however, does not entitle any one to make a copy of an entry; but any one may demand a certified copy of an entry from the keeper of the Registry on payment of five shillings.

The proprietor of the copyright must register in the Book of Registry:[3]—

i. The title.
ii. The time of first publication.
iii. The name and place of abode of the publisher.
iv. The name and place of abode of the proprietor.

In the case of an encyclopædia, review, magazine, periodical work, or other work published in a series of books or parts, the publisher must register:[4]—

i. The title.
ii. The time of first publication of the first part.
iii. The name and place of abode of the proprietor.
iv. The name and place of abode of the publisher if different from the proprietor.

The Actual Title.—This must be registered: a description of the book will not be sufficient, even although accurate. Thus in *Harris* v. *Smart*[5] the plaintiffs' book was intituled "Illustrated Catalogue and Price List," and they registered it as "Illustrated Book of Shop-fittings." The Court of Appeal, reversing the decision of Mathew and Grantham, JJ., held that the objection to the registration was fatal. When there is a clear and distinct title, that title they held must be registered. It might be different if a book had no title; perhaps such a book could not be registered at all; but probably a description of the book, stating that

[1] *Chappell* v. *Davidson* (1856), 18 C. B., 194. See 32 & 33 Vict. c. 24.
[2] 5 & 6 Vict. c. 45, sec. 11.
[3] 5 & 6 Vict. c. 45, sec. 13.
[4] 5 & 6 Vict. c. 45., sec. 19.
[5] (1889), 5 T. L. R., 594.

it had no title, would be sufficient.[1] In *Collingridge* v. *Emmott*[2] the plaintiff's newspaper was intituled "Warehousemen and Drapers' Trade Journal and Review of the Textile Fabric Manufacturers"; but it was registered as "Warehousemen and Drapers' Trade Journal: Failures and Arrangements." Kay, J., thought that the discrepancy was fatal to the registration.

It has been questioned whether in the case of a volume, a considerable part of which, being old matter, is not entitled to copyright, and which is published under one comprehensive title, there must not be some indication on the book itself or on the register that the owner does not claim copyright in the whole work. The point has never been definitely decided. It has been held that one who adapts new words and music to an old air and describes himself proprietor of the whole composition is entitled to protection;[3] but the question raised in these cases was whether the author was entitled to copyright at all unless he could show that the whole was original. It should always be remembered in questions of this kind that the purpose of registration is not, as has frequently been suggested in argument, to notify to an intending copyist what he may copy and what he may not. In *Cate* v. *Devon*[4] the plaintiffs had published a "Commercial Compendium," containing lists of bankruptcies and bills of sale. They reprinted several copies of it under another title, viz. "The London Association for the Protection of Trade," and it was issued "privately and confidentially" to that association. The defendants copied matter from the latter issue and pleaded that it was unregistered, and therefore that they were entitled to copy it. North, J., held that the act of the defendants was an infringement of copyright in the "Commercial Compendium," which was registered under that title. In his judgment he said :—

"It is not intended that there should always be complete registration of the publication in which there is copyright in order that persons may know what they may legitimately copy and what they cannot copy. The

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[1] *Per* Coleridge, L.C.J., in *Harris* v. *Smart* (1889), 5 T. L. R., 594.
[2] (1887), 57 L. T. (N.S.), 864.
[3] *Lover* v. *Davidson* (1856), 1 C. B. (N.S.), 182; *Leader* v. *Purday* (1848), 7 C. B., 4; *Chappell* v. *Sheard* (1855), 2 K. and J., 117.
[4] (1889), 40 Ch. D., 500.

Act itself contains provisions which make that clear. It is well known that registration is only necessary as a condition precedent to suing, and the almost universal practice on the part of large publishers notoriously is that they do not register until just on the eve of taking some proceeding. Then they take care to register their copyright and sue upon it. I think, therefore, that the contention that the defendants have not been warned by registration of the title under which the document appears is one which cannot be entertained."[1]

The Time of First Publication.—This must be exactly entered to the day of the month. In *Low* v. *Routledge*[2] an entry of "23rd May 1864" was held to be bad when the actual publication was on the 25th of May 1864.[3] Under the International Copyright Act, 1844, an entry of the year only was held to be fatal,[4] and under the Copyright Act of 1842 it has been held in two cases that an entry of the month only is bad.[5] When a subsequent edition of a book is published, in so far as it is a reprint of the first edition, it will not be protected unless the first edition and the date of the first publication thereof is entered on the register;[6] in so far as it consists of new matter there must be an entry bearing the date of the publication of the edition in which such new matter was first published;[7] but the previous editions and the date of their respective publications do not require to be entered in order to protect the new matter,[8] and subsequent editions do not require to be entered in order to protect old matter.[9] Where a book has been revised and altered as each new edition has come out, every edition should be entered separately in the register, with the date of the publication of such edition. When a story, or article, or serial story, or a series of articles is published in a magazine or other periodical, the proprietor of the magazine need only register the first number of the magazine and the date of the publication thereof in order to entitle him to sue.[10] If, however, the action is at the instance

[1] 40 Ch. D., at p. 506.
[2] As to what is publication, see p. 38.
[3] (1864), 10 L. T. (N.S.), 838.
[4] *Wood* v. *Boosey* (1867), L. R., 3 Q. B., 223.
[5] *Mathieson* v. *Harrod* (1868), L. R., 7 Eq., 270; *Collingridge* v. *Emmott* (1887), 57 L. T. (N.S.), 864; and see *Page* v. *Wisden* (1869), 20 L. T. (N.S.), 435; *Maxwell* v. *Hogg* (1867), L. R., 2 Ch., 307.
[6] *Thomas* v. *Turner* (1886), 33 Ch. D., 292.
[7] *Murray* v. *Bogue* (1852), 1 Drew, 353; *Hayward* v. *Lely* (1887), 56 L. T. (N.S.), 418.
[8] *Maple* v. *Junior Army and Navy Stores* (1882), 21 Ch. D., 369.
[9] *Macmillan* v. *Suresh Chunder Deb* (1890), Ind. L. R., 17 Calc., 951.
[10] *Henderson* v. *Maxwell* (1876), 4 Ch. D., 163.

of the author of a contribution to a collective work against third parties, ; prope registration would be of the story or article only with the date of the first publication in the collective work of such story or article, or if serial, of the first part thereof.[1] Against the proprietor, for publishing separately without permission, the author does not require to be registered, as the right sued on is not one of copyright but presumably of implied contract.[2] If the owner of the periodical has acquired the entire copyright in a story or article, he can sue on a registration either of the first number of the magazine or of the first part of the story or article.[3]

The Name and Place of Abode of the Publisher.—The publisher to be entered is the first publisher of the book.[4] No subsequent publisher, unless of a revised edition, need be entered on the register.[5] If the publishers are a firm it is sufficient to enter their firm name, such as *Newby & Co.*; the individual names of the members of the firm need not be entered.[6] A publisher's ordinary place of business describes sufficiently his "place of abode": his private residential address need not be entered.[7]

The Na. ; and Place of Abode of the Proprietor.—The proprietor to be entere l is the proprietor at the time of registration, and it is unn cessary to trace his title from the first proprietor.[8] The joinder (' the unregistered proprietor as co-plaintiff with a person who nas been erroneously registered, or who, being rightly registered, is no longer proprietor, will not render an action for infringement of copyright maintainable.[9] It is not sufficient to register a mere agent or nominee of the proprietor.[10] The registered proprietor, however, if legal owner, may sue as trustee for the equitable owner of the copyright.[11] If the plaintiff

[1] *Johnson* v. *Newnes* [1894], 3 Ch., 663.
[2] *Mayhew* v. *Maxwell* (1860), J. and H., 312.
[3] *Dicks* v. *Yates* (1881), 18 Ch. D., 76; *Trade Auxiliary* v. *Middlesborough* (1889), 40 Ch. D., at p. 434.
[4] Bacon, V.C., in *Coote* v. *Judd* (1883), 23 Ch D., 727.
[5] *Weldon* v. *Dicks* (1878), 10 Ch. D., 247.
[6] *Weldon* v. *Dicks* (1878), 10 Ch. D., 247; *Rock* v. *Lazarus* (1872), L. R., 15 Eq. 104; *Macmillan* v. *Suresh Chunder Deb* (1890), Ind. L. R., 17 Calc., 951.
[7] *Nottage* v. *Jackson* (1883), 11 Q. B. D., 627; 49 L. T. (N.S.), 339.
[8] *Weldon* v. *Dicks* (1878), 10 Ch. D., 247.
[9] *London Printing* v. *Cox* [1891], 3 Ch., 291.
[10] *Petty* v. *Taylor* [1897], 1 Ch., 465.
[11] *London Printing* v. *Cox* [1891], 3 Ch., per Lindley, L.J., at pp. 301 and 302.

in an action is the assignee of a former proprietor already registered, either the assignment must have been by entry in the register, or the assignment, if made otherwise, must be entered. In every case the plaintiff, either as proprietor at the date of registration or as his assignee, must appear on the face of the register.[1] It is probably not necessary to register every mesne assignment from the proprietor originally registered to the plaintiff.[2] When the original proprietor is registered, and the assignee from him is subsequently registered, it is necessary that both entries should be correct, in order to entitle the assignee to sue.[3] If the proprietor has no fixed abode in the United Kingdom, an address in the United Kingdom through which he can be conveniently communicated with will probably be a sufficient compliance with the statute.[4]

If there is an error in any of the particulars required to be entered in the register it is fatal to the success of an action, even although caused by neglect or carelessness on the part of one of the officials at Stationers' Hall.[5] If the necessary particulars are entered it is immaterial that superfluous matter is also entered.[6]

Certificate of Registration.—The officer appointed by the Stationers' Company for the purposes of registration under the Copyright Acts must, whenever reasonably required, give a copy of any entry in the Book of Registry, certified under his hand and impressed with the stamp of the Stationers' Company, to any person on payment of five shillings, and such copies are to be received in evidence in all Courts, and are *primâ facie* proof of the proprietorship or assignment of copyright or licence, but subject to be rebutted by other evidence.[7] Registration does not, however, give a title against the whole world except the true owner.[8]

[1] *Liverpool General Brokers* v. *Commercial Press* [1897], 2 Q. B., 1; *Morang* v. *Publishers* (1900), 32 Ont. Rep., 393.

[2] *Weldon* v. *Dicks* (1878), 10 Ch. D., 247.

[3] *Low* v. *Routledge* (1864), 33 L. J. Ch., 717; 10 L. T. (N.S.), 838.

[4] *Lover* v. *Davidson* (1856), 1 C. B. (N.S.), 182.

[5] *Cassell* v. *Stiff* (1856), 2 K. and J., 279.

[6] *Fairlie* v. *Boosey* (1879), 4 A. C., 711.

[7] 5 & 6 Vict. c. 45, sec. 11; *Hildesheimer & Faulkner* v. *Dunn* (1891), 64 L. T. (N.S.), 452.

[8] *Lucas* v. *Cooke* (1880), 13 Ch. D., 872.

False Entries.—If any person wilfully makes or causes to be made any false entry in the Registry Book of the Stationers' Company, or wilfully produces in evidence any paper falsely purporting to be a copy of any entry in such book, he will be guilty of an indictable misdemeanour.[1]

Rectification of Register.—If any person "deems himself aggrieved" by any entry in the Registry Book, he may apply by motion to the King's Bench Division for an order that such entry may be expunged or varied.[2] An order to expunge will not be made at the trial of an action:[3] it must be applied for by motion in accordance with section 14, unless, perhaps, it is specifically claimed in the statement of claim in the action. There is probably no appeal from an order to expunge.[4] If a wrong entry has been made in the Book of Registry, the proprietor of the copyright in the book so erroneously entered is, even although he has by mistake made the wrong entry himself, a person aggrieved within the meaning of the statute, and can apply to the Court for an order to vary such entry.[5] An order to expunge or vary will not be made without definite proof that the existing entry is erroneous, and that the proposed entry in lieu thereof is correct.[6] By the words "deem himself aggrieved" the legislature did not mean that any person who said he was aggrieved could apply: the applicant must show to the Court that he has a right to consider himself aggrieved.[7] When the copyright in a book is in dispute either party claiming the right is a party aggrieved.[8] If a non-copyright book is entered on the register, probably any one who wished to copy it would be a party aggrieved;[9] but it is not open to any one to make application to the Court on the ground of technical flaws in a registration.[10] The applicant, unless he claims the copyright,

[1] 5 & 6 Vict. c. 45, sec. 12.
[2] 5 & 6 Vict. c. 45, sec. 14.
[3] *Hole* v. *Bradbury* (1879), 12 Ch. D., 886; 48 L. J. Ch., 673.
[4] *In re The Young Duchess* (1891), 8 T. L. R., 41.
[5] *Ex parte Poulton* (1884), 53 L. J., Q. B., 320; *in re Hall* (1899), 24 Vict. L. R., 702.
[6] *Ex parte Davidson* (1856), 18 C. B., 296; see *in re Martin* (1884), 10 Vict. L. R., Law., 196.
[7] Blackburn, J., *Graves'* case, 10 B. and S., at p. 688.
[8] *Ex parte Bastow* (1854), 14 C. B., 631.
[9] *Ex parte Davidson* (1856), 18 C. B., 296; *Chappell* v. *Purday* (1843), 12 M. and W., 303.
[10] *Graves'* case (1869), 4 Q. B., 715.

must be able to show a substantial defect on the merits of the registered proprietor's title.[1]

When once an entry on the register has been struck out, the Court has probably no power to restore it.[2]

SECTION VI.—DELIVERY OF COPIES TO LIBRARIES.

Copies of all books first published in the United Kingdom after 1842 must be delivered to the undermentioned libraries by the publisher. In default the respective librarians may recover from the publisher :[3]

i. The value of the copy which ought to have been delivered.
ii. A sum not exceeding £5.
iii. Solicitor and client costs.

The proceedings may either be summary by way of conviction before two Justices of the Peace in the county or place where the publisher making default resides, or by action in any Court of Record in the United Kingdom.[4]

The following copies are to be delivered :—

I. *To the British Museum :*[5]

One of the best copies published (complete with maps and prints) of

i. Every book first published.
ii. Every subsequent edition of a book, unless
(*a*) it contains no additions or alterations, and
(*b*) some preceding edition has been delivered :

Within one calendar month after publication or offering for sale in London.

Within three calendar months after publication or offering for sale elsewhere in the United Kingdom.

The copy must be delivered between 10 A.M. and 4 P.M. on any day except Sunday, Ash Wednesday, Good Friday, and Christmas Day.[6]

The officer of the Museum appointed to receive these copies is required to give a receipt in writing.[7]

[1] *Graves'* case (1869), 4 Q. B., 715.
[2] *Chappell* v. *Purday* (1843), 12 M. and W., 303 ; *ex parte Davidson* (1856), 18 C. B., at p. 309.
[3] 5 & 6 Vict. c. 45, sec. 10.
[4] Ibid.
[5] 5 & 6 Vict. c. 45, sec. 6.
[6] 5 & 6 Vict. c. 45, sec. 7.
[7] Ibid.

II. *To each of the following Libraries,*[1] *or to Stationers' Hall for their use:*

The Bodleian Library at Oxford.
The Public Library at Cambridge.
The Library of the Faculty of Advocates at Edinburgh.
The Library of Trinity College at Dublin.

One copy of those copies of which the largest number is printed for sale, and in the like condition of

i. Every book first published.
ii. Every subsequent edition of a book, unless
(*a*) it contains no alterations or additions.

Within one month after demand.

Provided that within twelve months after publication demand has been made to the publishers under the hand of the officer of the Company of Stationers or other person authorised thereto by the respective libraries.

The officer at Stationers' Hall and librarians of the several libraries are required to give a receipt in writing when a copy of a book is delivered to them.

The clauses as to delivery of copies are to be considered as being strictly penal. In *The British Museum* v. *Payne*,[2] under the similar provisions in 54 Geo. III. c. 156, it was held that when a book was published in parts, a single part was not demandable. The Court refused to consider the question when, if ever, the complete book would be demandable.

It will be noticed that neither the copyright nor the right to sue is affected by non-delivery of these copies. The only consequence of omission to do so is a penalty on the publisher.

The right of the various bodies to delivery of a copy applies to all books published within the United Kingdom and not only to those entered at Stationers' Hall.[3]

SECTION VII.—DURATION OF PROTECTION.

Protection dates from first publication.

Generally.—The period of protection is for the natural life of the author and for seven years after his death, or for forty-

[1] 5 & 6 Vict. c. 45, sec. 8.
[2] (1828), 4 Bing., 540.
[3] Cf. *Cambridge University* v. *Bryce* (1812), 16 East., 317; *Routledge* v. *Low* (1868), L. R., 3 H. L., 100.

two years from the date of publication, whichever period shall be longer.[1]

Posthumous Works are protected for forty-two years from the date of publication.[2]

Encyclopædias are protected for the life of the proprietor and seven years (by 5 & 6 Vict. c. 45, sec. 18, the proprietor of a collective work enjoys the same rights as if he were the actual author thereof), or for forty-two years from the date of publication, whichever period shall be the longer.[3]

Reviews, Magazines, and other periodical works of a like nature[4] have two separate copyrights, viz. :—

i. The proprietor's copyright in the publication, as a whole, for his life and seven years, or forty-two years from first publication.

ii. The contributor's copyright in his separate contribution as a separate work, beginning twenty-eight years after publication of the collective work, or on separate publication, if such should by agreement take place within the twenty-eight years, and lasting for his life and seven years, or forty-two years from first publication in the collective work.

New Editions.[5]—As to each edition, the copyright runs from the date of publication thereof, in so far as the matter therein is then first published.

Joint Works.—Although there is no statutory provision, they are probably protected for the life of the surviving author and seven years, or for forty-two years from first publication.[6]

Section VIII.—Copyright in Lectures.

There is no lecturing right, *i.e.* no exclusive statutory right to deliver a lecture in public. The only Act applying to lectures is 5 & 6 Will. IV. c. 65, which, under pain of penalties, prohibits printing or publishing, or knowingly selling lectures, which at the time of delivery have not been published in book form, without leave of the author thereof, or of the person to whom

[1] 5 & 6 Vict. c. 45, sec. 3. [2] Ibid. [3] 5 & 6 Vict. c. 45, secs. 3, 18.
[4] 5 & 6 Vict. c. 45, secs. 3, 18. [5] See *supra*, p. 26.
[6] See *Nottage* v. *Jackson* (1883), 11 Q. B. D., 627.

the author thereof has sold or otherwise conveyed the same. The remedy is action in the High Court for : (i) Forfeiture of copies. (ii) One penny per copy ; half to the Crown and half to informer. A condition precedent of protection under this Act is the giving of notice in writing to two justices living within five miles from the place where such lecture or lectures are delivered, two days at least before delivering the same. The Act has fallen into entire desuetude, partly, no doubt, on account of this somewhat troublesome stipulation as to notice, but principally because a lecturer has, in fact, full protection at common law, if, as is usually the case, he can make out an implied contract between himself and his audience that the delivery of the lecture is for purposes of instruction only, and that those present are entitled to make no other use of it whatsoever.[1] His remedy at common law will be for damages and injunction. Of course he cannot sue for penalties, unless he has brought himself within the Act.

The Lectures Act does not apply so as to protect 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.[2] The law relating to such lectures is declared to be the same as if the Lectures Act had not been passed. The result of this proviso is that these special kinds of lectures are nearly always protected at common law by implied contract in the same way as other lectures.[3]

[1] *Caird* v. *Sime* (1887), 12 A. C., 326; *Nicols* v. *Pitman* (1884), 26 Ch. D., 374; *Abernethy* v. *Hutchinson* (1825), 3 L. J. Ch., 209.

[2] 5 & 6 Will. IV. c. 65, sec. 5.

[3] *Caird* v. *Sime* (1887), 12 A. C., 326.

CHAPTER III

THE OWNER OF THE COPYRIGHT IN BOOKS

SECTION I.—THE CROWN.

WHEN the Crown ceased to have the complete control which it originally exercised over the printing-press, it still claimed to retain, as its prerogative, the exclusive right of printing such works as it considered its own peculiar property.[1] These included the authorised translation of the Bible, the Common Prayer Book, Acts of Parliament[2] and Proclamations,[3] Latin Grammars and Year Books. Law books, such as "Rolle's Abridgment," and reports collected by the judges were also claimed by the Crown on the ground that the laws were the King's Laws. Classical books, almanacs and the like, were claimed by the Crown as *bona nullius* and things derelict. As regards those books which the Crown claimed as its own property, it granted licences and patents. The Stationers' Company, the King's printers, the Universities, and from time to time various individuals received grants of authority to print such works.

Many of the claims, for instance, to almanacs, law reports, Latin grammars, have for long been abandoned. The patentees of the Crown, however, still claim a prerogative copyright in—

1. The Authorised English Translation of the Bible.[4]
2. The Book of Common Prayer.[5]

The Universities of Oxford and Cambridge and the King's

[1] See *Millar* v. *Taylor* (1769), 4 Burr., 2303, and cases there cited.

[2] *Baskett* v. *University of Cambridge* (1758), 2 Burr. 661; *Baskett* v. *Cunningham* (1762), Black. Rep., 370.

[3] See *Grierson v. Jackson* (1794), Ridg. Ir., T. R., 304; *Nical* v. *Stockdale* (1785), 3 Swanst., 687.

[4] *Universities* v. *Richardson* (1802), 6 Ves., 689; *Manners* v. *Blair* (1828), 3 Bligh (N.S.), 391; *Grierson* v. *Jackson* (1794), Ridg. Ir., T. R., 304.

[5] *Universities* v. *Richardson* (1802), 6 Ves., 689; *Eyre* v. *Carnan* (1781), 6 Bac. Abr., 509; *Manners* v. *Blair* (1828), 3 Bligh (N.S.), 391.

printers have each the right to print the Bible and the Prayer Book.

No objection has ever been taken on behalf of the Crown or her patentees to the printing of the Bible with notes, and this is in practice constantly done without authority. The notes, however, must be substantial and not merely illusory.[1]

In 1887 the Treasury published a Minute[2] in which the claims of the Crown to the exclusive right of publishing Government publications are set out. The Minute was published in the *London Gazette*.

The following publications are declared to be free from restriction of any kind, and any person may therefore publish them with or without notes :—

1. Reports of Select Committees of the Two Houses of Parliament, or of Royal Commissions.
2. Papers required by Statute to be laid before Parliament, *e.g.* Orders in Council, Rules made by Government Departments, Accounts, Reports of Government Inspectors.
3. Papers laid before Parliament by Command, *e.g.* Treaties, Diplomatic Correspondence, Reports from Consuls and Secretaries of Legation, Reports of Inquiries into Explosions or Accidents, and other Special Reports made to Government Departments.
4. Acts of Parliament.
5. Official books, *e.g.* King's Regulations for the Army or Navy.

In the following works the Government claims to retain the copyright :—

1. Literary or quasi-literary works, *e.g.* the Reports of the *Challenger* Expedition, the Rolls Publications, the State Trials, the "Board of Trade Journal."
2. Charts and Ordnance Maps.

The ancient prerogative claimed by the Crown was a perpetual copyright. The Crown is not mentioned in the Copyright Act, and it is open to doubt whether it could enforce a perpetual copyright in works compiled by its servants, or

[1] *Baskett* v. *Cunningham* (1762), Black. Rep., 370. [2] See Appendix.

whether it could only claim the term of copyright granted by the Copyright Act.

Section II.—The Universities.

By an Act of George III.[1] provision is made for the vesting of copyrights in perpetuity in the Universities of Oxford and Cambridge, the Scottish Universities and the Colleges of Eton, Westminster, and Winchester. These privileges were obtained in consequence of the decision in *Donaldson* v. *Beckett*[2] in the House of Lords to the effect that there was no perpetual copyright.

Perpetual Copyright under the Universities' Act attaches to those books which are "bequeathed or otherwise given" to one of the Universities or Colleges. A work such as The Revised Version of the Bible, which was compiled under the direction and at the expense of the two Universities, will probably not have perpetual copyright under the Act since it is neither bequeathed nor given. The same would apply to copyrights purchased by a university or college.

The book in which University privilege is claimed must be registered within two months after the time when the bequest or gift of the copyright comes to the knowledge of the Vice-Chancellor of the University or head of the college, as the case may be.

The remedy against unauthorised printing or importing or knowingly selling, publishing, or exposing for sale any book in which there is University copyright is an action in the High Court for—

(*a*) Forfeiture for destruction.

(*b*) One penny for every sheet found in the custody of the infringer, half to go to the Crown and half to the informer.

The perpetual privilege granted by the Act only subsists so long as the book is printed only within the respective Universities or Colleges, and for their sole benefit and advantage.

[1] 15 Geo. III. c. 53; 41 Geo. III. c. 107, extending the privilege to Dublin; 5 & 6 Vict. c. 45, sec. 27.

[2] (1774), 2 Bro. P. C., 129.

This does not debar them from selling the copyright, but if sold it will only subsist for the term granted to authors by the Copyright Act, 1842.

Quære if some of Jowett's works, for instance, were printed in the United States in order to acquire American copyright, whether that would destroy the perpetual copyright by reason of copies being printed outside the University.

SECTION III.—THE AUTHOR.

Copyright in every book published in the lifetime of the author thereof "shall be the property of such author and his assigns."[1] Copyright therefore in the first instance ordinarily vests in the author. The word author is not defined in the Act, and from time to time difficult questions have arisen as to who is the author of a particular book within the meaning of the Act. Difficulties have generally arisen from the fact that two or more people have been engaged in the production of a book. The rule appears to be that, if the literary matter is composed by those who make the manuscript,[2] the author is the man from whom emanates the general conception and design, and that although much of the detail may have been the work of subordinate brains and hands, he is the author of the entirety, and may sue for any infringement of it. Thus in *Scott* v. *Stanford*,[3] where the plaintiff compiled and published periodically statistical returns of the London coal market, Page Wood, V.C., in giving judgment, said that it appeared to him quite immaterial whether the plaintiff had been assisted in the compilation by his own clerks or by those of the Corporation. In *Barfield* v. *Nicholson*[4] a case under the statute of Anne, Leach, V.C., said that he was of opinion that under the statute the one who formed the plan and embarked on the speculation of a work, and employed various persons to compose different parts of it adapted to their own peculiar acquirements, was the author and

[1] 5 & 6 Vict. c. 45, sec. 3.

[2] This reservation is made necessary by the decision in *Walter* v. *Lane* [1900], A. C., 539, that the author is not necessarily the composer of the literary matter; see *infra*, p. 65.

[3] (1867), L. R., 3 Eq., 718; see also *Nottage* v. *Jackson* (1883), 11 Q. B. D., 627; *Stannard* v. *Harrison* (1871), 24 L. T. (N.S.), 570.

[4] (1824), 2 L. J. Ch., 90, at p. 102; and see *Maclean* v. *Moody* (1858), 20 D., 1154.

proprietor of the work, if not within the literal expression, at least within the equitable meaning of the statute of Anne. In *Hatton* v. *Kean*[1] the defendant had arranged certain of Shakespeare's plays with adjuncts of scenery, music, dancing, &c., and employed artists and authors to aid him in carrying his design into effect; amongst others, the plaintiff was employed to compose and arrange the orchestral accompaniments. The Court of Common Pleas held that the defendant was the author of the entire production. Erle, C.J., said :—

"I am of opinion that the music so composed by the direction and under the superintendence of the defendant, and as part of the general plan of the spectacle, must, as between him and the plaintiff, become the property of the defendant, and that consequently the defendant has violated no right of the plaintiff in causing it to be represented in the manner alleged."[2]

In *Wallerstein* v. *Herbert*,[3] where the facts were similar to those in *Hatton* v. *Kean*,[4] that case was approved by the Court of Queen's Bench. Cockburn, C.J., said :—

"Looking at the nature of this composition, it is clear that it became a part and parcel of the drama, and was not an independent composition."

These decisions seem equally applicable to books which are not dramatic compositions, but *quære* whether *Hatton* v. *Kean*[5] did not go too far. It seems a strange thing to say that the arranger of a play becomes the author of, *inter alia*, the musical accompaniment of which, perhaps, he could not have composed a single bar. Would, for instance, the author of a book be also the author of illustrations which he had procured another to draw for him? Kekewich, J., in *Petty* v. *Taylor*, thought not.[6]

The mere suggestion of a subject or idea which is then entirely designed and executed by another does not constitute the originator of the idea an author, even although the actual

[1] (1859), 7 C. B. (N.S.), 268.
[2] 7 C. B. (N.S.), at p. 280.
[3] (1867), 16 L. T. (N.S.), 453.
[4] (1859), 7 C. B. (N.S.), 268.
[5] (1859), 7 C. B. (N.S.), 268. The decision in this case was no doubt right, but it should have been on the ground that the plaintiff was the employer or assignee of the defendant and not that he was the author.
[6] See *Petty* v. *Taylor* [1897], 1 Ch., 465; Kekewich, J., at p. 475.

composer is his employee.[1] In *Shepherd* v. *Conquest*[2] the plaintiffs, proprietors of a theatre, employed a "stock author" who, on payment of a weekly salary and travelling expenses, composed plays for them. Under this employment the author composed "Old Joe and Young Joe," a dramatic piece, which he handed over to the plaintiffs, and which was produced by them at their theatre. There was no contract or assignment in writing, but there was an oral understanding that the plaintiffs should have the sole right of representing the piece in London. It was held in the Court of Common Pleas that the plaintiffs had acquired no title under the Dramatic Copyright Act, 3 & 4 Will. IV. c. 15, by reason of which they could sue an infringement of the performing right.[3] Jervis, C.J., delivered the judgment of the Court :—

"We do not think it necessary in the present case to express any opinion whether, under any circumstances, the copyright in a literary work or the right of representation can become vested *ab initio* in an employer other than the person who has actually composed or adapted a literary work. It is enough to say in the present case that no such effect can be produced when the employer merely suggests the subject, and has no share in the design or execution of the work. It appears to us an abuse of terms to say that in such a case the employer is the author of a work to which his mind has not contributed an idea."

There may be joint authorship of a book. To constitute joint authorship the work must be produced by joint labour in prosecution of a preconceived joint design. In *Levy* v. *Rutley*[4] A wrote a play, to which subsequently B added a scene, and made a few alterations and additions in other parts of the piece. It was held that there was not joint authorship. Byles, J., said :—

"If the piece had been originally written by A and B jointly in prosecution of a preconcerted joint design, the two might have been said to be the co-authors of the whole play, notwithstanding that different portions were respectively the sole productions of either."

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[1] *Shepherd* v. *Conquest* (1856), 17 C. B., 427; *Nottage* v. *Jackson* (1883), 11 Q. B. D., 627.

[2] (1856), 17 C. B., 427.

[3] On the facts of this case the work of the servant ought to have become vested in the employer.

[4] (1871), L. R., 6 C. P., 523; and see *Tree* v. *Bowkett* (1896), 74 L. T. (N.S.), 77.

And Keating, J., said :—

"I entirely agree with my brother Byles that though it may not be necessary that each should contribute the same amount of labour, there must be a joint labouring in furtherance of a common design."

Quære whether co-authors are joint owners with the right of survivorship. In *Marzials* v. *Gibbons*[1] it was suggested that they were, but see the decisions where co-assignees are held to be owners in common, or part owners without the right of survivorship.[2] *Quære* also whether each co-author, as is the case with each co-assignee,[3] is entitled to sue in respect of an invasion without the concurrence of the other co-author or co-authors.

Until *Walter* v. *Lane*[4] was decided in the House of Lords, it was a prevalent opinion that the author must be he who actually designs and by himself or through others composes the literary matter contained in the book. That case, however, demonstrates that the author is the first producer of literary matter in "book" form, *i.e.* in some permanent form from which it can be copied by the printer's compositor, usually, but not necessarily, manuscript. As a rule such person is also the composer of the literary matter contained in the book, but this is not a necessary attribute of the character of author. In *Walter* v. *Lane*[5] Lord Rosebery had delivered without reserve of any kind certain public speeches. They were delivered orally, not having been previously committed to writing. On the various occasions when they were delivered reporters from the *Times* were present, and they took down the speeches verbatim. From these reports they were transcribed into long hand, and published in the *Times*. Mr. Lane, a publisher, took these speeches from the columns of the *Times*, and without any authority from the proprietors thereof, published them in a volume entitled "Appreciations and Addresses, by Lord Rosebery." In this action at the instance of the proprietors of the *Times* for the infringement of the copyright in their reports, it was finally held in the House of Lords, firstly, that as these reports contained literary matter pub-

[1] (1874), L. R., 9 Ch., 518; and see Bowen, L.J., in *Nottage* v. *Jackson* (1883), 11 Q. B. D., 627.

[2] *Powell* v. *Head* (1879), 12 Ch. D., 686; *Lauri* v. *Renad* [1892], 3 Ch., 402.

[3] Ibid. [4] [1900], A. C., 539. [5] Ibid.

lished for the first time in "book" form, they were the subject of copyright, and secondly, that the reporters were the authors within the meaning of the Act, since they first reduced the literary matter orally delivered by Lord Rosebery to "book" form.

SECTION IV.—THE EMPLOYER.

Under Section 18.—An employer is *ab initio* entitled to the copyright when he employs an author within the meaning of and subject to the conditions imposed by section 18. Section 18[1] enacts that—

"When any publisher or other person shall before or at the time of the passing of the 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 persons to compose the same in any volumes, parts, essays, articles, or portions thereof for publication in or as part of the same, and such works, 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 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, and 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 shall not publish any such essay, article, or portion separately or singly without the consent previously obtained of the author thereof or his assigns: 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

[1] 5 & 6 Vict. c. 45, sec. 18.

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."

The nature of a proprietor's rights in the articles contributed to his periodical under section 18 is well summarised by Chitty, J., as follows:—

"This 18th section when fairly examined comes to this: the author of a literary work is the proprietor of the copyright under the general sections of the Act. If it is unpublished matter, probably the better term is to say that his right is to prevent any one else from publishing. If it is published matter, then his right is a true copyright, and it is to prevent anybody else from multiplying copies, and that right is vested in him. . . . Then comes this 18th section, the short effect of which is to transfer for a limited period a portion of the copyright to the proprietor of the periodical for whom the article has been composed; it being a condition that there shall not only be a composition of the article on the terms that it shall belong to the proprietor or publisher, but also that the sum agreed to be paid has been paid."[1]

Scope of Section.—In some of the earlier cases it seems to be suggested that section 18 applies only to works of a periodical nature.[2] But this gives no meaning to the words "or any book whatsoever," which surely could not be construed as including only books *ejusdem generis* as periodicals. The first part of the section appears to include all books if produced under the conditions as to employment and payment there enacted.[3] The judgment in *Shepherd* v. *Conquest*[4] suggests that in the opinion of the Court in that case section 18 did not apply when the performing right in a play was claimed by the proprietors of a theatre, the play having been produced by a "stock author" in their employment. It is difficult to see why section 18 should not be equally applicable to the performing right as to the copyright. Section 20 of 5 & 6 Vict. c. 45 provides that—

"The provisions hereinbefore enacted in respect of the property of such copyright and of registering the same shall apply to the liberty of

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[1] Chitty, J., in *Trade Auxiliary* v. *Middlesborough* (1889), 40 Ch. D., at p. 430.

[2] And in one case it was even doubted whether it applied to newspapers, *Platt* v. *Walter* (1867), 17 L. T. (N.S.), 157.

[3] *Lamb* v. *Evans* [1893], 1 Ch., 218; *Trade Auxiliary* v. *Middlesborough* (1889), 40 Ch. D., 425.

[4] (1856), 17 C. B., 427.

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."

Under such Employment.—The author must be "employed" and the work must be composed "under such employment." It appears therefore that a work or part of a work would not come within this 18th section unless actually executed in the course of the author's employment by the proprietor. In other words, there must be antecedent employment.[1] A contribution voluntarily sent to a magazine would not, even although accepted and paid for on the terms that the copyright should belong to the proprietors, come under the provisions of section 18. It is submitted that it would become the sole property of the proprietor of the magazine for all purposes without any reservation of the right of separate publication to the author.[2]

If A employs B, who in his turn employs C, the copyright will vest in A if B acted as a mere agent for A. Thus in *Stubbs* v. *Howard*,[3] Stubbs employed the Mercantile Press to obtain the necessary information for their Gazette, and the Mercantile Press employed P. to collect and compile. It was held that the copyright vested *ab initio* in Stubbs under section 18. But if A employs and pays B to do certain literary work, and B, of his own authority, employs and pays C, D, and E to do certain portions of it, it is doubtful whether the copyright in these portions will vest in A under section 18. The author has been neither employed nor paid by the proprietor of the work since B acted not as an agent for him, but as an independent contractor.[4] The operation of section 18 seems to be exhausted in the first employment.

"*On the terms that the copyright therein shall belong to such proprietor.*"—The terms may be implied from the nature of the employment and the circumstances under which the work is

[1] *Brown* v. *Cooke* (1846), 16 L. J. Ch., 140.

[2] As to whether a written assignment of the copyright from the author would be necessary in such a case, see *infra*, at p. 74.

[3] (1895), 11 T. L. R., 507.

[4] *Brown* v. *Cooke* (1846), 16 L. J. Ch., 140.

composed. In *Sweet* v. *Benning*[1] various members of the bar had furnished reports of cases to the plaintiffs, the proprietors of the *Jurist*. The reporters selected what cases they thought fit to report and were paid for their work. The arrangements were entirely oral, and nothing seems to have been said about copyright. The Court of Common Pleas held that the proprietors of the *Jurist* became the owners of the copyright under the 18th section. Maule, J., in support of his opinion said :—

"When a man employs another to write an article or to do anything else for him, unless there is something in the surrounding circumstances or in the course of dealing between the parties to require a different construction, in the absence of a special agreement to the contrary, it is to be understood that the writing or other thing is produced upon the terms that the copyright therein shall belong to the employer."

In *Trade Auxiliary* v. *Middlesborough*[2] the proprietors of *Stubbs' Weekly Gazette* and two other weekly papers jointly employed on salary two men to examine the official records and extract the particulars of bills of sale and deeds of arrangement registered in accordance with the Acts. The information so obtained was published in the weekly papers. It was held that the proprietors of the respective papers became owners of the copyright under section 18. In *Lamb* v. *Evans*[3] the plaintiff employed and paid several persons in canvassing for advertisements and arranging them under appropriate headings in a Trades Directory. Lindley, L.J., in giving judgment, said he thought that—

"The burthen of proof was on the plaintiff to show that the headings were composed upon the terms that the copyright therein should belong to him ; but the statute does not say anything about the kind of evidence which is to be adduced for the purpose of proving that an article has been composed on these terms. . . . If there is no express agreement the question is, what is the inference to be drawn from the circumstances of the case. In drawing the inference regard must be had to the nature of the articles which are here merely the headings to groups of advertisements with translations, and the view expressed by Mr. Justice Maule in *Sweet* v. *Benning*[4] may be very safely acted upon, viz. that *primâ facie* at all events

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[1] (1855), 16 C. B., 459.

[2] (1889), 40 Ch. D., 425 ; and see *Trade Auxiliary* v. *Jackson* (1887), 4 T. L. R., 130.

[3] [1893], 1 Ch., 218 ; and see *Maple* v. *Junior Army and Navy Stores* (1882), 21 Ch. D., 369.

[4] (1855), 16 C. B., at p. 484.

you will infer, in the absence of evidence to the contrary, from the fact of employment and payment that one of the terms was that the copyright should belong to the employer. That is not a necessary inference; but in a case of this sort, where any other inference would be unbusinesslike, I *should not hesitate myself to draw that inference.*"

Bowen, L.J., in the same case, says:—

"From where are you to collect the terms? You may collect them from what passed between the parties, that is to say between the plaintiff and the persons whom he employed, but you may also collect them from the nature of the business itself, and it seems to me to be impossible as a matter of business to suppose that these headings were composed and furnished to the plaintiff upon any other terms than that he was to have the copyright in them, because otherwise those who composed them having furnished them to the plaintiff might themselves have published them and defeated his object."

On the other hand in *Walter* v. *Howe*,[1] Jessel, M.R., held that the *Times* could not sue in respect of a biography of Lord Beaconsfield which had appeared in their columns. There was evidence that the author had been paid for his literary services, but there was apparently no evidence as to whether he had been "employed" "on the terms that the copyright should belong" to the plaintiff. Notice that in this case no antecedent employment whatsoever is shown. In *Johnson* v. *Newnes*[2] a series of stories were contributed to the *Weekly Dispatch* under an arrangement between the proprietor and the author. The author was not on the permanent staff of the *Weekly Dispatch.* He was paid by the proprietors for his contributions, the arrangement being that the author should have the right of separately publishing the stories, provided such separate publication did not take place until after all the stories had appeared in the *Weekly Dispatch.* In an action by the author against an infringer, Romer, J., in giving judgment for the plaintiff, said that he had come to the conclusion that although the plaintiff was paid he was not paid on the terms that the copyright in the stories should belong to the proprietors of the journal. The author had therefore not parted with the copyright and was the proper plaintiff.[3]

[1] (1881), 17 Ch. D., 708; and see *Bishop of Hereford* v. *Griffin* (1848), 16 Sim., 190.
[2] [1894], 3 Ch., 663.
[3] And see *Coote* v. *Judd* (1883), 23 Ch. D., 727.

In *Aflalo* v. *Lawrence*[1] the defendants published a work called "The Encyclopædia of Sport." A, one of the plaintiffs, agreed with the defendants that he would edit the work. He was to receive £500 for his services, and to write without further remuneration 7000 words of special articles. He was entitled to pursue his literary work in so far as it did not interfere with the performance of his duties. A contributed an article to the encyclopædia under his agreement. A, by the request of the defendants, procured C, the other plaintiff, to write certain articles for the encyclopædia at the rate of £2 per thousand words. The articles of both plaintiffs were published in the encyclopædia. Joyce, J., held that the contributions of neither plaintiff came within section 18, since there was nothing to show that they were contributed on the terms that the copyright therein should belong to the defendants. The defendants were therefore not entitled to publish the plaintiff's articles in any other form than as part of the encyclopædia. In view of the earlier authorities I think this decision is extremely doubtful.

Joint Employers.—As has been seen above in the case of *Trade Auxiliary* v. *Middlesborough*,[2] two or more proprietors of several periodicals may jointly employ an author so as to acquire the copyright under this section. Each has a separate copyright in his respective paper, and, although the matter contributed to the several papers is the same, may sue without joining the other proprietors. Each is "a transferee by virtue of section 18 of a limited portion of the copyright in that particular composition."[3]

Payment.—Not only must there be employment for reward, but payment is a condition precedent. If payment is not proved the section will not operate to transfer the copyright from the author.[4] Payment must be made before the commencement of an action.[5] It has been suggested that it must be made before piracy, and this appears a sound view since there is no copyright in the proprietor until payment, and an infringement before

[1] [1902], 1 Ch., 264.
[2] (1889), 40 Ch. D., 425.
[3] Chitty, J., 40 Ch. D., at p. 431.
[4] *Brown* v. *Cooke* (1846), 16 L. J. Ch., 140; *Richardson* v. *Gilbert* (1851), 1 Sim. (N.S.), 336; *Collingridge* v. *Emmott* (1888), 57 L. T. (N.S.), 864; *Trade Auxiliary* v. *Middlesborough* (1889), 40 Ch. D., 425; *Trade Auxiliary* v. *Jackson* (1887), 4 T. L. R., 130.
[5] *Trade Auxiliary* v. *Middlesborough* (1889), 40 Ch. D., at p. 430.

copyright is assigned is no cause of action in the assignee.[1] There is nothing to suggest that payment must be made before publication.[2]

Author's Separate Rights.—When an author has contributed to a periodical and the conditions of the section have been fulfilled so as to vest the copyright in the proprietor of the periodical, it would seem that for twenty-eight years, *i.e.* until the right of publishing in separate form reverts to the author, the author has no right to sue third parties in respect of an infringement without joining the proprietor of the periodical as co-plaintiff. If, however, the author, while contributing on the terms that the proprietor should have the copyright, reserves the right of publishing his composition in a separate form within the meaning of the proviso at the end of the section, when he does publish in separate form he will be entitled to copyright concurrently with the proprietor, but semble that he will have no right to sue alone until publication in separate form,[3] or until the lapse of twenty-eight years.

During the twenty-eight years the proprietor of a periodical work is not, apart from express agreement, entitled to publish the contribution in separate form. If the proprietor does publish separately in breach of the provision of the section, the author has a right of action against him, and the author's right not being one of copyright but in respect of a breach of implied or statutory contract he does not require to be registered.[4] "Separate" means in any other form than the original collective publication, whether as a single work by itself or in conjunction with other matter. When the proprietor of a magazine reprinted certain stories which had appeared in the magazine from time to time, and published them as a supplement to the current number, this was held to be a publication in separate form which the author could prevent.[5] So also the republication of the Christmas number of a periodical under a different title, form, and price, is a separate publication of an article contained

[1] See cases cited, p. 79, footnote 4.
[2] See Chitty, J., *Trade Auxiliary* v. *Middlesborough* (1889), 40 Ch. D., at p. 430.
[3] See *Johnson* v. *Newnes* [1894], 3 Ch., 663.
[4] *Mayhew* v. *Maxwell* (1860), 1 J. and H., 312.
[5] *Smith* v. *Johnson* (1863), 4 Giff., 632.

in such number.[1] A Christmas number of a serial publication, although published in an entirely different form with separate pagination and sold at a different price from the ordinary numbers, is part of the periodical, and separate publication of the stories therein will be prohibited under section 18.[2]

An article may be contributed to a periodical under express or implied terms that the copyright shall belong to the proprietor for all purposes, in which case there will be no reservation of a right of separate publication.[3]

It should be clearly noted that the second part of section 18 applies only to periodical works. Therefore in the case of an encyclopædia or similar collective works the owner has, apart from special terms, a right to publish the contributor's article separately from the original publication.

Employer's Rights where Section 18 does not Apply.—A question of some difficulty has been raised from time to time to which there is no definite authoritative answer, viz. whether apart from the provisions of section 18 the copyright ever vests *ab initio* in the employer of an author. We shall see in dealing with assignment that probably the sole right before publication to acquire the copyright of a book on first publication may pass from the author to his assignee without writing, either by an implied gift on delivery of the manuscript or by express oral assignment. The question now considered is whether by the fact of employment alone the work of the employee may not *ipso facto* on production become the property of his employer. In *Sweet* v. *Benning*[4] it was held that the employment of certain members of the bar as reporters came within section 18, and that the copyright vested in the employers themselves; but during the argument Maule, J., is reported to have said:—

"One might almost infer without the aid of an Act of Parliament that one who employs another to write an article or to make anything else for him is the owner or proprietor."

I think that this suggestion is wrong if applied to the case of an independent contractor, and that if such an employment does not come within section 18 there will be no proprietary right in the

[1] *Mayhew* v. *Maxwell* (1850), 1 J. and H., 312.
[2] Ibid.
[3] *Hereford* v. *Griffin* (1848), 16 Sim., 190.
[4] (1855), 16 C. B., 459.

employer *ab initio*, although it may be transferred to him before publication by mere delivery of the manuscript with the mutual intention to convey all rights. But in the case of a servant or agent who produces literary work in the course of his employment, I think it is different. I think that his work will vest *ab initio* irrespective of section 18, and that section 18 only applies to an independent contractor and not to a servant. In *Hildesheimer* v. *Dunn*[1] Kekewich, J., takes this view. He says :—

"I entertain a strong opinion that when a person has composed verses, we will say on behalf of another, that is to say as his servant or agent, whether for pay or not, the person on whose behalf such verses are composed is properly registered under the Act as the proprietor, notwithstanding that there is no assignment in writing or indeed any assignment at all."

SECTION V.—THE ASSIGNEE.

Before Publication.—Before a manuscript has been published the right to publish and acquire the copyright may be assigned so that on publication the copyright will be the property of the assignee. If the publication takes place during the lifetime of the author, the assignee takes the copyright under sections 2 and 3 of the Copyright Act, 1842.[2] Section 3 provides "that the copyright in every book which shall, after the passing of the Act, be published in the lifetime of its author . . . shall be the property of such author and his assigns." Section 2 provides 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." If the publication takes place after the death of the author, the assignee takes the copyright under section 3, which enacts that "the copyright in every book which shall be published after the death of its author . . . shall be the property of the proprietor of the author's manuscript from which such book shall first be published and his assigns." The possession and

[1] (1891), 64 L. T., 452.

[2] 5 & 6 Vict. c. 45.

righ. of property in the manuscript is *prima facie* proof of the right to publish and acquire copyright, but such proof may be rebutted by showing that the possession or ownership of the manuscript has been separated from the right to publish and acquire copyright. Thus in the case of letters the literary property remains in the writer and his assigns, whereas the property in the physical substance of the manuscript has passed to the receiver and his assigns.

If an assignment of manuscript, purporting to carry with it the right to publish and acquire copyright, is made before publication, it is submitted that no writing is required. The requirement that an assignment of copyright after publication must be in writing is founded not on an express enactment, but on implication from section 15 of the Copyright Act, 1842.[1] This section prohibits the reproduction of any book in which there is subsisting copyright without the consent in writing of the proprietor thereof. From this it is deduced by *a fortiori* argument that an assignment of subsisting copyright must be in writing.[2] It does not in the least follow that the common law right in manuscript may not be assigned by any mode by which property of that description might be assigned at common law. The Courts have not, however, sufficiently distinguished between an assignment before and an assignment after publication, and as a result the case law on the subject is in a most unsatisfactory condition. There are several cases under the statute of Anne, which statute, in very similar words to the statute of Victoria, provides that copyright shall belong to the author and his assignee or assigns. There is no definition of "assigns," as in the statute of Victoria, but the rule that assignment of copyright must be in writing is deduced in the same way from the proviso that consent to copy must be in writing. The cases under the statute of Anne should therefore be equally applicable as authorities under the statute of Victoria. In *Clementi* v. *Walker*[3] a French author had assigned orally to an English subject the exclusive right of printing and publishing a musical composition in this country.

[1] 5 & 6 Vict. c. 45, sec. 15.

[2] See p. 77, *infra*.

[3] (1824), 2 B. and Cr., 861; see *Cary* v. *Kearsley* (1802), 4 Esp., 168; *Storace* v. *Longman* (1788), 2 Camp., 26 *n*.

The work had not been published in England, and apart altogether from the question of a prior publication in France, the Court was of opinion that the publication in England did not give copyright to the English publisher, "because there was not any assignment or consent in writing given to the author previously to that publication. The case of *Power* v. *Walker*[1] is an authority to show that a parole assignment is not sufficient to give to the assignee the privileges conferred by the legislature upon the author." In *Colburn* v. *Duncombe*[2] there was a written publishing agreement whereby the author agreed to write a book and assign the whole copyright therein. On completion the manuscript was delivered to the publisher, and the author gave a written receipt for the consideration and agreed to deliver a regular assignment when called upon. This was never done, and in an action by the publisher against an infringer it was held that he could not sue without the author in whom the copyright had vested and remained. In *Sweet* v. *Shaw*[3] the plaintiffs agreed with A and B that A and B should report cases for them. A and B accordingly took notes of cases, and these were printed and published by the plaintiffs. Shadwell, V.C., said that he thought the plaintiffs had a copyright in equity but not in law. "I cannot," he said, "see how the agreement that persons shall prepare a work for the plaintiffs gives the plaintiffs a copyright in law, for there can be no assignment in law except of that which actually exists." In all these three cases last cited it is submitted that the whole right of the author should have been held to have passed to the publisher by the delivery to him of the manuscript with the mutual intention that he should acquire all rights therein. The first case in which it is recognised that the author's right may before publication pass without writing is *Jefferys* v. *Boosey*.[4] Erle, J.,[5] and Coleridge, J.,[6] decided that no writing was required. Speaking of an oral assignment abroad of a manuscript subsequently published here, Coleridge, J., said: "The assignee is clearly

[1] (1814), 3 M. and S., 7.
[2] (1838), 9 Sim., 151.
[3] (1839), 8 L. J. Ch., 216; see *Hodges* v. *Welsh* (1840), 2 Ir. Eq. R., 266.
[4] (1854), 4 H. L. C., 815; see *M'Lean* v. *Moody* (1858), 20 D., 1154; *Jefferys* v. *Kyle* (1856), 18 D., 906; *Cocks* v. *Purday* (1848), 5 C. B., 860.
[5] 4 H. L. C., at p. 880.
[6] 4 H. L. C., at p. 907.

within the enabling clause of the statute (8 Anne, c. 19); he is the assignee of an author, and even if these words may in some cases mean an assignee under an instrument in writing attested by two witnesses, it has not been shown or decided that they must or can mean this in all cases. I think the contrary has been shown. Larger words and less restrained the legislature could scarcely have used, and on what sound principle are we to import a restraint by implication?" Lord St. Leonards, however, in the same case, seemed to be of opinion that the assignment must be in writing and attested by two witnesses (under 8 Anne, c. 19) even although made before publication. In some of the cases the publisher with whom the author has agreed that he shall have the whole copyright, but to whom there has been no assignment in writing, has been said to be an equitable owner of the copyright.[1] But it is submitted that if the manuscript passes before publication with mutual intention to convey to the publisher all right, title, and interest therein, the publisher is the legal assignee, and on publication is the legal owner of the copyright, and there is no necessity for a formal assignment in writing.[2] The same principle may not apply to performing rights in dramatic and musical works under 3 & 4 Will. IV. c. 15. It is probable that statutory performing rights vest in the author on production,[3] and if this is so there would probably be no common law performing right, and therefore no common law assignment; the statutory mode of assignment would attach from the beginning.[4]

After Publication.—After publication an assignment must be in writing.[5] It need not be by deed nor attested by witnesses,[6]

[1] *Hazlitt* v. *Templeman* (1866), 13 L. T. (N.S.), 593; *Grace* v. *Newman* (1875), L. R., 19 Eq., 623; *Cox* v. *Cox* (1853), 11 Hare, 118.

[2] See *Frowde* v. *Parish* (1896), 27 Ont. Rep., 526; *Macmillan* v. *Suresh Chunder Deb* (1890), Ind. L. R., 17 Calc., 951.

[3] See p. 128.

[4] See *Shepherd* v. *Conquest* (1856), 17 C. B., 427; *Eaton* v. *Lake* (1888), 20 Q. B. D., 378.

[5] 5 & 6 Vict. c. 45, sec. 15; *Leyland* v. *Stewart* (1876), 4 Ch. D., 419; *Power* v. *Walker* (1814), 3 M. and S., 7, *Davidson* v. *Bohn* (1848), 6 C. B., 456; *Clementi* v. *Walker* (1824), 2 Bar. and Cres., 861; *Jefferys* v. *Boosey* (1854), 4 H. L. C., 815; [See the judgment of Lord St. Leonards at p. 944; but note also that Coleridge, J., at p. 906, expressed his disapproval of the reasoning in *Power* v. *Walker* and *Davidson* v. *Bohn*]; *Kyle* v. *Jefferys* (1859), 3 Macq., 611, 617, 18 D., 906; *Cumberland* v. *Copeland* (1862), 1 H. and C., 194; *Cocks* v. *Purday* (1848), 5 C. B., 860; see Drone on "Copyright," pp. 304-316, where the soundness of the case law that assignment must be in writing is doubted.

[6] *Kyle* v. *Jefferys* (1859), 3 Macq., 611; *Jefferys* v. *Boosey* (1854), 4 H. L. C., 815.

nor, it would seem, need it be signed by the proprietor or any one.[1] The assignment may be given by an agent. An assignment does not require to be registered in order to make it valid as a transfer of the property: but an assignee who sues must be registered.[2] If the assignor is registered as proprietor complete assignment may be made by entry on the Book of Registry at Stationers' Hall.[3] Probably an author, even although not registered, may make a valid assignment by registering the book in the name of his assignee as proprietor.[4] It has been held that an unregistered author may so register himself and two others and give all three a title to sue as joint proprietors, from which it seems to follow that he could have registered the two others without himself.[5] An assignee may make the entry on the register himself without the concurrence or consent of his assignor.[6]

In the case of an assignment made otherwise than by entry on the register, the writing must in itself amount to a present conveyance of the copyright although no particular words of conveyance are required. An executory contract to assign is not sufficient,[7] neither will it invalidate a subsequent regular assignment to others.[8] A written agreement "to let A have" a particular drama in discharge of a debt of £10 was held a complete assignment of all rights in the drama.[9] A receipt for money purporting to be paid in respect of an assignment is not in itself an assignment.[10] The copyright will not pass merely by the sale and transfer of possession of any instrument whereby the book may be reproduced such as stereotype blocks.[11] In the

[1] *Morton* v. *Copeland* (1855), 16 C. B., 517.

[2] *Liverpool General Brokers* v. *Commercial Press* [1897], 2 Q. B., 1; see *contra* opinion of Lord Cockburn in *Wood* v. *Boosey* (1867), 7 B. and S., at p. 897; *Morang* v. *Publishers* (1900), 32 Ont. Rep., 393.

[3] 5 & 6 Vict. c. 45, sec. 13.

[4] *Stevens* v. *Wildy* (1850), 19 L. J. Ch., 190.

[5] Ibid.

[6] *Liverpool General Brokers* v. *Commercial Press* [1897], 2 Q. B., 1.

[7] *Levy* v. *Rutley* (1871), L. R., 6 C. P., 523; *Leader* v. *Purday* (1849), 7 C. B., 4; *Colburn* v. *Duncombe* (1838), 9 Sim., 151; *London Printing and Publishing Co.* v. *Cox* [1891], 3 Ch., 291.

[8] *Leader* v. *Purday* (1849), 7 C. B., 4.

[9] *Lacy* v. *Toole* (1867), 15 L. T. (N.S.), 512.

[10] *Tree* v. *Bowkett* (1895), 74 L. T. (N.S.), 77; *Lover* v. *Davidson* (1856), 1 C. B. (N.S.), 182; *Latour* v. *Bland* (1818), 2 Stark, 382; *Levy* v. *Rutley* (1871), L. R., 6 C. P., 523; *Colburn* v. *Duncombe* (1838), 9 Sim., 151; but see *Kyle* v. *Jefferys* (1859), 3 Macq., 611, 18 D., 911.

[11] *Cooper* v. *Stephens* [1895], 1 Ch., 567; *Marshall* v. *Petty* (1900), 17 T. L. R., 501.

event of mesne assignments the burden of proof is in those disputing the title to show that they were not *rite et solemniter acta*;[1] and even in the case of an alleged assignment to a party in the action, a valid assignment has been presumed from a long course of dealing without actual evidence of an assignment in writing.[2]

An executory contract or a purported assignment not valid at law will be recognised in equity, and the Court will order specific performance or compel the assignor to allow the assignee to sue in the assignor's name.[3]

The assignee cannot sue in his own name in respect of acts of infringement committed before he became proprietor.[4] An assignee cannot, apart from special agreement, prevent his assignor selling against him copies of the book which such assignor has printed before assignment.[5] Probably the assignment of copyright implies a warranty of the right to convey, free from encumbrances, and quiet enjoyment.[6]

Co-assignees take as tenants in common and not as joint tenants,[7] and any one or more may maintain an action against a stranger for an infringement of the entire copyright.[8] It follows that one of several co-assignees cannot grant an effective licence without the concurrence of the others.[9]

In *Jefferys* v. *Boosey*[10] Chief Baron Pollock expressed an opinion that if a foreigner resident abroad had a copyright in this country, an assignment valid by the laws of a foreign country would be sufficient, inasmuch as copyright is expressly enacted to be personal property, and would therefore pass according to the laws of the country where the transfer took place.

[1] *Morris* v. *Kelly* (1820), 1 Jac. and W., 481.
[2] *Dennison* v. *Ashdown* (1897), 13 T. L. R., 226.
[3] *Sweet* v. *Cater* (1841), 11 Sim., 572; *Sweet* v. *Shaw* (1839), 8 L. J. Ch., 216; *Sims* v. *Marryat* (1851), 17 Q. B., 281; *Strahan* v. *Graham* (1867), 16 L. T. (N.S.), 87; *Thomblesson* v. *Black* (1837), 1 Jur., 198.
[4] *Dupuy* v. *Dilkes* (1879), 48 L. J. Ch., 682; *Chappell* v. *Purday* (1843), 12 M. and W., 303.
[5] *Taylor* v. *Pillow* (1869), L. R., 7 Eq., 418; *Howitt* v. *Hall* (1862), 6 L. T. (N.S.), 348.
[6] *Sims* v. *Marryat* (1851), 17 Q. B., 281; *Queensberry* v. *Shebbeare* (1758), 2 Eden Cha. Cas., 330; Williams' "Law of Personal Property," 15th edition, p. 523.
[7] *Powell* v. *Head* (1879), 12 Ch. D., 686.
[8] *Lauri* v. *Renad* [1892], 3 Ch., 402.
[9] *Powell* v. *Head* (1879), 12 Ch. D., 686.
[10] (1854), 4 H. L. C., at p. 940; and see *Cocks* v. *Purday* (1848), 5 C. B., 860.

Partial Assignment.—It was laid down in *Jefferys* v. *Boosey*[1] by Lord St. Leonards that copyright was one and indivisible, and could not be partially assigned. If this is correct, any attempt to assign a partial right would operate if at all as a mere licence. This opinion of Lord St. Leonards was in respect of the statute of Anne. It seems to be more or less accepted that under the statute of Victoria copyright is divisible; that there may be partial assignment limited as to place,[2] *e.g.* provincial rights, right to publish in a particular country, or limited as to the nature of the right,[3] *e.g.* the right to dramatize, the right to translate. This view appears to be based on section 13 of the Act of Victoria,[4] which enacts that a registered proprietor may assign his interest or any portion therein by making entry on the register. I do not think that this provision in itself is conclusive or that it necessarily follows that a copyright can be split up and partially assigned. Section 13 may merely mean that the owner can assign a certain undivided share in his copyright to another. Cotton, L.J., in *Trade Auxiliary* v. *Middlesborough*,[5] refers to Lord St. Leonards' doctrine. He does not disapprove of it, but he distinguishes the case of common ownership in a copyright from the case of a partial assignment as to place.

In a case decided in the Supreme Court of New South Wales,[6] it was held that the assignee of a performing right limited to the Australian colonies could sue in his own name for infringement. The Court distinguished between the performing right and the copyright. They said that even although the copyright, in accordance with Lord St. Leonards' opinion, was not divisible the performing right was.[7]

In any view of partial assignment I do not think there can be partial assignment as to time.[8] Such an assignment would create an estate in possession and reversion in personal property, and there is no reason for holding that copyright is any

[1] (1854), 4 H. L. C., 815.

[2] *Taylor* v. *Neville* (1878), 26 W. R., 299; *Tree* v. *Bowkett* (1895), 74 L. T. (N.S.), 77; see doubt expressed in *Shepherd* v. *Conquest* (1856), 17 C. B., at p. 436.

[3] *Lucas* v. *Cooke* (1880), 13 Ch. D., 872.

[4] 5 & 6 Vict. c. 45, sec. 13.

[5] (1889), 40 Ch. D., 434, 435.

[6] *Holt* v. *Woods* (1896), 17 N. S. W. R., Eq., 36.

[7] See *ex parte Dobson* (1892), 12 N. Z. L. R., 171.

[8] See *contra Howitt* v. *Hall* (1862), 6 L. T. (N.S.), 348; *Sweet* v. *Cater* (1840), 11 Sim., 572; *Davidson* v. *Bohn* (1848), 6 C. B., 458.

exception to the general rule that such an interest cannot be created in personalty. Equitable estates, limited as to time, can no doubt be created as in the case of any other personal property.[1] What purports to be an assignment limited as to time must as a rule be treated as a licence.

Assignment distinguished from Licence.—The distinction between an assignment and a licence must be carefully observed; questions of the utmost importance will often depend on whether a transaction was one or the other. An assignment is a conveyance of the right denuding the grantor and carrying to the grantee the whole interest including the right to sue and the right to re-assign, whereas a licence is only a personal permission to the grantee to infringe the grantor's right, and carries with it no right of action except in the grantor's name. In determining whether a particular transaction is an assignment or a licence, the first question is whether, on a true construction of the statute, the right purported to be given can be given by assignment or only by licence. If the right is one so limited that it cannot legally be the object of assignment, the transaction must necessarily be a licence; but if it can legally be the object of assignment, the further question arises as to what was the intention of the parties as evidenced by what they have said and done. There may often be clear words to show what was intended, but more often it may never have occurred to the parties that there was any distinction between an assignment and a licence, and the form used will consequently be ambiguous. The principal test in such cases is to examine the contract and the circumstances under which it was made, and see whether or not it bears the impress of a reliance by the grantor on the personal skill or reputation of the grantee. If it does a licence will be presumed rather than an assignment; for instance, in a publishing agreement a licence only will be presumed, since either the pocket or the reputation of the author would suffer if the right of publication were to pass into incompetent hands.[2]

[1] *Rippon* v. *Norton* (1839), 2 Beav., 63.

[2] *Hole* v. *Bradbury* (1879), 12 Ch. D., 886; *Stevens* v. *Bradbury* (1854), 1 K. and J., 168; *Reade* v. *Bentley* (1857), 3 K. and J., 271; *Cooper* v. *Stephens* [1895], 1 Ch., 567; *ex parte Bastow* (1854), 14 C. B., 631.

Section VI.—The Licensee.

Whether a bare licensee can bring an action for infringement without joining the legal owner of the copyright is open to doubt. It is submitted that he cannot. The essence of a licence proper is that it is merely a personal relationship between a licensor and a licensee whereby the latter is permitted to infringe the former's copyright. The old cases are not satisfactory. The distinction between partial assignment and licence is not clearly drawn, and the result is a confusion of the respective rights of the assignee and the licensee. In several cases it was said that licensees could sue[1] but *quære* whether they were not really partial assignees. It has also been said that an owner of copyright who has granted an exclusive licence cannot sue in respect of an infringement which touches only the rights included in such licence, unless such owner has the consent of his licensee.[2] This again, it is submitted, is not a correct statement of the law, and arises from a confusion between a partial assignee and a licensee. In *Taylor* v. *Neville*[3] the grant of provincial performing rights although called a licence was really treated as an assignment and distinguished from a "merely personal licence." It is submitted that a licence proper is always "merely personal" and that the grantor may sue without consent of his licensee. Where a licence has been granted or when there is doubt as to whether a particular grant is an assignment or a licence, it will always be safer to join both grantor and grantee as co-plaintiffs. A licence will not be presumed to be a sole licence, and unless it is expressly stated, or must necessarily be implied from the circumstances that it is so, the first licensee cannot restrain the licensor from granting, or a second licensee from acting on, a second licence.[4]

[1] *Trade Auxiliary* v. *Middlesborough* (1889), 40 Ch. D., 425. *per* Cotton, L.J.; *Tuck and Sons* v. *Canton* (1882), 51 L. J., Q. B., 363; *Sweet* v. *Cater* (1841), 11 Sim., 572.

[2] *Taylor* v. *Neville* (1878), 26 W. R., 299; *Tree* v. *Bowkett* (1895), 74 L. T., 77.

[3] (1878), 26 W. R., 297.

[4] *Warne* v. *Routledge* (1874), L. R., 18 Eq., 497; see *Sweet* v. *Cater* (1841), 11 Sim., 572; *Stevens* v. *Benning* (1855), 1 K. and J., 168.

Section VII.—The Executors or Administrators.

Copyright is personal property, and descends on the death of an owner to his personal representatives.[1] "Assigns" is expressly interpreted to include one taking by bequest or by operation of law. The common law property in the manuscript passes on the death of the owner in the same way as copyright. A bequest of "all my books" has been held to include valuable manuscript notes left by a physician.[2]

Section VIII.—The Trustee in Bankruptcy.

Copyright comes within the vesting section of the Bankruptcy Act and passes to the trustee of a bankrupt owner.[3] A bankrupt's unpublished works, probably, cannot be published for the benefit of his creditors without his consent.

[1] *Latour* v. *Bland* (1818), 2 Stark, 382.
[2] *Willis* v. *Curtois* (1838), 1 Beav., 189.
[3] See *Mawman* v. *Tegg* (1826), 2 Russ., at p. 392.

CHAPTER IV

INFRINGEMENT OF COPYRIGHT IN BOOKS

SECTION 1.—PROHIBITED ACTS, AND REMEDIES.

COPYRIGHT is defined by the Copyright Act, 1842, as "the sole and exclusive liberty of printing or otherwise multiplying copies." Any invasion of this monopoly is an infringement of copyright. Besides infringement of copyright, *i.e.* illegal copying, the Act makes it an offence to deal in certain ways with unlawful copies. The offences against copyright and the owner's remedies may be conveniently summarised as follows :—

For the following offences :[1]

i. Piratical copying.
ii. Importing for sale or hire unlawfully printed books.
iii. Selling or hiring, or having in possession for sale or hire, unlawfully printed books, knowing the same to be unlawfully printed.[2]
iv. Causing any of the above acts to be done.

The remedies[3] are an action in a Court of Record for :

1. Damages and account of profits.
2. Delivery up of copies.
3. Injunction.

For the following offences :[4]—

v. Importing without the consent of the proprietor a foreign copy or copies,[5] *i.e.* printed outside the British dominion.

[1] 5 & 6 Vict. c. 45, secs. 15 and 2.

[2] See *Butterworth* v. *Kelly* (1888), 4 T. L. R., 430; *Leader* v. *Strange* (1849), 2 Car. and K., 1010.

[3] 5 & 6 Vict. c. 45, secs. 15 and 23. The remedies given by these two sections are cumulative, and may be recovered by one action; *Muddock* v. *Blackwood* [1898], 1 Ch., 58.

[4] 5 & 6 Vict. c. 45, sec. 17; 39 and 40 Vict. c. 36, sec. 42.

[5] Ignorance will not excuse in the case of importing, but contra in the case of selling or hiring, *Cooper* v. *Whittingham* (1880), 15 Ch. D., 501.

vi. Selling or hiring or having in possession for sale or hire foreign copies knowing them to be unlawfully imported.[1]

The remedies are :—

1. Seizure and destruction by any officer of Customs,[2] and on conviction before two justices of the peace.
2. £10 for every offence.[3]
3. Double the value of every copy dealt with,[4] and

An action in the High Court for

4. An injunction.[5]

Causing to be Printed.—The prohibition in section 15 is against "printing, or causing to be printed." Thus the author, publisher,[6] and printer of a piratical book are all equally liable, and it is no defence for the publisher, who has employed the printer, or for the printer to say he was acting merely as an innocent agent.[7] There may sometimes be difficulty in determining whether a person who, to a certain extent, is interested in the publication has yet caused it to be printed within the meaning of the section. Thus, in the case of *Kelly's Directories* v. *Gavin and Lloyds*,[8] the plaintiff had published a directory of merchants and shipping statistics. The defendant Gavin prepared a similar directory, and agreed with the defendants Lloyds for its publication. Lloyds were to print part of it and allow the use of their name in the title and receive some share in the profits. The book was accordingly published under the title of "Lloyds' Diary for Merchants, &c.," and bore on the title-page the statement "printed at Lloyds, Royal Exchange, London." Part of the book was held to be an infringement of the plaintiff's copyright; but it was proved on the trial that that part was not printed by Lloyds, but by a printer employed by Gavin, and that Lloyds had no knowledge of its piratical nature. Byrne, J., found that Lloyds were not partners in the undertaking with Gavin, and that

[1] *Cooper* v. *Whittingham* (1880), 15 Ch. D., 501.
[2] 5 & 6 Vict. c. 45, sec. 17; and see 39 & 40 Vict. c. 36, sec. 42.
[3] £5 to the use of the officer of customs, remainder to the use of the proprietor of copyright.
[4] Ibid.
[5] *Cooper* v. *Whittingham* (1880), 15 Ch. D., 501.
[6] [1901], 1 Ch., 374.
[7] Cf. *Colburn* v. *Simms* (1843), 2 Hare, 543.
[8] [1901], 1 Ch., 374.

the printing of the piratical portion was not done by the printer as their agent. He therefore held that Lloyds had not "caused" that portion to be printed within the meaning of the section, and dismissed the action as against Lloyds, but without costs, as they had allowed their name to appear on the title-page as printers.

Damages.—An action for damages lies, irrespectively of sections 15 or 23, for any infringement of copyright as defined by section 2.[1] The damages are damages as for conversion or detinue,[2] and may be matter for inquiry before a master or official referee, but frequently are assessed by the judge on a rough estimate.

Account of Profits.—An order for an account of profits is an equitable remedy. The defendant is held to have been in possession of the plaintiff's property, and must account for the profits thereof.[3] The account will be for an account of net profits.[4] On an interlocutory application for an injunction the defendant may undertake to keep an account of profits until trial; but, strictly, the right to an account depends on the right to an injunction, and will not be ordered when the case for an injunction fails.[5] If the defendant's work is not wholly piratical, the profits must be apportioned according to the relative value of the piratical with the non-piratical matter. The defendant's profits may not entirely recoup the plaintiff for the damage he has suffered, and in that event he is entitled to an inquiry into damages to supplement his compensation.[6]

Injunction.—This is also an equitable remedy. It is not specially provided for in the Copyright Act, but being the ancillary remedy in equity for the protection of legal rights, it will be

[1] *Novello* v. *Sudlow* (1852), 12 C. B., 177; and see *Beckford* v. *Hood* (1798), 7 T. R., 620; *Cambridge University* v. *Bryer* (1812), 16 East, at p. 322.

[2] *Muddock* v. *Blackwood* [1898], 1 Ch., 58; *Pike* v. *Nicholas* (1869), L. R., 5 Ch., 251, at pp. 255 and 260.

[3] *Hogg* v. *Kirby* (1803), 8 Ves., 215, at p. 223; *Grimson* v. *Eyre* (1804), 9 Ves., 341, at p. 346; *Kelly* v. *Hooper* (1841), 1 Y. and C., 197, at p. 199; *Colburn* v. *Simms* (1843), 2 Hare, 543.

[4] *Delfe* v. *Delamotte* (1857), 3 K. and J., 581; but see *Pike* v. *Nicholas* (1869), L. R., 5 Ch., 251.

[5] *Baily* v. *Taylor* (1829), 1 R. and M., 73; *Price's Patent Candles* v. *Bauwen* (1858), 4 K. and J., 727; *Delondre* v. *Shaw* (1828), 2 Sim., 240; *Sweet* v. *Maughan* (1840), 11 Sim., 51.

[6] Eldon, L.C., in *Mawman* v. *Tegg* (1826), 2 Russ., at p. 400.

granted or withheld according to the discretion of the Courts in all cases of infringement or other offences against the Act.[1]

An interim injunction is usually granted on motion before trial where the plaintiff shows a *primâ facie* case on affidavit. In doubtful cases weight will be given to the consideration which side is more likely to suffer from an erroneous judgment.[2] The Court will consider the balance of convenience on the one side and the other.[3] The reason for granting an interim injunction is that a continuing infringement might cause damage for which it would be difficult or impossible to assess an adequate money compensation. If the taking is of an inconsiderable part, an interim injunction might not be given, although an injunction might go at the hearing. In urgent cases an interim injunction may be granted *ex parte*. In all interim injunctions the plaintiff is, as a rule, required to undertake to give compensation to the defendant if on trial he fails to establish his case.[4] When such an undertaking is given the defendant is, if he succeed in his defence, entitled to an inquiry as to the damage sustained on account of the interim injunction against him.[5] When there has been undue delay in bringing an action, or where the conduct of the plaintiff has been such as to induce the defendant to believe that his conduct would not be objected to, an interim injunction will probably be refused.[6] A mere expression of opinion by the plaintiff that it would be legal to make a certain use of his work is not a sufficient ground for refusing an injunction if in point of law the use made by the defendant is illegal.[7] "Copyright is not to be lost by the mere expression of opinion."[8] At the hearing of the action a perpetual injunction will be granted on the plaintiff proving his title and infringement. Delay or acquiescence not amounting

[1] *Cooper* v. *Whittingham* (1880), 15 Ch. D., 501.

[2] *M'Neill* v. *Williams* (1847), 11 Jur., 344; *Hogg* v. *Kirby* (1803), 8 Ves., 215.

[3] Hall, V.C., in *Maple* v. *Junior Army and Navy Stores* (1882), 21 Ch. D., at p. 372.

[4] *Chappell* v. *Davidson* (1856), 8 De G. M. and G., 1.

[5] *Novello* v. *James* (1854), 24 L. J. Ch., 111.

[6] *Southey* v. *Sherwood* (1817), 2 Mer., 435; *Platt* v. *Button* (1815), 19 Ves., 447; *Saunders* v. *Smith* (1838), 3 My. and C., 711; *Lewis* v. *Chapman* (1840), 3 Beav., 133; *Assignees of Robinson* v. *Wilkins* (1805), 8 Ves., 224, *n*; *Baily* v. *Taylor* (1829), 1 Russ. and My., 73; *Rundell* v. *Murray* (1821), Jac., 311; and see *Buxton* v. *James* (1851), 5 De G. and Sm., 80.

[7] *Morris* v. *Ashbee* (1868), L. R., 7 Eq., 34.

[8] *Per* Gifford, V.C., L. R., 7 Eq., at p. 39.

to fraud will not prevent an injunction going at the hearing when the plaintiff proves his right;[1] "for at the hearing of the cause it is the duty of the Court to decide upon the rights of the parties, and the dismissal of the bill upon the ground of acquiescence amounts to a decision that a right which has once existed is absolutely and for ever lost."[2] When an infringement has been shown the Court will not wait until it can ascertain distinctly what parts have been pirated. It will grant an injunction in general terms restraining the defendant, his agents, servants, or workmen from further printing, publishing, selling, or otherwise disposing of any copy or copies of the defendant's book containing any passage or passages copied, taken, or colourably altered from the plaintiff's book.[3] If it appears that the piratical parts of the defendant's book can be distinguished from that which is innocent, this will be done in the injunction.[4] For a form of injunction against a servant restraining him from using blocks and materials obtained while in the plaintiff's employment, see *Lamb* v. *Evans*.[5] An injunction will be granted without any inquiry as to actual damages;[6] but there must be probability of damage. In *Borthwick* v. *Evening Post*,[7] Cotton, L.J., said:—

"In my opinion, in order to justify the Court in granting an injunction, we ought to be satisfied that there probably will be injury to the pockets of the plaintiff . . . an injunction is an equitable remedy, and ought not to be granted unless the Court is satisfied that there is damage to the plaintiff—probable damage, not necessarily damage already suffered—as the result of the defendant's conduct."[8]

Quære whether an injunction will be granted to protect the future numbers of a periodical. In *Cate* v. *Devon and Exeter Constitutional Newspaper Company*,[9] North, J., in granting an injunction to restrain a systematic infringement of a periodical, said:—

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[1] *Hogg* v. *Scott* (1874), L. R., 18 Eq., 444.

[2] *Per* Turner, L.J., in *Johnson* v. *Wyatt* (1863), 2 De G., J. and S., at p. 25.

[3] *Lewis* v. *Fullarton* (1830), 2 Beav., 6; *Kelly* v. *Morris* (1866), L. R., 1 Eq., 697; *Mawman* v. *Tegg* (1826), 2 Russ., 385.

[4] *Jarrold* v. *Houlston* (1857), 3 K. and J., 708; *Lamb* v. *Evans* [1892], 3 Ch., 462.

[5] [1892], 3 Ch., 462.

[6] *Campbell* v. *Scott* (1842), 11 Sim., 31; *Tinsley* v. *Lacy* (1863), 1 H. and M., 747.

[7] *Borthwick* v. *Evening Post* (1888), 37 Ch. D., 449.

[8] 37 Ch. D., at p. 462.

[9] (1889), 40 Ch. D., 500.

"It is clear that an injunction can only be granted in respect of matters in regard to which the plaintiffs now have the copyright and a present right to sue; they cannot have any protection by injunction to restrain the defendants from publishing hereafter any future entries with respect to which the plaintiffs may possibly . . . acquire a copyright, . . . but as to which they clearly cannot at this moment have any copyright."[1]

In another case, however, where a single illustration had been taken from *Punch*, Kekewich, J., said he saw no objection to the injunction extending to the protection of the contents of future numbers of *Punch*, and granted a perpetual injunction accordingly against the *Ludgate Monthly*.[2] An injunction will not be granted when it is difficult or impossible to enforce it,[3] for instance, when the defendant can readily reprint the same matter, compiling it from original sources.[4] The piracy proved may be so inconsiderable, and so little likely to injure the plaintiff, that the Court may decline to interfere by injunction.[5]

Delivery up of Copies.—All copies of any books wherein there is copyright and of which entry has been made in the Registry Book and which are unlawfully printed or imported, are deemed to be the property of the registered proprietor of such copyright, and he is entitled after demand in writing to sue for the same in detinue and trover.[6]

This right to the delivery up of pirated copies for the benefit of the proprietor of the copyright is purely statutory. Under the Acts of Anne and George III. the proprietor on delivery up was enjoined to damask and make waste paper of the copies.[7] Under the Act of Victoria the proprietor for the first time is entitled to recover such copies for his own use. It has been doubted whether there was any right to delivery up at

[1] 40 Ch. D., at p. 507; and see *Trade Auxiliary* v. *Middlesborough* (1889), 40 Ch. D., 425.

[2] *Bradbury* v. *Sharp* (1891), W. N., 143.

[3] *Cox* v. *Land and Water* (1869), L. R., 9 Eq., 324; *Southern* v. *Bailes* (1894), 38 S. J., 681.

[4] *Cox* v. *Land and Water* (1869), L. R., 9 Eq., 324; *Baily* v. *Taylor* (1829), 1 R. and M., 73.

[5] *Lewis* v. *Fullarton* (1839), 2 Beav., 6, Langdale, M.R., at p. 11.

[6] 5 & 6 Vict. c. 45, sec. 23. To be safe the demand in writing should be made before the writ is issued.

[7] 8 Anne c. 19, sec. 1; 54 Geo. III. c. 156, sec. 4.

common law,[1] but the bulk of authority is in favour of the view that there was,[2] although the delivery up was for destruction only.[3] It is a doubtful point whether section 23 applies to unlawful copies made before registration of the plaintiff's title. Fry, L.J., held that it did not,[4] and therefore in the case of such copies ordered delivery up for destruction as a common law remedy, but refused the statutory remedy of delivery up for the plaintiff's benefit. Jessel, M.R., however, differed from this view,[5] and thought that the 23rd section applied to unlawful copies made before the plaintiff's title was registered. It must also be considered doubtful whether section 23 applies where the defendant's book is not merely a reprint of the plaintiff's. In an Irish case O'Brien, J., said :—

"It would be difficult to maintain that under the 23rd section the proprietor of the copyright in a book would acquire the property of all copies of another book which contained printed therein a few pages or passages of his book."[6]

But, whether or not in such a case the plaintiff would be entitled under the section to extraction and delivery up for his benefit of the pirated parts, he is under the general jurisdiction of the Court entitled to delivery up for cancellation.[7] In *Warne* v. *Seebohm*[8] the order was that the defendant should first state upon oath what copies of the work exist; secondly, extract from those copies which are in his possession or power and deliver up to the plaintiffs for cancellation all passages copied, taken, or colourably imitated from the plaintiffs' book; thirdly, produce to the plaintiffs, if required by them for examination, the copies after the pirated passages have been extracted.[9] *Quære* whether the Court would order delivery up in an action to which the person who owned the books and paper and at whose expense the printing was executed was not a party.[10]

[1] *Colburn* v. *Simms* (1843), 2 Hare, 543.

[2] *Prince Albert* v. *Strange* (1849), 2 De G. and Sm., 652; *Kelly* v. *Hodge* (1873), 29 L. T. (N.S.), 387; *Emperor of Austria* v. *Day* (1861), 3 D. F. and J., 217.

[3] *Hole* v. *Bradbury* (1879), 12 Ch. D., 886; but see *Delfe* v. *Delamotte* (1857), 3 K. and J., 581; *Stannard* v. *Harrison* (1871), 19 W. R., 811.

[4] *Hole* v. *Bradbury* (1879), 12 Ch. D., 886; cf. *Colburn* v. *Simms* (1843), 2 Hare, 543.

[5] *Isaacs* v. *Fiddemann* (1880), 49 L. J. Ch., 412.

[6] *Rooney* v. *Kelly* (1861), 14 Ir. C. L. R., *per* O'Brien, J., at p. 171.

[7] *Warne* v. *Seebohm* (1888), 39 Ch. D., 73. [8] Ibid.

[9] *Warne* v. *Seebohm* (1888), 39 Ch. D., at p. 83.

[10] *Colburn* v. *Simms* (1843), 2 Hare, 543; *Hole* v. *Bradbury* (1879), 12 Ch. D., 886.

Customs Act.—The Customs Laws Consolidation Act, 1876,[1] provides for the seizure of foreign books, and in this respect is somewhat inconsistent with section 17 of the Copyright Act. Section 42 of the Customs Act prohibits the importation of books "first composed or written or printed in the United Kingdom and printed or reprinted in any other country, as to which the proprietor of such copyright or his agent shall have given to the Commissioners of Customs a notice in writing duly declared[2] that such copyright subsists, such notice also stating when such copyright will expire." On reference to section 17 of the Copyright Act it will be noticed that the prohibition there is as to books "reprinted in any country or place outside the British dominions." *Quære* does the provision in the Customs Act enlarge the protection by the words "printed or reprinted in any other country"? Does this include the colonies? Again it will be noticed that the Copyright Act has no condition as to notice to the Commissioners of Customs. *Quære* is the notice required by the Customs Act a condition precedent to all protection from unlawful importation, and in this respect does the Customs Act limit the provisions of the Copyright Act, or is the Customs Act merely directory to the Custom-house officials? To be on the safe side the notice should always be given. Section 44 of the Customs Act provides for the keeping of a list of books as to which notice has been given, and section 45 entitles any person who shall have cause to complain of the insertion of any book in such list to apply to a judge at chambers for the rectification thereof.

Every Offence.—Each separate transaction of sale or importation will constitute a separate offence, for which a separate penalty of £10 will accrue.[3] It would seem that "every such offence" does not, as in the Artistic Copyright Act, mean "or the sale or importation of every copy."[4]

Limitation of Action.—Section 26 of the Copyright Act, 1842, enacts, "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

[1] 39 & 40 Vict. c. 36, sec. 42.
[2] 39 & 40 Vict. c. 36, sec. 44.
[3] *Brooke* v. *Milliken* (1789), 3 T. R., 509.
[4] *Ex parte Beal* (1868), L. R., 3 Q. B., 387.

next after such offence committed, or else the same shall be void and of none effect." It is clear that even although the remedy for one offence is barred, that in no way extinguishes the owner's right, and the owner may sue for subsequent offences;[1] thus although a piratical book has been printed and published more than twelve months before action brought, yet the owner will be entitled to sue in respect of sales, &c., made within the twelve months. In a Scotch case, *Stewart* v. *Black*,[2] it seems to have been held by Lord President Boyle that the limitation in the 26th section did not apply to an action of damages for infringement, and Malins, V.C., says *obiter* in *Weldon* v. *Dicks*,[3] that in his opinion the limitation only applies to an action for penalties. It is submitted that *Stewart* v. *Black*, if applied to books published after 1842, is wrong, and that the dictum of Malins, V.C., in *Weldon* v. *Dicks*, is also wrong. The section seems sufficiently clear and applicable to all actions brought in respect of an infringement of copyright. The argument contra seems to be based on the use of the words "for any offence that shall be committed," from which it is argued, that penalties only are pointed at. Offence, however, is used in the 15th section as applicable to infringement of copyright not involving penalties. In cases where the Public Authorities Protection Act applies, the shorter limitation of six months must be substituted.[4]

Pleading.—The defendant is required to give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of the action. If the defendant intends to dispute that the plaintiff is author or first publisher, or that he is proprietor, he must state the name of the person whom he alleges to be the author or proprietor, together with the title of the book and the time when, and the place where, such book was first published.[5] It has been said to be sufficient, in the case of an old publication, to state the year of first publication without stating the day and month in the notice of objections.[6]

[1] *Hogg* v. *Scott* (1874), L. R., 18 Eq., 444; see *Macmillan* v. *Suresh Chunder Deb* (1890), Ind. L. R., 17 Calc., 951.

[2] (1846), 9 D., 1026; and see *Clark* v. *Bell* (1804), Mor. Dic., Literary Property, App., 9.

[3] (1878), 10 Ch. D., 247, at p. 262.

[4] 56 & 57 Vict. c. 61; *Muddock* v. *Blackwood* [1898], 1 Ch., at p. 64.

[5] 5 & 6 Vict. c. 45, sec. 16; *Hole* v. *Bradbury* (1879), 12 Ch. D., 886.

[6] *Boosey* v. *Davidson* (1846), 4 Dow. and Low, at p. 155.

The notice of objections must be specific, and give full notice of the nature of the defence.[1] If the defence is that the book has not been registered at all, that must be stated.[2] If a faulty registration is relied on, it is not sufficient to deny that the book has been duly registered; the notice must state what the particular objection to the registration is.[3] If the plaintiff's title is denied, it will not do merely to state that the proprietor "is some person unknown, but not the plaintiff;"[4] the full particulars as required by the section must be given.[5] In objecting to the registration, however, it is not necessary for the defendant to state what the correct entry should be. Thus if he says the time of first publication is wrongly entered, he does not require to specify the true date of first publication.[6] It is unnecessary to deliver a separate "Notice of Objections," as was the practice at one time,[7] it is sufficient if it is incorporated in the defence. A suggestion of defective title contained in an affidavit would not be sufficient.[8] If a defective title is apparent from the plaintiff's own statement of claim or evidence, the action would probably be dismissed by the Court, *proprio motu*, even although the defendant had not given notice of objection.[9] Leave to amend the pleadings and take further objection may be allowed on conditions under the judicial discretion given by the Rules of the Supreme Court,[10] but if the objection be merely technical, the Court will not give leave to amend,[11] unless, perhaps, the plaintiff had otherwise fair notice that the objection might be taken.[12] It has been held by a County Court judge that section 16 of the Copyright Act does not apply to proceedings in the

[1] *Collette* v. *Goode* (1878), 7 Ch. D., 842; *Boosey* v. *Purday* (1846), 10 Jur., 1038; *Boosey* v. *Davidson* (1846), 4 D. and L., 147; *Leader* v. *Purday* (1849), 7 C. B., 4; *Barnett* v. *Glossop* (1835), 1 Bing. N. C., 633; 1 Scott's Rep., 621.

[2] *Chappel* v. *Davidson* (1856), 18 C. B., 194.

[3] *Collette* v. *Goode* (1878), 7 Ch. D., 842.

[4] *Boosey* v. *Davidson* (1846), 4 D. and L., 147; *Hole* v. *Bradbury* (1879), 12 Ch. D., 886.

[5] Ibid.

[6] *Collette* v. *Goode* (1878), 7 Ch. D., 842.

[7] *Sweet* v. *Benning* (1855), 16 C. B., 459; *Cocks* v. *Purday* (1848), 5 C. B., 860.

[8] *Hayward* v. *Lely* (1887), 56 L. T. (N.S.), 418.

[9] *Coote* v. *Judd* (1883), 23 Ch. D., 736; *Hole* v. *Bradbury* (1879), 12 Ch. D., 886; *Collette* v. *Goode* (1878), 7 Ch. D., 842; but see *Leader* v. *Purday* (1848), 6 Dow. and Low, 408.

[10] *Collette* v. *Goode* (1878), 7 Ch. D., 842.

[11] Ibid.

[12] *Hayward* v. *Lely* (1887), 56 L. T. (N.S.), 418.

County Court, as that Court was created after the date of the Act.[1]

The plaintiff may be ordered to specify the particular passages which he is prepared to prove have been pirated from his work.[2]

Evidence.—The great test of piracy is coincidence of blunders, and when some passages are proved by the recurrence of blunders to have been copied, other passages which are the same with passages in the original book are presumed *prima facie* to be likewise copied, although no blunders occur in them.[3]

It will greatly prejudice the defendant if his manuscript is not produced or accounted for.[4]

A denial by the defendant that he has made any use whatsoever of the plaintiff's work raises a presumption of piracy if it is shown that he must have made some use of it, however fair.[5]

To prove that A on a certain date heard certain music performed from printed sheets, is no evidence that the music was published as a book at that date.[6]

Discovery.—The defendant is entitled to administer interrogatories to ascertain the extent of the sale of plaintiff's book, and to enable the defendant to ascertain the damages and pay into Court.[7]

The plaintiff is entitled to interrogate as to the original sources from which the defendant alleges his work to have been compiled.[8]

Mode of Trial.—Formerly the question of piracy or no piracy and the amount of damages was frequently tried by jury, but now the trial of the action is almost invariably before a judge alone, either in the Chancery or the King's Bench Division. Either party may ask for a trial by jury, but not as a matter of right, it is a matter entirely in the discretion of the Court and semble that the onus lies on the party applying

[1] *Harris* v. *Smart* (1889), W. N., 92, 5 T. L. R. 594.
[2] But see *Sweet* v. *Maughan* (1840), 11 Sim., 51.
[3] Eldon, L.C., in *Mawman* v. *Tegg* (1826), 2 Russ., at p. 394.
[4] *Hotten* v. *Arthur* (1863), 1 H. and M., 603; *Jarrold* v. *Houlston* (1857), 3 K. and J., 708.
[5] Ibid.
[6] *Boosey* v. *Davidson* (1849), 13 Q. B., 257.
[7] *Wright* v. *Goodlake* (1865), 3 H. and C., 540.
[8] *Kelly* v. *Wyman* (1869), 17 W. R. 399; *Stevens* v. *Brett* (1864), 10 L. T. (N.S.), 231.

for a jury to show that the cause could be more conveniently tried in that way.[1]

Costs.—In copyright as in other actions a successful party may be refused his costs. The plaintiff will not get his costs if he has unduly acquiesced in the defendant's conduct, and thereby induced the defendant to incur expenses,[2] or if after acquiescence and delay an action is brought without fair warning.[3] So, too, if the plaintiff has suffered no real harm, but brings an action for the purpose of making money out of it ;[4] and in one case where the Court was of opinion that although the plaintiff was entitled to nominal damages, the action was one which should never have been brought, the plaintiff was ordered to pay the defendant's costs as well as his own.[5] If the plaintiff has increased the expenses by raising other questions in which he has failed, the costs will be apportioned.[6] A defendant, although successful, may lose his costs or part of them if he has acted in such a way as was not fair and right as between man and man ;[7] for instance, if he has made some use of the plaintiff's book, but does not acknowledge it at the hearing.[8] A successful defendant may lose his costs if in his defence he challenges the plaintiff's title and fails in his attack, but wins on the question of piracy. If a defendant by his conduct in lending his name to a publication has led the plaintiff to assume that he "caused it to be printed," he will probably not be allowed his costs.[9] A defendant may also be refused his costs if the Court is of opinion that he brought the action on himself by sailing too near the wind.[10] The Court will not encourage a plagiarist or one who has made an illiberal use of another's work, even although he has not actually committed a piracy. Costs have also been refused

[1] *Coote* v. *Ingram* (1887), 35 Ch. D., 117.
[2] *Maxwell* v. *Somerton* (1874), 22 W. R., 313.
[3] *Walter* v. *Steinkopff* [1892], 3 Ch., 189.
[4] *Wall* v. *Taylor* (1883), 11 Q. B. D., 102.
[5] *Dicks* v. *Brooks* (1880), 15 Ch. D., 22.
[6] *Metzler* v. *Wood* (1878), 8 Ch. D., 606.
[7] Lord Romilly, M.R., in *Cobbett* v. *Woodward* (1872), L. R., 14 Eq., at p. 414 ; Hall, V.C., in *Maple* v. *Junior Army and Navy Stores*, 21 Ch. D., at p. 373.
[8] *Piddington* v. *Philip* (1893), 14 N. S. W. R., Eq., 159.
[9] *Kelly's Directories* v. *Gavin & Lloyds* [1901], 1 Ch., 374; affirmed in the Court of Appeal.
[10] *Pike* v. *Nicholas* (1869), L. R., 5 Ch., 251; *Cobbett* v. *Woodward* (1872), L. R., 14 Eq., 407.

where, although the defendant succeeded, his defence was a merely technical one, such as a defect in registration.[1] If copyright is claimed in part of a book only, the whole of which is registered without distinction, the notice of motion or statement of claim should specify the parts in which copyright is claimed, or the plaintiff may be liable in costs unnecessarily incurred by the defendant.[2]

Section II.—What is a Piratical Copy.

Literary property may be invaded in three ways:—

(i) Open Piracy;
(ii) Literary Larceny;
(iii) Commercial Fraud.[3]

With the first there is no difficulty once a title has been established and the pirate caught. It consists in a bodily reprinting and publishing of the whole or of large portions of a copyright book. The third is not properly speaking an infringement of copyright. It is the invasion of the common law rights of an author or publisher, and will be dealt with later. The second, literary larceny, gives rise to many difficult questions and is dealt with in this section.

The question put by the law is, in its simplest form: "Is the alleged infringement an unauthorised copy of the whole or part of a copyright work?" The statute does not attempt to define what a copy is, and such rules as there are for determining whether one work is a copy of another are entirely derived from the case law on the subject. It is impossible to lay down any very definite rules as to infringement; it is really a question of fact not of law; and although now almost invariably tried by a judge sitting alone, it was at one time constantly referred to the decision of a jury. The judges either in giving their own decisions or in directing juries have from time to time laid down general rules as an aid to determining these questions of fact.

The Copyright Acts have always received a liberal interpretation in favour of the author, and against the plagiarist. "If we

[1] *Liverpool General Brokers* v. *Commercial Press* [1897], 2 Q. B., 1.
[2] *Page* v. *Wisden* (1869), 20 L. T., 435.
[3] James, L.J., in *Dicks* v. *Yates* (1881), 18 Ch. D., 76.

can construe the Act so as to promote fair and honest dealing, such a construction is to be preferred." [1]

What is a Copy.—A copy is that which will provide a substitute for the whole or for a substantial part of the original book.[2] The owner of the copyright has the sole and exclusive liberty of printing or otherwise multiplying copies. It has been held that the right is not in any way limited by section 15 of the Copyright Act, 1842, which section applies its remedy only to cases where the subject-matter is multiplied by printing.[3] Thus copies produced by writing,[4] lithography,[5] typewriting,[6] photography,[7] are copies within the meaning of the Act. The symbols used matter little in themselves; the question in each case is whether the defendants are multiplying copies.[8] It is not necessary that the copy should be primarily intended to be used for the same purpose as the original. Thus a copy in shorthand characters intended for instruction in shorthand was held to be an infringement of a story in a magazine.[9] But the copy must provide a reasonable substitute for the whole or part of the original work. A perforated scroll used for the mechanical reproduction of music from an instrument is not a copy, since no reasonable being would use it as a substitute for the original sheet of music.[10]

A Substantial Part must be Taken.—In other words, *De minimis non curat lex.*

"Part is not necessarily the same as particle, and there may be a taking so minute in its extent and so trifling in its nature as not to incur the statutable liability." [11]

In *Sweet* v. *Benning*,[12] Jervis, C.J., said:—

"It is undoubtedly exceedingly difficult, perhaps absolutely impossible, to lay down any general rule upon this subject. I do not assent to

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[1] Jessel, M.R., in *Maple* v. *Junior Army and Navy Stores*, 21 Ch. D., at p. 378.
[2] Lord Ellenborough in *Roworth* v. *Wilkes* (1807), 1 Camp., at p. 97.
[3] *Novello* v. *Sudlow* (1852), 12 C. B., 177.
[4] *White* v. *Geroch* (1819), 2 B. and Ald., 298; Lindley, M.R., in *Boosey* v. *Whight* [1900], 1 Ch., at p. 123.
[5] *Novello* v. *Sudlow* (1852), 12 C. B., 177. [6] *Warne* v. *Seebohm* (1888), 39 Ch. D., 73.
[7] See Lindley, M.R., in *Boosey* v. *Whight* [1900], 1 Ch., at p. 123.
[8] *Bach* v. *Longman* (1777), 2 Cowp., 623; *D'Almaine* v. *Boosey* (1835), 1 Y. and C., Ex., 288.
[9] *Nicols* v. *Pitman* (1884], 26 Ch. D., 374.
[10] *Boosey* v. *Whight* [1900], 1 Ch., 122.
[11] Lord O'Hagan in *Chatterton* v. *Cave* (1878), 3 A. C., at p. 498.
[12] (1855), 16 C. B., at p. 481.

the argument that every publication of a portion of a work in which there is subsisting copyright will afford a ground of action: it is a question of degree which must depend upon the circumstances of each particular case."

In *Chatterton* v. *Cave*,[1] Brett, J., said:—

"Unless there is a taking of a material and substantial part there is no infringement of copyright. It is true that the question under the second section is not only whether the whole production has been copied, but also whether a part has been copied; but by a part this section must mean a material and substantial part." [2]

In *Chatterton* v. *Cave*,[3] two small points or incidents were taken from one drama by the author of another, and it was held that the taking was not of a substantial part. In *Pike* v. *Nicholas*,[4] in the case of two rival essays on the same subject, one quotation from a classical author was taken by the defendant directly from the plaintiff's book; Lord Hatherley, L.C., and Giffard, L.J., were of opinion that it would not do to show merely one or two passages; some material part of the book must be shown to have been taken.

The question is not altogether one of quantity, it is perhaps mainly one of quality,[5] and depends on the character of the work and the relative value of the material taken.[6]

"The question of the extent of appropriation which is necessary to establish an infringement of copyright is often one of extreme difficulty: but in cases of this description the quality of the piracy is more important than the proportion which the borrowed passages bear to the whole work." [7]

"It ought to be clearly established that, looking at the works as a whole, there has been a substantial appropriation by the one party of the independent labour of the other before any proceeding on the ground of copyright can be justified." [8]

"When it comes to a question of quantity it must be very vague.

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[1] (1875), L. R., 10 C. P., at p. 575.

[2] See also *Bohn* v. *Bogue* (1846), 10 Jur., 420; *Jarrold* v. *Heywood* (1870), 18 W. R., 279; *Baily* v. *Taylor* (1829), 1 R. and M., 73.

[3] (1878), 3 A. C., 483.

[4] (1869), L. R., 5 Ch., 251.

[5] *Leslie* v. *Young* [1894], A. C., at p. 342.

[6] *Cary* v. *Kearsley* (1802), 4 Esp., 168; *Lennie* v. *Pillans* (1843), 5 D., 416; *Cooper* v. *Stephens* [1895], 1 Ch., 567.

[7] *Per* Page Wood, V.C., in *Tinsley* v. *Lacey* (1863), 1 H. and M., at p. 752.

[8] *Per* L.C. Herschell in *Leslie* v. *Young* [1894], A. C., at p. 341.

One writer might take all the vital[1] part of another's book, though it might be but a small proportion of the book in quantity. It is not only quantity, but value that is always looked to."[2]

"The principle of the cases is that, when one man for his own profit puts into his work an essential part of another man's work from which that other may still derive profit, or from which but for the act of the first he might have derived profit, there is evidence of piracy."[3]

Although it is no excuse for infringement to say that the matter taken has been improved upon or added to, yet there may be so much new matter that the part borrowed becomes so insignificant that the Courts will not interfere. In *Mawman* v. *Tegg*,[4] Lord Chancellor Eldon says :—

"After the quantity of matter which has been copied has been ascertained, the quantity of matter not piratical with which the piratical matter has been intermixed is still a circumstance of great importance."

The materiality of the part taken may sometimes be judged more by the proportion which it bears to the defendant's work than to the work from which it is taken. Thus in *Neale* v. *Harmer*[5] the plaintiff had prepared and published an elaborate work intituled "The Abbey Church of St. Alban," containing about 200 architectural drawings. The defendant took and published three of these in a magazine article on St. Alban's Abbey, and they were the only strictly architectural drawings illustrating the article. It was held to be an infringement. Kekewich, J., said in his judgment :—

"It is said that these drawings did not form a material part of the plaintiff's work. In one sense that is true. The plaintiff's work is a large one, and it is a very learned work. The test is not so much what proportion of the plaintiff's work had been taken, but rather what portion of the defendant's work is the plaintiff's."

In questions of amount it is material to inquire whether the matter was taken so as to compete with the plaintiff's work,[6] but

[1] See *Murray* v. *Bogue* (1852), 1 Drew, at p. 369.

[2] *Per* Cottenham, L.C., in *Bramwell* v. *Halcomb* (1836), 3 My. and Cr., at p. 738; see *Scott* v. *Stanford* (1867), L. R., 3 Eq., 718.

[3] *Bradbury* v. *Hotten* (1872), L. R., 8 Ex., 1; see also *Cooper* v. *Stephens* [1895], 1 Ch., 567.

[4] (1826), 2 Russ., at p. 394.

[5] (1897), 13 T. L. R., 209; and see *Kelly* v. *Hooper* (1841), 1 Y. and C. Ch. C., 197; *Cooper* v. *Stephens* [1895], 1 Ch., 567.

[6] *Trade Auxiliary* v. *Middlesborough* (1889), 40 Ch. D., 425; *Cate* v. *Devon* (1889), 40 Ch. D., 500.

an infringement need not necessarily be shown to be in competition with the work infringed, since it is sufficient if the defendant has made such a use of part of the plaintiff's work as the plaintiff might himself have done.

If matter is taken regularly and systematically by one periodical from another, and particularly if it is taken and claimed to be taken as of right, a very small amount will suffice.[1] As to a claim of right, North, J., said in *Cate* v. *Devon*:—

"That of itself is sufficient to put the plaintiff in the wrong in the action and get over any question as to the amount of matter actually taken."[2]

Although the Court will not grant a remedy for a trifling infringement, it will not refuse an injunction merely on account of the minute inquiries into detail which, in some cases, may be necessary to establish even an extensive piracy.[3]

No Animus Furandi need be Proved.—In *Cary* v. *Kearsley*[4] Lord Ellenborough's judgment contained a reference to the *animus furandi* in cases of infringement, from which a mistaken idea seems to have arisen that in all cases of infringement the *animus furandi* must be proved.[5] Lord Ellenborough said:—

"That part of the work of one author is found in another is not in itself piracy or sufficient to support an action; a man may fairly adopt part of the work of another; he may so make use of another's labours for the promotion of science and the benefit of the public, but having done so the question will be, was the matter so taken used fairly with that view and without what I may term the *animus furandi*."[6]

This did not mean that in every case of infringement alleged it was necessary to prove an *animus furandi* or guilty intention. Lord Ellenborough in a subsequent case[7] said:—

"The intention to pirate is not necessary in an action of this sort; it is enough that the publication complained of is in substance a copy

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[1] *Trade Auxiliary* v. *Middlesborough* (1889), 40 Ch. D., 425; *Cate* v. *Devon* (1889), 40 Ch. D., 500.

[2] 40 Ch. D., at p. 507.

[3] *Jarrold* v. *Houlston* (1857), 3 K. and J., 708.

[4] (1802), 4 Esp., 168.

[5] *Jarrold* v. *Houlston* (1857), 3 K. and J., 708.

[6] *Per* Lord Ellenborough in *Cary* v. *Kearsley* (1802), 4 Esp., at p. 170.

[7] *Roworth* v. *Wilkes* (1807), 1 Camp., 97.

whereby a work vested in another is prejudiced. If A takes the property of B the *animus furandi* is inferred from the act."[1]

In *Scott* v. *Stanford*,[2] Page Wood, V.C., after quoting the above passage from Lord Ellenborough's judgment in *Cary* v. *Kearsley*,[3] said :—

"It is urged that this is a case in which no *animus furandi* can be found on the part of Mr. Hunt, who has taken these statistics in perfect good faith and with the fullest acknowledgment[4] in his book of the source from which they are derived. But if in effect the great bulk of the plaintiff's publication—a large and vital portion of his work and labour—has been appropriated and published in a form which will materially injure his copyright, mere honest intention on the part of the appropriator will not suffice, as the Court can only look at the result and not at the intention in the man's mind at the time of doing the act complained of, and he must be presumed to intend all that the publication of his work effects."[5]

Although the *animus furandi* does not require to be proved, it is a useful aid to proof, and where it appears piracy is more readily presumed.[6]

Taking not necessarily for Profit.—The prohibition in section 15 of the Copyright Act, 1842, is against printing or causing to be printed "either for sale or exportation," but as this has been held not to confine piracy to copying by means of printing, neither does it confine it to copying for sale or exportation, and the purpose for which the copy when made is to be used is immaterial. In *Alexander* v. *Mackenzie*[7] the Society of Writers to the Signet in Edinburgh prepared for the use of their own members a book of forms taken largely from a similar copyright work. The Court of Session held that this was an infringement of copyright. A catalogue of books, although not intended for sale, may be an infringement of another catalogue ;[8]

[1] *Per* Shadwell, V.C., in *Campbell* v. *Scott* (1842), 11 Sim., 31; *Clement* v. *Maddick* (1859), 1 Giff., 98; *Reade* v. *Lacy* (1861), 1 J. and H., 524; *Scott* v. *Stanford* (1867), L. R., 3 Eq., 718.

[2] (1867), L. R., 3 Eq., 718.

[3] (1802), 4 Esp., 168.

[4] See also *Bohn* v. *Bogue* (1846), 10 Jur., 420.

[5] *Per* Sir W. Page Wood, V.C., in *Scott* v. *Stanford* (1867), L. R., 3 Eq., 718, at p. 723; and see *Kelly* v. *Morris* (1866), L. R., 1 Eq., 697.

[6] *Jarrold* v. *Houlston* (1857), 3 K. and J., 708; *Reude* v. *Lacey* (1861), 1 J. and H., 524; *Spiers* v. *Brown* (1858), 31 L. T. (O.S.), 18; 6 W. R., 352.

[7] (1847), 9 D., 748.

[8] *Hotten* v. *Arthur* (1863), 1 H. and M., 603.

manuscript copies of a copyright song distributed exclusively among the members of a philharmonic society,[1] and a telegraphic code distributed only among the agents of a shipping firm have also been prohibited.[2] In *Ager* v. *The P. & O.*, Kay, J., said :—

"It has long been settled that multiplying copies for private distribution among a limited class of persons is just as illegal as if it were done for the purpose of sale."

It is submitted that making a single copy for private use is an infringement.

Copying may be Indirect and Unintentional.—If matter in which copyright exists is taken it is immaterial that the appropriation was made not directly from the original work but indirectly through some other work, copyright or non-copyright, authorised or unauthorised. Thus a book may be infringed by retranslating or copying a translation of it,[3] and a drama may be infringed by dramatizing a novel founded on the drama.[4] In *Cate* v. *Devon and Exeter Constitutional Newspaper Company*,[5] it was argued that an indirect copying could not be considered an infringement, because since the copyist is ignorant of what works he is indirectly copying, he cannot know whether or not he is infringing any copyright books, but this argument was rejected. Ignorance on the part of the copyist does not excuse him from the consequences of his act.[6]

Custom of Trade has been pleaded in defence of what was otherwise clearly a piracy. A custom was alleged whereby provincial newspapers were entitled to make large extracts, without criticism, from articles in magazines which were sent to them;[7] and in another case "a usual practice" among publishers of magazines to take articles from each other[8] was

[1] *Novello* v. *Sudlow* (1852), 12 C. B., 177.

[2] *Ager* v. *The P. & O.* (1884), 26 Ch. D., 637; and see *Oxford and Cambridge* v. *Gill* (1899), 43 S. J., 570.

[3] *Murray* v. *Bogue* (1852), 1 Drew, 353.

[4] *Reade* v. *Lacey* (1861), 1 J. and H., 524; *Reade* v. *Conquest* (1862), 11 C. B. (N.S.), 479.

[5] (1889), 40 Ch. D., 500; *Cooper* v. *Whittingham* (1880), 15 Ch. D., 501.

[6] See Lord Blackburn in *Chatterton* v. *Cave*, 3 A. C., at p. 501; *Novello* v. *Sudlow* (1852), 12 C. B., 177; *Rock* v. *Lazarus* (1872), L. R. 15 Eq., 104; *Lee* v. *Simpson* (1847), 3 C. B., 871.

[7] *Maxwell* v. *Somerton* (1874), 22 W. R., 313.

[8] *Wyatt* v. *Barnard* (1814), 3 V. and B., 77.

pleaded. It is clear that no such customs can be admitted. In *Walter* v. *Steinkopff*[1] the *St. James' Gazette* alleged that there was a universal understanding among journalists and newspaper proprietors that paragraphs of news may be quoted verbatim by one daily paper from another without express consent, provided (1) the source was acknowledged, (2) the papers were not direct rivals, (3) there is give and take between the papers, and (4) no expressed objection. The *St. James' Gazette* took articles from the *Times* on this alleged footing. North, J., held that they had not complied with these conditions, and that even if they had it would have been no defence.

"The plea of the existence of such a habit or practice of copying, as is set up, can no more be supported when challenged than the highwayman's plea of the custom of Hounslow Heath."[2]

Fair Use.—When an author writes on a subject in which there are common sources of information he must do the work of research and compilation for himself, and the only use he can lawfully make of a prior copyright work on the same subject is—

i. Using the information or the ideas contained in it without copying its words or imitating them so as to produce what is substantially a copy.
ii. Making extracts (even if they are not acknowledged as such) appearing under all the circumstances of the case reasonable in quality, number, and length, regard being had to the objects for which the extracts are made and to the subjects to which they relate.
iii. Using one book on a given subject as a guide to authorities afterwards independently consulted by the author of another book on the same subject.
iv. Using one book on a given subject for the purpose of checking the results independently arrived at by the author of another book on the same subject.[3]

No one can monopolize a Field of Labour.—Although an author has been the first to deal with a particular subject, his priority

[1] [1892], 3 Ch., 489.
[2] [1892], 3 Ch., 489, *per* North, J., at p. 499.
[3] This summary of "fair use" is taken from Stephen's Digest "Report of Copyright Commission," 1878, p. lxx.

gives him no exclusive right therein.[1] Any one else can do exactly the same as he has done. If a man draws a map of a newly-discovered island, or writes a book on the habits of its natives, he acquires no right to prevent any one from competing with him in the publication of maps and books dealing with that island.[2] His only right is to prevent any one else from taking matter from his book. In one of the older cases it was suggested that there was a usage among booksellers — a sort of comity among them — by which if one preoccupied a certain subject he was considered a sort of proprietor.[3] In that case Lord Eldon repudiated the idea that such could be the law, and now no monopoly of the kind could be suggested.

> "All human events are equally open to all who wish to add to or improve the materials already collected by others making an original work."[4]

No Infringement to take Facts.—It is no infringement to state a fact or an opinion which another man has stated for the first time: but you must not take his mode of expression or his selection or arrangement of facts which he has thought proper to state. Thus there is no copyright in a mere piece of news, for instance, "The Emperor of China is dead." If one newspaper proprietor received a telegram from abroad to that effect, another could take the information as published and print it in his newspaper. But although there is no copyright in news as such, the smallest taking of a selection or arrangement of news will be prohibited. In a case in Victoria[5] the defendants had taken the plaintiff's telegrams, re-arranged them, and altered the expression, and yet they were held to have been guilty of an infringement.

No Infringement to take the General Scheme or Idea of another

[1] *Sayre* v. *Moore* (1785), 1 East., 361, *n.*; *Hogg* v. *Kirby* (1803), 8 Ves., 215; *Matthewson* v. *Stockdale* (1806), 12 Ves., 270; *Mawman* v. *Tegg* (1826), 2 Russ., 385; *Pike* v. *Nicholas* (1869), L. R., 5 Ch., 251; *Alexander* v. *Mackenzie* (1847), 9 D., 748 at p. 761; *Longman* v. *Winchester* (1809), 16 Ves., 269; *Wilkins* v. *Aikin* (1810), 17 Ves., 422; *Weekes* v. *Williamson* (1886), 12 Vict., L. R., 483.

[2] Lindley, L.J., *Lamb* v. *Evans* [1893], 1 Ch., at p. 224.

[3] *Hogg* v. *Kirby* (1803), 8 Ves., 215.

[4] *Per* Lord Chancellor Erskine in *Matthewson* v. *Stockdale* (1806), 12 Ves., at p. 273.

[5] *Wilson* v. *Lake* (1875), 1 Vict. L. R., Eq., 127.

Book or the Theories therein.—Copyright does not extend to ideas or schemes or systems or methods: it is confined to their expression; and if their expression is not copied the copyright is not infringed.[1] Thus in *Jarrold* v. *Houlston*,[2] Page Wood, V.C., said that even although Dr. Brewer's "Guide to Science," which purported to give popular scientific information under various headings in the form of question and answer, had been the first book of the kind, there was nothing to prevent another person from originating another book in the same general form, provided he did so from his own resources.[3] In *Pike* v. *Nicholas*, the case of two rival historical essays on "The Origin of the English Nation," James, V.C., said :—

> "There is no monopoly in the main theory of the plaintiff, or in the theories and speculations by which he has supported it, nor even in the use of the published results of his own observations."[4]

A careful distinction must be drawn between the taking of a scheme and the taking of it as applied to certain material, *i.e.* the taking of the expression. For instance, in *Kelly* v. *Morris*,[5] the plaintiff had adopted a "very ingenious form of arrangement" in his "Street Directory." The defendant was held to have infringed the plaintiff's copyright by taking his list of streets from the plaintiff's work. The only thing he was entitled to do was to adopt the "ingenious form of arrangement" and apply it for himself.

Every Author must do his own Work.—In *Longman* v. *Winchester*,[6] the action being for the infringement of copyright in a court calendar, Lord Eldon drew an analogy to the case of a map describing a particular county and a map of the same county afterwards published by another person, which, if the description be accurate in both, must be very much the same, yet he said :—

> "It is clear the latter publisher cannot on that account be justified in sparing himself the labour and expense of actual survey."

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[1] Lindley, L.J., in *Hollinrake* v. *Truswell* [1894], 3 Ch., at p. 427.

[2] *Jarrold* v. *Houlston* (1857), 3 K. and J., 708.

[3] *Morris* v. *Ashbee* (1868), L. R., 7 Eq., 34; *Lennie* v. *Pillans* (1843), 5 D., 416; *Mawman* v. *Tegg* (1826), 2 Russ., 385; Lindley, L.J., in *Lamb* v. *Evans* [1893], 1 Ch., at p. 224.

[4] *Pike* v. *Nicholas* (1869), L. R., 5 Ch., 251, at p. 260.

[5] (1866), L. R., 1 Eq., 697.

[6] (1809), 16 Ves., 269; and see *Matthewson* v. *Stockdale* (1806), 1 J. and H., 312; *Baily* v. *Taylor* (1829), 1 Russ. and Mylne, 73; *Wilkins* v. *Aikin* (1810), 17 Ves., at p. 424.

In *Lewis* v. *Fullarton*,[1] Lord Langdale, M.R., said :—

"Any man is entitled to write and publish a topographical dictionary and to avail himself of the labours of all former writers whose works are not subject to copyright, and of all public sources of information: but whilst all are entitled to resort to common sources of information, none are entitled to save themselves trouble and expense by availing themselves for their own profit of other men's works still subject to copyright and entitled to protection."[2]

In the case of Dr. Brewer's "Guide to Science,"[3] Page Wood, V.C., said :—

"In publishing a work in the form of question and answer on a variety of scientific subjects the defendant had a right to look to all those books which were unprotected by copyright, and to make such use of them as he thought fit by turning them into questions and answers. He had also a further right if he found a work like Dr. Brewer's, and perusing it was struck by seeing—as I think has been the case in the present instance—that the author had been led up to particular questions and answers by the perusal of some other work to have recourse himself to the same work, although possibly he would not have thought of doing so but for the perusal of the plaintiff's book. . . . It would also be a legitimate use of a work of this description if the author of a subsequent work, after getting his own work with great pains and labour into a shape approximating to what he considered a perfect shape, should look through the earlier work to see whether it contained any heads which he had forgotten."[4]

In *Hotten* v. *Arthur*[5] the same judge held that the defendant had infringed the plaintiff's descriptive catalogue of books for sale :—

"The only fair use you can make of the work of another of this kind is where you take a number of such works, catalogues, dictionaries, digests, &c., and look over them all, and then compile an original work of your own founded on the information you have extracted from each and all of them: but it is of vital importance that such new work shall have no mere copying, no merely colourable alterations, no blind repetition of obvious errors."

In *Kelly* v. *Morris*,[6] a directory case, there is another clear dictum from the same judge :—

"In the case of a dictionary, map, guide-book, or directory, when there are certain common objects of information which must, if described

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[1] (1839), 2 Beav., 6., at p. 8.
[2] And see *Garland* v. *Gemmill* (1887), 14 S C. R. (Canada), 321.
[3] *Jarrold* v. *Houlston* (1857), 3 K. and J., 708.
[4] 3 K. and J., at p. 715.
[5] 1 H. and M., 603.
[6] (1866), L. R., 1 Eq., 697.

correctly, be described in the same words, a subsequent compiler is bound to set about doing for himself that which the first compiler has done. In case of a road-book he must count the milestones for himself. In the case of a map of a newly-discovered island he must go through the whole process of triangulation just as if he had never seen any former map; and generally he is not entitled to take one word of the information previously published without independently working out the matter for himself so as to arrive at the same result from the same common sources of information, and the only use he can legitimately make of a previous publication is to verify his own calculations and results when obtained. So in the present case the defendant could not take a single line of the plaintiff's directory for the purpose of saving himself labour and trouble in getting his information. . . . What he has done has been just to copy the plaintiff's book and then send out canvassers to see if the information so copied was correct. . . . The work of the defendant has clearly not been compiled by the legitimate application of independent personal labour."[1]

In *Scott* v. *Stanford*,[2] Page Wood, V.C., held that certain tables of statistical returns in the coal market had been pirated. In his judgment he said :—

"The defendant, after collecting the information for himself, might have checked his results by the plaintiff's tables, but that is a widely different thing from this wholesale extraction of the vital part of his work. No man is entitled to avail himself of the previous labours of another for the purpose of conveying to the public the same information, although he may append additional information to that already published."

In *Morris* v. *Ashbee*,[3] Giffard, V.C., held that the copyright in a business directory had been infringed in so far as the compilation and arrangement of the advertisements and names of traders were taken from the plaintiff's directory. In giving judgment he commented on *Kelly* v. *Morris*,[4] pointing out that the decision in that case was not based solely on the fact that the information was reprinted bodily by the defendants and then verified when possible :—

"The decree is general in its terms, following *Lewis* v. *Fullarton*,[5] and the substance of the judgment is that in a case such as this no one has a right to take the results of the labour and expense incurred by another for the purposes of a rival publication, and thereby save himself the

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[1] See *Hogg* v. *Scott* (1874), L. R., 18 Eq., 444.
[2] (1867), L. R., 3 Eq., 718.
[3] (1868), L. R., 7 Eq., 34.
[4] (1866), L. R., 1 Eq., 697.
[5] (1839), 2 Beav., 6.

expense and labour of working out and arriving at these results by some independent road."

In reference to the case before him the Vice-Chancellor said:—

"It is plain that it could not be lawful for the defendants simply to cut the slips which they have cut from the plaintiff's directory and insert them in theirs. Can it be lawful to do so because in addition to doing this they sent persons with the slips to ascertain their correctness? I say, clearly not. Then, again, would their acts be rendered lawful because they got payment and authority [1] for the insertion of the names from each individual whose name appeared in the slips? And to this again I answer, clearly not. They had no right to make the results arrived at by the plaintiff the foundation of their work or any material part of it, and this they have done." [2]

In *Morris* v. *Wright*,[3] another case of alleged infringement of the same business directory, Giffard, L.J., distinguished it from *Kelly* v. *Morris* [4] and *Morris* v. *Ashbee*,[5] inasmuch as the plaintiff's work had only been used by the defendant as a guide to original sources. He held that there was no infringement. Referring to the passage quoted above from the judgment of Page Wood, V.C., in *Kelly* v. *Morris*,[6] he said:—

"This passage does not mean that a subsequent compiler may not look into the book for the purpose of ascertaining whether it was worth his while to call upon that person or not, but it means that he may not take that particular slip and show that to the person and get his authority as to putting that particular slip in." [7]

So also quotations from and references to previous authors must not be taken bodily from a rival work. They may be used as a guide and as a guide only. Lord Hatherley, L.C., in *Pike* v. *Nicholas*,[8] a case of rival historical works on the same subject, said:—

"Although the defendant might have been led to look more minutely into *Prichard* than he otherwise would have done by referring to the plaintiff's work, still the plaintiff could not say, 'I, having found these passages in *Prichard*, will prohibit all the world who may find the same

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[1] See *Garland* v. *Gemmill* (1887), 14 S. C. R. (Canada), 321.
[2] *Morris* v. *Ashbee* (1868), L. R., 7 Eq., 34, *per* Giffard, V.C., at pp. 40, 41.
[3] (1870), L. R., 5 Ch., 279.
[4] (1866), L. R., 1 Eq., 697.
[5] (1868), L. R., 7 Eq., 34.
[6] (1866), L. R., 1 Eq., 697.
[7] *Per* Giffard, L.J., L. R., 5 Ch., at p. 285.
[8] (1869), L. R., 5 Ch., 251.

passages from making use of them.' The moment he had given that degree of light to the defendant which led him to refer to that common source, if the defendant did really and *bonâ fide* look at that common source, he did all that this Court required him to do. He must not simply copy the passage from the plaintiff's book, but, having been put on to the track, and having looked at that particular part of the book which the plaintiff led him to, he was entitled to make use of every passage from that author which the plaintiff had made use of." [1]

In this case the quotation was proved to have been taken directly from the plaintiff's work, but this was considered to be so small a taking that the bill was dismissed, though without costs, the Court being satisfied "that the book of the defendant was his own composition in this sense, that wherever he got the materials from they were worked up by him into his own language." [2]

It is no excuse for piracy to say that with a little labour the copyist could have produced identically the same result.[3] The fact that the result may be identical is a reason for not making a new book, but it is no reason for copying another's book.

Work with a Different Object.—An author is much less restricted in the use which he may make of a previously published copyright book if such book is of an entirely different nature or has a different scope or object from his own work. Considerable portions may then be taken for the purpose of comment, criticism, or illustration. Lord Eldon suggested in one case [4] that a copyright map might be taken bodily for the purpose of insertion in a book giving an historical account of all the different maps of a particular district. In *Bradbury* v. *Hotten*,[5] Kelly, C.B., suggested that a picture might be reproduced amongst a large collection published for an entirely different object from that which the first publisher had in view.

"We must consider in each case the intent of the copyist and the nature of the work. A traveller publishes a book of travels about some distant country like China. Amongst other things he describes some

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[1] Hatherley, L.C., L. R., 5 Ch., at p. 263; and see *Longman* v. *Winchester* (1809), 16 Ves., at p. 271; *Moffat & Paige* v. *Gill* (1902), C. A., April 25.

[2] *Per* Giffard, L.J., L. R., 5 Ch., at p. 268.

[3] *Matthewson* v. *Stockdale* (1806), 1 J. and H., 312; *Walter* v. *Lane* [1900], A. C., 539; *Kelly* v. *Morris* (1866), L. R., 1 Eq., 697; *Morris* v. *Wright* (1870), L. R., 5 Ch., 279; *Baily* v. *Taylor* (1829), 1 Russ. and Mylne, 73.

[4] *Wilkins* v. *Aikin* (1810), 17 Ves., 422.

[5] (1872), L. R., 8 Ex., 1.

mode of preparing food in use there. Then the compiler of a cookery book republishes the description. No one would say that was a piracy. So, again, an author publishes a history illustrated with woodcuts of the heads of kings, and another person writing another history of some other country finds occasion to copy one of these woodcuts. That again would not be a piracy."[1]

These *obiter dicta* illustrate sufficiently well the distinction between taking for a rival work and taking for an entirely different object; it is probable, however, that some of them go too far and tend to follow the mistake of the older view of infringement in looking more to the value of the work done by the plagiarist than to the value of the material taken. As authoritative *dicta* they must, therefore, be accepted with caution. The best test of infringement or no infringement in a taking of this kind is to inquire whether the subsequent work by reason of the taking provides a substitute for the whole or any substantial part of the prior publication. In *Bradbury* v. *Hotten*,[2] nine cartoons, illustrative of the career of Napoleon III., were published in *Punch* in nine several weekly numbers. The defendants published a volume entitled "Story of the Life of Napoleon, as told by popular Caricaturists of the last thirty years," which contained among numerous other illustrations taken from French and English comic journals the nine cartoons first produced in *Punch*. This was held to be an infringement of the copyright in *Punch*. In *Nicols* v. *Pitman*[3] the defendant published in an educational work for the purpose of instruction in shorthand writing a lecture delivered by the plaintiff on "The Dog as the Friend of Man." The Court held there was an infringement, because although the lecture was reproduced in shorthand characters, it might by those who could read shorthand be reasonably used as a substitute for the lecture printed in ordinary characters. A compiler of an encyclopædia or similar work would probably be allowed to quote to a certain extent from copyright monographs, but this must not be carried to such an extent as to supersede the original work.[4] Several cases have been before the Courts on the verbatim copying of law reports

[1] *Per* Kelly, C.B., L. R. 8 Ex., 1, at p. 5.
[2] (1872), L. R., 8 Ex., 1.
[3] (1884), 26 Ch. D., 374.
[4] *Roworth* v. *Wilkes* (1807), 1 Camp., 94; *Murray* v. *M'Farquhar* (1785), M., 8309.

in whole or in part into legal treatises of various kinds. The collection of all the reports on a particular branch of law such as "Poor Law"[1] or "Registration of Voters,"[2] is an infringement of copyright if they are copied verbatim from previously published copyright reports. This will be so even although they are collected from the reports of many different reporters.[3] In *Sweet* v. *Benning*,[4] a digest compiled by taking verbatim the head notes from copyright law reports and arranging them under appropriate titles was held to be an illegal publication, the Court being of opinion that the defendant had been guilty of an abuse of the fair right of extract, which the law allows for the purpose of comment, criticism, or illustration. No doubt in text-books large portions of the head notes, arguments of counsel, and judgments may be taken verbatim. In an ordinary legal text-book it would require a very free use of verbatim quotation to found the necessary argument that the text-book provided even to the smallest extent a substitute for the original reports. A more difficult question arises where volumes of leading cases are published, the cases being reproduced verbatim from the original reports but with extensive notes and comment. In *Saunders* v. *Smith*[5] the Court refused to decide whether "Smith's Leading Cases" constituted an infringement of the original reports, judgment going for the defendants on the ground of acquiescence. In the Irish case of *Hodges* v. *Welsh*[6] a similar problem was suggested but not decided. The better view probably is that such a wholesale taking is an infringement of the copyright of the original reporters.

Extract for Purpose of Criticism.—Lord Eldon, in *Mawman* v. *Tegg*,[7] says :—

"Quotation is necessary for the purpose of reviewing, and quotation for such a purpose is not to have the appellation of piracy affixed to it; but quotation may be carried to the extent of manifesting piratical intention."

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[1] *Sweet* v. *Shaw* (1839), 3 Jur., 217.
[2] *Hodges* v. *Welsh* (1840), 2 Ir. Eq. Rep., 266.
[3] *Sweet* v. *Shaw* (1339), 3 Jur., 217.
[4] (1855), 16 C. B., 459.
[5] (1838), 3 Myl. and Cr., 711.
[6] (1840), 2 Ir. Eq. R., 266.
[7] (1826), 2 Russ., 385, at p. 393; see Lord Kinloch in *Black* v. *Murray* (1870), 9 M., at p. 356.

Considerable quotation may be made for the *bonâ fide* purpose of criticising a copyright book;[1] in one case [2] nearly a quarter of a controversial article in a magazine was quoted in a reply thereto published in another magazine, and the Court held that this constituted no infringement, as the extracts were clearly inserted for the purpose of criticism and argument. The question is whether so much of the original work is extracted that the review substantially communicates the same knowledge as the book reviewed.[3] Thus in *Campbell* v. *Scott*,[4] the defendant published "The Book of Poets" containing, *inter alia*, an essay and biographical notice of the poet Campbell, and, as the defendant said, by way of illustrating the poet's works, a large number of his poems and extracts therefrom were appended to the biographical notice without any particular observations in the way of notes to individual pieces or extracts. This was clearly an infringement of the poet's copyright. In a similar case, *Smith* v. *Chatto*,[5] the defendants published a book entitled "Thackerayana." It purported to be a critical essay on the life and works of Thackeray, and contained extensive quotations from his writings, prefaced and interspersed with comments by the writer of the book. Hall, V.C., held in fact that the defendants had inserted the extracts for the purpose of increasing and enhancing the value of their book, and that they had therefore infringed the copyright in Thackeray's works.

Improvement or Addition of New Matter no Excuse.—In the earlier cases of taking material from a rival publication if it was shown to have been greatly improved and added to, this was accepted as an excuse for the piracy, on the ground that a new and more useful work had been given to the public. Thus in *Sayre* v. *Moore*[6] Lord Mansfield said :—

"If an erroneous chart be made, God forbid it should not be corrected even in a small degree if it thereby become more serviceable and useful for the purposes to which it is applied."

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[1] *Whittingham* v. *Wooler* (1817), 2 Swanst., 428; *Wilkins* v. *Aikin* (1810), 17 Ves., 422.

[2] *Bell* v. *Whitehead* (1839), 8 L. J. Ch., 141.

[3] *Per* Lord Ellenborough in *Roworth* v. *Wilkes* (1807), 1 Camp., 94, at p. 97.

[4] (1842), 11 Sim., 31.

[5] (1874), 31 L. T. (N.S.), 775.

[6] (1785), 1 East., 361, *n*.

In *Cary* v. *Kearsley*,[1] Lord Ellenborough said :—

"While I shall think myself bound to secure every man in the enjoyment of his copyright, one must not put manacles on science."

In *Martin* v. *Wright*,[2] Shadwell, V.C., says :—

"Any person may copy and publish the whole of a literary composition provided he writes notes upon it so as to present it to the public connected with matter of his own."

The theory of these early cases on infringement seems to have been—colourable alteration is not to be allowed, but no check must be put on the taking of material when it is taken *bonâ fide* in the interests of scientific or literary knowledge. Gradually, however, the Courts in questions of infringement came to look more to the interests of the author than to those of the public, and regarded the law of copyright more as a means of securing rights of property to the individual than as an unnatural monopoly created for the purpose of encouraging and developing literary effort. Thus in *D'Almaine* v. *Boosey*,[3] in 1835, it was held to be an infringement to publish the music of an opera in the form of waltzes and quadrilles, and this notwithstanding that these waltzes and quadrilles would, if taken from the music of a non-copyright opera, have been protected as original works.[4] Since then many cases have followed on the same lines, and no addition, correction, or improvement will now be accepted as an excuse for taking a material part of a copyright publication.[5] But although improvement and addition is no excuse for taking a substantial portion of another author's work, the fact that there has been such improvement and addition is not to be entirely ignored in questions of infringement. It may be an important factor in determining whether or not there has been a taking of a substantial part.[6] We have seen that to determine that question the two works must be taken as a whole and their relation to

[1] (1802), 4 Esp., 168 ; and see *Carnan* v. *Bowles* (1786), 1 Cox, Eq. Cas., 283.
[2] (1833), 6 Sim., 297.
[3] (1835), 1 Y. and C. Ex., 288.
[4] *Wood* v. *Boosey* (1868), L. R., 3 Q. B., 223, 9 B. and S., 175.
[5] *Warne* v. *Seebohm* (1888), 39 Ch. D., 73 ; *Oxford and Cambridge* v. *Gill* (1899), 43, S. J., 570 ; *Jarrold* v. *Houlston* (1857), 3 K. and J., 708 ; *Kelly* v. *Morris* (1866), L. R., 1 Eq., 697 ; *Scott* v. *Stanford* (1867), L. R., 3 Eq., 718.
[6] *Leslie* v. *Young* [1894], A. C., Lord Herschell, at p. 341.

one another considered, and particularly the relative value of the material taken.[1]

Dramatization of a Novel.—The representation on the stage of a dramatized version of a copyright novel is not in itself an infringement of copyright in such novel, since copyright only prohibits the reproduction of copies, and representation on the stage does not necessarily imply that a copy of the whole or any material part of the novel has been made.[2] But if in dramatizing any substantial passages are taken from the novel, it is an infringement of copyright to print and publish the drama,[3] and in *Warne* v. *Seebohm*[4] Stirling, J., held that the making of four manuscript or typewritten copies of a drama taken from a copyright novel—one for the Lord Chamberlain and the other three for use in representation—constituted an infringement of the copyright in the novel. In this case, as in *Tinsley* v. *Lacy*,[5] considerable passages in the play had been extracted verbatim from the novel.

Whether if no actual sentences be taken it is an infringement of copyright to take the characters, the sequence of events, and scenes, in short, the plot, is doubtful. In *Warne* v. *Seebohm* it was suggested by Stirling, J., in his judgment, that a novel might be lawfully dramatized if a few copies of the novel were purchased and a drama compiled therefrom by cutting out and pasting in the passages which it was thought desirable to take. This, however, would involve a copying of the arrangement of scenes and events, and it is suggested that even that might be an infringement.

Abridgments.—Probably an abridgment in the ordinary sense of the word, that is, the reproduction of a book in a shorter form, retaining the general scheme and arrangement, and the sequence of ideas, would now be held to be an infringement.[6] In the earlier cases, which tend to excuse a taking by reason of the utility of additional work bestowed upon the material

[1] See p. 97, *supra*.

[2] *Tinsley* v. *Lacy* (1863), 1 H. and M., 747; *Murray* v. *Elliston* (1822), 5 B. and Ald., 657; *Reade* v. *Conquest* (1861), 9 C. B. (N.S.), 755; *Toole* v. *Young* (1874), L. R., 9 Q.B., 523.

[3] *Tinsley* v. *Lacy* (1863), 1 H. and M., 747.

[4] (1888), 39 Ch. D., 73.

[5] *Tinsley* v *Lacy* (1863), 1 H. and M., 747.

[6] See Stephen's "Digest," Art. 9 ("Report Copyright Commission," 1878, p. lxx.).

taken, an abridgment is recognised as a lawful use of a copyright book. In 1740 Lord Hardwicke, L.C., in dealing with an alleged abridgment of Sir Matthew Hale's *Historia Placitorum Coronæ*,[1] said :—

"Where books are colourably shortened only they are undoubtedly within the meaning of the Act of Parliament, and are a mere evasion of the statute and cannot be called an abridgment. But this must not be carried so far as to restrain persons from making a real and fair abridgment, for abridgments may with great propriety be called a new book, because not only the paper and print but the invention, judgment, and learning of the author is shown in them, and in many cases are extremely useful though in some instances prejudicial by mistaking and curtailing the sense of an author."

It will be noticed how completely this argument is founded on the idea that an author may take the materials of another so long as he sufficiently modifies it by such addition, extraction, or correction as to give it the character of a new work. It is a good argument in favour of a plaintiff who has dealt with a non-copyright work and desires protection, but it would not now be considered a sound answer to a charge of infringement. Since *Gyles* v. *Wilcox*[2] it seems to have been accepted as law that what was called a fair abridgment would be allowed.[3] In *Dodsley* v. *Kinnersley*[4] the Court went so far as to admit as a fair abridgment a magazine article containing about one-tenth of Dr. Johnson's "Prince of Abyssinia." Selections were, it appears, taken and reproduced verbatim. The same doctrine as to abridgments was repeated in *D'Almaine* v. *Boosey* :[5]—

"It is a nice question what shall be deemed such a modification of an original work as shall absorb the merit of the original in the new composition. No doubt such a modification may be allowed in some cases, as in that of an abridgment or digest. Such publications are in their nature original. Their compiler intends to make of them a new use, not that which the author proposed to make. Digests are of great

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[1] *Gyles* v. *Wilcox* (1740), 2 Atk., 142.

[2] Ibid.

[3] *Tonson* v. *Walker* (1752), 3 Swans., 672, at p. 681 ; *Millar* v. *Taylor* (1769), 4 Burr., Willes, J., at p. 2311 ; *Bell* v. *Walker* (1785), 1 Bro. Ch. C., 450 ; *Murray* v. *Elliston* (1822), 1 Dow and Ry., 299 ; *Butterworth* v. *Robinson* (1801), 5 Ves., 709.

[4] (1761), Amb., 402 ; and see *Anonymous Case* (1774), Lofft., 775.

[5] (1835), 1 Y. and C., Ex., 288.

use to practical men, though not so, comparatively speaking, to students. The same may be said of an abridgment of any study, but it must be a *bonâ fide* abridgment, because if it contains many chapters of the original work or such as made that work most saleable, the maker of the abridgment commits a piracy."[1]

When the view as to plagiarism being excusable on account of its utility began to alter, and the Courts began to look more to what was taken and the value of it than to what labour was expended on it afterwards, the view taken of abridgments began to change too. In 1844 one of Dickens' Christmas stories was abridged evidently much in the same way as Dr. Johnson's tale in *Dodsley* v. *Kinnersley*.[2] Knight Bruce, V.C., held that there was an infringement:[3]—

"The defendant has printed and published a novel, of which fable, persons, names, and characters of persons, the age, time, country, and scene are exactly the same, the style of language in which the story is told is in many instances identical, in all similar, except where certain alterations by way of extension or substitution have been made, as to which whether they improve or do not improve upon the original composition it is not necessary for me to express any opinion. Now this has been said to be an abridgment, and as an abridgment to be protected. I am not aware that one man has the right to abridge the works of another. On the other hand, I do not mean to say that there may not be an abridgment which may be lawful, which may be protected; but to say that one man has the right to abridge and so publish in an abridged form the work of another without more is going much beyond my notion of what the law of this country is."

In 1864 Lord Hatherley, then Sir William Page Wood, said:[4]—

"The Court has gone far enough in the direction of sanctioning fair abridgments; and it is difficult to acquiesce in the reason sometimes given that the compiler of an abridgment is a benefactor to mankind by assisting in the diffusion of knowledge."

Translations.—There are two recent decisions in India to the effect that the translation of an English book into an Indian language is not an infringement of the author's copyright.[5] If

[1] *Per* Lord Lyndhurst, L. C. B., at p. 301.
[2] (1761), Amb., 402.
[3] *Dickens* v. *Lee* (1844), 8 Jur., 183, at p. 184.
[4] *Tinsley* v. *Lacy* (1863), 1 H. and M., 747, at p. 754; and see the observations of the same judge in *Spiers* v. *Brown* (1858), 6 W. R., 352.
[5] *Munshi* v. *Mirza* (1890), Ind. L. R., 14 Bomb., 586; *Macmillan* v. *Shamsul* (1894), Ind. L. R., 19 Bomb., 557.

we are to be guided by the general principles of the law of copyright now accepted by our Courts, I think these Indian decisions must be held to be wrong. A translation takes everything in a book but the actual words; it takes the selection of material and its arrangement, and is certainly a very material taking of the work and labours of another. The translator is making a profit from the author's work by using it in a manner in which the author might have himself used it and made a similar profit. The only real answer which the translator has is that he has expended a great deal of skilled labour in putting the author's book into another form. This might have been a defence fifty years ago, but I do not think it is a good defence now. In England there is no direct decision; although there are several *obiter dicta* to the effect that a translation is not an infringement. In *Burnett* v. *Chetwood*,[1] in 1720, there is a *dictum* of Lord Chancellor Macclesfield, in which he expressed his opinion that a translation might not be within the prohibition of the Act (8 Anne c. 19), "on account that the translator had bestowed his pains upon it." In *Millar* v. *Taylor*,[2] Yates, J., and in *Prince Albert* v. *Strange*,[3] Knight Bruce, V.C., suggest that a translation is not an infringement. In *Wyatt* v. *Barnard*[4] it was held that a translation would be protected as a new work, but it does not follow that it is not an infringement of an old one. I think that these English *dicta* are practically useless as authorities, since it cannot now be maintained that the translator will be permitted to take the work of an original author merely because he "bestows his pains upon it." In *Murray* v. *Bogue*,[5] Kindersley, V.C., said that if an English book were translated into a foreign language and then retranslated into English without authority such translation would be an infringement of the original work. If this is so, it is difficult to see why the translation into the foreign language is not also an infringement if done without authority. The translation and the retranslation appear to be exactly on the same footing, both take the substance of the book, the plot, the arrangement, the selection of material; neither takes the author's words. If it

[1] (1720), 2 Meriv., at p. 441. [2] (1769), 4 Burr., Yates J., at p. 2348.
[3] (1849), 2 De G. and M., at p. 693. [4] (1814), 3 V. and B., 77. [5] (1852), 1 Drew, 353.

is said that one competes with the original which the other does not, the answer is that it is no defence to say that an infringement is made for a wholly different market from that which the original commands.[1] An author is entitled not only to the uses which he does make of his work, but also to the uses which he might make of it.

Licence.—A licence in writing[2] granted by the plaintiffto the defendant is a good defence to an action for infringement. The licence need not be written or signed by the proprietor himself. It may be granted by an agent having authority.[3] It would seem that a licence might be valid without being signed by any one. The onus of proving a written licence lies upon the defendant in an action. An assignee of the copyright is not bound by the licence granted by his assignor, unless at the date of assignment he has notice of the licence.[4] A licence, unlike an assignment, may be given before the copyright has come into existence, or even before the work is composed.[5] A licence from the Dramatic Authors' Society was held to include the dramas composed by the members of the society after the date of the licence.[6]

If an oral licensor were to sue in respect of acts done by the defendant under his oral licence, the plaintiff's conduct would probably be considered fraudulent, with the result that he would be refused an injunction, get nominal damages, and have to pay the defendant's costs.[7]

It need hardly be said that when the use for which a book is published and sold includes a copying of the whole or part of it, such copying is not an infringement, even although no express consent in writing is obtained from the author, for instance, in the case of copy-books, school maps, precedents of conveyancing. This, however, does not entitle any one who uses the book to make a larger use of it in the way of multiplying copies than that which must be presumed from the nature of the publication.[8]

[1] *Nicols* v. *Pitman* (1884), 26 Ch. D., 374. [2] 5 & 6 Vict. c. 45, sec. 15.
[3] *Morton* v. *Copeland* (1855), 16 C. B., 517. [4] *London Printing* v. *Cox* [1891], 3 Ch., 291.
[5] *Morton* v. *Copeland* (1855), 16 C. B., 517. [6] Ibid.
[7] *Cooper* v. *Stephens* [1895], 1 Ch., 567; *Allen* v. *Lyon* (1884), 5 Ont. Rep., 615; but see *Eaton* v. *Lake* (1888), 20 Q. B. D., 378; *Strahan* v. *Graham* (1867), 16 L. T. (N.S.), 87.
[8] *Ager* v. *P. & O.* (1884), 26 Ch. D., 637.

It has been suggested that a foreigner resident abroad, who had obtained a copyright in the United Kingdom, could grant an oral licence, if by the law of copyright in his own country an oral licence would be valid.[1] I do not think this is sound.

Abandonment.—Copyright may be abandoned by giving a general licence to print. Probably, however, this could only be done by some declaration in writing.[2] The Common Law right in an unpublished manuscript might be abandoned by leaving it for a long time in the hands of others.[3] Copyright would not be lost or abandoned by the fact of a book, during the life of the author, being allowed to remain out of print.[4]

Acquiescence and Delay.—This is no ground of defence, unless in the view of the Court it would make it a fraud afterwards to insist on the legal right. It would seem that the defendant must show some act on the part of the plaintiff inducing the defendant to infringe or continue an infringement of the copyright.[5] At the best, the defence is only an equitable one, and will avail no more than to prevent the plaintiff from getting an injunction or substantial damages, and as the costs are always in the discretion of the Court, he might be ordered to pay the defendant's costs.

Provision against the Suppression of Books.—After the death of an author, if the proprietor of his published work refuses to republish it, and the book is thereby withheld from the public, the Judicial Committee of the Privy Council may, on complaint, grant a licence to the complainant to publish such book on such conditions as they may think fit.[6] There is no record of any attempt to put in force the provisions of this section.

[1] Coleridge, J., in *Jefferys* v. *Boosey* (1854), 4 H. L. C., at p. 906.

[2] But see Willes, J., at pp. 2311 and 2332, and Aston, J., at p. 2346, in *Millar* v. *Taylor* (1769), 4 Burr., 2303.

[3] *Southey* v. *Sherwood* (1817), 2 Mer., 435; *Rundell* v. *Murray* (1821), Jac., 311.

[4] *Weldon* v. *Dicks* (1878), 10 Ch. D., 247.

[5] *Hogg* v. *Scott* (1874), L. R., 18 Eq., at p. 455; *Morris* v. *Ashbee* (1868), L. R., 7 Eq., 34; *Rundell* v. *Murray* (1821), Jac., 311; *Saunders* v. *Smith* (1838), 3 My. and Cr., 711; *Platt* v. *Button* (1815), 19 Ves., 447; *Latour* v. *Bland* (1818), 2 Stark, 382; *Pitman* v. *Hine* (1884), 1 T. L. R., 39; *Weldon* v. *Dicks* (1878), 10 Ch. D., 247.

[6] 5 & 6 Vict. c. 45, sec. 5.

CHAPTER V

PERFORMING RIGHTS

SECTION 1.—NATURE OF PERFORMING RIGHT.

As copyright is the exclusive right of making copies of a book, so performing right is the exclusive right of representing or performing in public dramatic or musical works. In a dramatic or musical work, the two rights—the copyright and the performing right—exist side by side; but they are quite distinct from one another, and may pass into different hands. The copyright can only be infringed by copying, the performing right by representation or performance. It is no infringement to dramatize and represent on the stage a copyright novel, since the only exclusive right as to non-dramatic work is the multiplication of copies;[1] but a drama on which a novel has been founded may be infringed by another drama taken from the novel.[2] A writes and publishes a novel. He then dramatizes it, but does not publish the drama. B represents a drama founded on the novel. Such a representation is no infringement either of A's drama[3] or of his novel. It makes no difference even if A has published his drama.[4] In dramatizing a copyright novel, however, the making of a single copy of the drama may be an infringement of the copyright in the novel.[5] It is no infringement of performing right to print and publish as a book a play which has been publicly performed,[6] but it may be an infringement of the common law right in the MS.,[7] or the statutory copyright in the book if already printed and published, or it may be a breach of implied contract.[8] If a

[1] *Reade* v. *Conquest* (1861), 9 C. B. (N.S.), 755; *Tinsley* v. *Lacy* (1863), 1 H. and M., 747.

[2] *Reade* v. *Conquest* (1863), 11 C. B. (N.S.), 479. *Schlesinger* v. *Turner* (1890), 63 L. T., 764.

[3] *Toole* v. *Young* (1874), L. R., 9 Q. B., 523.

[4] *Schlesinger* v. *Bedford* (1890), 63 L. T., 762.

[5] *Warne* v. *Seebohm* (1888), 39 Ch. D., 73.

[6] See *Clark* v. *Bishop* (1872), 25 L. T., 908.

[7] *Macklin* v. *Richardson* (1770), Amb., 694.

[8] See p. 215.

dramatic piece or musical composition is first published as a book, this does not take away the performing right. This was decided in *Chappell* v. *Boosey*[1] in respect of music, and is equally applicable to dramatic work. Conversely the representation or performance of a dramatic piece or musical composition in public does not deprive the author of his common law right to publish as a book, or of his copyright when he so publishes.[2] Performing right extends throughout the British dominions.[3]

SECTION II.—PERFORMING RIGHT AT COMMON LAW.

It is doubtful whether there ever was any performing right at common law. The only case from which it could be gathered that there was is *Morris* v. *Kelly*,[4] where an injunction was granted by Lord Eldon restraining the performance of a comedy. The play was apparently in manuscript, but it does not appear whether it had been performed or not. The ground of the decision is very uncertain. From the fact that the Lord Chancellor asked for proof that the assignment was in writing, it might almost appear that protection was given under the statute of Anne, which would certainly have been unsound. The decision may also have been on the ground of common law right in unpublished manuscript, *i.e.* the right to prevent any one but the owner from interfering with it in any way, or it may have been on the ground of breach of implied contract. Altogether the decision is unsatisfactory; the application seems to have been *ex parte*, and the law hardly to have been considered, so that it is impossible to base any definite proposition of law on the case. On the other hand Erle, C.J., stated in the course of the argument in *Marsh* v. *Conquest*,[5] that there was no performing right at common law. For his authority, however, he cites *Murray* v. *Elliston*,[6] which is hardly sufficient to support the proposition. In *Murray* v. *Elliston* a tragedy by Lord Byron was printed and

[1] (1882), 21 Ch. D., 232.
[2] *Macklin* v. *Richardson* (1770), Amb., 694.
[3] 3 & 4 Will. IV. c. 15, sec. 1; 5 & 6 Vict. c. 45, secs. 15, 2.
[4] (1820), 1 Jac. and W., 481.
[5] (1864), 17 C. B. (N.S.), 418, at p. 426.
[6] (1822) 5 B. and Ald., 657.

published for sale. The defendants abridged it and represented it on the stage in the abridged form. It was argued for the defendant that the tragedy having been printed and published as a book, must depend for protection entirely on the statute of Anne in accordance with the decision in *Donaldson* v. *Beckett*.[1] The statute of Anne gave no performing right, and therefore there was no protection. The Court gave judgment for the defendant, but the ground of their judgment is not quite clear. Some stress seems to be laid on the fact that the tragedy was abridged, and it is therefore left doubtful whether the judges would have considered the representation of an unabridged version to be an infringement of the plaintiff's rights. In either view it is not a decision that there was no performing right at common law. Another case which may be relied on for the contention against performing right at common law is *Coleman* v. *Wathen*,[2] but on examination it will be seen that all that case decides is that the statute of Anne gave no performing right, and that representation on the stage was not an infringement of copyright.

It is submitted that the history of the law of performing right is this: At common law there was no performing right in the proper sense of the term, but an unpublished manuscript was protected from performance as from any other invasion of the author's exclusive right to it. If it was performed on the stage without being published as a book, there would be a remedy on breach of implied contract, the public only being admitted for the purpose of hearing the performance. Once, however, it was published as a book, all exclusive right of performance was gone. The statute of Anne gave no performing right, and performing right proper was first created by 3 & 4 Will. IV. c. 15. This statute and 5 & 6 Vict. c. 45 govern the performing right in dramatic pieces. The performing right in musical compositions is governed by these two Acts, as modified by the Copyright (Musical Compositions) Acts of 1882 and 1888.

[1] (1774), 4 Burr., 2408.

[2] (1793), 5 T. R., 245; and see *dictum* of Cockburn, C.J., in *Toole* v. *Young* (1874), L.R., 9 Q. B., at p. 527.

Section III.—What is a Dramatic Work.

The subject of dramatic performing right must be—

1. An original composition.
2. Of a dramatic nature.

The amount of original composition required is probably the same as in a literary work claiming the protection of the Copyright Act, 1842, as a "book." As has been seen the standard is extremely low, no literary merit or great skill being essential.[1] Adaptations, translations, and the like, are protected *quoad* their transformation.[2]

As to what amount of dramatic element is required is not clear from the statutes, and not much clearer from the decisions. It is now well decided that in order to secure a performing right there must be some dramatic element. That is to say, one cannot compose a non-dramatic work, and after publishing it in its non-dramatic form, claim the exclusive right to represent the non-dramatic work on the stage in dramatic form.[3] But the difficulty is to define what is "dramatic form." The dramatic works protected by 3 & 4 Will. IV. c. 15 are "any tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment." In 5 & 6 Vict. c. 45 "dramatic piece" is defined as including every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment. Neither definition is very satisfactory. In *Lee* v. *Simpson*[4] it was held that an introduction to a pantomime, being the only written part, and intended to be followed by "comic business," was a dramatic piece. This case as reported, however, is of little assistance, as it does not show what the exact nature of the "introduction" was, and the judgment of the Court does not contain any definition of a dramatic piece. In *Russell* v. *Smith*[5] the question was more carefully considered. The work in which a performing right was claimed was a song called "The Ship on Fire." It

[1] See *supra*, p. 13.

[2] *Chatterton* v. *Cave* (1875), L. R., 10 C. P., 572; *Hatton* v. *Kean* (1859), 7 C. B. (N.S.), 268.

[3] *Reade* v. *Conquest* (1861), 9 C. B. (N.S.), 755; *Tinsley* v. *Lacy* (1863), 1 H. and M., 747; *Toole* v. *Young* (1874), L. R., 9 Q. B., 523; *Warne* v. *Seebohm* (1888), 39 Ch. D., 73.

[4] (1847), 3 C. B., 871.

[5] (1848), 12 Q. B., 217.

was founded on the loss of *The Kent* by fire in the Bay of Biscay. According to the judgment—

"It represents a storm at sea, the burning of the ship, and an escape by boat to another ship, and so a safe return to land. It moves terror and pity and sympathy, by presenting danger, and despair, and joy, and maternal and conjugal affection. A witness of great experience in publishing music deposed that this was considered a dramatic song."

The Court held that it was a "dramatic piece." Lord Denman, C.J., said:—

"The nature of the production places it rather in the representative than the narrative class of poetry, according to Lord Bacon's division of dramatic from epic; and the evidence states it to be known as dramatic among those who are conversant with such things. The interpretative clause of 5 & 6 Vict. c. 45, sec. 2, declares that 'dramatic piece' within the Act includes 'tragedy, comedy, play, opera, farce, or any other scenic, musical, or dramatic entertainment.' These words comprehend any piece which could be called dramatic in its widest sense, any piece which on its being presented by any performer to an audience would produce the emotions which are the purpose of the regular drama, and which constitute the entertainment of the audience."

In *Clark* v. *Bishop*[1] an original song, "Come to Peckham Rye," was composed and set to an old air. It was sung at music halls with appropriate character dress, gesture, and expression. The Court were of opinion that it was a dramatic piece, within the meaning of 5 & 6 Vict. c. 45. Kelly, C.B., said:—

"The plaintiff, by his powers of singing, acting, and characterisation, had made this song a thing of value, not as a song merely, but as acted by him in character, and so as a dramatic piece."

In *Wall* v. *Taylor*[2] it was suggested that by reason of the interpretation clause in 5 & 6 Vict. c. 45, sec. 2, every musical entertainment whatsoever was a "dramatic piece," but Brett, M.R., refused to accept this view. In *Roberts* v. *Bignell*,[3] a very imperfectly reported case, a divisional court (Day and Wills, JJ.) held that a music hall song, "Oh, Jenny Dear!" the exact nature of which is not apparent, was a "dramatic piece." The leading case on this subject is now *Fuller* v. *Blackpool Winter Gardens*,[4] and in this the doctrine which seemed to have been

[1] (1872), 25 L. T., 908.
[2] (1883), 11 Q. B. D., 102.
[3] (1887), 3 T. L. R., 552.
[4] [1895], 2 Q. B., 429.

growing up that every literary production with the least dramatic flavour was a dramatic piece received a check. The subject of this action was a popular music hall song called "Daisy Bell." The song was sung in character costume, and the inference to be drawn from the song itself and from the evidence was that it was a composition intended for the stage either of the theatre or of music halls. The Court of Appeal, sustaining the judgment of Kennedy, J., held that the song was not a dramatic piece. Lord Esher, M.R., said :—

"The fact that it is sung in costume does not make it a dramatic piece. If the dress of the singer could have that operation, the singer and not the author of the song would be the person who caused it to be a dramatic piece. The same may be said of the manner in which the singer treats the song. The question must be what was the character of the composition when it was first written and published. I can quite understand that it is possible that a thing to be performed by one person only may be a dramatic piece. But whether the composition is to be sung by one or more persons, if a song is sung, and only a song, there is no performance of a dramatic piece."

A. L. Smith, L.J., after reviewing the previous cases, says :—

"It is not necessary to determine whether each of these cases was rightly decided or whether the reasons given in each for holding the song to be a dramatic piece are satisfactory. Every case must depend upon its own attendant circumstances. In each case it is a question of fact. I think that to constitute a song a dramatic piece it must be such a song that for its proper representation, acting, and possibly scenery, formed a necessary ingredient, and that if neither of these be a requisite to the efficient representation of the song it is not a dramatic piece. It is an entire misnomer to call a mere common, ordinary, music-hall song, which required neither acting nor scenery for its production, a dramatic piece, for it is in truth nothing of the kind."

The result then seems to be that "dramatic" must not be used in the widest sense of the term as suggested by Lord Denman, C.J., in *Russell* v. *Smith*,[1] and that the test is not that of dramatic or epic in the sense in which Lord Bacon applies the words to poetry. There must be more than the dramatic flavour, there must be the dramatic form; that is to say, the work must be so constructed as to be obviously intended for reproduction by means of acting with scenic effect. This test will apply

[1] (1848), 12 Q. B., 217.

equally to non-musical as to musical works. A case in point is that of the novel in *Toole* v. *Young*.[1] The facts as stated in the judgment are :—

"that Mr. Hollingshead wrote a story which he published in a work called *Good Words*, and having in his mind at the time he wrote and published it the intention of afterwards dramatizing the story, he composed it very much of a dramatic character."

Yet it was held that it was no infringement of the author's right to put this novel into dramatic form and represent it on the stage. If the novel could have been considered a dramatic piece on account of its "dramatic character," it ought to have been protected against the performance of an adaptation. Mr. Scrutton in his book on copyright considers that "the dramatic character consists in the representative as opposed to the narrative element :" but this seems rather a return to the older theory in *Russell* v. *Smith*[2] and contrary to *Fuller* v. *Blackpool Winter Gardens*.[3] For instance, a poem, song, or piece for recitation may be representative in that it depicts action and dialogue rather than narrates events : this according to *Russell* v. *Smith*[4] would constitute it a "dramatic piece," but according to *Fuller* v. *Blackpool Winter Gardens*[5] we must find not only the "representative element" but an element which requires acting in order to represent it adequately.[6]

Section IV.—What Dramatic Works are Protected : Duration of Protection.

It has been suggested by some writers that there is no statutory protection of performing rights until first representation in public.[7] It has also been suggested that the duration of performing right is in every case for the period laid down by 5 & 6 Vict. c. 45, *i.e.* forty-two years from first performance or the author's life plus seven years. It is difficult to concur in these views, which seem to imply that 5 & 6 Vict. has taken

[1] (1874), L. R., 9 Q. B., 523.
[2] (1848), 12 Q. B., 217.
[3] [1895], 2 Q. B., 429.
[4] (1848), 12 Q. B., 217.
[5] [1895], 2 Q. B., 429.
[6] See cases under the Dramatic Licensing Acts ; *Day* v. *Simpson* (1865), 18 C. B. (N.S.), 680.
[7] See Stephen's "Digest," Art. 13 ("Report Copyright Commission," p. lxxii.).

away from the dramatic author certain rights given to him by 3 & 4 Will. IV. c 15.

The law appears to stand thus. Before the statute of 3 and 4 Will. IV. c. 15 there was no statutory performing right. Whether there was a common law performing right *quære*.[1] By the Act of 3 & 4 Will. IV. c. 15 the author of a dramatic piece not printed and published in book form is given a perpetual performing right. This presumably dates from the composition of the dramatic piece. If the dramatic piece is printed and published as a book, the protection is then limited to twenty-eight years from publication or for the life of the author, whichever be the longer period. In neither case is the performing right dependent for its existence on public performance.[2] Then comes the Act of 5 & 6 Vict. c. 45, which enacts in section 20—

"that the provisions of the said Act of His late Majesty (3 & 4 Will. IV. c. 15) 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."

As regards dramatic pieces which have been publicly performed it is clear that the Act of Victoria gives them protection from that date for forty-two years, or for the life of the author and seven years.[3] But does 5 & 6 Vict. c. 45 take away the protection given by 3 & 4 Will. IV. c. 15 to such dramatic pieces as do not come within the provisions of the later statute, *i.e.* unperformed dramatic pieces? It is submitted that it does not, and this appears to be the view of Hawkins, J., in *Reichardt*

[1] See *supra*, p. 121.

[2] The printing and publication of a dramatic piece as a book before public representation does not destroy the performing right as suggested in Stephen's "Digest," Art. 14 ("Report Copyright Commission," p. lxxiii.); *Chappell* v. *Boosey* (1882), 21 Ch. D., 232.

[3] See *Boucicault* v. *Chatterton* (1876), 5 Ch. D. 267.

v. *Sapte*,[1] the only decision on the point. In that case A wrote a dramatic piece, B subsequently wrote one very similar: B's drama was first performed, and a few days afterwards A's drama was performed. In an action by B against A for infringement of performing right, Hawkins, J., held that A had acquired his performing right under 3 & 4 Will. IV. when he wrote his drama. He says:—

"In none of the enactments in 5 & 6 Vict. c. 45 will be found anything which prejudicially affects the right of sole representation conferred by the statute of 3 & 4 Will IV. c. 15. The first production of a dramatic piece mentioned in section 20 of the statute of Victoria confers no priority upon the first producer, nor does it confer a title to the sole liberty of representation. That is conferred by the statute 3 & 4 Will. IV. c. 15 upon the author or his assignee: it[2] only fixes the first production as the point from which (if entitled to it) the endurance of the sole liberty of representation is to be calculated."

What Hawkins, J., decided was that there is a vested statutory interest in a dramatic piece immediately it is composed, and although it is not quite clear from his judgment, it seems necessarily to follow that the whole rights and remedies given by 3 & 4 Will. IV. c. 15 still attach immediately on composition, and that there is nothing in 5 & 6 Vict. to divest the author of that right. When a dramatic work is performed, no doubt the protection to performing right is restricted as well as extended to the period given by 5 & 6 Vict. c. 45, *i.e.* forty-two years from the date of first performance, or life and seven years: but as regards unperformed works, it is submitted that the performing right is given by 3 & 4 Will. IV. c. 15 on composition, and is perpetual if the work be not printed and published as a book within the British dominions, or if it be printed and published as a book, then for forty-two years from the date of publication as a book, or for the author's life and seven years.

Extremely difficult questions may arise as regards performing rights when a dramatic or musical work has been published as a book or publicly performed outside the British dominions before the first publication or the first public performance within the British dominions.

[1] [1893], 2 Q. B., 308; and see also *Boucicault* v. *Chatterton* (1876), 5 Ch. D., 267.
[2] *i.e.* the statute of Victoria.

Section 19 of 7 & 8 Vict. c. 12, provides :—

"That neither the author of any book, nor the author or composer of any Dramatic Piece or Musical Composition . . . 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." [1]

The whole difficulty lies in the meaning of the words "first published" as applied to the performing right. In *Boucicault* v. *Delafield*,[2] and *Boucicault* v. *Chatterton*,[3] it was held that when an unpublished play was first performed outside the British dominions the performing right in this country was extinguished. "First published" was held to include the "first performance" of a drama. This, however, only provides for one possible contingency. As the literary exchange with America, with which we have no international convention, is becoming larger every year, it may be useful to consider some of the other contingencies which may arise, and the difficulties of which are not yet judicially solved. The cases suggested are in connexion with the United States, but apply equally to any foreign country, except in so far as rights may be acquired under International Convention.

Dramatic or Musical Work unpublished, first performed in America.—This has been decided as above. The performing right in this country is lost.

Dramatic or Musical Work first published in America, subsequently first performed within the British Dominions. — This problem is not solved by the above cases. The alternative views are that "publication" in the section means : (i) a putting before the public in any form, whether by representation or in print, or (ii) as regards copyright, a publication in print, as regards performing right, a publication by representation. I am inclined to think that the second alternative is the correct one, and that the performing right in this country is not lost. The contrary, however, seems to have been assumed in *Boucicault* v. *Chatterton*,[4] both by the bench and bar.

[1] *i.e.* The International Copyright Acts.
[2] (1863), 1 H. and M., 597.
[3] (1876), 5 Ch. D., 267.
[4] Ibid.

Dramatic or Musical Work first published in the British Dominions, subsequently first performed in America.—This problem depends on the same two alternatives as the last. I therefore think that the performing right here would be lost, even although there was first publication as a book within the British dominions.

Dramatic or Musical Work first performed in America, subsequently first published in the British Dominions.—The performing right in this country would be lost, but probably not the copyright.

Dramatic or Musical Work first performed in the British Dominions, subsequently first published in America.—The performing right in this country would be secured, but the copyright lost.

Section V.—What is a Musical Composition.

The necessary originality in a musical composition consists either in a new air or melody, or in the new arrangement and adaptation of an old air. Thus an arrangement of an opera for the pianoforte is an original work separate and distinct from the opera itself.[1] So the adaptation of new words and accompaniment to an old air is a musical composition entitled to protection.[2] It must always be remembered, however, that a new arrangement or adaptation will only be protected *quoad* its novelty. In so far as the new work is taken from a non-copyright work, an unauthorised taking of that part is not an infringement of the new work.

Section VI.—What Musical Works are Protected: Duration of Protection.

As in the case of dramatic works, so in the case of musical compositions it is submitted that the statutory protection dates from composition, not from first public performance. Musical compositions are protected under the same provisions which protect dramatic works. The protection is therefore identical,

[1] *Wood* v. *Boosey* (1867), L. R., 2 Q. B., 340.
[2] *Leader* v. *Purday* (1849), 7 C. B., 4; *Lover* v. *Davidson* (1856), 1 C. B. (N.S.), 182.

except as to the two amending statutes noticed below which do not apply to dramatic works. It was contended in one case that the extension of 3 & 4 Will. IV. c. 15 to musical compositions was only applicable to musical compositions of a dramatic nature.[1] This, however, is not the case, and all musical compositions are protected.[2]

By the Copyright (Musical Compositions) Act, 1882, the performing right in musical compositions which have been published in "book" form is conditional[3] on a notice reserving the performing right, and printed on every published copy. If the copyright and performing right are in different hands the owner of the performing right must give notice in writing to the owner of the copyright, requiring him to print such notice, and if the latter after due notice fail to do so, he shall forfeit to the owner of the performing right the sum of £20.

Even if the musical composition is also a dramatic piece or part thereof, it comes within this requirement as to notice of reservation on published copies.[4]

Once a musical composition has been printed and published without notice of reservation, it will probably be impossible to obtain any protection for the performing right afterwards by publishing copies with reservation.[5]

A limited reservation is constantly made, and is probably effectual, *e.g.* reserving the right to sing in music halls, but permitting public performances elsewhere without fee or licence.[6]

Section VII.—Registration of Performing Rights.

Section 20 of 5 & 6 Vict. c. 45 enacts that "the provisions hereinbefore enacted" in respect of registering the copyright in books shall apply to the liberty of representing or performing any dramatic piece or musical composition; provided that in the

[1] *Russell* v. *Smith* (1848), 12 Q. B., 217; in *Hatton* v. *Kean* (1859), 7 C. B. (N.S.), at p. 273, the plaintiff began to argue the question whether a non-dramatic musical composition was within the Act; but counsel for the defendant intimated that he would not rely on that point.

[2] *Wall* v. *Taylor* (1883), 11 Q. B. D., 102.

[3] See A. L. Smith, L.J., in *Fuller* v. *Blackpool Winter Gardens* [1895], 2 Q. B., 429.

[4] Ibid. [5] Ibid. [6] Ibid.

case of a dramatic piece or musical composition in manuscript it shall be sufficient to register—

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

In the case, therefore, of a dramatic piece or musical composition which has been published as a book, the proper registration in respect of both copyright and performing right would seem to be that provided by section 11, viz. :—

1. The title.
2. The time of first publication.
3. The name and place of abode of the publisher.[1]
4. The name and place of abode of the proprietor.[2]

This is probably correct, although it may not strictly be in accordance with the proviso in section 20, viz. :—"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." If, however, the provision as to registration in section 11 were strictly construed in accordance with this proviso, the result is that the proper registration would be :—

1. The title.
2. The time of first representation.
3. The name and place of abode of the person who first represented it.
4. The name and place of abode of the proprietor.

It is obviously absurd that this should be the form of registration when the dramatic piece or musical composition has been printed and published, and that the form in section 20 should be the form of registration when it is in manuscript. The distinction between the two forms is meaningless.

Section 24 of 5 & 6 Vict. c. 45, which enacts that no action

[1] Note that the form in the schedule provides for "name of publisher and place of publication."

[2] *i.e.* of the copyright and performing right if in the same hands. If in different hands the respective proprietors should be specified.

for infringement of copyright shall be brought unless the book is registered, provides "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 3 & 4 Will. IV. c. 15, or of this Act, although no entry shall be made in the book of registry aforesaid."

The provisions as to registration of dramatic pieces are therefore merely permissive and are in no way a condition precedent either to the performing right itself or to the right of action upon infringement;[1] but registration is *primâ facie* proof of the right of representation subject to rebuttal by other evidence.[2]

All the provisions as to the keeping of the registry book,[3] making false entries therein,[4] and motion to expunge,[5] apply equally to registration of a dramatic piece for the purpose of protecting performing right as to registration of a book for the purpose of protecting copyright.[6]

Musical Compositions.—The requisite registration is the same as for performing rights in dramatic works; but *quære* whether in the case of performing right in a musical composition it is not a condition precedent to action. This doubt is raised by section 24, which provides that the registration of a book is a condition precedent to an action for infringement of copyright, and it specially excepts "the remedies which the proprietor of the sole liberty of representing any dramatic piece shall have" from the operation of the section. It is curious that "musical compositions" are omitted from this saving clause, whereas in nearly every other part of the Act "dramatic piece and musical compositions" are dealt with together. The arguments against registration being a condition precedent are, (1) the first part of section 24 relates only to copyright which does not include performing right; (2) section 20 does not extend the provisions of section 24 to performing right, since it only applies the provisions "*before* enacted." There is also a suggestion that "dramatic piece" in the saving clause of section 24 includes

[1] *Russell* v. *Smith* (1848), 12 Q. B., 217; *Lacy* v. *Rhys* (1864), 33 L. J., Q. B., 157; *Clark* v. *Bishop* (1872), 25 L. T., 908.

[2] 5 & 6 Vict. c. 45, sec. 11. [3] *Ibid.* [4] 5 & 6 Vict. c. 45, sec. 12.

[5] 5 & 6 Vict. c. 45, sec. 13. [6] 5 & 6 Vict. c. 45, sec. 20.

"musical composition," since the definition of "dramatic piece" in section 2 includes "musical or dramatic entertainment." There is no authority directly in point. In *Russell* v. *Smith*[1] the song called "The Ship on Fire" was protected without registration, but then it was held to be a "dramatic piece" and something more than a musical composition. In *Clark* v. *Bishop*[2] the song protected was also held to be a "dramatic piece." In *Lacy* v. *Rhys*,[3] where it was held that in the case of a dramatic piece there was clearly no obligation to register, Crompton, J., said that if it had not been for the proviso in section 24, there would have been a doubt whether registration were not necessary.[4]

In registering an unpublished arrangement of dance music taken from an opera, the arranger, not the composer of the original opera, must be entered as composer.[5]

Section VIII.—Assignment of Performing Rights.

The performing right in dramatic pieces and musical compositions can only be transferred by a written assignment[6] or by entry on the register.[7] See decisions as to assignment of copyright;[8] but note that as regards performing right the assignment, even if before publication or performance, must be in writing.[9] The performing right will not pass by a mere conveyance of the copyright in a dramatic or musical work[10] unless an entry shall be made of such assignment in the register expressing the intention of the parties that such right should pass.[11] As in the case of copyright, there is no express enactment that assignment must be in writing; but it is inferred from the fact that a licence which is a smaller right cannot be given except by writing.[12] The assignment does not require to

[1] (1848), 12 Q. B., 217.

[2] (1872), 25 L. T., 908.

[3] (1864), 33 L. J., Q. B., 157.

[4] See *Fairlie* v. *Boosey* (1879), 4 A. C., 711.

[5] *Wood* v. *Boosey* (1868), L. R., 3 Q. B., 223.

[6] *Shepherd* v. *Conquest* (1856), 17 C. B., 427; see *Cumberland* v. *Copeland* (1861), 7 H. and N., 118; (1862), 1 H. and C., 194.

[7] 5 & 6 Vict. c. 45, secs. 22, 20, 13.

[8] *Supra*, p. 77.

[9] *Shepherd* v. *Conquest* (1856), 17 C. B., 427; *Eaton* v. *Lake* (1888), 20 Q. B. D., 378.

[10] *Marsh* v. *Conquest* (1864), 17 C. B. (N.S.), 418.

[11] 5 & 6 Vict. c. 45, sec. 22.

[12] 3 & 4 Will. IV. c. 15, sec. 2; *Power* v. *Walker* (1814), 3 M. and S., 7; *Leyland* v. *Stewart* (1876), 4 Ch. D., 419.

be by deed,[1] and if by written document it is valid without registration.[2] Section 22 of 5 & 6 Vict. c. 45 appears at first sight to make registration necessary in every assignment of performing right, at least if the copyright is assigned with it; but this is not so. If in the written assignment there is a specific conveyance of the performing right,[3] or if general words are used such as "all other the estate, right, title, and interest," showing that something else than the copyright was intended to be conveyed, the performing right will pass without registration.[4] Cotton, L.J., in considering this section, says :—

"I incline to think that this enactment was not meant to control the operation of deeds of assignment, but only to regulate the effect of entries in the registry book."[5]

In fact it was passed on account of *Cumberland* v. *Planché*,[6] which decided that the assignee of the copyright took the performing right as well.

If the view is right that the statutory performing right vests immediately on production,[7] there can be no question of assignment of common law rights.[8]

Performing rights can probably be partially assigned so as to make a grantee of provincial rights not only a licensee but an assignee, with full power to sue alone and re-assign.[9]

Section IX.—Infringement of Dramatic Performing Rights.

By 3 & 4 Will. IV. c. 15, section 1, the author or his assignee has "the sole liberty of representing, or causing to be represented, at any place or places of dramatic entertainment whatsoever" in the British dominions.

Public Performance.—It is no infringement of performing right in a dramatic work to represent it otherwise than in a place of dramatic entertainment; but it has been held that

[1] *Marsh* v. *Conquest* (1864), 17 C. B. (N.S.), 418.
[2] *Marsh* v. *Conquest* (1864), 17 C. B. (N.S.), 418; *Lacy* v. *Rhys* (1864), 4 B. and S., 873.
[3] Ibid.
[4] *Ex parte Hutchins* (1879), L. R., 4 Q. B. D., 483.
[5] L. R., 4 Q. B. D., 483.
[6] (1834), 1 Ad. and E., 580.
[7] See p. 128.
[8] See p. 74.
[9] *Holt* v. *Woods* (1896), 17 New South Wales R., Eq., 36; and see p. 61.

any place where a dramatic work is publicly performed is for the time being a place of dramatic entertainment. In *Lee* v. *Simpson*,[1] Wilde, C.J., says:—

"The legislature clearly meant places where dramatic entertainments are represented to which the public are admitted."

In *Russell* v. *Smith*[2] the Court decided that a certain song, "The Ship on Fire," was a dramatic piece. Denman, C.J., said:—

"It follows that as Crosby Hall was used for the public representation for profit of a dramatic piece, it became a place of dramatic entertainment for the time, within the statutes now in question. The use for the time in question and not for a former time is the essential fact. As a regular theatre may be a lecture-room, dining-room, ball-room, and concert-room on successive days, so a room used ordinarily for either of these purposes would become for the time being a theatre if used for the representation of a regular stage play. In this sense, as "The Ship on Fire" was a dramatic piece, in our view Crosby Hall, when used for the public representation and performance of it for profit, became a place of dramatic entertainment. In thus deciding we do not declare that the defendant's performances at Crosby Hall were unlawful without a theatrical licence within Stat. 6 & 7 Vict. c. 68."[3]

In the judgment of Brett, M.R., in *Wall* v. *Taylor*[4] there is a suggestion that although a single item in a programme might be dramatic, that would not be sufficient to render the whole entertainment dramatic or to make the place a place of dramatic performance. In *Duck* v. *Bates*[5] the defendant represented a dramatic piece without the author's consent. The representation took place in a room of Guy's Hospital, and was provided entirely for the amusement of the nurses and attendants of the hospital. The medical officers of the hospital, the students and some of their friends were present. A reporter to a theatrical newspaper was also present by invitation. It was held by Brett, M.R., and Bowen, L.J. (Fry, L.J., dissenting), that the room was not a place of dramatic entertainment. Neither profit[6] nor habitual use were essential elements, but there must

[1] (1847), 3 C. B., 871.
[2] (1848), 12 Q. B., 217.
[3] See *Shelley* v. *Bethell* (1883), 12 Q. B. D., 11.
[4] (1883), 11 Q. B. D., at p. 108.
[5] (1884), 13 Q. B. D., 843.
[6] And see *Novello* v. *Sudlow* (1852), 12 C. B., 177.

be a representation to which a portion of the public is admitted. Brett, M.R., said :—

"Did the legislature intend to forbid a representation without the author's consent by children in a nursery before their parents, or by grown-up persons in a drawing-room? It is clear that something more than that must have been intended; and why should not a representation of that kind be called a dramatic entertainment? Because it is obviously domestic and private. Suppose that the servants of the household are invited to witness the performance; nevertheless it is a domestic entertainment. As I have already intimated, the author wants protection for the pecuniary value of his drama, and a representation in a private room is of no pecuniary value. In order to entitle the author to penalties there must be a representation which will injure the author's right to money; such, for instance, as a representation which, although it is not for profit, would attract persons who are willing to pay money, and would induce them not to go and see a performance licensed by the author. Suppose that a representation in the presence of friends takes place for the amusement of friends and of the members of the household in an unfurnished house hired for the occasion: that is not an infringement of the statute: the representation must be other than domestic or private. There must be present a sufficient part of the public who would go also to a performance licensed by the author as a commercial transaction; otherwise the place where the drama is represented will not be a 'place of dramatic entertainment' within the meaning of the statute. Suppose that a drama is represented in a county town, and that all persons of a certain class throughout the county are free to come: suppose that a member for a parliamentary constituency (I do not mean shortly before or during an election) organises dramatic entertainments to which the inhabitants are admitted without paying: suppose that an amateur company choose to act some drama for a charitable object, with admission upon payment or by tickets issued generally: in each of these instances an infringement of the statute has been committed. . . . I wish to say, by way of warning, that those who go beyond the facts of the present case may incur the penalties of the statute."

This case is most instructive as being quite on the border line between a private and public representation. Performing right in a drama may be infringed by a representation without scenery and appropriate dresses.

"We should take away a part of the protection conferred on authors if we hold that there could be no public representation without these accompaniments."[1]

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[1] Denman, C.J., in *Russell* v. *Smith* (1848), 12 Q. B., 217, at p. 236.

Substantial Part.—As in literary copyright the part taken must be material and substantial in order to infringe performing right. In *Chatterton* v. *Cave*,[1] Lord Chief Justice Coleridge at the trial found as a fact "that two scenes or points of the drama of the defendant had been taken directly from the drama of the plaintiff;" there was no further copying. He thereupon gave judgment for the defendant. On a rule for a new trial, Lord Coleridge, sitting in the Court of Common Pleas, stated orally that what he meant to convey by his finding was, "that looking to the general character of the plaintiff's and defendant's dramas, the extent to which the one was taken from the other was so slight, and the effect upon the total composition was so small, that there was no substantial and material taking of any one portion of the defendant's drama from any portion of the plaintiff's." On this explanation the rule was discharged, and the judgment subsequently affirmed by the Court of Appeal and the House of Lords. Lord Hatherley said that the principle *de minimis non curat lex* applied to a supposed wrong in taking a part of dramatic works as well as in reproducing a part of a book. He could not read the word "part" in the Dramatic Copyright Act as "particle," so that the crowing of the cock in "Hamlet," or the introduction of a line in the dialogue might be held to be an invasion. In *Planché* v. *Braham*,[2] Tindal, C.J., directed the jury that if either one song, or more than one song be taken from a piece and be performed on the stage or any place of theatrical entertainment, that would be a "representing" within the Act of Parliament. The jury, having found that the defendant had represented "a part of the plaintiff's opera," a rule for a new trial was refused.[3] In *Beere* v. *Ellis*,[4] two plays purported to be founded on the same novel. The defendant's play contained some of the dialogue and several dramatic incidents and situations taken directly from the plaintiff's play. Baron Pollock held that a small piece of dialogue would not alone amount to an infringement, but the defendant had taken two dramatic incidents on which the plot of the play depended. He had therefore taken a material part, and although he had done

[1] (1878), 3 A. C., 483.
[2] (1837), 8 C. and P., 68.
[3] (1837), 4 Bing., N. C., 17.
[4] (1889), 5 T. L. R., 330.

a considerable quantity of work for himself, he had "extracted the plums" from the plaintiff's work, and this he was not entitled to do. An indirect taking is, as in literary copyright, an infringement, *e.g.* to copy and perform passages from a play by dramatizing a novel founded on that play.[1] It is no infringement to produce a play almost identically similar to that of another author, if this is the result of coincidence and not of any piracy direct or indirect.[2] As to the taking of a plan or idea, see the chapter on infringement of literary copyright.[3] There must be more than the taking of a general idea or scheme. Lord Blackburn, in *Chatterton* v. *Cave*,[4] said :—

"An idea may be taken from a drama and used in forming another without the representation of the second being a representation of any part of the first. For example, I have no doubt that Sheridan in composing 'The Critic' took the idea from 'The Rehearsal,' but I think it would be an abuse of language to say that those who represent 'The Critic' represent 'The Rehearsal,' or any part thereof, and if it were left to me to find the fact, I should without hesitation find that they did not. On the other hand, in composing 'The Trip to Scarborough,' Sheridan took so much from 'The Relapse,' that if it were left to me to find the fact, I should find that those who represent 'The Trip to Scarborough' do represent parts of 'The Relapse.'"

Causing to be Represented.—The "penalty" prescribed by the Act of 3 & 4 Will. IV. c. 15 is recoverable from those who "represent or cause to be represented" an unauthorised work. Section 20 of 5 & 6 Vict. c. 45 provides "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," &c. Notice that this section uses the word "permitting," whereas 3 & 4 Will. IV. c. 15 only uses "represent or cause to be represented." The later statute, however, does not purport to extend the nature of performing right, and therefore the word "permitting," if it have any meaning at all, can only be explanatory of the words "cause to be represented" in the earlier statute. When then does a person "cause a dramatic piece to be represented"? Shortly, the answer

[1] *Reade* v. *Conquest* (1862), 11 C. B. (N.S.), 479; *Schlesinger* v. *Turner* (1890), 63 L. T. (N.S.), 764.

[2] *Reichardt* v. *Sapte* [1893], 2 Q. B., 308; and see *Walter* v. *Lane* [1900], A. C., 539.

[3] *Supra*, p. 104.

[4] (1878), 3 A. C., at p. 501.

probably is, that if he does not actually take part as an actor, the defendant must be shown to have had some initiation in or control over the performance. In *Parsons* v. *Chapman*,[1] an acting manager, who paid the performers' salaries, and was entitled to dismiss them, was held to have caused a dramatic piece to be represented within the meaning of 10 Geo. III. c. 28, sec. 1. In *Russell* v. *Briant*,[2] the defendant was the landlord of "The Horns" Tavern, at Kennington. His premises included a large assembly room which was hired for evening entertainments. The defendant furnished the platform and the lights, and allowed bills to be put up in the tavern, and tickets of admission to be advertised to be sold at the bar. At one entertainment a song, "The Ship on Fire," which in *Russell* v. *Smith*[3] was held to be a copyright dramatic piece, was sung. It was held that the defendant had not represented or caused to be represented the dramatic piece in question. Wilde, C.J., said that no one could be considered as an offender unless by himself or his agent he actually took part in the representation. In *Lyon* v. *Knowles*[4] the defendant let his theatre. He provided and paid for the scenery, lights, printing, advertising, band, doorkeepers, scene-shifters, and supernumeraries. His servants collected the money at the door, and he retained half the gross profits to recoup himself. The lessee brought his own company, and represented pieces of his own choice, the defendant having no control over any person employed in the representation. It was held that the defendant had not caused the piece to be represented within the meaning of the Acts. In *Marsh* v. *Conquest*[5] the defendant was the proprietor of a theatre, and his son, the acting manager, hired it for a "benefit." The Court held that the defendant came within the statute. Erle, C.J., delivered the judgment of the Court :—

"It appears that the defendant is the proprietor of the Grecian Theatre, and the employer of the dramatic corps attached thereto; that his son,

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[1] (1831), 5 C. and P., 33.
[2] (1849), 8 C. B., 836.
[3] (1848), 12 Q. B., 217.
[4] (1863), 3 B. and S., 556; see this case and *Russell* v. *Briant*, *supra*, approved by Byrne, J., in *Kelly's Directories* v. *Gavin & Lloyds* [1901], 1 Ch., 374.
[5] (1864), 17 C. B. (N.S.), 418.

the stage manager, hired for his benefit-night the theatre, together with the company of actors, and servants, and lights, for the sum of £30; and that the son, in the defendant's theatre, and with the aid of his actors and actresses, musicians, servants, lights, and other paraphernalia, represented the dramatic piece in question, in violation of the plaintiff's sole and exclusive right of representing or causing it to be represented. I think the defendant is responsible for that representation. He was the proprietor of the theatre, and had entire control over the establishment and all belonging to it, and what was done by his son was done with his permission."

In *Monaghan* v. *Taylor*[1] the defendant was the proprietor of a music hall, and paid a singer to perform, leaving him his own choice of songs. The singer sang a copyright song. The Court held that the defendant came within the statute. This decision would not now apply to musical performing right, since, by the Musical Copyright Act of 1888, a proprietor is not liable unless he permits the performance knowing it to be an infringement. It is still applicable to dramatic performing rights. Suppose, for instance, the proprietor of a variety theatre hired the services of a troop of players, telling them to fill up twenty minutes on the programme with any dramatic scene they pleased. If they infringed a dramatic copyright, the proprietor would be liable.

It seems to be doubtful whether if B, acting entirely as the agent of A, causes C and others to perform a dramatic piece, he can be held liable if he took no part in the representation. In *Parsons* v. *Chapman*[2] Lord Tenterden, C.J., directed the jury that it was sufficient if the defendant caused the piece to be performed; and that it made no difference that he did so as an agent for others. This was a decision under 10 Geo. II. c. 28, and the principle should be the same under 3 & 4 Will. IV., and 5 & 6 Vict.; but in *French* v. *Day*[3] Kennedy, J., took a different view. One of the defendants was the manager of a theatre. He received instructions for the production of the piece in question from the proprietor, and he could not engage or dismiss artistes; he was in every respect

[1] (1886), 2 T. L. R., 685; but see *Cole* v. *Gear* (1888), 4 T. L. R., 246.
[2] (1831), 5 C. and P., 33.
[3] (1893), 9 T. L. R., 548.

bound to conform to his employer's orders. Kennedy, J., said :—

"The whole thing was carried on by the proprietor, who merely used the manager as his mouthpiece. I think I ought not to hold that a person in his position 'represented,' or 'caused to be represented,' the piece."

Knowledge.—In an action for infringement of dramatic performing right it is unnecessary to prove that the defendant knew the performance was an infringement.[1]

Innocent Agents.—All the actors who take part in an unlawful performance are within the section as "representing," and are liable to penalties.[2]

Licence.—It is an infringement of performing right to perform "without the consent in writing of the author or other proprietor."[3] See decisions on licence as to copyright in books.[4] The licence must be in writing,[5] but it does not require to be written by the proprietor or signed by him or any one else.[6] The secretary of a dramatic author's society may, if he has authority, grant a good licence on behalf of the authors.[7] A part owner cannot grant a licence without the consent of the other part owners.[8]

Section X.—Infringement of Musical Performing Rights.

Substantial Part.—The rule that the taking of a part but not of a particle in infringement applies equally to musical compositions and to the performing rights therein. In *D'Almaine* v. *Boosey*[9] the taking of airs from an opera and arranging them as quadrilles and waltzes was held to be an infringement of the copyright in the opera. Lord Lyndhurst said :—

"Substantially the piracy is when the appropriated music, though adapted to a different purpose from that of the original, may still be recognised by the ear."

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[1] *Lee* v. *Simpson* (1847), 3 C. B., 871, at p. 883.
[2] *Duck* v *Mayeu* (1892), 8 T. L. R., 339.
[3] 3 & 4 Will. IV. c. 15, sec. 2.
[4] *Supra*, p. 118.
[5] *Roberts* v. *Bigneli* (1887), 3 T. L. R., 552; *Eaton* v. *Lake* (1888), 20 Q. B. D., 378.
[6] *Morton* v *Copeland* (1855), 16 C. B., 517.
[7] Ibid.
[8] *Powell* v *Head* (1879), 12 Ch. D., 686.
[9] (1835), 1 Y. and C. Ex., 288.

This test, however, will hardly apply to the piracy of an adaptation where the air or melody is a non-copyright one. A comparison of the actual notes and treatment of the phrases would have to be made.

Public Performance.—It has been contended that the protection afforded by 3 & 4 Will. IV. c. 15 to musical compositions is only an exclusive right of performance in places of dramatic entertainment. That is the protection given to dramatic pieces, and it was said that 5 & 6 Vict. c. 45, in applying 3 & 4 Will. IV. c. 15 to musical compositions did not give them a wider protection than dramatic pieces had. In *Wall* v. *Taylor*[1] the Court held that this view was wrong. Bowen, L.J., said :—

"I think the answer is this, that what is called in the argument a 'condition' of recovering a penalty in s. 2 of 3 & 4 Will. IV. c. 15 is nothing of the kind, but part of the definition of the offence upon which the penalty is to be incurred. . . . The right granted is the privilege of representing at places of dramatic entertainment. . . . Now sec. 20 of 5 & 6 Vict. c. 45 creates a new right of property as to a musical composition, and gives the author and his assigns the sole liberty of representing or performing it. That is the right given, and sec. 21 says that the person who shall have that right 'shall have and enjoy the remedies given and provided' in the Act of 3 & 4 Will. IV. c. 15. Why read into that word 'remedies' that the second section of that Act is only to be put in force not where there is an infringement of that right, but where there has been a representation or performance at a place of dramatic entertainment."

The view of Cotton, L.J., in the same case was that the remedies of 3 & 4 Will. IV. c. 15 were not applicable unless the musical composition was performed in a place of dramatic entertainment; but that in every case of public performance there was a remedy under 5 & 6 Vict. c. 45 for damages and injunction. Since the Musical Copyright Act of 1888 the distinction between these opinions has become immaterial, for in every case in which the performance is actionable at all the Court may assess the damages as it thinks proper.

Causing to be Represented.—The offence is representing or

[1] (1883), 11 Q. B. D., 102.

"causing to be represented." As to what the latter includes see page 139, on performing right in dramatic pieces. The liability for "causing to be represented" differs from that in the case of dramatic pieces in that since the Copyright (Musical Compositions) Act, 1888, "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 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."[1] In respect of those who are not proprietors, tenants, or occupiers the liability is the same as in the infringement of dramatic performing right.

SECTION XI.—REMEDIES FOR INFRINGEMENT OF DRAMATIC PERFORMING RIGHT.

An action for—

1. Penalty[2] of 40s. for each performance, or the defendant's profits, or the actual damage sustained, whichever be the greater.
2. Injunction.[3]
3. A full and reasonable indemnity as to costs.[4]

Action must be brought within twelve calendar months of the offence.[5]

[1] 51 & 52 Vict. c. 17, sec. 3. Wright, J., has held that a knowledge that the music contained the statutory notice reserving performing rights is not of itself sufficient evidence that the proprietor knew the performance to be unauthorised. *Moul* v. *Coronet*, Nov. 30, 1901.

[2] Not a true "penalty," but in the nature of liquidated damages, *Adams* v. *Batley* (1887), 18 Q. B. D., 625; *Saunders* v. *Will* [1892], 2 Q. B., 18; see *Fitzhull* v. *Brooke* (1844), 2 D. and L., 477.

[3] See p. 86.

[4] 3 & 4 Will. IV. c. 15, sec. 2, provided "double costs of suit." This was amended by 5 & 6 Vict. c. 97, sec. 2, to a "full and reasonable indemnity as to all costs, charges, and expenses.' This probably means nothing more than ordinary party and party costs, *Reeve* v. *Gibson* [1891], 1 Q. B., 652; *Avery* v. *Wood* [1891], 3 Ch., 115; but it would seem that as the costs are given by statute they are not in the discretion of the Court, and must be awarded to a successful plaintiff, *Reeve* v. *Gibson* [1891], 1 Q. B., 652; *Hasker* v. *Wood* [1885], 54 L. J. Q. B., 419; Judicature Act, 1890, sec. 5. Sec. 2 of 5 & 6 Vict. c. 97 is repealed by the Public Authorities Protection Act in so far as that Act applies.

[5] 3 & 4 Will. IV. c. 15, sec. 3.

Section XII.—Remedies for Infringement of Musical Performing Right.

An action for—

1. Damages.[1]
2. Injunction.[2]
3. Costs in the discretion of the Court.[3]

Action must be brought within twelve calendar months of the offence.[4]

[1] 51 & 52 Vict. c. 17, sec. 1; and see p. 86 as to mode of assessing.
[2] See p. 86.
[3] 51 & 52 Vict. c. 17, sec. 2; 3 & 4 Will. IV. c. 15, sec. 2; 5 & 6 Vict. c. 96, sec. 2.
[4] 3 & 4 Will. IV. c. 15, sec. 3.

CHAPTER VI

COPYRIGHT IN ENGRAVINGS

SECTION I.—WHAT WORKS ARE PROTECTED.

THE *following works are protected under the Engraving* Acts :—

1. Every original engraving or print :[1]
2. [Made within the British dominions :][2]
3. First published within the British dominions :[3]
4. Which bears the date of first publication and the proprietor's name thereon :[4]
5. And is innocent.[5]

The protection endures for twenty-eight years from publication.[6]

The protection is limited to the United Kingdom.[7]

What is an Original Engraving.—By 8 Geo. II. c. 13 (1734) copyright is given to "every person who shall invent and design, engrave, etch, or work in mezzotinto or chiaro oscuro, or from his own works and invention shall cause to be designed and engraved, etched, or worked in mezzotinto or chiaro oscuro any historical or other print or prints."

In *Blackwell* v. *Harper*[8] (1740) it was decided that the above Act was not limited to works of invention such as an historical group, but extended to the "designing or engraving anything that is already in nature."

In *Jefferys* v. *Baldwin*[9] (1753) it was held that prints of herring fishing-boats were notwithin the protection of the Act.

By 7 Geo. III. c. 38 (1766), which was passed in consequence probably of the doubt thrown upon the earlier Act by

[1] See *infra*. [2] See p. 150. [3] This is doubtful. [3] See p. 150.
[4] See p. 151. [5] See p. 152. [6] See p. 152.
[7] See chapter on Colonial Copyright, p. 186.
[8] 2 Atk., 93. [9] Amb., 264

the above and other decisions, the copyright in engravings is given to "all and every person or 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," and "to all and every person 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."

Notwithstanding this widely worded protection, doubts arose as to whether lithographs and certain new processes of reproducing prints came within the Acts, and in consequence a clause was inserted in the Copyright Act of 1852[1] whereby it was declared that the provisions of the Engraving Acts were intended to include prints taken by lithography or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely.

Prints of every description, therefore, are protected under the Engraving Acts, and it is immaterial whether the design produced is

1. The imaginative invention of the maker,
2. Taken from some object in nature, or
3. Taken from some other work of art, such as a picture or model.

Originality.—The only originality required is an originality in execution, *i.e.* the work must not be taken from some other print and reproduce from that other print those characteristics of execution wherein the peculiar merit of the engraver's art lies.

"The engraver produces his effects by the management of light and shade, or as the term of his art expresses it, the *chiaro oscuro*. The due degrees of light and shade are produced by different lines and dots; he who is the engraver must decide on the choice of the different lines or dots for himself, and on his choice depends the success of his print. If

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[1] 15 & 16 Vict. c. 12, sec. 14.

he copies from another engraving he may see how the person who engraved that has produced the desired effect, and so without skill or attention become a successful rival."[1]

Map, Chart, or Plan.—It will be remembered that maps, charts, and plans are included under the definition of books in the Copyright Act, 1842,[2] and receive protection as such. Doubt has consequently been raised as to whether a map must comply with both the Engraving Acts and the Literary Act in order to obtain protection, or whether it will be sufficient to comply with the requirements of one only, and if so, which. The decided cases are unsatisfactory. In *Stannard* v. *Lee*[3] protection was claimed for a "Panoramic Bird's-eye view of France and Prussia," with the railway and strategic positions illustrating the Franco-Prussian War of 1870. This was not registered as a book under the Copyright Act, 1842, and the objection was held to be fatal. The judges in the Court of Appeal seemed to be of opinion that the Act of 1842 had taken maps, charts, and plans out of the protection of the Engraving Acts and placed them under the protection of the Literary Act, consequently that the requirements of the latter and not of the Engraving Acts must be observed. James, L.J., said :—

"It was reasonable and proper to take a map out of the class of artistic copyrights and to give to it the better and more complete copyright which is intended to be given to literary works. And there would be, as I have pointed out clearly, great inconvenience in having two laws of copyright as to two sets of maps or as to the same set of maps."[4]

Mellish, L.J., said :—

"I think it is a perfectly rational enactment that maps shall no longer be included among works of art but be classed in future with literary works."[5]

After this case had been decided a petition was brought to the Court praying that another case, *Stannard* v. *Harrison*,[6] in which the same map had been copied, and to which the de-

[1] *Per* Best, C.J., in *Newton* v. *Cowie* (1827), 4 Bing., at p. 246.
[2] 5 & 6 Vict. c. 45, sec. 1.
[3] *Stannard* v. *Lee* (1871), L. R., 6 Ch., 346; 24 L. T. (N.S.), 459.
[4] 24 L. T. (N.S.), at p. 460.
[5] 19 W. R., at p. 617.
[6] (1871), 24 L. T. (N.S.), 570.

fendants had consented to a decree for injunction and damages, should be reheard. Bacon, V.C., refused the petition, and indicated in the course of his judgment that a map not registered as a book might be protected as an engraving if the claim was properly stated. The judgment in *Stannard* v. *Lee*,[1] he said, had gone on a question of pleading, the plaintiffs having voluntarily brought their map under the category of books. This is by no means a satisfactory explanation of the decision in the Court of Appeal, as it is abundantly clear from the judgments as reported that in the view of the Lords Justices the Copyright Act, 1842, took maps, charts, and plans out of the category of artistic works and placed them in the category of literary works. Whether this is a correct view is another matter, but at present it would seem to be law. It is submitted that the true view probably is that a map may be protected under either Act if the requisite formalities are observed. The Literary will probably give a wider protection than the Engraving Acts. The Engraving Acts will protect a map from infringement of the method of execution, that is to say, the work which is the peculiar work of the engraver ; while the Literary Act will protect it not only from that, but from a piratical taking of information imparted. Thus suppose a map of India giving battles and dates and, say, the principal products of the various districts marked with printed letters on the surface. It is difficult to see how the taking of all these dates and products and placing them perhaps printed in different letters on the new map could be an infringement of the engraving copyright in the map ; there is nothing in the nature of a design or drawing taken ; and yet it is quite clear it will be an infringement under the protection afforded by a literary copyright, because there is a taking of the particular expression by which information is imparted.

Engravings in a book are protected by the Copyright Act, 1842, as part of the book, and, as such, do not require to comply with the requirements of the Engraving Acts.[2] The protection of a print forming part of a book is probably a double one, and if it

[1] (1871), L. R., 6 Ch , 346.

[2] *Bogue* v *Houlston* (1852), 5 De G. and Sm., 267 ; *Maple* v. *Junior Army and Navy Stores* (1882), 21 Ch. D , 369 , *Comyns* v. *Hyde* (1895), 43 W. R., 266 ; *Hildesheimer* v. *Dunn* (1891), 64 L. T. (N.S.), 452.

had the name and date inscribed would be protected without registration or notwithstanding faulty registration of the book.

Must the Engraving be made within the British Dominions.—The Act 17 Geo. III. c. 57 giving a remedy by action for damages is expressly confined to works made in Great Britain. The other two Acts, 8 Geo. II. c. 13 and 7 Geo. III. c. 38, are not expressly limited to works there made, but it has been held that the limitation is to be supplied in them.[1]

> "It is plain that the object of the legislature was to protect those works which were designed, engraved, etched, or worked in Great Britain, and not those which were designed, engraved, etched, or worked abroad, and only published in Great Britain."[2]

The Act 6 & 7 Will. IV. c. 59 extends the application of the Engraving Acts to Ireland, and in section 2 there is a general proviso protecting "any engraving or print of any description whatever . . . which may have been or which shall hereafter be published in any part of Great Britain or Ireland." It is quite arguable that this extends the protection to engravings wherever made if published in the United Kingdom; but probably it would be held to be only applicable to engravings made in the United Kingdom, and is merely a proviso that there will be no copyright until publication in the United Kingdom. The point, however, is one of great uncertainty.

Under the International Copyright Act, 1886,[3] works first produced anywhere within the British dominions are protected equally with those first produced in the United Kingdom. The doubt still remains whether the engraving must not be made as well as first published within the British dominions.

The Engraving must be first Published within the British Dominions.—There is no protection until publication[4] except at common law. Publication is an act which gives to the public an opportunity on payment or otherwise of viewing the print. There may probably be publication without offering copies for sale or distribution. See as to publication of books[5] and pictures;[6] but the analogy is not complete with either.

[1] *Page* v. *Townsend* (1832), 5 Sim., 395. [2] Ibid.
[3] 49 & 50 Vict. c. 33, sec. 8 (1); and see 7 & 8 Vict. c. 12, sec. 19.
[4] 7 Geo. II. c. 38. [5] See p. 36. [6] See p. 169.

There seems to be no direct authority as to what constitutes publication of an engraving.

Before 1886 the work had to be published in the United Kingdom.[1] Now first publication anywhere within the British dominions will be sufficient to secure the copyright.[2]

Date of First Publication and Proprietor's Name.—It is a condition precedent to protection that there must be truly engraved on each plate, and printed on every print or prints [3]—

i. The name of the proprietor;
ii. The day of first publication.

This qualification of the engraver's right is only inserted in 8 Geo. II. c. 13, and not in the subsequent Acts which extend the protection to works not there included and give remedies not there given. It has been held, however, that as the Acts are *in pari materia* they must be taken together, and the qualification in the first read into the others.[4]

The proviso as to the name and date is a condition precedent to protection, and not merely directory.[5] In one case Lord Hardwicke thought that, although no action for penalties would lie unless the name and date were correctly published, an injunction might be granted even although the name and date were not published at all.[6] He was probably wrong.

Name of Proprietor.—There is some little doubt as to whether this must be the name of the person who was proprietor at the date of first publication or at the date on which protection is claimed. In *Thompson* v. *Symonds*[7] Lord Kenyon said:—

"The name of the proprietor should appear in order that those who wish to copy it might know to whom to apply for consent. It seems, therefore, necessary that the date should remain, but that the name of the proprietor should be altered as often as the property is changed."

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[1] 6 & 7 Will. IV. c. 59, sec. 2; *Page* v. *Townsend* (1832), 5 Sim., 395.
[2] 7 Vict. c. 12, sec. 19; 49 & 50 Vict. c. 33, sec. 8 (1).
[3] 8 Geo. II. c. 13.
[4] *Newton* v. *Cowie* (1827), 4 Bing., 234; *Brooks v. Cock* (1835), 3 Ad. and E., 138.
[5] *Thompson* v. *Symonds* (1792), 5 T. R., 41; *Harrison* v. *Hogg* (1794), 2 Ves., 322; *Newton* v. *Cowie* (1827), 4 Bing., 234; *Brooks* v. *Cock* (1835), 3 Ad. and E., 138; *Mackmurdo* v. *Smith* (1798), 7 T. R., 518.
[6] *Blackwell* v. *Harper* (1740), 2 Atk., 93; and see *Roworth* v. *Wilkes* (1807), 1 Camp., 94.
[7] (1792), 5 T. R., 41.

But Buller, J., in the same case, thought the proprietor always meant the inventor and first proprietor, notwithstanding the property had passed to his assignee. The point is certainly doubtful, but the latter view that the name of the first proprietor only need be on the print seems the more reasonable, and not contrary to the wording of the Act. The proprietor need not be described as such on the plate.[1] If his name is there it is sufficient, even if there is more than one name and it is uncertain which is the proprietor.[2] The proprietor need not be described by his full name, his surname is sufficient.[3] When a partnership firm are proprietors of an engraving the trading name of the firm is a sufficient designation, inasmuch as it enables parties to know whom to apply to for information.[4] If a single proprietor trades under the designation of A. B. & Co. that is a sufficient designation.[5]

Immoral Works.—There will be no copyright in profane, libellous, or indecent prints.[6]

Duration of Protection.—The statutory right begins on publication, and runs for twenty-eight years from the day of first publishing.[7]

After publication protection will depend entirely on the statute.[8]

Before publication there is a common law right to prevent all interference with what is a man's private property,[9] and to protect this the formalities prescribed by the statute need not be complied with.

SECTION II.—THE OWNER OF THE COPYRIGHT.

The Engraver.—The persons to whom the copyright is given by the Acts are, "Every person and persons who shall

[1] *Blackwell* v. *Harper* (1740), 2 Atk., 93; *Graves* v. *Ashford* (1867), L. R., 2 C. P., 410.
[2] *Newton* v. *Cowie* (1827), 4 Bing., 234; *Thompson* v. *Symonds* (1792), 5 T. R., 41.
[3] Ibid.
[4] *Rock* v. *Lazarus* (1872), L. R., 15 Eq., 104.
[5] *Graves* v. *Ashford* (1867), L. R., 2 C. P., 410.
[6] *Baschet* v. *London Illustrated Standard* [1900], 1 Ch., 73; *Fores* v. *Johnes* (1802), 4 Esp., 97.
[7] 7 Geo. III. c. 38, sec. 7.
[8] *Donaldson* v. *Beckett* (1774), 2 Bro. P. C., 129.
[9] *Prince Albert* v. *Strange* (1849), 1 M'N. and G., 25; *West* v. *Francis* (1822), 5 B. and Ald., 737.

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 prints . . . and every person 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."

The engraver, therefore, is the first owner of the copyright when he does the work on his own behalf, or, if he does it on behalf of another, executes it entirely from his own work, design, or invention.

The Employer.—When one man employs another to execute an engraving it would seem that by the Acts[1] the copyright vests *ab initio* in the employer :—

1. In the case of an engraving taken from another work of art.
2. In the case of an engraving with an original design, if it is executed from the employer's own work, design, or invention.

An employer may be the inventor of a design even although he is unable to draw, and would himself be unable to execute it. For instance, in the case[2] of a war map for the Franco-Prussian war in 1870, it was held that a publisher who had employed an engraver, giving him material and instructions from time to time was the inventor, and therefore the first owner in the copyright in the map. Bacon, V.C., said :—

"As to whether the design or invention is that of the plaintiff or not is a mere matter of character. . . . The compiler has proved that it is the design of the plaintiff; that the plaintiff brought to him his rough sketch or draught, a drawing of the same size as the stone on which it was to be engraved, pointing out, as the compiler has said, 'a rough sketch of the forts and towns to give me an idea; he furnished me also with a large French map, and some maps published in the *Times* and *Daily Telegraph*; he gave me notice also daily of the earthworks that were made and produced, besides a picture published in the *Illustrated London News*.' That the plaintiff cannot draw himself is a matter

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[1] 8 Geo. II. c. 13; 7 Geo III. c. 38.
[2] *Stannard* v. *Harrison* (1871), 24 L. T. (N.S), 570.

wholly unimportant if he has caused other persons to draw for him. He *invents the subject of the design beyond all question.* He prescribes the proportions and the contents of the design; he furnishes a part of the materials from which the drawing has to be made in the first instance, and afterwards collects daily from the proper sources, and even, if it be necessary to say so, from official sources, the decrees, the reports, the bulletins and accounts contained in the newspapers of the different phases of the war, and especially of the places in which earthworks are thrown up. These he communicates to the man whom he has employed to make a drawing for him. . . . It is clear to my mind that this is a work of diligence, industry, and for aught I know of genius on the part of the plaintiff, for the notion never seems to have occurred to the compiler himself."

If the person employed is the servant of the employer and not an independent contractor, the whole right in the engraving will probably, irrespective of the Acts, vest *ab initio* in the employer.[1]

The Assignee.—In one case[2] it was contended that there could be no assignment under the Engraving Acts enabling an assignee to sue in his own name, since these Acts only provide for the licence and exemption from liabilities of a purchaser.[3] It was held, however, that there could be an assignment, and that the assignee could sue in his own name.[4]

As a licence is required to be in writing, signed by the proprietor and in the presence of two or more credible witnesses,[5] so must the assignment which passes a greater right.[6]

The sale of plates will not in itself operate as an assignment;[7] but, if it were clearly intended to pass the whole right, probably it would pass with the plates without assignment in writing.[8]

Before publication the whole right in the engraving, *i.e.* the common law right, may be assigned without writing.[9]

[1] See as to books, p. 73.
[2] *Thompson* v. *Symonds* (1792), 5 T. R., 41.
[3] 8 Geo. II. c. 13; 17 Geo. III. c. 57.
[4] *Thompson* v. *Symonds* (1792), 5 T. R., 41.
[5] 8 Geo. II. c. 13; 17 Geo. III. c. 57.
[6] See Assignment of Books, p. 77.
[7] Cf. *Cooper* v. *Stephens* [1895], 1 Ch., 567, a decision under the Copyright Act, 1842.
[8] *Marshall* v. *Petty* (1900), 17 T. L. R., 501; 8 Geo. II. c. 13, sec. 2.
[9] See as to books, p. 74.

SECTION III.—INFRINGEMENT OF THE COPYRIGHT.

Prohibited Acts and Remedies.—It is an offence "for any print-seller or other person whatsoever"[1]—

1. To engrave, etch, or work, or in any manner copy and sell the protected work.
2. To print, reprint, or import for sale any pirated copy.
3. Knowingly to publish, sell, or expose for sale, or in any other manner dispose of any pirated copy.
4. To cause or procure any of these acts to be done.

For any such offence the remedy is an action in the High Court for—

i. Forfeiture of plates and sheets to proprietor for destruction.[2]
ii. Penalty of 5s. for every published copy.[3]
iii. Damages.[4]
iv. Injunction.[5]
v. Inspection and Account.[6]

Further it is an offence—

5. Innocently to publish, sell, or expose for sale, any pirated copy.[7]
6. To make a copy or copies, whether for sale or not.[8]
7. To cause or procure any of these acts to be done.

For any such offence the remedy is an action in the High Court for—

i. Damages.[9]
ii. Injunction.[10]
iii. Inspection and Account.[11]

[1] 8 Geo. II. c. 13; 17 Geo. III. c. 57. The above summary is the result of a careful comparison of these two Acts. As Sir James Stephen says in his "Digest": "They are inexpressibly puzzling and very cumbrous. . . . The sense escapes in a cloud of words." It is submitted, however, that there are more important distinctions between the two Acts than those noticed in the "Digest," and the above is an attempt to make them as clear as possible.

[2] 8 Geo. II. c. 13. [3] Ibid. [4] 17 Geo. III. c. 57.
[5] 25 & 26 Vict. c. 68, secs. 8 and 9. [6] Ibid. [7] 17 Geo. III. c. 57.
[8] 17 Geo. III. c. 57; but see *Martin* v. *Wright* (1833), 6 Sim., 297, contra.
[9] 17 Geo. III. c. 57.
[10] 25 & 26 Vict. c. 68, secs. 8 and 9. [11] Ibid.

Penalties and delivery of plates or copies may also be recovered by summary proceeding before any two justices having jurisdiction where the party offending resides.[1]

Guilty Knowledge.—It will be noticed that in order to recover penalties and forfeiture of copies under 8 Geo. II. c. 13, for the offence of selling a piratical copy, it must have been committed knowing the copy to have been produced without consent. In 17 Geo. III. c. 57, however, the offence for which an action for damages lies is merely "selling," thus not requiring proof of guilty knowledge. It has been contended that the requirement of guilty knowledge in 8 Geo. II. c. 13, should be read into 17 Geo. III. c. 57, and the action of damages provided by the latter statute applied to guilty selling only. This contention has been rejected as erroneous.[2]

Limitation of Action.—Actions for penalties under the Acts must be brought within three months of the discovery of the offence sued on[3] and within six months after the committal of such offence.[4]

There is no express limitation in the Acts in respect of actions for damages under 17 Geo. III. c. 57, and therefore such action will not be barred for six years.[5]

Costs.—The litigant if successful in an action for infringement is to recover "full costs."[6] This proviso, however, has been construed to mean nothing more than ordinary costs taxed as between party and party.[7] Probably, however, they may be claimed as of right and are not in the discretion of the Court under Rules of the Supreme Court, o. 65, r. 1.[8]

Copying for Private Use will probably be actionable under 17 Geo. III. c. 57;[9] but no penalties could be recovered under 8 Geo. II. c. 13, as under that Act the making must be a making for sale.

What is a Piratical Copy.—The right under the Acts is "the

[1] 25 & 26 Vict. c. 68, sec. 8.
[2] *Gambart* v. *Sumner* (1859), 8 W. R., 27; 5 H. and N., 5; *West* v. *Francis* (1822), 5 B. and Ald., 737.
[3] 8 Geo. II. c. 13.
[4] 7 Geo. III. c. 38.
[5] *Graves* v. *Mercer* (1868), 16 W. R., 790.
[6] 8 Geo. II. c. 13; 7 Geo. III. c. 38.
[7] *Avery* v. *Wood* [1891], 3 Ch., 115.
[8] *Hasker* v. *Wood* (1885), 54 L. J., Q. B., 419; *Reeve* v. *Gibson* [1891], 1 Q. B., 652.
[9] But see *Martin* v. *Wright* (1833), 6 Sim., 297.

sole right and liberty of printing and reprinting the same,"[1] and the prohibition is against "engraving, etching, or working in mezzotinto or chiaro oscuro or otherwise, or in any manner copying, in the whole or in part, by varying, adding to or diminishing from, the main design."[2]

The taking of a material part is a piracy;[3] the copy which contains a material part of a copyright engraving is a piratical copy, and it is an offence to import or sell it.[4]

The copyright in an engraving may be infringed otherwise than by another engraving. Thus a photograph of an engraving is an infringement of the copyright in it.[5]

It is doubtful how far the Engraving Acts protect the design in an engraving. It is clear that when an engraving is taken from a work of art previously existing, such as a pen and ink drawing or a painting, the engraving is only copyright so far as the work of the engraver[6] is concerned; that is to say, apart from the copyright in the drawing or painting, which may or may not be his, the engraver acquires no monopoly[7] of the right to engrave the picture; the fact of his being the first engraver does not prevent others from doing the same, they can only be prevented from copying from his engraving the peculiar execution of the design. In *Dicks* v. *Brooks*[8] a printed pattern for Berlin wool work was taken from an engraving of the well-known picture "The Huguenot," by Millais. The owner of the copyright in the engraving sued for infringement. It was held that the printed pattern constituted no infringement of his engraving; it contained no reproduction of that which was the engraver's meritorious work in the print. But if the whole invention and design of the engraving is the engraver's own do the Engraving Acts protect the engraver in such design and invention? There is no authority where the point has been expressly considered and decided. It is suggested that

[1] 8 Geo. II. c. 13. [2] 8 Geo. II. c. 13; 17 Geo. III. c. 57.
[3] *West* v. *Francis* (1822), 5 B. and Ald., 737; *Moore* v. *Clarke* (1842), 9 M. and W., 692.
[4] *West* v. *Francis* (1822), 5 B. and Ald., 737.
[5] *Graves* v. *Ashford* (1867), L. R., 2 C. P., 410; *Gambart* v. *Ball* (1863), 14 C. B. (N.S.), 306.
[6] *Dicks* v. *Brooks* (1880), 15 Ch. D., 22; *Gambart* v. *Ball* (1863), 14 C. B. (N.S.), 306.
[7] *Newton* v. *Cowie* (1827), 4 Bing. at p. 246; *De Berenger* v. *Wheble* (1819), 2 Stark., 548.
[8] *Dicks* v. *Brooks* (1880), 15 Ch. D., 22; *Gambart* v. *Ball* (1863), 14 C. B. (N.S.), 306.

the Engraving Acts protect that part of an engraving only which is the result of the engraver's peculiar art; for the rest, for the design, for the invention, for the grouping of the figures, protection can only be obtained under the Act protecting drawings, or (in the case of maps) under the Literary Copyright Act, or at common law. In *Roworth* v. *Wilkes*[1] Lord Ellenborough considered a copying of the design was an infringement of copyright under the Engraving Acts. The action was in respect of an alleged infringement of certain plates in a treatise on fencing. These plates had been copied in so far as the position of the figures went, but they were represented as differently dressed. His Lordship, in directing the jury, said :—

"As to the prints, the question will be whether the defendant has copied the main design . . . it is still to be considered whether there be such a similitude and conformity between the prints that the person who executed the one set must have used the others as a model. In that case he is a copyist of the main design. But if the similitude can be supposed to have arisen from accident, or necessarily from the nature of the subject, or from the artist having sketched designs merely from reading the letter-press of the plaintiff's work, the defendant is not answerable. It is remarkable, however, that he has given no evidence to explain the similitude or to repel the presumption which that necessarily causes."

In *Martin* v. *Wright*[2] it was held that when an artist had from sketches of his own produced an engraving, and the defendant had it copied on canvas in colours on a very large scale, with dioramic effect, and publicly exhibited it, such a copying and exhibiting was no infringement of the engraving. The ground of this decision seems to have been partly that the merit of the new work had absorbed the merit of the old. Thus Shadwell, V.C., prefaces his judgment with the remark that "any person may copy and publish the whole of a literary composition provided he writes notes upon it, so as to present it to the public connected with matter of his own."[3] Another ground of the decision seems to have been that the diorama was produced for purposes of exhibition and not of sale. The real point, whether the Acts protected more than that

[1] (1807), 1 Camp., at p. 98.
[2] (1833), 6 Sim., 297.
[3] No such statement could now be accepted as sound. See p. 112.

which was peculiar to the engraver's art, does not appear to have been considered either in the argument or judgment. In *Dicks* v. *Brooks*[1] James, L.J., appears to have been of opinion that 8 Geo. II. c. 3, in protecting the work of an engraver where the invention and design was his own, protected not only the work peculiar to the engraver's art, but the invention and design of the pictures as well.

"These words were intended to give protection for the genius exhibited in the invention of the design, and the protection was commensurate with the invention and design."[2]

Bramwell, L.J., however, seems inclined towards the opposite view. He says :—

"I do not say that if this were an ordinary engraving with no picture, a lithograph taken from it would not be a copy. I think that a photograph taken from it would be a copy. I do not say that if this were an original engraving with no picture, and a copy were made of it and afterwards coloured there might not be some ground for saying that there was a piracy of the art and skill of the engraver. I should have very great misgiving about it, because I doubt whether the statutes were not intended to protect the artist's skill as an engraver only, and not as a draftsman."[3]

It is no defence to an action for infringement that the work has been extensively added to or improved.[4]

Striking prints from the proprietor's own plate has been held not to be an infringement, although it was clearly an unauthorised act and a breach of contract.[5] Thus a printer who had plates in his possession would not infringe the copyright and be liable to penalties by striking copies for his own use, but he would be liable in damages for breach of contract.

Licence a Defence.—A licence in order to be a defence must be in writing signed by the proprietor in the presence of two or more credible witnesses,[6] but a licensee who is also a purchaser of any plates for printing may presumably without any document in writing print from the said plates without incurring penalties[7]

[1] (1880), 15 Ch. D., 22.
[2] 15 Ch. D., at p. 34.
[3] 15 Ch. D., at p. 37.
[4] See as to literary copyright, p. 112.
[5] *Murray* v. *Heath* (1831), 1 B. and Ad., 804.
[6] 8 Geo. II. c. 13; 17 Geo. III. c. 57.
[7] 8 Geo. II. c. 13.

under 8 Geo. II. c. 13 or 7 Geo. III. c. 38, but *quære* whether such purchaser would not technically be liable to damages under 17 Geo. III. c. 57. A bare licensee, although a purchaser of plates, could not authorise third persons to print from the plates except as his agent and on his behalf.[1]

[1] Cf. *Cooper* v. *Stephens* [1895], 1 Ch., 567, which is under 5 & 6 Vict. c. 45, but on a claim for damages and injunction only would seem to be analogous; *Marshall* v. *Petty* (1900), 17 T. L. R., 501.

CHAPTER VII

COPYRIGHT IN SCULPTURE

SECTION I.—WHAT WORKS ARE PROTECTED.

THE following works are protected under the Sculptures Act :—

1. Every original sculpture : [1]
2. First published within the British dominions : [2]
3. [The author of which is a British subject or resident within the British dominions] : [3]
4. Which bears the proprietor's name and the date [of first publication] thereon : [4]
5. And is innocent.[5]

Protection endures for fourteen years from publication, and another term of fourteen years if the author is then alive and retains the copyright.[6]

Protection is probably limited by implication to the United Kingdom.[7]

What is an Original Sculpture.—The work protected is "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 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 part or parts of any animal, or of any such subject containing any of the matters or things hereinbefore mentioned, whether separate or combined." [8]

In one case it was contended that the Act only applied to

[1] See *infra*.
[2] See p. 162.
[3] See p. 162. This is doubtful.
[4] See p. 162.
[5] See p. 163.
[6] See p. 163.
[7] See chapter on Colonial Copyright, p. 186.
[8] 54 Geo. III. c. 56, sec. 1.

representations of human figures and animals. North, J., however, held that "any new and original sculpture" applied to any subject "being matter of invention in sculpture," and that casts of fruit and leaves used for instruction in drawing were protected.[1]

Carefully modelled toy soldiers have been protected as works of sculpture.[2]

The Sculpture must be First Published within the British Dominions.—The Act provides that protection shall run from the first publication of the work.[3] Before 1886 it is possible that first publication within the United Kingdom was required, now first publication anywhere within the British dominions will vest the copyright;[4] first publication outside the British dominions will destroy it.[5]

Publication.—A work of sculpture is published when the "eye of the public"[6] is allowed to rest upon it, that is to say when the sculpture itself and not merely a photographic copy or sketch is so exhibited that the general public have an opportunity of viewing it.[7] Exhibition in any public gallery such as the Royal Academy would be publication; but a private view in the artist's studio would not be publication.

Author's Nationality.—It is extremely doubtful whether the author must not at the time of first publication bear some allegiance to the crown by virtue of nationality or residence. If this is so in the case of books,[8] there seems to be no good ground for saying that the statute as to sculpture[9] was intended to be more generous to the foreigner than that as to books.[10]

Proprietor's Name and Date.—The protection given by the Sculpture Act is conditional on the proprietor or proprietors having caused his, her, or their name or names with the date to be put on every sculpture before the same shall be put forth or published.[11]

[1] *Caproni* v. *Alberti* (1892), 40 W. R., 235.
[2] *Britain* v. *Hanks*, Wright, J., April 15, 1902.
[3] 54 Geo. III. c. 56, sec. 1.
[4] 49 & 50 Vict. c. 33, sec. 8 (1).
[5] 7 & 8 Vict. c. 12, sec. 19.
[6] 10 Ir. R. Ch., at p. 516, per Brady, L. Ch. I.
[7] *Turner* v. *Robinson* (1860), 10 Ir. R. Ch., 121, 510.
[8] See *supra*, p. 42.
[9] 54 Geo. III. c. 56.
[10] 5 & 6 Vict. c. 45.
[11] 54 Geo. III. c. 56, sec. 1.

Proprietor's Name.[1]—As to what will probably be a sufficient statement of the proprietor's name, see the cases on engravings[2] on which also the proprietor's name is required. As to this provision the two statutes seem to be *in pari materia* and the cases equally applicable to both.

Date.—It is not stated what date: but there can be no reasonable doubt but that the date of first publication is intended. The older statute governing sculptures[3] (now repealed) required the proprietor's name and "date of publication." The International Act, 7 & 8 Vict. c. 12, in reciting the provisions as to sculptures, runs "and by the said Acts[4] it is provided that the name of the proprietor, with the date of first publication thereof, is to be put on all such sculptures." It should be noticed, however, that both statutes were then in operation and 38 Geo. III. c. 71 had not yet been repealed, so that the recitation in 7 & 8 Vict. c. 12 may apply only to the provision in 38 Geo. III. c 71, and is not necessarily explanatory of 54 Geo. III. c. 36. There can be no doubt, however, that the omission in 54 Geo. III. c. 56 to state what date was required was an oversight, and everything points to its being the date of first publication that is meant. The statutory protection begins then, and from then the duration of the copyright is measured so that there is strong reason for the public being apprised of the date of first publication, while the date of making, which is the only other conceivable date, is of no importance. When the date affixed was a date a few days before publication, Wright, J., held it was immaterial, as it would only shorten the term of the copyright.[5]

Immoral Works.—Profane, libellous, or indecent works will not be protected. There are no direct authorities in respect of unlawful works of sculpture, but as in books,[6] paintings,[7] and engravings[8] the general policy of the law not to take an account between wrong-doers will apply.

Duration of Protection.—Statutory protection commences on

[1] As to work done by partner of a firm, see *Britain* v. *Hanks*, April 15, 1902.
[2] See p. 151.
[3] 38 Geo. III. c. 71. [4] Viz., 38 Geo. III. c. 71, and 54 Geo. III. c. 56.
[5] *Britain* v. *Hanks*, April 15, 1902.
[6] See p. 46. [7] See p. 174. [8] See p. 152.

publication.[1] Before publication the unpublished work will be protected at common law from any use which may be made of it without the permission of the owner. After publication the statutory protection alone exists and subsists for fourteen years[2] with a further term of fourteen years if at the expiration of the first term the person who originally made or caused the sculpture to be made is alive and has not parted with the copyright.[3]

SECTION II.—THE OWNER OF THE COPYRIGHT.

The Artist.—If a work of sculpture is made by an artist on his own behalf he becomes on publication the proprietor of the copyright if before publication he has not assigned his interest in the work.

The Employer. — If one procures an artist to make a work of sculpture for him the employer will be *ab initio* the owner of the copyright without any necessity for assignment from the artist. In order so to vest the work the employer, it would seem, requires to take no part in the invention or design of the work. If he causes the work to be done, he comes within the Act. No valuable consideration need be shown.

The Assignee.—Assignment must be under seal, *i.e.* by a deed in writing signed by the proprietor in the presence of and attested by two or more credible witnesses.[4]

SECTION III.—INFRINGEMENT OF THE COPYRIGHT.

Prohibited Acts and Remedies.—The Act (54 Geo. III. c. 56) gives to the proprietor "the sole right and property" of works in sculpture.

[1] 54 Geo. III. c. 56, secs. 1 and 2.

[2] Ibid.

[3] 54 Geo. III. c. 56, sec. 6; cf. *Carnan* v. *Bowles* (1786), 2 Bro. C. C., 80; *Rundell* v. *Murray* (1821), Jac., 311.

[4] 54 Geo. III. c. 56, sec. 4; cf. 8 Anne c. 19, sec. 1, and *Davidson* v. *Bohn* (1848), 6 C. B., 456; *Power* v. *Walker* (1814), 3 M. and S., 7; *Jefferys* v. *Boosey* (1854), 4 H. L. Cas., 815.

The prohibited Acts are [1]—

1. Making a pirated copy.
2. Importing a pirated copy.
3. Exposing for sale or otherwise disposing of a pirated copy.
4. Causing any of these acts to be done.

The remedy is an action at the suit of the proprietor for [2]—

i. Damages.
ii. Injunction.
iii. Costs—"a full and reasonable indemnity." [3]

Guilty Knowledge.—Ignorance is no defence to an action in respect of any of the prohibited Acts, even that of selling.

Limitation of Action.—All actions under the Act must be commenced within six months of the discovery of the offence sued on.

Copying for Private Use.—Either making or importing a single copy for private use would technically be an infringement. The prohibition is not limited to making or importing for sale, hire, exhibition, or distribution, as in the case of paintings, &c., under 25 & 26 Vict. c. 68, sec. 6.

What is a Piratical Copy.—A pirated copy may be "produced by moulding or copying from or imitating in any way any of the matters or things put forth or published under the protection of the Act . . . to the detriment, damage, or loss of the proprietor." [4]

The prohibition is against "imitating in any way." This prohibition does not seem so wide as that in 25 & 26 Vict. c. 68, which prohibits the multiplication of a painting or drawing or the design thereof. It is more similar to the prohibition in the Engraving Act 8 Geo. II. c. 13, viz., against engraving, &c., "or in any manner copying" a copyright print. It seems therefore to be open to question as with engravings whether a piece of sculpture can be infringed except by some work of art

[1] 54 Geo. III. c. 56, sec. 4. [2] Ibid.

[3] The Sculpture Act gives "double costs," but 5 & 6 Vict. c. 97, sec. 2, substitutes "a full and reasonable indemnity." See p. 144, *note* 4. This probably means costs in the ordinary sense; but the plaintiff is entitled to them as of right and not as a matter of discretion under the Rules of the Supreme Court.

[4] 54 Geo. III. c. 56, sec. 3.

which reproduces the peculiar art of the sculptor. Would a piece of sculpture be infringed by a picture, sketch, or engraving copying the design of the work?

Licence would be a defence, and it probably does not require to be in writing. There is nothing in the Act from which the necessity for a licence to be in writing could be implied.

CHAPTER VIII

COPYRIGHT IN PAINTINGS, DRAWINGS, AND PHOTOGRAPHS

SECTION I.—WHAT WORKS ARE PROTECTED.

THE following works are protected under the Fine Arts Copyright Act, 1862 :—

1. Every original painting, drawing, and photograph : [1]
2. Not first published outside the British Dominions : [2]
3. The "author" of which is a British subject, or is resident within the dominions of the crown [when the work is made] : [3]
4. Which has been registered before infringement : [4]
5. And is innocent.[5]

Protection vests at the date of making, and endures for the author's life and seven years.[6]

Protection is limited to the United Kingdom.[7]

Every Original Painting, Drawing, and Photograph.—There is no attempt to define what is a painting, drawing, or photograph within the meaning of the Act.[8] The substances used in the making are no doubt immaterial, so long as the result is *ejusdem generis* with what is ordinarily meant by a picture, drawing, or photograph. A painting on the wall of a house would doubtless be protected, but not a design created by grouping figures in a *tableau vivant*.[9]

Originality as an essential of protection means that there must be something either in the design or execution of the work which is not merely copied from some other artistic work. The whole work need not be original. Thus the execution may be original but not the design, as in the case of a photograph of an

[1] See *infra*. [2] See p. 168. [3] See p. 170.
[4] See p. 171. [5] See p. 174. [6] See p. 174.
[7] See chapter on Colonial Copyright, p. 186. [8] 25 & 26 Vict. c. 68, sec. 1.
[9] *Hanfstaengl* v. *Empire Palace* [1894], 2 Ch., 1.

old picture;[1] or part only of the design may be original, as in the case of the design of an old drawing added to or altered. In so far as the work is new there will be protection, but in so far as it is old there will be no protection.[2]

Artistic Merit.—The Court will not inquire as to whether a painting, drawing, or photograph is good, bad, or indifferent. If it consists in the representation of some object by means of light and shade or colour, it will suffice, and even the coarsest or the most commonplace, or the most mechanical representation of the commonest object would be protected so that an exact reproduction of it, such as photography, for instance, would produce, would be an infringement of copyright.[3] Probably there must be a representation of some concrete object, real or imaginary. Protection, for instance, was refused to a label for Eau de Cologne,[4] which merely bore the legend "Johanna Maria Farina gegenüber dem Julichs Platz," written in copperplate with sundry dots and flourishes. It was held that any one who had a right to sell Farina's Eau de Cologne might manufacture and use the label, since although the label was a trade mark there was no copyright in it. A label with anything in the nature of a picture on it would undoubtedly be copyright, as the use to which a work of art is put is immaterial, but it is doubtful whether a label containing merely geometrical figures and fancy dots and lines would be protected under the Act of 1862. Probably it would not.

Publication outside the British Dominions. — Copyright in works of art under the Act of 1862 begins on the making thereof, and is not dependent on publication. It is immaterial where the work is made, whether in the British dominions or elsewhere, and it would be as immaterial where it was first published, or whether it was published or not, but for the provision of the International Copyright Act, 1844. Section 19 of this Act provides that the maker of a work of art which shall be first published out of the British dominions shall not have copyright

[1] *Graves'* case (1869), L. R., 4 Q. B., 715.

[2] See the cases as to new editions of books.

[3] *Kenrick* v. *Lawrence* (1890), 25 Q. B. D., 99.

[4] *Farina* v. *Silverlock* (1858), 4 K. and J., 650. This case is hardly an authority, as it was decided when published paintings and drawings were unprotected; but it is submitted that even under the Act of 1862 a label of this kind would not be protected.

therein otherwise than such as he may become entitled to under the International Acts; which means that where there is no treaty a work first published abroad is not protected at all. The result of this section was evidently not contemplated when the Fine Arts Act, 1862, was framed. There seems to be no doubt that the work, wherever made, will acquire copyright immediately on the making, but that that copyright may be lost if the work is published abroad before it is published in the British dominions.

Published.—A painting, drawing, or photograph is probably published when it is so exhibited as to give the public an opportunity of viewing it. The leading case on publication of works of art is *Turner* v. *Robinson*[1] in the Court of Chancery in Ireland. This case was decided before 1862, and therefore before there was any statutory copyright in paintings. The subject-matter was a painting from which certain stereoscopic views had been taken without the proprietor's consent. The painting had been previously, with the consent of the proprietor, published in the form of an engraving in a magazine, and exhibited at the Royal Academy in London and in Manchester. It was then exhibited with the proprietor's consent in Dublin for the purpose of obtaining contributors to a proposed engraving, and while so exhibited the defendant, without consent, copied it and produced his stereoscopic photographs. The Master of the Rolls[2] thought that the picture had never been published, because the exhibitions to the public in the Academies and in Dublin were on the condition that no copies should be taken, and the engraving in the magazine was not a publication of the picture, but only of a rough representation of it. He therefore held that the common law right in the picture had not been lost by publication, and that the proprietor could recover against the taker of the stereoscopic views as against an infringer of common law rights. The Court of Appeal in Chancery upheld the judgment of the Master of the Rolls, but on different grounds. They said it was unnecessary to decide whether there had been publication in London and Manchester since, in their opinion, the act of the defendant in taking stereoscopic

[1] (1860), 10 Ir. Ch., 121, 510.

[2] (1860), 10 Ir. Ch., 121.

views from the painting was a breach of faith. He was admitted to the view in Dublin for one purpose only, *i.e.* to become if he wished a subscriber to an engraving; but he abused his privilege by taking a copy of the painting which might well compete with the plaintiff's proposed engraving. The defendant was, therefore, restrained on the ground of breach of faith or implied contract. In his judgment the Lord Chancellor disapproved of the view of the Master of the Rolls that there had been no publication in London or Manchester. He thought exhibition in the Academy, even although to a certain extent conditional, would be sufficient publication to vest the copyright, *e.g.* in a work of sculpture under the statutes applicable to such works. Exhibition in a public gallery, therefore, would be publication, but not a private view in the artist's studio to which only a small and selected portion of the public are invited. Whether the publication of a print would be publication of the picture from which it was taken, *quære*; the Master of the Rolls thought not, and on this point the Court of Appeal neither approved nor disapproved.

Nationality or Residence of Artist.—The protection of the Act is expressly limited to the works of British subjects and of such foreigners as are resident within the dominions of the Crown.[1] There is no direction in the statute as to the time when the author must possess the requisite nationality or residence. Must it be at the time of making or at the time of publishing, or both? It is submitted that it must be at the time of making, since copyright in the work vests at that time, and there may never be publication at all. There seems to be no reason for suggesting that the date to be looked at is the date of publication, except that the next words in the section provide that the work may be made anywhere, and the proviso as to the residence of the author, if applied at the date of making, means that—

1. A work by a British subject may be made anywhere; but,
2. A work by an alien must be made within the dominions of the Crown.

[1] 25 & 26 Vict. c. 68, sec. 1; see *Geissendorfer* v. *Mendelssohn* (1896), 13 T. L. R., 91.

There does not seem to be anything absurdly contradictory in this, and there is, on the other hand, a patent absurdity in not being able to determine whether the author is an author within the Act until long after the right has begun to run.

Registration.—A condition precedent to protection is registration in the book kept at the Hall of the Stationers' Company.

The Requisite Entry.—There must be registered :—

1. Name and place of abode of the "author."
2. Name and place of abode of the proprietor.
3. Short description of the nature and subject of the work.

And if desired,

4. A sketch outline or photograph of the work.

The wording of section 4 of the Act of 1862 providing for compulsory registration is very confused, the requirements on first registration being unaccountably mixed up with the requirements on subsequent assignment.

On first registration whenever it takes place it is submitted that the particulars entered should be as above.[1] The author and proprietor may very likely be the same individual, in which case the one name will be entered twice, once under each description. It would probably not be sufficient merely to enter the author's name once as author and leave it to be implied that he is the owner. Even if the author and proprietor are different persons, either because the author has been employed for valuable consideration or because he has granted an assignment, the particulars to be entered on first registration are the same, no entry of the terms of employment or assignment being necessary.[2] The real proprietor must be on the register, and if the wrong person is registered as proprietor it will not give a cause of action to join such person as co-plaintiff with the real proprietor who is not on the register.[3]

As in the Literary Copyright Act, copyright in the work exists before registration, but no action is maintainable without registration, and under this Act even after registration

[1] See *Nottage* v. *Jackson* (1883), 11 Q. B. D., 627.
[2] *Petty* v. *Taylor* [1897], 1 Ch., 465.
[3] Ibid.

there is no remedy in respect of infringement committed before registration.[1]

It need hardly be said that the necessity of registration only applies to an action on copyright proper, and an action will without registration lie on breach of contract, express or implied,[2] and probably on the common law right of an author and his assigns in unpublished work.[3]

If an unauthorised copy is made before the proprietor is registered but sold afterwards, an action for damages will lie for the offence of selling such copies, but no action for penalties.[4] No action at all will lie for making.[5]

If an action is brought by an assignee, such assignee must be on the register as proprietor,[6] and it will not avail to join as co-plaintiff an unregistered assignee with the assignor who although registered has parted with the copyright.[7] An assignee taking from a registered assignor probably cannot sue in respect of acts of infringement committed before the registration of the assignment.[8] It is not necessary that the original proprietor, whether author or employer, should have been registered,[9] but once registration has been effected it would seem that all future assignments must be entered on the register.[10]

The registration by an assignee under an assignment, subsequent to first registration, must contain the following particulars :[11]—

1. Date of assignment.
2. Names of parties to the assignment.
3. Name and place of abode of the assignee.
4. Name and place of abode of the author.

[1] 25 & 26 Vict. c. 68, sec. 4.

[2] *Tuck & Sons* v. *Priester* (1887), 19 Q. B. D., 629 ; *Pollard* v. *Photo. Co.* (1888), 40 Ch. D., 345.

[3] *Turner* v. *Robinson* (1860), 10 Ir. Ch., 121, 510 ; *Prince Albert* v. *Strange* (1849), 1 M'N. and G., at p. 42 ; *West* v. *Francis* (1822), 5 B. and Ald., 737.

[4] *Tuck & Sons* v. *Priester* (1887), 19 Q. B. D., 629 ; *Tuck* v. *Continental* (1887), 3 T. L. R., 826.

[5] Ibid.

[6] *London Printing* v. *Cox* [1891], 3 Ch., 291 ; *Dupuy* v. *Dilkes* (1879), W. N., 145, 48 L. J. Ch., 682.

[7] *London Printing* v. *Cox* [1891], 3 Ch., 291.

[8] *Dupuy* v. *Dilkes* (1879), W. N., 145 ; 48 L. J. Ch., 682.

[9] *Graves'* case (1869), L. R., 4 Q. B., 715.

[10] *Ex parte Walker* (1869), 17 W. R., 1018 ; 10 B. and S., 680.

[11] 25 & 26 Vict. c. 68, sec. 4.

5. Short description of nature and subject of the work.
And if desired,
6. A sketch outline or photograph of the work.

The enactments of 5 & 6 Vict. c. 45 (the Literary Copyright Act) as to

1. Keeping the Register Book;
2. Searches and certified copies therefrom;
3. False entries;
4. Application to expunge,

apply *mutatis mutandis* to registration of paintings, drawings, and photographs.

The charge for making an entry is one shilling.

Name.—The trading style of a firm is a sufficient registration of the name of a proprietor.

Place of Abode.—The place where a man can readily be found on inquiry is sufficient. A business address is a "place of abode" within the statute.

Short Description of the Nature and Subject of the Work.—The title of the work will sometimes be a sufficient description. The following were held sufficient descriptions of Sir John Millais' well-known pictures, viz.: "Painting in oil, 'Ordered on Foreign Service'"; "Painting in oil, 'My First Sermon'"; "Photograph, 'My Second Sermon.'"[1] Blackburn, J., said:—

"It is the object of the legislature that enough be stated to identify the production, and that the registration must be *bonâ fide*, that a man shall not first claim one thing and then sue for another. The description must be such as shall earmark the subject. . . . The picture 'Ordered on Foreign Service' represents an officer who is ordered abroad taking leave of a lady, and no one can doubt that is the picture intended. . . . There may be a few instances in which the mere registration of the name of the picture is not sufficient; for instance, Sir Edwin Landseer's picture of a Newfoundland dog might possibly be insufficiently registered under the description of 'A Distinguished Member of the Humane Society.' So also of a bullfinch and a couple of squirrels described as 'Piper and a Pair of Nut-crackers.' . . . It would be advisable for a person proposing to register to add a sketch or outline of the work."[2]

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[1] *Ex parte Beal* (1868), L. R., 3 Q. B., 387; 9 B. and G., 395.

[2] Blackburn, J., 9 B. and S., at p. 398. The headnote in *ex parte Walker* (1869), 10 B. and S., 680, "That the description 'A Piper and a Pair of Nut-crackers' was sufficient for the purpose of sec. 6," is erroneous, the point being left undecided.

In the learned judge's opinion deficient description although it would not be sufficient in itself, may be made sufficient by the addition of a photograph, sketch, or outline. It would seem, however, that there must be a description of some kind, and that a photograph or sketch would not by itself be sufficient.

Immoral Works.—There will be no copyright in profane, libellous, or indecent [1] works of art.

Duration of Protection.—The copyright under the Fine Arts Act endures for the term of the natural life of the "author" and seven years after his death. [2]

Copyright will cease if and when any painting or drawing or the negative of any photograph is sold by the first owner thereof without either the express reservation in writing of such copyright to the vendor signed by the vendee or his agent, or the express assignment in writing of such copyright to the vendee signed by the vendor or his agent.[3]

The copyright will also cease (probably) if the work is published out of the British dominions before publication within the dominions.[4]

SECTION II.—THE OWNER OF THE COPYRIGHT.

The Author.—The copyright is given to "the author and his assigns," except when the work is executed for or on behalf of any other person for a good or valuable consideration.[5] The author is the actual artist whose mind has created the work.[6] The giving of ideas and suggestions to another is not sufficient to constitute an author,[7] but, on the other hand, there might be an author who had done little or nothing of the manual work required in the execution. In *Nottage* v. *Jackson* the question of authorship in works of art was fully discussed. Brett, M.R., said :—

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[1] *Baschet* v. *London Illustrated Standard* [1900], 1 Ch., 73; *Fores* v. *Johnes* (1802), 4 Esp., 97; see *Du Bost* v. *Beresford* (1810), 2 Camp., 511.

[2] 25 & 26 Vict. c. 68, sec. 1. [3] Ibid. [4] 7 Vict. c. 12, sec. 19.

[5] 25 & 26 Vict. c. 68. sec. 1.

[6] *Nottage* v. *Jackson* (1883), 11 Q. B. D., 627; *Wooderson* v. *Tuck* (1887), 4. T. L. R., 57; *Melville* v. *Mirror of Life* [1895], 2 Ch., 531; *Kenrick* v. *Lawrence* [1890], 25 Q. B. D., 99.

[7] *Nottage* v. *Jackson* (1883), 11 Q. B. D., 627; *Kenrick* v. *Lawrence* [1890], 25 Q. B. D., 99.

"The author of a painting is the man who paints it, the author of a drawing is the man who draws it, . . . of a photograph the author is the person who effectively is as near as he can be the cause of the picture which is produced, that is, the person who has superintended the arrangement, who has actually formed the picture by putting the people into position and arranging the place in which the people are to be—the man who is the effective cause of that. Although he may only have done it by standing in the room and giving orders about it, still it is his mind and act, as far as anybody's mind and act are concerned, which is the effective cause of the picture such as it is when it is produced."

Cotton, L.J., in the same case, said :—

"In my opinion 'author' involves originating, making, producing, as the inventive or master mind, the thing which is to be protected, whether it be a drawing or a painting or a photograph. . . . It is not the person who suggests the idea but the person who makes the painting or drawing who is the author."

The Employer.—When an artistic work, protected by 25 & 26 Vict. c. 68, is executed by the author for or on behalf of any other person for a good or valuable consideration, the copyright vests in the employer and his assigns, unless it be expressly reserved to the author by agreement in writing signed by the employer.[1] This provision applies to the everyday case of a person employing and paying a painter or photographer to take his portrait. The copyright vests in the customer.[2] The case, however, is not always so simple. Difficult questions arise where the artist, usually a photographer, requests the sitter, probably an actress or athlete, to allow his portrait to be taken on the understanding that the artist may publish and sell copies.[3] The sitter probably receives free copies or copies at a reduced price. The difficulties to be solved are purely questions of fact in each case, viz. :—

1. Was the portrait taken for or on behalf of some person other than the artist ?
2. Did the artist receive good and valuable consideration ?

As a rule, where a photographer invites celebrities to sit for him,

[1] 25 & 26 Vict. c. 68, sec. 1 ; *Kenrick* v. *Lawrence* (1890), 25 Q. B. D., 99 ; *Levi* v. *Champion* (1887), 3 T. L. R., 286.

[2] *Wooderson* v. *Tuck* (1887), 4 T. L. R., 57.

[3] *Melville* v. *Mirror of Life* [1895], 2 Ch., 531 ; *Ellis* v. *Marshall* (1895), 11 T. L. R., 522 ; *Ellis* v. *Ogden* (1894), 11 T. L. R., 50.

the understanding will be that the portrait is taken on the photographer's behalf ;[1] but at the same interview some plates might be taken on behalf of the photographer and some on behalf of the sitter.[2] The valuable consideration received by the photographer need not be a money payment, but may consist merely in the right given to him to publish and sell copies.[3]

When a managing director of a company employed A to make drawings for a trade catalogue, the letterpress of which he wrote himself, it was held that he was acting merely as agent for the company, and that as the drawings were made not on his behalf but on behalf of the company he was not the proprietor.[4]

The Assignee.—Assignment is required to be by some note or memorandum in writing signed by the proprietor of the copyright or his agent appointed for that purpose in writing.[5] Registration is not necessary to effect assignment,[6] although the assignee must be registered before he can sue.[7]

No particular words are required in an assignment,[8] but there must be a present grant and not only an executory contract.[9]

Partial Assignment.—It is doubtful whether a copyright can be partially assigned, either limited as to a copying of a particular kind or limited as to place or time.[10] What is called by the parties an assignment may only amount to a licence. In *Lucas* v. *Cooke* [11] the proprietor of the copyright in a picture granted the following document to an engraver : "I assign to you for the purposes of an engraving of one size the copyright of the picture painted by Mr. E. V. Eddie, entitled "Going to Work," and being a portrait of my daughter." Fry, J., said :—

"The result of this instrument in my view was that after the preparation of the engraving and the registration, Mr. Lucas (the engraver)

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

[2] *Ellis* v. *Ogden* (1894), 11 T. L. R., 50.

[3] *Melville* v. *Mirror of Life* [1895]. 2 Ch., 531 ; *Ellis* v. *Ogden* (1894), 11 T. L. R., 50.

[4] *Petty* v. *Taylor* [1897], 1 Ch., 465.

[5] 25 & 26 Vict. c. 68, sec. 3.

[6] *Troitzsch* v. *Rees* (1887), 3 T. L. R., 773 ; and see *Graves'* case (1869), L. R., 4 Q. B., 715.

[7] See p. 172 as to registration.

[8] *London Printing and Publishing Alliance* v. *Cox* [1891], 3 Ch., 291.

[9] See assignment of literary copyright, p. 78.

[10] See as to partial assignment of literary copyright, p. 80.

[11] (1880), 13 Ch. D., 872.

became the owner of the copyright of the print or engraving, and Mr. Halford remained the owner of the copyright of the painting."

It was held that the engraver, in order to succeed against a copyist, would have to show that the alleged infringement was a copy of his engraving, another copy of the picture itself was no infringement of his rights. The transaction was a licence, and probably a licensee can never sue in his own name. In one case,[1] however, Mathew, J., held that a sole licensee for a limited time could sue, and did not require to be registered. The plaintiff had acquired from the proprietor of the copyright in a picture the sole right to reproduce it in chromo for two years. The defendants also produced a chromo of the picture taken directly from the picture and not from the plaintiff's chromo. Mathew, J., held that the plaintiff, as sole licensee, was entitled to prevent any one infringing his right, and that being a licensee and not an assignee, his name was not required to be on the register. This is a very doubtful decision.

SECTION III.—INFRINGEMENT.

Prohibited Acts and Remedies.—The right given is "the sole and exclusive right of copying, engraving, reproducing, and multiplying a painting or drawing and the design thereof, or a photograph and the negative thereof by any means and of any size." [2]

It is an offence for the author having parted with the copyright, or for any other person not being the proprietor [3]—

1. To repeat, copy, colourably imitate or otherwise multiply for sale, hire, exhibition, or distribution.
2. Knowingly to import into the United Kingdom, or sell, publish, let to hire, exhibit, or distribute, or offer for sale, hire, exhibition, or distribution any copy unlawfully made.

[1] *Tuck* v. *Canton* (1882), 51 L. J., Q. B., 363.
[2] 25 & 26 Vict. c. 68, sec. 2.
[3] 25 & 26 Vict. c. 68, sec. 6.

And for any of the above offences an action lies at the instance of the proprietor for [1]—

i. Sum not exceeding £10 on each copy made or dealt with.[2]
ii. Forfeiture of copies to the proprietor.[3]
iii. Inspection and account.[4]
iv. Damages.[5]
v. Injunction.[6]

Penalties and forfeiture of copies may also be obtained by summary proceedings before any two justices having jurisdiction where the party offending resides.[7]

It is further an offence—

3. Innocently to import or sell, publish, let to hire, exhibit, or distribute, or offer for sale, hire, exhibition, or distribution any copy made without the owner's consent.

For any of which an action lies at the instance of the proprietor of the copyright for [8]—

i. Damages.
ii. Delivery up of copies.
iii. Inspection and account. [9]
iv. Injunction.[10]

In addition to sections 6 and 11, where importing is treated as an infringement involving penalties and damages, section 10 contains a direct prohibition against importing copies "made contrary to the provisions of the Act," and on the declaration of the proprietor such copies may be detained by the officers of Customs.[11]

Cause or Procure.—It is equally an offence to "cause or procure" any of the above acts.[12] It may be sometimes difficult to determine whether a person has "caused or procured" within

[1] 25 & 26 Vict. c. 68, secs. 6, 8, 9, 11.
[2] 25 & 26 Vict. c. 68, sec. 6. These penalties are not a civil debt, but in the nature of a fine for a criminal offence; *ex parte Graves* (1868), L. R., 3 Ch., 642.
[3] 25 & 26 Vict. c. 68, sec. 6.
[4] 25 & 26 Vict. c. 68, sec. 9.
[5] 25 & 26 Vict. c. 68, sec. 11.
[6] 25 & 26 Vict. c. 68, sec. 9.
[7] 25 & 26 Vict. c. 68, sec. 8.
[8] 25 & 26 Vict. c. 68, sec. 11.
[9] 25 & 26 Vict. c. 68, sec. 9.
[10] Ibid.
[11] 25 & 26 Vict. c. 68, sec. 10.
[12] 25 & 26 Vict. c. 68, sec. 11.

the meaning of the section. In *Bolton* v. *London Exhibitions*[1] the defendants ordered a poster for the advertisement of their exhibition at Earl's Court; they gave the lithographer a general idea of what was wanted, and told him to do his best. The lithographer, in preparing the poster, infringed the copyright in the plaintiff's photograph of a lion. It was held that as the defendants did not authorise the reproduction of the plaintiff's lion they had not "caused or procured" the infringement complained of; the action against them was therefore dismissed, but without costs, as they should have exercised more care in the matter.

Innocent Agent.—If a publisher procures a printer to strike off copies of an infringement, the printer is liable even although he is entirely innocent. It was argued in *Baschet* v. *London Illustrated*[2] that the printer was only liable if he printed for his own use, and that if another caused or procured him to print, it was only the person causing or procuring who was liable. It was held that both the employers and employees were liable for the same offence.

Unlawful Copy.—If a copy is made in a foreign country in which the proprietor's copyright is not protected, such copy is not a copy "unlawfully made," and therefore no penalties will attach under section 6 for knowingly importing or selling such copy;[3] but under section 11 damages may be sued for, since under that section it is an offence to import or sell copies made without consent, and delivery up may be claimed under the same section, because such copies when offered for sale become unlawful copies although not unlawfully made.[4] The same distinction applies to selling or importing copies made before registration, such copies not being "unlawfully made."[5]

Separate Offence.—Each piratical copy made or dealt with, and not only each transaction, is an offence under section 6, and involves a separate penalty.[6] Blackburn, J., says in *ex parte Beal*:[7]—

"It would be a monstrous absurdity if a man might import a cargo of

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[1] (1898), 14 T. L. R.
[2] [1900], 1 Ch., 73.
[3] *Tuck* v. *Priester* (1887), 14 Q. B. D., 629.
[4] Ibid.
[5] Ibid.
[6] *Ex parte Beal* (1868), L. R., 3 Q. B., 387; *Hildesheimer* v. *Faulkner* [1901], 2 Ch., 552.
[7] (1868), 9 B. and S., 395.

pirated works from France and £10 be the utmost penalty that could be imposed. Such a state of the law would render it worth a man's while to do wrong."[1]

It was held in several cases[2] that as ¼d. was the smallest coin of the realm, the minimum penalty must be ¼d. for each copy. This has now been overruled in the Court of Appeal in *Hildesheimer* v. *Faulkner*,[3] and a fraction of ¼d. can be assessed as the penalty.

Copying for Private Use will probably not be actionable, since the offence is to copy, &c., for sale, hire, exhibition, or distribution.[4] Gratuitous distribution would, however, be actionable.

Action on Breach of Contract.—Although no action may lie for infringement, either because the party aggrieved has no copyright or is not duly registered, there may be a remedy for breach of contract express or implied. Thus if A contract to make copies of B's drawing, even although B has no copyright therein, it is a breach of contract for A to make any copies other than for the use of B.[5] And again, a photographer who has been employed by a customer to take his portrait is not justified in striking off copies of such photograph for his own use, or selling or exhibiting them by way of advertisement or otherwise, without the authority of such customer express or implied, and even although the customer is not registered as proprietor of the photograph.[6]

Fraudulent Acts.—The following acts if committed fraudulently are rendered penal by the Act :[7]—

1. To affix any name, initials, or monogram on any work.[8]
2. To sell, exhibit, &c., a work bearing false name, initials, or monogram.

[1] 9 B. and S., at p. 402.

[2] *Ellis* v. *Marshall* (1895), 64 L. J., Q. B., 757; *Baschet* v. *London Illustrated* [1900], 1 Ch., 73; *Nicholls* v. *Parker* (1901), 17 T. L. R., 482; *Green* v. *Irish Independent* [1899], 1 I. R., 386.

[3] [1901], 2 Ch., 552.

[4] 25 & 26 Vict. c. 68, sec. 6.

[5] *Tuck* v. *Priester* (1887), 19 Q. B. D., 629; *Murray* v. *Heath* (1831), 1 B. and Ad., 804; *Mayall* v. *Higbey* (1862), 1 H. and C., 148.

[6] *Pollard* v. *Photo. Co.* (1888), 4 Ch. D., 345.

[7] 25 & 26 Vict. c. 68, sec. 7.

[8] This offence does not constitute forgery, because a forgery must be a document, and a picture is not a document; *Reg* v. *Closs* (1857), 6 W. R., 109.

3. To represent a copy as the work of an original "author."
4. To sell or publish an altered work as the unaltered work of an original "author."

For any of these fraudulent acts the person aggrieved may recover by action [1]—

i. Sum not exceeding £10 or double the full value of the fraudulent works.
ii. Delivery up of the fraudulent works.
iii. Injunction.

But such penalties will not be incurred if the person whose name or work has been fraudulently dealt with has been dead for more than twenty years.

Limitation of Action.—There is no special limit fixed by the Act of 1862, and therefore the remedy on an offence within the statute will not be barred for six years.[2]

Evidence.—In any action for the infringement of copyright in a picture, it will be sufficient to produce in evidence an authenticated copy of the picture, *e.g.* a photograph with the oral evidence of the photographer.[3]

What is a Piratical Copy.—*No Monopoly.*—There can be no monopoly of the subject-matter of a painting, drawing, or photograph. Another artist may independently represent the same scene or object as that represented in a copyright work.[4]

What is a Copy.—A piratical copy need not necessarily be an artistic work of the same kind as the work pirated. Thus an oil painting is infringed by a photograph of it,[5] and a photograph may be infringed by a pencil sketch.[6] An infringement may consist of either a taking of the design or a taking of the method of execution, or both. Thus an infringement need not even be a kind of work which would be protected by this Act. Although there is no direct authority, it is clear from section 2, which gives the exclusive right to the design of the work protected, that an engraving would be an infringement

[1] 25 & 26 Vict. c. 68, sec. 7.
[2] 16 Jac. I., c. 16, sec. 3.
[3] *Lucas* v. *Williams* [1892], 2 Q. B., 113.
[4] 25 & 26 Vict. c. 68, sec. 2.
[5] *Ex parte Beal* (1868), 3 Q. B., 387.
[6] *Bolton* v. *Aldin* (1895), 65 L. J., Q. B., 120.

of a painting, drawing, or photograph, and so perhaps might a piece of sculpture.[1] Then again the design may not be copyright, for instance, in the case of a photograph of a non-copyright picture, and yet it would be an infringement to take a photograph of such a photograph. That would be a taking of the method of execution.[2]

The infringement must be an artistic work of some kind, *i.e.* such a work that would be protected if not under the Act of 1862, under the Engraving Acts or Sculpture Act. In *Hanfstaengl* v. *Empire Palace*[3] the Court held that the grouping of people on a stage so as to form *tableaux vivants* was not an infringement in the copyright of a picture thus represented. Kay, L.J., in his judgment, said :—

"Could it possibly have been said the *tableaux vivants* were pictures within the sense of this Act, and does not a reproduction mean something in which, if the original author of the painting had himself produced it, he might have had copyright."

General Idea may be Taken.—It is not an infringement to take merely the general idea of subject-matter and treatment from a copyright work of art. In *Hanfstaengl* v. *Baines*,[4] the *tableaux vivants* which were the subject of the last case cited were sketched and reproduced in the *Daily Graphic*. It was contended that these sketches infringed the copyright in the pictures from which the *tableaux vivants* were taken. The House of Lords, affirming the judgment of the Court of Appeal, held that they did not. Lord Herschell, L.C., in giving judgment, pointed out that the essence of the design varied according to the nature of the picture. Sometimes it might be principally in the grouping of the figures, sometimes in the pose and countenances. Referring to one of the sketches complained of, he said :—

"There is no doubt a resemblance between the sketch and the photograph from the painting. In each case a young man and a young woman

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[1] But see *Hanfstaengl* v. *Baines* [1895], A. C., 20; *Hanfstaengl* v. *Empire Palace* [1894], 2 Ch., 1; [1894], 3 Ch., 109.

[2] *Graves'* case (1869), L. R., 4 Q. B., 715; cf. the case of the photograph of an engraving, *Gambart* v. *Ball* (1863), 14 C. B. (N.S.), 306; *Graves* v. *Ashford* (1867), L. R., 2 C. P., 410.

[3] [1894], 2 Ch. 1.

[4] [1895], A. C., 20.

are standing beside one another close to a stile or fence. In each case the woman is shading her head by a parasol, and the dress of the man is somewhat similar in the two, but the idea of a young man courting a young woman at a country stile is of great antiquity. It has often formed the subject of pictorial representation. This cannot be said to be the design of the plaintiff's painting within the meaning of the Act. Much more must be comprehended than this. There can only be a copy of such design if the treatment of the subject be the same. Now, comparing the sketch of the photograph from the painting, I do not think this can be said to be the case. The faces are different, the dress especially in the case of the woman is different, the pose is different, the attitudes are different, the backgrounds are different, and in the case of the sketch the foreground is wanting. In the artistic design all these things play a part, although I do not say that a variation in one or even more of these respects would prevent the sketch being a copy of the design. Yet, comparing the two and considering the design of the painting as a whole, I cannot avoid the conclusion that the sketch is not a copy of the painting or of the design thereof, and therefore there has been no infringement."

His lordship concluded by saying that such questions really depended on the effect produced on the mind by a study of the picture and of that which is alleged to be a copy of it. In *Guggenheim* v. *Leng*[1] the plaintiff was the owner of the copyright in a photograph of a football team. The defendant, without authority, made from the photograph rough sketches of the various individual portraits, and published them in his newspaper. It was held not to be an infringement.

Material Part.—There is no piracy of an artistic work unless a material part of the work is taken. What amounts to a material part must be a question of fact in each case, and it is impossible to lay down any definite rule. In *Moore* v. *Clarke*[2] a horse was taken from a copyright print and inserted in another print among different surroundings. In the second print the horse appeared to be going in a different direction, and the jockey on his back was differently dressed. The judge directed the jury to consider whether the defendant's engraving was substantially a copy of the plaintiff's, and the jury came to the conclusion that it was not. In *Brooks* v. *Religious Tract Society*[3] a collie dog, identical in expression, attitude, and position, was, together with a wall in

[1] (1896), 12 T. L. R., 491. [2] (1842), 9 M. & W., 692.

[3] (1897), 45 W. R., 476; see also *West* v. *Francis* (1822), 5 B. and Ald., 737; *London Stereo* v. *Kelly* (1888), 5 T. L. R., 169; *Bolton* v. *London Exhibitions* (1898), 14 T. L. R., 550.

the background and a table, taken from a copyright picture and inserted in a woodcut. The woodcut differed from the picture in that the figure of a child was omitted, and in its place two cats and a tortoise and other details were inserted. Romer, J., held that there was a piracy :—

"It was not only the dog that was taken, but also the feeling and artistic character of the plaintiff's work. . . . If a person were to take an historical picture, and take out of it the principal figure, and reproduce that figure without the other surroundings, that would be an infringement. The present case was a stronger case, because the defendants had not only taken the principal figure of a dog, but copied as well the sentiment of the picture."

Indirect Taking.—It is equally an infringement although the copying is indirect.[1] Thus, for instance, the photograph of an engraving may infringe the copyright of the picture from which it is taken.[2]

Guilty Knowledge.—It is no defence to say that the taking was an innocent one and unintentional.[3] In the case of a claim for penalties in respect of importing or selling piratical copies, knowledge of infringement must necessarily be proved, but in no other case. But the question of intention cannot always be wholly disregarded, as it may guide the Court in determining whether the alleged infringement is a copy or not.[4]

Replicas.—It is an infringement of the proprietor's right for an author who has parted with his copyright to make a replica of the work; but if he has made replicas before selling his copyright it would be no infringement to sell these replicas. *Quære* whether it would be an infringement after selling his copyright in the original work to take photographs or engravings of the replicas; probably it would.

Licence a Defence.—Licence must be in writing, signed by the proprietor of copyright or by his agent authorised in writing;[5] but probably an oral consent would be a good defence.[6]

[1] *Hanfstaengl* v. *Baines* [1895], A. C., 20; *ex parte Beal* (1868), L. R., 3 Q. B., 387; *Turner* v. *Robinson* (1860), 10 Ir. Ch., 121, 510.

[2] *Ex parte Beal* (1868), L. R., 3 Q. B., 387.

[3] *Brooks* v. *Religious Tract Society* (1897), 45 W. R., 476; *West* v. *Francis* (1822), 5 B. and Ald., 737.

[4] *Hanfstaengl* v. *Empire Palace* [1894], 3 Ch., 109.

[5] 25 & 26 Vict., sec. 3.

[6] 25 & 26 Vict., sec. 6.

An assignee is not bound by a licence granted by the assignor before the assignment, unless he has notice of it.[1]

The licensee will be kept strictly within the limits of his licence. When a licence was granted to reproduce a photograph in one magazine, it was held an infringement of copyright to reproduce it in another, and the contention that there was a custom in the publishing trade allowing this to be done on tender of payment was characterised as ridiculous.[2]

[1] *London Printing and Pub. All.* v. *Cox* [1891], 3 Ch., 291.

[2] *Nicholls* v. *Parker* (1901), 17 T. L. R., 482; and see *Guggenheim* v. *Leng* (1896), 12 T. L. R., 491.

CHAPTER IX

COLONIAL COPYRIGHT

EVERY British Possession has the power to legislate independently as regards the protection within its own territory of literary or artistic works first produced therein.[1] In respect of such works they may either limit or extend the protection afforded by the Imperial Acts. Most of our larger colonies have local Acts.[2] Some of the colonies[3] have, for instance, created a copyright in the news contained in foreign telegrams, a monopoly unknown under the Imperial Acts. It is not proposed here to deal with the colonial local Acts. They are of interest only in the various colonies themselves. This chapter will be restricted to the rights of a work published in one part of the British dominions to receive protection in any other part of the British dominions. This is controlled by the Imperial Copyright Acts, which extend since 1886 to every British Possession, and protect works published anywhere therein apart from any local legislation.

Books.—Before 1886, the Copyright Act, 1842, although it applied to the whole of the British dominions, only protected those books which were first published in the United Kingdom. A book, therefore, published first, say in Canada or Australia, received no copyright protection except by local legislation, if any, within the territory of the particular colony where it was first published.

A book first published in the United Kingdom was protected in every British colony, not only against copying but against

[1] 49 & 50 Vict. c. 33, sec. 8 (4).

[2] The following colonies have local legislation: India, Ceylon, Canada, the Australian Colonies, New Zealand, Cape of Good Hope, Natal, Hong Kong, Tasmania, Newfoundland.

[3] Australian Colonies, Tasmania, Cape of Good Hope, Natal, New Zealand, Hong Kong, Ceylon. The period of protection in foreign telegrams varies from 24 to 120 hours in the respective colonies.

the importation of reprints. The smaller and poorer colonies found this a considerable grievance. They alleged that they were unable to afford the price of English books, and that as they were prohibited from importing foreign reprints and had little or no contemporary literature of their own, they were reduced to reading the classics or nothing at all. The Colonial Copyright Act, 1847,[1] was passed to give them relief. It enacts that when reasonable protection to the British author shall be provided in any British possession by the legislature of such possession, Her Majesty may, by Order in Council, declare that so long as such protecting provision shall be in force all Acts prohibiting the importation or sale or hire of foreign copies shall be in respect of such possession suspended. Altogether twenty colonies[2] have taken advantage of this Act. It has been found, however, that the protecting provisions are of little value, and that the duties which are supposed to be levied on foreign reprints for the benefit of the British author are continually evaded, and the colonies under the Foreign Reprints Act are overrun with foreign reprints of popular books which, coming in practically free of duty, make the authors' copyright in such colonies absolutely valueless.

Books first published in the colonies received Imperial protection in 1886, when the International Copyright Act[3] of that year was passed. It enacts that the Copyright Acts shall apply to a literary or artistic work first produced in a British Possession in like manner as they apply to a work first produced in the United Kingdom,[4] with a proviso, firstly, that the enactments as to registration shall not apply if the law of the Possession in question provides for registration; and, secondly, that no delivery of copies shall be required. There is also a provision

[1] 10 & 11 Vict. c. 95, usually known as the Foreign Reprints Act.

[2] The following are the colonies now under the provisions of the Foreign Reprints Act, 1847. The dates are of the respective Orders in Council. Bermuda, February 13, 1849; Bahamas, May 21, 1849; Newfoundland, July 30, 1849; St. Christopher, November 6, 1849; Antigua, June 19, 1850; St. Lucia, November 13, 1850; British Guiana, October 23, 1851; Mauritius, April 1, 1853; Grenada, December 29, 1853; Nevis, March 10, 1855; Cape of Good Hope, March 10, 1855; Natal, May 16, 1857; Jamaica, April 23, 1859; Trinidad, March 17, 1875; Barbados, August 15, 1890; St. Vincent, August 26, 1881.

[3] 49 & 50 Vict. c. 33, sec. 8.

[4] The following colonies have provided a system of registration: Canada, New South Wales, Victoria, Western Australia, Queensland, South Australia, Natal, Cape of Good Hope.

for evidence of colonial copyright by certified extract from the colonial register.

Canada came under the Foreign Reprints Act, and, as a result, was so inundated with cheap reprints from the United States that the Canadian publishers, in 1875, obtained a local Act for their protection.[1] This Act enacts that works of which the copyright has been granted and is subsisting in the United Kingdom, and copyright of which is not secured or subsisting in Canada under any Canadian or provincial Act, shall, upon being printed and published or reprinted and republished in Canada, be entitled to copyright under the Canadian Act.[2] It prohibits *inter alia* copying and importation of foreign copies, but nothing in the Act is to be held to prohibit the importation from the United Kingdom of copies of such works legally printed there. The Canadian Act is confirmed by an Imperial Act, the Canada Copyright Act, 1875,[3] and this enacts that the Canadian copies of a British book may not be imported into the United Kingdom without the author's consent.

Although Canada came under the Foreign Reprints Act, 1847,[4] and in accordance therewith imposed duties on foreign reprints for the benefit of the owner of the copyright, the collection of those duties has now been abandoned by the Tariff Customs Act (Canada), 1894,[5] the result of which is that as regards Canada the provisions of the Imperial Copyright Act, 1842,[6] section 17, are revived and the importation of foreign copies of works having an Imperial copyright is again prohibited.[7] The same result will occur in other colonies which may by statute abandon their enactments for the collection of authors' duties.

The Canadian Legislature has recently passed a Copyright Act[8] purporting to affect the importation into Canada of books published under an Imperial Copyright. The Act provides that if a book has acquired Imperial Copyright by first publication in the British dominions outside Canada, and a licence has been

[1] Printed as a schedule to 38 & 39 Vict. c. 53.
[2] 39 & 40 Vict. c. 36, sec. 152.
[3] 38 & 39 Vict. c. 53.
[4] 10 & 11 Vict. c. 95.
[5] 57 & 58 Vict. (Canada), c. 33.
[6] 5 & 6 Vict. c. 45, sec. 17.
[7] *Morang* v. *Publishers* (1900), 32 Ont. Rep., 393.
[8] 63 & 64 Vict. (Canada), c. 25, known as the Fisher Act.

granted for its reproduction in Canada, the Canadian Minister of Agriculture may prohibit the importation into Canada of any copies of such book printed out of Canada and imported without the licensee's consent.

I think it is doubtful whether the last-mentioned Act is not *ultra vires* of the Canadian Legislature. The Canadians have, since the British North American Act, 1867, claimed that they have the exclusive power of legislating in respect of and regulating copyright within the Dominion of Canada. This claim, however, has not been recognised in the Canadian courts. In *Smiles* v. *Belford*[1] a book was copyrighted in England, but not under the local Act of 1875 in Canada. An action was brought by the proprietor to restrain a reprint of the book in Canada. The defendants pleaded that the book was not protected in Canada since it was not copyrighted under the local Act. They argued that the British North American Act, in giving to the Parliament of Canada "exclusive legislative authority" in certain matters, including copyrights, excluded the operation of the Imperial Acts in Canada. They further argued that the confirmation of the Canadian Copyright Act, 1875, by the Imperial Parliament impliedly repealed the Imperial Copyright Act of 1842 in so far as it extended to Canada. The Court held that neither of these arguments was sound. With reference to the argument on the British North American Act, Burton, J.A., in the Court of Appeal, said:—

"It is clear, I think, that all the Imperial Act intended to effect was to place the right of dealing with colonial copyright within the Dominion under the exclusive control of the Parliament of Canada, as distinguished from the provincial legislatures. . . . I entirely concur with the learned Vice-Chancellor in the opinion he has expressed that under that Act no greater powers were conferred upon the Parliament of the Dominion to deal with this subject than had been previously enjoyed by the local legislatures."

As regards the Imperial Act confirming the Canada Copyright Act, 1875, the Court held that it was passed merely to resolve doubts which would otherwise have arisen as to whether the Canada Copyright Act was not repugnant to the provisions

[1] (1876), 1 Tupp. App. Rep., 436.

of the Foreign Reprints Act, 1847, and the Order in Council thereunder applicable to Canada. Burton, J.A., said :—

"It is scarcely reasonable to suppose that if the Imperial Parliament had thought fit to accept the Canadian enactment as a substitute for the 5 & 6 Vict. they would not have repealed it so far as it affected Canada in express terms, or that when stating a reason for Imperial legislation they would have confined themselves to a reference to the Order in Council, which dealt only with a portion of the prohibition referred to in that statute. I am of opinion, therefore, that they have stated the only reason which rendered it expedient to seek a confirmation of the Provisional Act, and that it was intended to preserve intact so much of the Imperial Act as prohibits the printing of a British copyright work in Canada, but giving to the author a further right on certain conditions of securing a Canadian copyright and thus preventing the importation into Canada of foreign reprints."

For some considerable time before the passing of the Canadian Act of 1900, the Canadians were negotiating for a clause in the Copyright Bill in this country enabling them to pass a similar provision to that which they have now passed without Imperial sanction. A clause was inserted in Lord Monkswell's Literary Copyright Bill, 1900, proposing to give to all the colonies such a power of protecting licensees. The Canadians, however, impatient of the delay in copyright reform in this country, passed their own Act without waiting to obtain authority. It would certainly be satisfactory to see it confirmed by an Imperial statute.

Summary of Provisions in respect of Books.—The result of the various enactments with reference to the colonies is that, as regards copying, every book first published in any part of the British dominions is protected in every other part of the British dominions. The book must be duly registered either in the colony or dependency where it is produced, or, if such colony or dependency does not provide a proper system of registration, at Stationers' Hall in London. The protection within the colony in which a book is first produced depends on local legislation if such overrides the Imperial legislation. As to importation of copies, the result is not so simple, but it may be summarised thus :—

If a book has been first published anywhere within the British dominions, the following prohibitions apply :

I. *The United Kingdom.*—There shall not be imported into, or sold in, without the consent in writing of the owner of the copyright—

Copies printed outside the British dominions.[1]

Copies printed in Canada under the Canadian Act.[2]

II. *Canada.*—If the book has been printed and published, or reprinted and republished,[3] and registered in Canada, there shall not be imported into, or sold in, without the consent in writing of the owner of the copyright—

Copies printed outside Canada[4] unless legally printed in the United Kingdom under an Imperial copyright existing prior to the acquirement of a Canadian local copyright.[5]

If a book has acquired Imperial copyright by first publication within the British dominions outside Canada, and the owner of the copyright has granted a licence to reproduce it in Canada, there shall not be imported (if the Minister of Agriculture so order) without the consent in writing of the Canadian licensee—

Copies printed outside Canada.[6]

In other cases these shall not be imported or sold without the written consent of the owner of the copyright—

Copies printed outside the British dominions.

III. *Colonies under the Act of* 1847 *other than Canada.*—There is no prohibition except the nominal import duty on copies printed outside the British dominions.

IV. *Other Colonies.*—There shall not be imported into or sold in without the consent in writing of the owner of the copyright—

Copies printed outside the British dominions.[7]

Artistic Works.—We have seen that since the International Copyright Act, 1886, there is complete protection throughout the whole of the British dominions for books first published anywhere therein. It was evidently intended that artistic works should be placed on the same footing, but unfortunately the distinction between the literary and artistic Acts was overlooked.

[1] 5 & 6 Vict. c. 45, sec. 17; 39 & 40 Vict. c. 36, sec. 152.
[2] 38 & 39 Vict. c. 53, sec. 4.
[3] The type need not be set in Canada; *Froude* v. *Parish* (1896), 27 Ont. Rep., 526.
[4] 38 & 39 Vict. c. 53, schedule, sec. 15.
[5] *Anglo-Canadian* v. *Suckling* (1889), 17 Ont. Rep., 239.
[6] 63 & 64 Vict. (Canada), c. 25.
[7] 5 & 6 Vict. c. 45, sec. 17.

The Copyright Act, 1842, protected books published in the United Kingdom, but expressly extended the protection to the whole of the British dominions. None of the artistic copyright Acts extend their protection beyond the United Kingdom. The Engraving Acts expressly limit their protection to the United Kingdom;[1] the Paintings, Drawings, and Photographs Act expressly limits its remedies to the United Kingdom;[2] and the Sculpture Act is silent as to the extent of its protection.[3] The result seems to be that although since 1886 all works of art first published anywhere throughout the British dominions will be protected by Imperial legislation, that protection extends no further than the United Kingdom. This has been decided by a divisional Court in Canada in respect of the Paintings, Drawings, and Photographs Act, 1862.[4] The decision will apply *a fortiori* to engravings. Sculptures may be different, in that there is no express limit contained in the Sculptures Act; but probably a limitation of protection to the United Kingdom will be implied. The result is that artistic works are only protected in the Colonies and dependencies under local legislation.

[1] See p. 146, *supra*.
[2] See p. 167, *supra*.
[3] See p. 161, *supra*.
[4] *Graves* v. *Gorrie* (1900), 32 Ont. Rep., 266.

CHAPTER X

INTERNATIONAL COPYRIGHT

Works first produced in His Majesty's Dominions are protected in those foreign countries with which there is a treaty for the mutual protection of literary and artistic rights. These countries are the signatories of the Berne Convention,[1] and Austria-Hungary, with which there is a separate treaty on similar lines. Generally it may be presumed that each of these countries has by domestic legislation given full effect to the international agreement, and that all works which are protected in this country, and would have been protected if first produced in the foreign country in question, will receive the same protection there as would be accorded to a work first produced in such foreign country. The protection, however, must be sought in the foreign country and not here. The Courts of this country will not grant any redress for the infringement of a British author's copyright in a foreign State, even although such infringement be perpetrated by a British subject resident in England.[2]

Works first produced in foreign countries with which this country has no treaty are in no way protected from infringement in the United Kingdom, unless they are produced within His Majesty's dominions simultaneously with their production elsewhere.[3]

Works first produced in foreign countries with which this country has a treaty are protected from infringement in His Majesty's dominions by the domestic legislation of the United Kingdom.

Before December 6, 1887, foreign works were protected by virtue of the International Copyright Acts of 1844, 1852, and

[1] See p. 194, *infra*.
[2] *Morocco Bound Syndicate* v. *Harris* [1895], 1 Ch., 534.
[3] 7 & 8 Vict. c. 12, sec. 19; *Boucicault* v. *Delafield* (1863), 1 H. and M., 597.

1875, and numerous Orders in Council, now revoked, giving effect to treaties with various foreign States. As the subsequent provisions under the International Copyright Act, 1886, are retrospective, it is unnecessary to examine the old law in any detail. On one important point, however, it will be necessary to mention some of the provisions of the International Copyright Acts which were applicable before December 6, 1887, since the subsequent legislation, in giving protection to works which were produced before that date and were then unprotected, enacts that its retrospective effect shall not prejudice rights and interests lawfully acquired before it came into operation. The law before 1887 has to be examined to determine what these rights and interests are.

Since December 6, 1887, the rights of foreign authors in His Majesty's dominions have depended on the provisions of the International Copyright Acts of 1844, 1852, 1875, and 1886, the Berne Convention of 1887, and an Order in Council of November 28, 1887. To these are now added the Additional Act of Paris, 1896, and an Order in Council of March 7, 1898. These may now all be read together, and apply to all foreign works first produced in the countries to which they are applicable. It should be mentioned here that Austria-Hungary has a convention of its own, and in dealing with works produced there that convention and the Orders in Council giving it effect must be substituted for the Berne Convention and Additional Act of Paris and the Orders in Council above mentioned. Norway has not become a signatory of the Additional Act of Paris, and therefore in dealing with works produced there the Berne Convention must be read as unmodified by the Additional Act.

It is proposed to deal here in detail with the provisions of the Acts, Orders in Council, and treaties as they apply to the majority of the foreign countries, *i.e.* those which are signatories of the Berne Convention and the Additional Act of Paris. As regards Norway and Austria-Hungary the law differs very slightly. The law applicable to Norway can easily be ascertained by reading the Berne Convention without the Additional Act. The law applicable to Austria-Hungary is almost identical, except that it affords protection in the United Kingdom and all

colonies except Canada, the Cape, New South Wales, and Tasmania, and not in the whole of His Majesty's dominions, as in the case of the signatories to the Berne Convention.

The countries whose works are protected in His Majesty's dominions are as follows:—

Germany Belgium Spain France Haiti Italy Switzerland Tunis Monaco Luxembourg Japan	Signatories of the Berne Convention, 1887, and Additional Act of Paris, 1896.
Norway	Signatory of the Berne Convention, 1887.
Austria-Hungary	Having a separate convention, April 24, 1893; given effect to by Orders in Council, April 30, 1894, and February 2, 1895.

What Foreign Works are entitled to Protection.—Those works are protected which are first produced in any of the foreign countries of the Union, and which—

(*a*) Are protected by the law of the country of origin, and:

(*b*) Would have been protected in the United Kingdom if first produced in the United Kingdom.

Produced.—"Produced" means, as the case requires, published or made, or performed, or represented,[1] or, in other words, the act which is deemed to vest the author or publisher of the work with exclusive rights of reproduction or publication. Thus in the United Kingdom a book or an engraving or sculpture is

[1] 49 & 50 Vict. c. 33, sec. 11.

produced when it is first published. A painting is produced when it is made. A musical or dramatic work as regards the performing right is probably produced[1] when it is first performed or represented. But it would seem that, in considering when a work is produced, the law of the foreign country or countries in question must first be inquired into, and it will be considered to be produced in the country where an act is done which first invests it with protection in the nature of copyright.

If a work is produced simultaneously in two or more countries of the Union, it is deemed to be first produced in that country where the term of copyright accorded to it is shortest. And if a work is produced simultaneously in His Majesty's dominions and in one or more of the foreign countries of the Union, and according to the above rule is deemed to be first produced in a foreign country, it will be protected under the International Acts and not under the Copyright Acts applicable to works first produced in the United Kingdom, and *vice versâ*. If a work is produced simultaneously in a foreign country not within the Union and in a foreign country within it, it would no doubt be deemed to be first produced in the foreign country within the Union, although there is no legislative enactment to this effect.

Character of Work.—In order to obtain protection in this country, a foreign work must be such as is protected in the country of origin.[2] In each case, therefore, it is necessary to inquire into the laws of the country where the work is deemed to have been first produced.[3]

The work must also be such as would have obtained protection if first produced in the United Kingdom,[4] and it is therefore necessary in each case to inquire also into the law of this country.[5]

Unpublished Works.—Unpublished works of foreign authors are expressly included in the convention as works entitled to protection.[6] If, therefore, they are protected in the country of

[1] See p. 129.

[2] Berne Convention, Arts. 2, 14; 49 & 50 Vict. c. 33, sec. 2 (3); Order in Council, Nov. 28, 1887, sec. 3.

[3] *Hanfstaengl* v. *Empire Palace* [1894], 3 Ch., 109.

[4] Additional Act of Paris, Art. I. 1; Berne Convention, Art. 13.

[5] *Hanfstaengl* v. *Empire Palace, ubi supra.*

[6] Additional Act of Paris, Art. I. 1.

origin, and would be protected if they had been the works of British authors, they are entitled to protection within His Majesty's dominions. In the case of unpublished works the country to which the author belongs is considered the country of origin.[1]

Special Provisions.—There is also express stipulation in the conventions as to the inclusion of the following works :—

Posthumous works :[2]

Authorised translations (to be protected as original works) :[3]

Photographic works and works produced by an analogous process :[4]

Choregraphic works.[5]

Works produced in Foreign Countries before December 6, 1887.—As is explained above the international treaties and domestic legislation in this country are retrospective, and apply to all works whenever produced. The International Act, 1886, sec. 6 (1),[6] provides that--

"When 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."

The Berne Convention, article 14, provides that—

"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."[7]

It was suggested that these retrospective provisions only applied to works produced between the date of the Act of 1886 and December 6, 1887, *i.e.* the date at which the Order in

[1] Berne Convention, Art. 13. [2] Additional Act of Paris, I. 1.
[3] Berne Convention, Art. 6; 49 & 50 Vict. c. 33, sec. 5 (3).
[4] Additional Act of Paris, II. 1.
[5] *i.e.* works delineating the steps in a dance or ballet. Berne Convention, Final Protocol (2).
[6] 49 & 50 Vict. c. 33, sec. 6.
[7] See also Berne Convention, Final Protocol (4); Order in Council, Nov. 28, 1887, sec. 3; Additional Act of Paris, Art. II. 2.

Council of November 28, 1887, came into operation.[1] Charles, J., however, refused to accept such a construction, and said that he felt no doubt that section 6 of the International Copyright Act, 1886, applied to all literary and artistic works produced before the date at which the Order in Council came into operation, whether they were produced before or after the passing of the Act.[2]

In *Lauri* v. *Renad*[3] it was held by the Court of Appeal that when under the older law a right of translation in this country had existed, and had expired by lapse of time, the Act of 1886 would not operate to revive such a right, even although the rights of reproduction and translation still subsisted in the country of origin. This is generally thought to be an unsound decision, as the proper test in such cases is whether the right has fallen into the public domain, not in this country but in the country of origin.

Formalities required in case of Foreign Works.—

In the Country of Origin—

All such formalities must be observed as are necessary to entitle to protection under the domestic law of such country.[4]

In the United Kingdom—

1. Registration or delivery of copies to the libraries is unnecessary.[5]
2. Musical works must bear a notice of reservation on each authorised copy, otherwise the performing right will be lost.[6]
3. Whether other formalities such as name and date of publication on an engraving,[7] name and date on sculpture,[8] are necessary *quære*.

Before 1886 registration and delivery of copies of a foreign work was required by the Act of 1844[9] and various Orders in

[1] *Lauri* v. *Renad* [1892], 3 Ch., 402.
[2] *Hanfstaengl* v. *Holloway* [1893], 2 Q. B., 1.
[3] [1892], 3 Ch., 402.
[4] Berne Convention, Art. 2; 49 & 50 Vict. c. 33, sec. 2 (3).
[5] 7 & 8 Vict. c. 12, sec. 6; 49 & 50 Vict. c. 33, sec. 4; Order in Council, Nov. 28, 1887; *Hanfstaengl* v. *American Tobacco Co.* [1895], 1 Q. B., 347.
[6] Berne Convention, Art. 9.
[7] 8 Geo. II. c. 13.
[8] 54 Geo. III. c. 56.
[9] 7 & 8 Vict. c. 12, sec. 6.

Council in pursuance thereof. The Act of 1886, however, enacts[1] that the provisions of the Act of 1844 as to registration and delivery shall not apply to works produced in a foreign country except in so far as provided by the Order in Council referring thereto. The Order in Council of 1887[2] makes no provision as to registration and delivery, and revokes all the previous Orders in Council which did. In *Fishburn* v. *Hollingshead*[3] the question came before the Court whether since 1886 any registration or delivery was necessary. Stirling, J., held that although none of the formalities prescribed by the International Copyright Act of 1844[4] need be observed, yet a foreign work must comply with the provisions of the Copyright Acts as to registration and delivery applicable to works first produced in this country. His *ratio decidendi* was that a foreign work was only entitled to the protection afforded to natives,[5] and the Act of 1844[6] provided that all and singular the enactments of the Copyright Acts in this country should apply to foreign works in such and the same manner as if such works were published in the United Kingdom. Charles, J., in *Hanfstaengl* v. *Holloway*[7] differed from this view, and finally the Court of Appeal in *Hanfstaengl* v. *American Tobacco Company*[8] held that no registration in this country was necessary. The ground of this decision is that the enactments of 1844 as to registration of foreign works superseded the enactments of 1842, and when the provisions of 1844 were repealed the provisions of 1842 did not revive. This reasoning, which appears to be undoubtedly sound, applies equally to the provisions as to delivery of copies. It does not, however, apply to the question whether such formalities as the name and date of publication on an engraving are necessary. At present the position seems to be this. The reasoning of Stirling, J., in *Fishburn* v. *Hollingshead*[9] equally applies to the formalities as to name and date on engravings and sculpture as it does to registration and delivery. The judgment of Stirling, J., was overruled in *Hanfstaengl* v. *American Tobacco Company*[10] in

[1] 49 & 50 Vict. c. 33, sec. 4.
[2] November 28, 1887.
[3] [1891], 2 Ch., 371.
[4] 7 & 8 Vict. c. 12, sec. 6.
[5] Berne Convention, Art. 1.
[6] 7 & 8 Vict. c. 12, secs. 3, 4, 5.
[7] [1893], 2 Q. B., 1.
[8] [1895], 1 Q. B., 347.
[9] [1891], 2 Ch., 371.
[10] [1895], 1 Q. B., 347.

the Court of Appeal, but on grounds which do not apply to these formalities. As to them, therefore, the judgment of Stirling, J., stands. It is very doubtful whether this is the correct view of the law, but it is submitted that until *Fishburn* v. *Hollingshead*[1] is further overruled the law is that formalities under heading 3 *supra* are necessary. In *Avanzo* v. *Mudie*[2] it was held that a foreign print could not claim copyright under 7 & 8 Vict. c. 12, unless the date and name were engraved thereon as required by 8 Geo. II. c. 13. Mr. Scrutton, whose opinion in these matters carries great weight, thinks that these formalities are not required.[3] As a matter of expediency they should always be observed where practicable.

Who are entitled to sue in respect of a Foreign Work.—The author of a foreign work or his assignee is probably entitled to sue in the case of all foreign works which are protected in this country.[4]

The publisher of a foreign work published anonymously or pseudonymously is entitled to sue if his name is indicated on the work.[5]

Evidence of Title.—Where the name of the author is indicated on a foreign work or in the case of an anonymous or pseudonymous work the name of the publisher, such author or publisher is, in the absence of proof that he is disentitled, entitled to sue in respect of such foreign work.[6]

An extract from a register, or a certificate or other document authenticated by the official seal or signature of a minister of state of the foreign country of origin, or of a British diplomatic or consular officer, lawfully acting in such foreign country, is admitted as *primâ facie* evidence of the owner of the copyright.[7]

Protection afforded to Foreign Works.—Generally a foreign work is accorded—

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[1] [1891], 2 Ch., 371.
[2] (1854), 10 Ex., 203; and see *Cassell* v. *Stiff* (1856), 2 K. and J., 279.
[3] Scrutton on "Copyright," 3rd ed., p. 213.
[4] Additional Act of Paris, 1896, Art. 11.
[5] Berne Convention, Art. 11.
[6] Ibid.
[7] 49 & 50 Vict. sec. 7.

1. The same right of copyright and during the same period as if the work had been first produced in the United Kingdom :[1] but
2. No greater right or longer term of protection than it enjoys in the country of origin.[2]

Section 10 of the International Copyright Act, 1844,[3] provides that all copies of foreign books in which there is copyright under the International Acts, if printed or reprinted in any foreign country *except the country of origin*, shall not be imported into the British dominions without the consent of the proprietor. It has been held,[4] however, that this section does not supply a complete code as to the importation of copies of a foreign book, and that copies printed in the country of origin will also be prohibited in the same way as if the book had been first published in the United Kingdom. Section 3 of the International Copyright Act, 1844, applies to foreign works, *inter alia*, the provisions 5 & 6 Vict., sections 15 and 17, which prohibit the importation of any copies printed outside the British dominions. Section 10 was held not to curtail the general application in section 3 of the provisions of the Copyright Act, 1842, to foreign books.

As to certain foreign works which are dealt with below, there is express provision in the International legislation which results in giving such foreign works a narrower right or shorter term than they would have if first published in this country. Where there is no express limitation, the above general rules apply. The law of both the country of origin and of the United Kingdom must be examined, and the right given will be limited according to the law which affords least protection. Where, however, according to this rule there is a right, the Courts here will give the same remedies as they would extend to the author of a work first published in the United Kingdom. Thus in *Baschet* v. *London Illustrated Standard*,[5] Kekewich, J., refused to consider

[1] Additional Act of Paris, Art. I. 1 ; Order in Council, November 28, 1887, sec. 3 ; 7 & 8 Vict. c. 12, secs. 2, 3, 4 ; 49 & 50 Vict. c. 33, sec. 9.

[2] Berne Convention, Art. 2 ; Order in Council, November 28, 1887, sec. 3 ; 49 & 50 Vict. c. 33, sec. 2 (3).

[3] See also Revenue Act, 1887.

[4] *Pitt Pitts* v. *George* [1896], 2 Ch., 866.

[5] [1900]. 1 Ch., 73.

whether a French Court would or would not award penalties for infringement.

Works published before December 6, 1887, are protected, except in so far as such protection may prejudice rights or interests arising from or in connection with works lawfully produced before, and subsisting and valuable at, that date.[1]

This limitation is introduced by the retrospective section of the Act of 1886, which enacts 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."

The following are some of the classes of literary or artistic works which were not protected before 1886 but to which the retrospective section and its saving clause applies :—

i. Works not registered in this country under the International Copyright Act, 1844, section 6.[2]
ii. Works which had not acquired the translating right under the International Copyright Act, 1852, sections 2, 4, 8.
iii. Dramatic works, as to the liberty to make fair imitations or adaptations to the English stage under the International Copyright Act, 1852, section 6.

"Lawfully Produced" means that the work has been produced without contravening any right existing at the date of its production.[3]

"Rights" and "Interests" are to be distinguished, the latter word bearing a wider interpretation than the former. Right does not mean the right to reproduce in common with all mankind, but right in the strict legal sense of the term under the English Copyright Acts, *i.e.* an exclusive right of property.

When any capital has been embarked in the production of a work, and the publisher depends on the sale of copies in stock

[1] 49 & 50 Vict. c. 33, sec. 9.
[2] See *Cassell* v. *Stiff* (1856), 2 K. and J., 279.
[3] *Per* A. L. Smith, J., in *Moul* v. *Groenings* [1891], 2 Q. B., 443.

or on the proceeds of a future edition to recoup himself for his outlay, there is clearly an interest although there may be no right. Where a bandmaster had purchased a copy of a French musical composition and instructed his band to perform it, he was held to have such an interest as would entitle him to continue performing it after the French composer had acquired protection under the Act of 1886.[1] Even where no capital has been embarked, if the publisher has a special interest as distinct from the rest of the public in the reproduction of the work, he has an interest within the meaning of the section.[2] Thus where a firm had adopted a German picture as a trade mark for their candles, they were held to have such an interest in the reproduction as would constitute a good defence to an action for infringement of copyright acquired under the retrospective operation of the Act of 1886.[3] It has been suggested that not only the interests of the lawful producer will be safeguarded, but also interests arising in a third person from or in connection with such production, and this seems to be sound.[4]

Translating Right expires if not exercised within ten years.

The exclusive right of translation is expressly given to the foreign author by the Act of 1886 and the Additional Act of Paris for the full term of his copyright in the original work, but if an authorised translation in the English language is not published after the expiration of ten years next after the end of the year in which the work was first produced the translating right of the author shall cease.[5] If a book is published in numbers, the ten years run from the date of publication of the last part.[6] When a book is composed of a number of volumes, each volume is considered as a separate work.[7] A translation in order to preserve the translating right must be full and substantial.[8] A translation might be such as, if made without the consent of the

[1] *Per* A. L. Smith, J., in *Movl* v. *Groenings* [1891], 2 Q. B., 443.

[2] *Schauer* v. *Field* [1893], 1 Ch., 35; *Hanfstaengl* v. *Holloway* [1893], 2 Q. B., 1.

[3] *Schauer* v. *Field* [1893], 1 Ch., 35.

[4] *Per* A. L. Smith, J., in *Movl* v. *Groenings* [1891], 2 Q. B., 443; but see *Hanfstaengl* v. *Holloway* [1893], 2 Q. B., 1.

[5] 49 & 50 Vict. c. 33, sec. 5 (1); Additional Act of Paris, Art. I. 3.

[6] Berne Convention, Art. 5; *cf.* 49 & 50 Vict. c. 33, sec. 2.

[7] Berne Convention, Art. 5.

[8] *Wood* v. *Chart* (1870), 10 Eq., 193; *Lauri* v. *Renad* [1892], 3 Ch., Kekewich, J., at p. 414.

author, would constitute a piracy, and yet not be such a translation as is required by the Act—

"What is required is that the English people should have the opportunity of knowing the foreign work as accurately as it is possible to know a foreign work by the medium of a version in English."[1]

Articles in Newspapers and Periodicals.[2]—Articles, not being serial stories or tales, appearing in a newspaper or periodical in a foreign country, may be republished or translated in a newspaper or periodical in this country without the consent of the owner of the copyright, provided—

(*a*) In the case of articles of political discussion, the news of the day, or miscellaneous information, the source from which the same is taken be acknowledged.

(*b*) In the case of articles relating to any other subject, the source from which the same is taken be acknowledged, and the author has not signified his intention in a conspicuous part of the newspaper or periodical of preserving the copyright and right of translation.

Photographic Works.—The Additional Act of Paris runs as follows :—"It is understood that an authorised photograph of a work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the Berne Convention, and by the present Additional Act, 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."[3]

It would seem, therefore, that photographs of protected works of art are not protected as original works, and that, whenever produced, their protection stands and falls with the right in the original work. Other photographs, including photographs of unprotected works of art, are protected as original works.

Performing Right in Dramatic or Dramatic Musical Works.—Exclusive performing right in dramatic or dramatico-musical works subsists during the existence of the exclusive right of

[1] *Per* Sir W. M. James, V.C., *in Wood v. Chart.*

[2] 15 Vict. c. 12, sec. 7; 49 & 50 Vict. c. 33, sec. 5 (4); Additional Act of Paris, Art. I. 4.

[3] Additional Act of Paris, II. 1.

translation. If the translating right is allowed to fall into the public domain by non-exercise within ten years, the performing right falls with it.[1]

There is not now as formerly any right in the public to make fair imitations or adaptations to the English stage.[2]

Express Provisions as to Particular Kinds of Infringement.—The Berne Convention, article 8, provides that the question of the right of extract is to be decided by the legislation of the different countries of the Union, or by special arrangement between them. There is *no* special arrangement as to this with the United Kingdom, therefore the law as to extract and quotation applicable to works produced in this country applies.

Article 10 of the Berne Convention enacts that indirect appropriations such as adaptations and arrangements are included among illicit reproductions when they do not bear the character of original work. Here also, therefore, the law is similar to that applicable to works produced in this country.

[1] Berne Convention, Art. 9.

[2] 15 Vict. c. 12, sec. 6; 38 and 39 Vict. c. 12, sec. 1; Order in Council, Nov. 28, 1887, sec. 6.

CHAPTER XI

COMMON LAW

As to works which have been published within the meaning of the Copyright Acts, the common law affords no protection in the nature of copyright, that is to say, as regards the exclusive right of reproduction, the author must rely entirely on the statutes. There is no copyright at common law after the expiration of the period prescribed by statute,[1] neither is there any greater right during that period than the statute gives.[2] Common law remedies, however, may be applied when the statute gives a right without a sufficient remedy.[3] But apart altogether from rights in the nature of copyright, the principles of common law and equity do apply to both published and unpublished works to prevent or to remedy the consequences of fraud or breach of contract.

As to works which have been composed[4] but have not been published, the common law affords protection to the author against reproduction or interference of any kind.[5]

The rights and remedies at common law are perpetual, and are neither limited in duration *nor* as regards the time within which action must be brought, except in so far as the general rules of equity as to acquiescence and delay or the statutes of limitation may be applicable.

Title: Passing off.—*No Copyright in Title.*—There is no copyright in a title consisting, as a title usually does, of only a few

[1] *Donaldson* v. *Becket* (1774), 2 Bro. P. C., 129; and see *Millar* v. *Taylor* (1769), 4 Burr., 2303; *Tonson* v. *Collins* (1760), 1 W. Black., 301, 321.

[2] See *Cox* v. *Land and Water* (1869), L. R., 9 Eq., 324; *Reade* v. *Conquest* (1861), 9 C. B. (N.S.), 755; *Jefferys* v. *Boosey* (1854), 4 H. L. C., 815.

[3] *Beckford* v. *Hood* (1798), 7 T. R., 620.

[4] *Platt* v. *Walter* (1867), 17 L. T. (N.S.), 157.

[5] See cases cited in arguments in *Tonson* v. *Collins* (1760), 1 W. Black., 301, 321; *Donaldson* v. *Beckett* (1774), 2 Bro. P. C., p. 138; *Millar* v. *Taylor* (1769), 4 Burr., 2303; Lord St. Leonards in *Jefferys* v. *Boosey* (1854), 4 H. L. C., at p. 979.

words. Thus *Belgravia*,[1] *Sporting Life*,[2] "Splendid Misery,"[3] *The Licensed Victuallers' Mirror*,[4] and "The Post Office Directory,"[5] have all been decided not to be the subject of copyright. In two decisions "The Birthday Scripture Text-Book"[6] and "Trial and Triumph"[7] (as the title of a novel) were protected on the ground of copyright in title, but since *Dicks* v. *Yates*[8] in which these two decisions were cited, and in so far as they were based on a claim of copyright in title, disapproved, no such claim could be entertained, and the exclusive user of a title will only be protected on the general principles of common law and equity which prevent one man passing off his wares as those of another man. As was pointed out by Jessel, M.R., in *Dicks* v. *Yates*,[9] it is conceivable that there might be a title in which there was copyright; for instance, if it was extremely long and elaborate, but since *Dicks* v. *Yates* there is no case in the books where a title has been protected on the ground of copyright.

Whether Protection is based on a Right of Property in the Title.—The great bulk of authority is to the effect that the right to prevent others passing off their literary works under the same or a similar title does depend on a right of property in the title as applied to a particular class of work, which right can only be acquired by user.[10] This right is regarded as a chattel interest capable of assignment,[11] and may be a partnership asset.[12] In *Walter* v. *Emmott*,[13] however, Cotton and Bowen, L.JJ., expressed a strong opinion that the right to prevent a deceitful use of title was not founded on a right of property in the title, but on the ground of deceit alone. It is submitted that the plaintiff in an action of this kind need not prove deceit on the part of the defendant, and that the right is strictly a proprietary right

[1] *Maxwell* v. *Hogg* (1867), L. R., 2 Ch., 307.
[2] *Kelly* v. *Hutton* (1868), L. R., 3 Ch., 703.
[3] *Dicks* v. *Yates* (1881), 18 Ch. D., 76.
[4] *Licensed Victuallers* v. *Bingham* (1888), 38 Ch. D., 139.
[5] *Kelly* v. *Byles* (1879), 40 L. T. (N.S.), 623.
[6] *Mack* v. *Petter* (1872), L. R., 14 Eq., 431.
[7] *Weldon* v. *Dicks* (1878), 10 Ch. D., 247.
[8] *Dicks* v. *Yates* (1881), 18 Ch. D., 76.
[9] 18 Ch. D., at p. 89.
[10] *Borthwick* v. *The Evening Post* (1888), 37 Ch. D., 449; *Bradbury* v. *Beeton* (1869), 39 L. J. Ch., 57; *Clement* v. *Maddick* (1859), 1 Giff., 98.
[11] *Kelly* v. *Hutton* (1868), L. R., 3 Ch., 703; *Ward* v. *Beeton* (1874), L. R., 19 Eq., 207.
[12] *Bradbury* v. *Dickens* (1859), 27 Beav., 53.
[13] (1885), 54 L. J. Ch., 1059.

which must have been acquired by user before the Court will intervene.

Knowledge of Existence and Value on part of the Public.—This is necessary before an author or proprietor of a literary or artistic work can acquire a right to the exclusive use of a title in connexion with works of a certain class. It is not sufficient that the title of a proposed book or magazine has been extensively advertised or that it has been registered, even although great expenditure has been incurred in the preparation and advertisement.[1] Any one, it would seem, can seize the opportunity of another's advertisements and bring out a similar book under the same or a similar title, either before the publication of that other's book or immediately after its publication, and before it became known to the public as an actually existing publication which they have had an opportunity of reading and forming an opinion of on its merits. The sale of a few copies only will not establish a common law right in title.[2] Not only must the work be well known to the public, but it must also be distinctively known under the title in which a proprietary right is claimed.[3]

No right can be acquired by attaching an original title to an old work in which the publisher has no proprietary right. In *Talbot* v. *Judges*[4] the plaintiffs published a work in which they had no copyright of any kind under a title of their own invention, "The Liberal and Radical Year-Book." The defendant published a similar work, intituled "The Liberal Year-Book." It was held that they were entitled to do so, as the plaintiffs could have no right in the title when the material was in no sense their own.

Non-user of title for a considerable period will leave it open to others to adopt the same title and to acquire a right therein to the exclusion of the original user,[5] but no representation must be made, express or implied, that the subsequent publication is a continuation of the first. If the proprietor of a magazine

[1] *Maxwell* v. *Hogg* (1867), L. R., 2 Ch., 307; *Licensed Victualiers* v. *Bingham* (1888), 38 Ch. D.; *Correspondent News* v. *Saunders* (1865), 11 Jur. (N.S.), 540.

[2] *Maxwell* v. *Hogg* (1867), L. R., 2 Ch., 307.

[3] *Schove* v. *Schmincké* (1886), 33 Ch. D., 546.

[4] *Talbot* v. *Judges* (1887), 3 T. L. R., 398.

[5] *Maxwell* v. *Hogg* (1867), L. R., 2 Ch., 307.

incorporates it with another publication, such as the *John Bull* with the *Britannia*, and intitules the future publication with a joint name such as the *John Bull and Britannia*, he can prevent any taking of the original titles either *simpliciter* or colourably altered, as, for instance, *The True Britannia*.[1]

No Fraud need be Proved.—When the exclusive right to a title has been established, an innocent invasion is equally as actionable as one tainted with fraud or intent to deceive.[2] It is a question what the public are likely to believe, not what it was intended they should believe.

Must be Calculated to Deceive.—The question is whether the man of ordinary intelligence is likely to be deceived, and purchase the later publication while intending to purchase the original. It is not sufficient to show that some thoughtless or stupid people have made mistakes and taken the one for the other.[3] The exclusive right to the use of a title only extends so far as to prevent the whole or any part of the title being used in such a way as to deceive the public, to the injury of the proprietor of the title. Thus a part of the title may be taken and so used in conjunction with other words, that there can be no possibility of confusion, or the whole title may be taken and used for an entirely different class of work, or otherwise put before the public in such a way that mistake is practically impossible. Thus in questions of passing off, besides the similarity of title, the result depends on the peculiar circumstances under which the works are produced: the time and place of publication, appearance, such as similarity in print and binding and price, may all be of vital importance.

Cases in which an Injunction was Granted.—In *Hogg* v. *Kirby*[4] the defendant was interested in the sale and profits of a magazine called *The Wonderful Magazine*. A dispute arose between him and the proprietor of the magazine, and the defendant thereupon published a magazine under the same title, described as *New Series Improved*. This publication was restrained. In *Constable* v. *Brewster*,[5] a Scotch case, an interdict was granted on very

[1] *Prowett* v. *Mortimer* (1856), 2 Jur. (N.S.), 414.

[2] *Borthwick* v. *Evening Post* (1888), 37 Ch. D., 449; *Clement* v. *Maddick* (1859), 1 Giff., 98.

[3] *Bradbury* v. *Beeton* (1869), 39 L. J. Ch., 57.

[4] (1303), 8 Ves., 215.

[5] (1824), 3 Sh., 215.

similar facts. In *Chappell* v. *Sheard*[1] the plaintiffs published a song, the words of which were original, but set to an old American air, "Lillie Dale," in which there was no copyright. This song had become popular, and was sung at concerts by a Madame Thillon. The plaintiffs published their song under the title of "'Minnie,' sung by Madame Anna Thillon, written by George Linley," and the cover bore a lithographed drawing of Madame Thillon. The defendants set other words to the same air and published it as "Minnie Dale," sung by Madame Thillon, and their cover also bore a portrait of Madame Thillon. The defendants' song had, in fact, never been sung by Madame Thillon. An injunction was granted. In *Chappell* v. *Davidson*[2] the same song was similarly pirated by one intituled "Minnie, dear Minnie," and an injunction was also granted. In *Prowett* v. *Mortimer*[3] *The True Britannia* was restrained as tending to interfere with the sale of the plaintiff's paper, *The John Bull and Britannia*, which had incorporated the plaintiff's previous publication, *The Britannia*. In *Clement* v. *Maddick*[4] the plaintiff owned a sporting periodical paper, intituled *Bell's Life*. The defendants were restrained from publishing a similar paper under the title, *Penny Bell's Life*. In both publications the name Bell was entirely pseudonymous. In *Ingram* v. *Stiff*[5] the defendant was the proprietor of a weekly paper, *The London Journal*, and assigned all his interest therein to the plaintiff, covenanting not to publish any rival weekly paper. Two years afterwards the defendant published a daily newspaper, *The Daily London Journal*. The Court restrained him from continuing the publication, but their judgment seems to have gone on the ground of breach of covenant. In *Clowes* v. *Hogg*[6] the proprietors of *London Society* were held entitled to an injunction against *English Society*, but this was also on the ground of a covenant between the parties. In *Corns* v. *Griffiths*[7] the plaintiff published a weekly newspaper under the title, "*Iron Trade Circular* (Ryland's)." The defendant had for some considerable time published a weekly report headed "*The Iron Trade* (Griffith's Weekly Report)," but changed his title to "*The Iron*

[1] (1855), 2 K. and J., 117.
[2] (1855), 2 K. and J., 123.
[3] (1856), 2 Jur. (N.S.), 414.
[4] (1859), 1 Giff., 98.
[5] (1859), 5 Jur. (N.S.), 947.
[6] (1870), W. N., 268.
[7] (1873), W. N., 93.

Trade Circular (edited by Samuel Griffiths)," and published it in type and form very similar to the plaintiff's newspaper. The defendant's publication was restrained. In *Metzler* v. *Wood*[1] the plaintiffs were the publishers of "Henry's Royal Modern Tutor for the Pianoforte." This work had a very large sale. The defendants took an old work, intituled "Jousie's Royal Standard Pianoforte Tutor," which had entirely fallen into disuse, and employed Henry to revise it, and then published it as "Henry's New and Revised Edition of Jousie's Royal Standard Pianoforte Tutor." In both publications the word "Henry's" was published in large letters, and was more conspicuous than any other part of the title. The Court granted an injunction. James, L.J., in his judgment, said :—

"The defendants' title-page was calculated to deceive, and I cannot conceive any reasonable theory to explain the defendants taking an obsolete work, getting it revised by Mr. Henry, and putting Henry's name as the prominent and striking distinguishing mark of his work except that he intended to do that which the name was calculated to do, viz., to mislead the public into believing that when they were buying the defendants' work they were buying the plaintiffs'. If it was so calculated to mislead, the case of the plaintiffs is made out."

Cases where an Injunction was Refused.—In *Spottiswoode* v. *Clarke*[2] Lord Cottenham, L.C., refused an interlocutory injunction in a case of two Pictorial Almanacks, where the covers were very similar and could hardly have been so accidentally. In a similar case to-day an injunction would probably have gone. In *Jarrold* v. *Houlston*[3] an injunction was refused to the author of "Why and Because," in respect of a similar work intituled "The Reason Why." There was no such similarity or colourable imitation in the title as to support the claim. In *Bradbury* v. *Beeton*[4] the proprietors of *Punch* craved an injunction against *Punch and Judy*. There was, however, no evidence that any one had been misled, and although the papers were similar in size and general appearance, the colour of the paper was slightly different, and the design on the cover was entirely different. Malins, V.C., refused an injunction. In *Kelly* v. *Byles*[5] the plaintiff had

[1] (1878), 8 Ch. D., 606.
[2] (1846), 2 Phillips, 154.
[3] (1857), 3 K. and J., 708.
[4] (1869), 39 L. J. Ch., 57.
[5] (1879), 40 L. T. (N.S.), 623.

published numerous directories called "post office" directories. Among them was "The Post Office Directory of the West Riding of Yorkshire." An injunction was refused against the defendant who proposed to issue a directory under the title "Post Office Bradford Directory." The publications in no way resembled one another. The plaintiff claimed that he had acquired an exclusive use to the words "post office" in connection with a directory. It was held that he could have no such exclusive right. In *Dicks* v. *Yates*[1] a serial story, entitled "Splendid Misery, or East End and West End, by C. H. Hazlewood," was being published in a magazine called *Every Week*. Another weekly, *The World*, commenced a serial story intituled "Splendid Misery, by the Author of Lady Audley's Secret, Vivian, &c." The two weekly papers were of an entirely different character, and it was held that there was nothing in the publication of the serial story in *The World* which was calculated to deceive. In *Cowen* v. *Hulton*[2] the plaintiff was proprietor of *The Newcastle Weekly Chronicle* and *The Newcastle Daily Chronicle*. He claimed an exclusive right to the use of the word "Chronicle" in connection with newspapers in Newcastle, and craved an injunction against the sale in Newcastle of *The Sporting Chronicle*. The Court of Appeal, reversing the decision of North, J., refused an injunction. In *Walter* v. *Emmott*[3] *The Mail* was published three days a week at 11 A.M., price twopence. The Court refused an injunction against *The Morning Mail*, price one halfpenny. Both papers were published in London. In *Borthwick* v. *The Evening Post*[4] the proprietors of *The Morning Post* claimed an injunction against *The Evening Post*. The Court was of opinion that there was no probability of injury to *The Morning Post* since the papers were not competing papers. Bowen, L.J., in his judgment, said :—

"He must be an extremely unintelligent person if he thinks that the *Evening Post*, which disclaims all connection with the *Morning Post*, and writes upon different topics and in a different style, is connected with the *Morning Post*. The idea would explode itself before he got half-way through the first page."

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[1] (1881), 18 Ch. D., 76.
[2] (1882), 46 L. T. (N.S.), 897.
[3] (1885), 54 L. J. Ch., 1059.
[4] (1888), 37 Ch. D., 449.

The injunction was refused. The commonest form of passing off is by means of a similar title and binding, but any act which induces the public to believe that A's book is the book of B is equally actionable, and will be sustained. Thus for A to announce his book as a continuation of B's book,[1] or in any other way to so advertise it as to induce the public to believe that it is B's work [2] is actionable.

Malicious Criticism.—It would be actionable to publish of an author's work that which was obviously untrue; for instance, that it was an immoral or a libellous work, when no suggestion of immorality or libel could be found in it. Apart from absolute falsehood of this kind there is no limit to the range of criticism;[3] a man is entitled to form what opinion he pleases of another's work, and to publish these opinions. So long as he confines himself to the work criticised and the author thereof as author, he has very full liberty of saying what he thinks.

It may be actionable to say that a man is the author of a work which is not his. The offence if anything would be defamation of the author.[4]

Slander of Title.—No doubt an action would lie against any one publishing statements in disparagement of the owner's right to a literary or artistic work.[5] Special damage is of the essence of such an action.

Author who has parted with Copyright is entitled to protect his Reputation.—Although a purchaser of copyright may do what he pleases with what he has purchased, he may not mutilate an artistic or literary work and present it to the public in its mutilated form as the work of the original author. The copyright in a law book was purchased by a bookseller. The author refused to edit a third edition, and the bookseller had the necessary alterations made for himself. The third edition was then published without any notice that it was prepared by any one other than the author. It contained numerous errors. In an action by the author against the bookseller, Lord Tenterden, C.J., in summing up, put it to the jury that if they were of

[1] *Hogg* v. *Kirby* (1803), 8 Ves., 215. [2] *Seeley* v. *Fisher* (1841), 11 Sim., 581.
[3] *Carr* v. *Hood* (1808), 1 Camp., 354 *n.* [4] *Martin* v. *Wright* (1833), 6 Sim., 297.
[5] *Dicks* v. *Brooks* (1880), 15 Ch. D., 22; *Ward* v. *Beeton* (1874), L. R., 19 Eq., 207; *Seeley* v. *Fisher* (1841), 11 Sim., 581.

opinion that the third edition would be understood by those who bought it to have been prepared by the plaintiff, the plaintiff was entitled to a verdict; but if they were of opinion that persons using reasonable care would think that this third edition was not prepared by the plaintiff, their verdict should be for the defendant. The jury returned a verdict of five pounds for the plaintiff.[1] The nature of the remedy is really an action for the defamation of the plaintiff's reputation as an author. The Court is slow to grant an interlocutory injunction in such an action. No doubt it would be done in an extreme case, for instance, if the owner of performing rights in a play inserted indecent or scandalous matter without the consent of the author, but the Court prefers to have the legal question as to whether the altered version is injurious to the plaintiff's reputation tried first. In *Cox* v. *Cox*[2] the plaintiff had written a legal article for the purpose of insertion in the defendant's book. The defendant revised and shortened the article to a considerable extent, and the plaintiff applied for an injunction in Chancery to restrain the defendant from publishing the article in its mutilated form. Page Wood, V.C., refused an injunction, and, in his judgment, said :—

"In respect to what was said about the plaintiff's reputation suffering from having the legal matter supplied by him published in a mutilated and erroneous form, according to Sir J. Clark's case,[3] the loss of reputation, unless connected with property, was not a ground for coming to this Court, though it might be an ingredient for the Court to consider when there was property."

One might almost infer from this judgment that if the plaintiff had parted with his property no right of action lay for injury to his reputation. It must be observed, however, that this was a claim for an injunction in equity, and the judgment of Lord Tenterden in *Archbold* v. *Sweet*[4] was not referred to. That and the subsequent cases make it clear that there is a right of action on the ground of injury to reputation alone, and that in urgent cases the Court will interfere by interlocutory injunction. In *Gilbert* v. *Boosey*[5] the owner of a performing right in an opera

[1] *Archbold* v. *Sweet* (1832), 5 C. and P., 219.
[2] (1853), 1 W. R., 345, 11 Hare, 118.
[3] *Clark* v. *Freeman* (1848), 11 Beav., 112.
[4] (1832), 5 C. and P., 219.
[5] *The Law Times*, September 28, 1889.

inserted without the permission of the author two songs, and one of the author's songs was left out. The opera was advertised and performed *simpliciter* as the plaintiff's opera without any mention of alterations. On an application for an interlocutory injunction, Denman, J., refused to interfere at such an early stage, but he intimated that if the songs had been indecent or such as would obviously damage the plaintiff's reputation, he might have granted an injunction. In *Lee* v. *Gibbings*[1] the defendant had acquired the copyright in the plaintiff's "Autobiography of Edward, Lord Herbert of Cherbury." He published a condensed edition, on the title-page of which the plaintiff was stated *simpliciter* to be the author. The plaintiff alleged that the work was unscholarly and injurious to his reputation, and craved an interim injunction. Kekewich, J., refused the motion. The plaintiff's remedy, he said, was founded on libel by reason of the injury to his reputation. Of late years there had been no such thing as an injunction to restrain a libel (except in the case of a trade libel) on an interlocutory application or before the point had been submitted to a jury. He saw no reason for making an exception in the case before him, and he would express no opinion as to whether there was a libel or not.

The Court would restrain one who published a book falsely representing that it was the work of another.[2]

Protection from Breach of Faith or Contract. — The relationship of parties may give rise to rights and obligations in reference to literary or artistic matter which could not exist as between strangers. Such rights and obligations are supported on the various grounds of express contract, implied contract, and breach of faith. As to express contract there is little difficulty, the ordinary rules of contract will apply. As to implied contract or breach of faith, these are really the same, only common law based its remedy on the former and equity on the latter. It usually arises in the case of a clerk or other employee between whom and the employer a confidential relationship exists. As regards employees, the law stated briefly is this, that during his employment he must do nothing which is

[1] (1892), 8 T. L. R., 773.

[2] *Byron* v. *Johnston* (1816), 2 Meriv., 29.

contrary to the interests of his employer; he may not in any way assist in the production of literary or artistic work which may compete with the work of his employer. After the termination of his employment, apart from express contract, he is entitled to compete with his late employer, and for that purpose may make use of the general knowledge and information which he acquired in his employment: but he may not for such purpose use any materials such as documents, notes, printing blocks, &c., which he acquired in his capacity of employee and *a fortiori* if he acquired them surreptitiously.

In *Jovatt* v. *Winyard*[1] a veterinary surgeon employed a journeyman for the purpose of selling his medicine. While in such service the journeyman surreptitiously got access to his books of recipes and copied them. It was held that there was a breach of trust, and the journeyman was restrained from selling the medicines or printing or selling printed directions for their use. In *Prince Albert* v. *Strange*[2] a workman, who was entrusted by the Prince Consort with certain plates for the purpose of reproducing privately drawings which had from time to time been made by Queen Victoria and the Prince Consort, in breach of the trust reposed in him sold impressions to the defendant, who published a descriptive catalogue of the drawings. Knight Bruce, V.C., granted an injunction against the publication of the catalogue. In *Reuter's Telegram Co.* v. *Byron*[3] the defendants had for some time acted as agents in Australia of the plaintiff company, sending on and receiving telegraphic messages on their behalf. In the course of this agency they became acquainted with the cypher used by many of the company's customers. On the termination of their employment the defendants started a rival telegram business and sent circulars to the plaintiffs' customers, mentioning that they had their cyphers. On a motion to restrain the defendants from making use of the list of cyphers acquired in the plaintiffs' employment, Jessel, M.R., refused an interim injunction. He said:—

"The Court will always restrain a man from publishing or divulging that which has been communicated to him in confidence. But this is a

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[1] (1820), 1 Jac. and W., 394.
[2] (1849), 2 De G. and Sm., 652.
[3] (1874), 43 L. J. Ch., 661.

totally different case. The plaintiffs do not here seek to restrain the defendants from publishing anything but from making use of knowledge acquired while the relation of principal and agent subsisted after that relation terminated."

In *Lamb* v. *Evans*[1] the defendants had been employed by the plaintiff as canvasser for his trade directory. On the termination of their employment they published a rival directory and made use of blocks and notes which they had acquired in the plaintiff's employment. The Court held that this was an improper use for the defendants to make of materials so acquired. Bowen, L.J., in his judgment, said :—

"It is not a question of copyright—that must be kept out of sight altogether—nor is it, on the other hand, a simple question of the absolute property at law in the documents themselves or in the blocks themselves. It is a question of whether the plaintiff, whatever the property in the documents may be or whatever the property in the materials may be, has not sufficient special property in them to entitle him to restrain the use of them against him when they had been obtained for his use by his agents in the course of their employment. That depends entirely, I think, on the terms upon which the employment was constituted, through which the fiduciary relation of principal and agent came into existence."

In commenting on *Reuter's Telegram Co.* v. *Byron*, the same judge said :—

"I think if Reuter's case is to be judged by the result, it no doubt is right—and Sir George Jessel was generally right—but I do not think that the propositions reported in the *Law Journal* as laid down by him can be considered to be sound. It seems to me that as a matter at law or as a matter of equity, the conduct of the defendants in that case cannot be justified to the extent to which the learned judge is made by the report to justify it. If Reuter's case is cited as an authority for the propositions which the Master of the Rolls is there stated to have laid down, I am not prepared to follow it."

In *Merryweather* v. *Moore*[2] a clerk while in the employment of a firm of engine-makers had made a table of dimensions of various types of engines. After he had left their employment he was restrained from publishing or communicating the table or its contents to any one. In *Louie* v. *Smellie*[3] the plaintiff carried on a

[1] *Lamb* v. *Evans* [1893], 1 Ch., 218.
[2] [1892], 2 Ch., 518.
[3] (1895), 11 T. L. R., 515.

business as a process server, the defendant while in his employment secretly made extracts from the plaintiff's register and index of agents and copies of the plaintiff's forms. He was restrained from making use of such extracts in competition with the plaintiff after he had left his employment and set up as a process server on his own account. Lindley, L.J., in his judgment, said :—

"As to the law it has been clearly laid down in *Lamb* v. *Evans*. It is not new law, it is as old as the hills. The good faith that existed between employer and employed rendered it improper for the employed to make use of any information acquired by him during the period of the confidential relationship."

The injunction was granted in these terms :—

"An injunction to restrain the defendant, his servants, and agents from making use of any copies or extracts from the plaintiff's register of agents, or index of agents, or any memoranda made or obtained by the defendant when in the plaintiff's employ relating to any person named in these books or either of them."

In *Robb* v. *Green*,[1] the defendant having been employed as manager of the plaintiff's business, secretly copied a list of the names and addresses of his customers. On leaving the plaintiff's employment he set up a similar business, but was restrained from making use of the list of his late master's customers. In *Gilbert* v. *Star Newspaper*[2] the members of a theatrical company taking part in the rehearsal of a new opera were held to be under an obligation not to disclose any information concerning it until it should be publicly performed, and the Court restrained a critique published in a daily newspaper on the ground that the material for it must have been unlawfully procured.

In these cases it is not only the party who is in breach of contract or confidential relationship that will be restrained. The Court will restrain any one who, knowing how the material has been acquired, makes use of it.[3] In *Tipping* v. *Clarke*,[4] Wigram, V.C., said that if the defendant availed himself surreptitiously of

[1] [1895], 2 Q. B., 315.
[2] (1894), 11 T. L. R., 4.
[3] See *Jefferys* v. *Boosey* (1854), 4 H. L. C., 815, *per* Lord Brougham.
[4] (1843), 2 Hare, 383, at p. 393.

the information which he could not have had except from a person guilty of a breach of contract in communicating it, he could not be permitted to avail himself of such breach of contract. In *Abernethy* v. *Hutchinson*,[1] Lord Eldon said :—

"How the gentleman who had published the letters came by them he did not know; but whether an action would be maintained against them or not on the footing of implied contract, an injunction undoubtedly might be granted, because if there had been a breach of contract on the part of the pupil who heard these lectures, and if the pupil could not publish for profit, to do so would certainly be what this Court would call a fraud upon a third party."

Thus in *Prince Albert* v. *Strange*[2] the defendant obtained the information from the person in whom the plaintiff's confidence was placed, and was on that account restrained. In the *Exchange Telegraph Co.* v. *Central News*[3] the Court restrained a third party from publishing information which he had obtained by inducing a subscriber to the Telegraph Company to break his contract. If there has been a breach of contract or trust the Court will assume a guilty knowledge in the case of a third person, who, being in possession of the material, cannot give any satisfactory explanation.[4] If a third party acquire innocently and for value materials or information originally procured in breach of trust or contract, it seems questionable, apart from any absolute right in the plaintiff, such as a right to manuscript, whether he can be restrained from making use of them in any publication. If the original act amounts to fraud or crime, certainly the Court will not protect even an innocent purchaser. "Let the hand receiving it be ever so chaste, if it comes through such a corrupt and polluted channel, the obligation of restitution must follow."[5] But if the original act amounted to no more than breach of confidence or contract, it may be different, and a purchaser for value and without notice may be excused.[6] The point must be con-

[1] (1825), 3 L. J. (O.S.) Ch., 209.
[2] (1849), 2 De G. and Sm., 652.
[3] [1897], 2 Ch., 48. *Exchange Telegraph* v. *Gregory* [1896], 1 Q. B., 147.
[4] *Abernethy* v. *Hutchinson* (1825), 3 L. J. (O.S.), Ch., 209; *Prince Albert* v. *Strange* (1849), 1 M'N. and G., at p. 45.
[5] *Bridgman* v. *Green* (1755), 2 Ves. Sen., 627, Wilmot's cases, 58.
[6] *Morison* v. *Moat* (1851), 9 Hare, 241.

sidered doubtful.[1] The ground of action on breach of faith or contract may sometimes exist concurrently with a ground of action on copyright, and may be useful if there are any technical difficulties in the plaintiff's way as to copyright.[2]

Unpublished Works.—The author and his assignees have the right of first publication; this right at common law is unaffected by the Copyright Acts, and is a right in perpetuity. The right in literary matter in manuscript is clearly one of property, and is independent of any confidential or contractual relation between the author and those who interfere with his property without authority. "It cannot," said Lord Halsbury in *Caird* v. *Sime*,[3] "be denied that in the present state of the law an author has a proprietary right in his unpublished literary productions." An author may choose his own time to publish or may choose never to publish at all, and he may proceed against any one who attempts to publish or otherwise deals without his authority with his unpublished work. This was definitely decided in *Donaldson* v. *Beckett*[4] when the question among others was put to the judges: "Whether at common law an author of any book or literary composition had the sole right of first printing or publishing the same for sale; and might bring an action against any person who printed, published, and sold the same without his consent?" Ten out of eleven judges consulted answered that there was such a right, and eight of them that an action lay in cases of infringement. Two of the judges, however, were of opinion that an action lay against an infringer only when the manuscript had been obtained by fraud or violence. Only one judge held that there was no right of first publication. In *Prince Albert* v. *Strange*[5] Lord Cottenham, L.C., considered the law as well settled and beyond dispute. He says:—

"The property of an author or composer of any work, whether of literature, art, or science, in such work unpublished and kept for his

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[1] *Barfield* v. *Nicholson* (1824), 2 Sim. and Stu., 1.

[2] *Tuck & Sons* v. *Priester* (1887), 19 Q. B. D., 629; *Pollard* v. *Photo. Co.* (1888), 40 Ch. D., 345.

[3] (1887), 12 A. C., at p. 337.

[4] (1774), 2 Bro. P. C., 129; 4 Burr., 2408; *Millar* v. *Taylor* (1769), 4 Burr., 2303; *Forrester* v. *Walker* (1741), 4 Burr., 2331; *Duke of Queensberry* v. *Shebbeare* (1758), 2 Ed., Cha. Cas., 329; 4 Burr., 2330; *Webb* v. *Rose* (1732), Amb. 694; *Pope* v. *Curl* (1741), 2 Atk., 342.

[5] (1849), 1 M'N. and G., 25.

private use or pleasure, cannot be disputed after the many decisions in which the proposition has been affirmed or assumed."

The right of an author to his unpublished work is of a much wider and more exclusive nature than his right to published matter. It probably extends to prohibit any kind of interference whatsoever.[1] The public have not the right of "fair use" comment and criticism which they have in a published work. In *Prince Albert* v. *Strange* Knight Bruce, V.C.,[2] says :—

"A work lawfully published in the popular sense of the term stands in this respect, I conceive, differently from a work which has never been in that situation. The former may be liable to be translated, abridged, analysed, exhibited in morsels, complimented and otherwise treated in a manner that the latter is not."

The reason that private documents of a man should be protected from any interference whatsoever is sufficiently obvious. "A man," says Knight Bruce, V.C., in the same case,[3] "may employ himself in private in a manner very harmless, but which disclosed to society may destroy the comfort of his life or even his success in it." In *Miller* v. *Taylor*[4] Yates, J., expresses the principle of the common law protection :—

"Ideas are free. But while the author confines them to his study they are like birds in a cage which none but he can have a right to let fly; for till he thinks proper to emancipate them they are under his own dominion. It is certain every man has a right to keep his own sentiments if he pleases: he has certainly a right to judge whether he will make them public or commit them only to the sight of his friends. In that state the manuscript is in every sense his peculiar property, and no man can take it from him or make any use of it which he has not authorised without being guilty of a violation of his property."

The common law right in manuscript ceases upon "communication to the public" with the consent of the author,[5] but it may still continue notwithstanding some kind of communication to others. The communication in order to divest the owner of common law right must be an abandonment of his ideas and

[1] *Millar* v. *Taylor*, Yates, J., 4 Burr. at p. 2379; and see *Tonson* v. *Walker* (1752), 3 Swanst., 672; *Prince Albert* v. *Strange* (1849), 2 De G. and Sm., 652, at p. 691, 3.

[2] 2 De G. and Sm., p. 693. [3] 2 De G. and Sm., at p. 697.

[4] (1769), 4 Burr., 2303, at p. 2379.

[5] *Jefferys* v. *Boosey* (1854), 4 H. L. C., 815; *Caird* v. *Sime* (1887), 12 A. C., at p. 343.

words to the use of the public at large. Representation on the stage, delivery as a lecture, a gift or loan of the manuscript to a friend do not *ipso facto* determine the author's right of property.[1] The questions in cases of alleged unlawful publication of manuscript are usually: What is to be presumed as the reasonable understanding between the author and the persons to whom literary matter in the manuscript is communicated? Are they intended to have the right of making any use they please of it, or do the circumstances raise a presumption that they may only use it for a limited purpose? In *Macklin* v. *Richardson*[2] the Court held that although a play had been performed on the stage, that was only a limited publication of it, and therefore the exclusive right to publish remained in the author.[3] In *Nicols* v. *Pitman*[4] a lecture delivered at a Working Men's College from a manuscript previously prepared, was reproduced by the defendant without the plaintiff's consent. Kay, J., granted an injunction. In *Caird* v. *Sime*[5] the professor of moral philosophy in Glasgow University delivered a course of lectures in pursuance of his duty as professor. These were published by a bookseller from notes taken by a student. It was strenuously argued that the professorship being a *munus publicum* and the classes being open to all comers, the delivery of the lectures was really a publication without reserve to the whole world. The House of Lords rejected this argument, and held that the right to publish was reserved, the persons who were present at the lecture not being the general public, but a limited class of the public selected and admitted for the sole and special purpose of receiving individual instruction. Lord Halsbury, L.C., in giving judgment, suggested possible cases where it would be implied from the circumstances that there was publication to the world at large:—

> "It is intelligible that when a person speaks a speech to which all the world is invited, either expressly or impliedly, to listen, or preaches a sermon[6] in a church, the doors of which are thrown open to all mankind, the mode and manner of publication negative, as it appears to me, any limitation."[7]

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[1] *Abernethy* v. *Hutchinson* (1825), 3 L. J. (O.S.), Ch., 209. See p. 37, *supra*.
[2] (1770), Amb., 694.
[3] (1825), 3 L. J. (O.S.), Ch., 209.
[4] (1884), 26 Ch. D., 374.
[5] (1887), 12 A. C., 326.
[6] See *Pope* v. *Curl* (1741), 2 Atk., 342.
[7] 12 A. C., at p. 338.

The same rules apply to communication by delivery of the manuscript or a copy. If I give my manuscript to another to read or for any other limited purpose, he may not exceed the limits of use expressly or impliedly agreed. Publication by printing and circulation among a limited class will not destroy the common law right.[1]

The common law right in a manuscript may be abandoned by neglect or acquiescence in an adverse use. Thus it was said that Southey had no right to complain when having left his poem "Wat Tyler" in the hands of a publisher for twenty-three years the publisher published it for his own profit.[2]

A man's right to the exclusive use of his unpublished work does not depend on its value, and it is immaterial whether he did or did not intend to make profit by its publication.[3] It is also immaterial whether the publication would prove creditable or discreditable, advantageous or disadvantageous.[4]

The question has been raised whether the Courts would prevent an unauthorised person from publishing manuscript of an immoral nature which the author may have repented of and refused to place before the public.[5]

Ignorance of the author's right is no defence to an action for interfering with unpublished literary matter. A *bonâ fide* purchaser for value gets no better title than the original pirate.[6]

Speeches and Sermons.—Literary matter delivered orally from an extempore composition without having been previously reduced to writing, is protected at common law from unauthorised use. The extent of the protection as in the case of delivery from manuscript is defined by the terms of the relationship existing between the speaker and his audience. He may have freely abandoned all exclusive interest in the matter of his address, or he may give them only the right to listen, or he may

[1] *Prince Albert* v. *Strange* (1849), 1 M'N. and G., 25; and see *Mayall* v. *Higbey* (1862), 1 H. and C., 148.

[2] *Southey* v. *Sherwood* (1817), 2 Mer., 435.

[3] *Southey* v. *Sherwood* (1817), 2 Mer., 435; and see cases as to publication of private letters, p. 225.

[4] *Prince Albert* v. *Strange* (1849), 2 De G. and Sm., at p. 697.

[5] *Southey* v. *Sherwood* (1817), 2 Mer., 435.

[6] *Prince Albert* v. *Strange* (1849), 2 De G. and Sm., at p. 688.

give them the right of taking notes and using them for their own instruction. It seems to be doubtful, however, whether the right in unwritten speeches is one based on property, or whether it must depend entirely on implied contract between the speaker and his audience. In *Abernethy* v. *Hutchinson*[1] Dr. Abernethy delivered surgical lectures to students at St. Bartholomew's Hospital. These lectures had not been previously reduced to writing. Lord Eldon, L.C., granted an injunction against their unauthorised reproduction in the *Lancet*. There was no evidence as to how the defendants got possession of the lectures, but Lord Eldon thought that was immaterial :—

"They must have been taken from a pupil or otherwise in such a way as the Court would not permit, and the injunction ought to go on the ground of property, and although there was not sufficient to establish an implied contract as between the plaintiffs and the defendants, yet it must be decided that as the lectures must have been procured in an undue manner from those who were under a contract not to publish for profit, there was sufficient to authorise the Court to say the defendants shall not publish."

In *Nicols* v. *Pitman*[2] a case of previously written lectures, Kay, J., reviews the judgment of Lord Eldon in the last cited case :—

"Now it is quite true that the learned judge seems at one moment to refer to the ground of property and at another to that of implied contract. But I take his meaning to be this, that when a lecture of this kind is delivered to an audience, especially when the audience is a limited one admitted by tickets, the understanding between the lecturer and the audience is that, whether the lecture has been committed to writing beforehand or not, the audience are quite at liberty to take the fullest notes they like for their own personal purposes, but they are not at liberty having taken those notes to use them afterwards for the purpose of publishing the lecture for profit."

The question of whether the right in an oral speech is property or not might well be of the highest importance in a question between the speaker and a publisher who acquired the matter in entire ignorance of his right. The facts might be such that the Court would not, as they did in *Abernethy* v. *Hutchinson*,[3]

[1] (1825), 3 L. J. (O.S.), Ch., 209.
[2] (1884), 26 Ch. D., 374.
[3] (1825), 3 L. J. (O.S.), Ch., 209.

presume that the material "must have been procured in an undue manner." If there was no such presumption from the facts, it would appear that, apart from a right of property, the speaker must be without remedy unless he has given notice as a lecturer within 5 & 6 Will. IV. c. 65.[1]

Letters.—Private letters are protected from publication as much as any other manuscript. In an early case[2] it was suggested that there could be no property in business letters or others with no literary merit; but as the idea of literary merit in connection with copyright is now entirely exploded, the *obiter dicta* in this case may be disregarded. In all letters then there is a literary property in the writer which entitles him or his executors to prohibit any publication without his consent, express or implied.[3] It is immaterial whether the publication is for the purpose of profit or not.[4] If a letter is written by one as agent for another the property is in the principal, and the agent cannot restrain him from publishing.[5] The receiver of a letter has a property in the paper on which it is written[6] and is entitled to retain possession even against the writer. The receiver may make no use of a letter except such as is implied in the sending or with the consent of the writer.[7] The receiver may even be restrained from parting with possession or showing the letters to any one.[8] The receiver is probably entitled to prevent the publication of the letters from copies not in his possession or from the originals which have passed from his possession.[9]

Although the sender has a right of property in the literary matter in the letters, the receiver may without his consent destroy the letters and so destroy the writer's chance of obtaining benefit from them. The literary property of the writer and

[1] See p. 57, *supra*.

[2] *Perceval* v. *Phipps* (1813), 2 V. and B., 19.

[3] *Pope* v. *Curl* (1741), 2 Atk., 342; *Thompson* v. *Stanhope* (1774), Amb., 737; *Granard* v. *Dunkin* (1809), 1 Ball and B., 207; *Gee* v. *Pritchard* (1818), 2 Swanst., 402; *Palin* v. *Gathercole* (1844), 1 Coll., 565.

[4] *Gee* v. *Pritchard* (1818), 2 Swanst., 402.

[5] *Howard* v. *Gunn* (1863), 32 Beav., 462.

[6] *Oliver* v. *Oliver* (1861), 11 C. B. (N.S.), 139.

[7] *Gee* v. *Pritchard* (1818), 2 Swanst., 402.

[8] *Lytton* v. *Devey* (1884), 52 L. T. (N. S.), 121.

[9] *Gee* v. *Pritchard* (1818), 2 Swanst., 402.

the property in the paper of the receiver descend to their respective executors.[1] The question has been suggested but never answered: What would be the rights of trustees in bankruptcy to publish for the benefit of creditors private letters?[2] Letters may be published against the will of the writer when published *bonâ fide* for the purpose of vindication of character.[3]

[1] *Thompson* v. *Stanhope* (1774), Amb., 737; *Lytton* v. *Devey* (1884), 52 L. T. (N.S.), 121.

[2] *Perceval* v. *Phipps* (1813), 2 V. and B., 19.

[3] *Perceval* v. *Phipps* (1813), 2 V. and B., 19; *Gee* v. *Pritchard* (1818), 2 Swan., 402; *Palin* v. *Gathercole* (1844), 1 Coll., 565; *Lytton* v. *Devey* (1884), 52 L. T. (N.S.), 121.

CHAPTER XII

PUBLISHING AND PRINTING AGREEMENTS

Publishers' Agreements. — These agreements are governed by the law of contract, and only incidentally involve questions of copyright. The contract between an author and his publisher is a personal one and cannot be assigned; each party is presumed to have relied on the personal skill or reputation of the other.[1] Thus it was held that a half profit agreement could not be assigned by a publisher's firm to a firm which had succeeded to their business but which contained none of the partners of the original firm.[2] The same principle has been applied in the case of a limited company carrying on a publishing business.[3] A publishing agreement ought to provide for an assignment of the publisher's rights and obligations to the person or persons who may succeed to the business. Unless otherwise agreed, the death or bankruptcy of a publisher will terminate a publishing agreement.[4] Similarly if an author had not performed his part of an agreement, viz. to write and revise the manuscript, his death[5] or bankruptcy[6] would terminate his obligations in that respect. The publisher could not insist on the author's representatives completing the work, nor could they if they completed the work insist on the publisher publishing.[7]

An agreement to write a book or an article cannot be enforced by specific performance.[8] The only remedy for breach is an action for damages,[9] or, if the author has agreed not to

[1] *Hole* v. *Bradbury* (1879), 12 Ch. D., 886; *Stevens* v. *Benning* (1855), 1 K. and J., 168; *Reade* v. *Bentley* (1857), 3 K. and J., 271.

[2] *Hole* v. *Bradbury* (1879), 12 Ch. D., 886.

[3] *Griffith* v. *Tower Publishing* [1897], 1 Ch., 21.

[4] *Gibson* v. *Carruthers* (1841), 8 M. and W., 321, at pp. 343, 4.

[5] *Gale* v *Leckie* (1817), 2 Stark, N. P., 107.

[6] *Gibson* v. *Carruthers* (1841), 8 M. and W., 321, at pp. 343, 4.

[7] *Marshall* v. *Broadhurst* (1831), 1 Tyr., 348, at p. 349.

[8] *Clarke* v. *Price* (1819), 2 Wills, C. C., 157; and see *Whitwood* v. *Hardman* [1891], 2 Ch., 416.

[9] *Gale* v. *Leckie* (1817), 2 Stark, 107.

write on a particular subject for any one else, that may be enforced by an injunction.[1] An agreement to assign a copyright may be enforced by specific performance,[2] and probably also an agreement to furnish an unpublished manuscript already completed. An undertaking to write a book on a particular subject is not fulfilled by furnishing a translation of a foreign work on that subject.[3] If A agrees with B to write an article for a certain publication or series of publications, and if before the article can be published the publication or series has been discontinued, A is not bound to deliver his article for publication in another form; but he is entitled to a *quantum meruit* for the work he has done.[4]

If an author has entered into a royalty agreement with a publisher he is not, apart from express agreement, under any obligation not to publish the work through another publisher before the first edition has been sold out.[5] An author should therefore be bound not to publish elsewhere so long as the publisher is willing and ready to publish, and if this is done the publisher may restrain the author or another publisher who publishes with notice of his agreement.[6] In a half profit agreement where nothing was said as to future editions, it was thought that the contract might probably be determined by either party on the expiry of each edition and before any expense had been incurred in respect of a future edition; but until that was done the publisher had the exclusive right to publish and recoup himself for his outlay and earn profits.[7]

It is not illegal as being in restraint of trade for an author to contract to write only for a single publisher or theatrical manager,[8] nor for a publisher to contract not to publish a particular class of work.[9] If an editor engages to give his whole time to a publication, he will be restrained from engaging in or adver-

[1] *Morris* v. *Colman* (1812), 18 Ves., 437; *Stiff* v *Cassell* (1856), 2 Jur. (N.S.), 348.
[2] *Thombleson* v. *Black* (1837), 1 Jur., 198.
[3] *Paton* v. *Duncan* (1828), 3 C. and P., 336.
[4] *Planché* v. *Colburn* (1831), 5 C. and P., 58.
[5] *Warne* v. *Routledge* (1874), L. R., 18 Eq., 497.
[6] Ibid.
[7] *Reade* v. *Bentley* (1857), 3 K. and J., 271.
[8] *Morris* v. *Colman* (1812), 18 Ves., 437; *Stiff* v. *Cassell* (1856), 2 Jur. (N.S.), 348.
[9] *Anstruther* v. *Bentley* (1866), 14 W. R., 630.

tising any rival work.[1] Unless there is an express stipulation an author will not be prevented under a publishing agreement from writing and publishing other books on the same subject provided they do not reproduce in whole or in part the former book.[2] If there is an express stipulation against publishing similar works, both the author and his publisher would be restrained from doing so.[3] Apart from express agreement a publisher is probably free to publish any other rival work he pleases, even although it may seriously affect the sale of the former book.[4]

In the absence of express stipulation, the publisher under a half profit agreement has been held entitled to fix the selling price, choose the embellishments, and generally control the publication.[5]

In a publishing agreement it should always be expressly stated who is to hold the copyright. It has been held that where no mention of the copyright was made a half profit agreement did not import a transfer of the copyright to the publisher.[6] In editorial agreements as to newspapers or magazines similar careful provision should be made as to who is to own the copyright and the goodwill in the name, otherwise difficult questions may arise.[7]

Where the author of a novel sold the copyright therein to the owners of a periodical, reserving to himself the right to publish in "volume form," it was held that under this agreement he was entitled to publish the work in weekly parts, which when completed could be bound into a volume.[8]

An indemnity given by an author to a publisher against proceedings for libel is void if the publisher knew or ought to have known that the matter was libellous.[9] The publisher, however,

[1] *Ward* v. *Beeton* (1874), L. R., 19 Eq., 207.

[2] *Rooney* v. *Kelly* (1861), 14 Ir. C. L. R., 158, at p. 178.

[3] *Barfield* v. *Nicholson* (1824), 2 Sim. and Stu., 2; see *Brooke* v. *Chitty* (1831), 2 Coop. Cas., 216; *Blackie* v. *Aikman* (1827), 5 S., 719.

[4] See *Hogg* v. *Kirby* (1803), 8 Ves., 215, at p. 222.

[5] *Reade* v. *Bentley* (1857), 3 K. and J., 271.

[6] Ibid.

[7] See *Constable* v. *Brewster* (1824), 3 S., 215; *Kelly* v. *Hutton* (1868), L. R., 3 Ch., 703; *Platt* v. *Walter* (1867), 17 L. T. (N.S.), 157.

[8] *Johnson* v. *Egan* (1880), 24 Sol. J., 572.

[9] *Shackell* v. *Rosier* (1836), 2 Bing., N. C., 634.

would be entitled to rely on such an indemnity if he acted innocently. The same principle would apply to proceedings for infringement of copyright.

A publishing agreement may be made orally unless, which will seldom happen, it cannot be performed within a year from the making thereof, in which case there must be a written memorandum of the terms to satisfy the Statute of Frauds.[1]

The agreement, if in writing, must be stamped with the usual sixpenny agreement stamp. If it contains a conveyance of a copyright it will probably have to be stamped with *ad valorem* duty under section 53 of the Stamp Act.[2] If the work is unpublished at the time of the agreement the whole interest in the manuscript can be conveyed by delivery; in the case of a published work the copyright could be conveyed by entry on the register, so that in neither case need there be a conveyance in the agreement, and the stamp duty can thus be avoided. If a copyright is conveyed by entry on the regiſte the Copyright Act expressly exempts the conveyance from duty.[3]

Printers' Agreements.—A printer has a lien on the books printed by him for his printing charges.[4] He has no lien on stereotype plates for the amount of the bill for printing from them.[5] If the printer does not print his name and address on a book as required by Act of Parliament[6] he will not be entitled to recover his printing charges.[7] An order to print a certain number of copies of a book must as a rule be treated as an entire order, and no payment will fall due until the whole are complete and ready for delivery, so that if when half finished they are destroyed by fire he will not be entitled to recover for the work done.[8] A printer does not insure the manuscript when

[1] *Sweet* v. *Lee* (1841), 3 Man. and Gr., 452; see *Mavor* v. *Pyne* (1825), 3 Bing., 285; *Boydell* v. *Drummond* (1809), 11 East., 142.

[2] 54 & 55 Vict. c. 39.

[3] 5 & 6 Vict. c. 45, sec. 13.

[4] *Blake* v. *Nicholson* (1814), 3 M. and S., 167.

[5] *Bleaden* v. *Hancock* (1829), 4 C. and P., 152.

[6] 2 & 3 Vict. c. 12, sec. 2; and Newspapers, Printers, and Reading Rooms Repeal Act, 1869; 32 & 33 Vict. c. 24.

[7] *Bensley* v. *Bignold* (1822), 5 B. and Ald., 335; *Marchant* v. *Evans* (1818), 2 Moore, 14; see *Houston* v. *Mills* (1834), 1 M. and Rob., 325.

[8] *Gillett* v. *Mawman* (1808), 1 Taunt., 140.

in his possession,[1] but is only liable for loss occasioned by his negligence.

A printer cannot maintain an action in respect of his charges for printing an immoral or seditious work, knowing it to be such.[2] If while a book is being printed by him he discovers that it contains libellous, seditious, or immoral matter, he would be entitled to discontinue the printing and sue for the work already done.[3]

[1] *Gillett* v. *Mawman* (1808), 1 Taunt., 140; *Mawman* v. *Gillett* (1809), 2 Taunt., 325.
[2] *Poplett* v. *Stockdale* (1825), Ry. and M., 337.
[3] *Clay* v. *Yates* (1856), 1 H. and N., 73.

ADDENDUM

Musical Copyright, Summary Remedies.—A Bill has passed both Houses of Parliament and awaits the Royal Assent whereby, after October 1902, owners of copyright in music may proceed in a Court of summary jurisdiction against persons dealing in pirated music. Piratical copies which are being hawked or offered for sale may be seized by a constable without warrant and brought before the Court, which, on proof, may order the copies to be forfeited or destroyed, and inflict a penalty not exceeding twenty pounds on any one offender in respect of the same transaction. This Act will not apply outside the United Kingdom.

PART II

THE LAW OF COPYRIGHT IN THE UNITED STATES

CHAPTER I

INTRODUCTORY

THE law of copyright in the United States, especially in relation to literary work, is daily becoming of more interest to the owners of copyright in this country. Since the *Act of Congress*, 1891, commonly known as the *Chace Act*, those who are neither citizens of nor resident in the United States can acquire a copyright therein if copies of their books are printed from type set up in the United States and if their books are duly recorded there before publication either within or outside the United States. There is thus created for English authors a property which may be of considerable value if before publishing here they incur the trouble and expense of printing and recording their books in America.

Apart from this commercial interest which English authors and publishers have in a knowledge of American copyright law, there is the further interest to English lawyers in the large body of analogous case law to which the American statutes have given rise. These statutes were originally founded on our own statute of Anne, and, although the difference between the Acts now in force in the two countries is very wide in many respects, a great deal remains the same in substance, and the decisions of the American Courts afford us valuable precedents. These cases, however, must not be cited in our Courts at random, as has too frequently been done. In citing from the American reports, it is essential to compare the statutory provisions in America with the statutory provisions in this country, and ascertain whether the decisions are really applicable or not. It is for this reason that I have thought it expedient to keep the American law and the English law entirely separate. The practice of citing American cases promiscuously throughout a treatise on English Copyright Law I have found to be confusing and misleading.

CHAPTER II

WHAT WORKS ARE ENTITLED TO COPYRIGHT

In order to acquire copyright in the United States the work must fulfil the following conditions:—

1. It must be an original literary or artistic work.
2. The $\left(\begin{matrix}\text{owner}\\\text{author}\end{matrix}\right)$ must be a citizen of the United States (or resident therein), or of a foreign country proclaimed to that intent by the President.[1]
3. It must have complied with the formalities prescribed by the statutes of the United States.[2]
4. It must be innocent.[3]

SECTION I.—AN ORIGINAL LITERARY OR ARTISTIC WORK.

In the United States literary and artistic works are treated similarly under the same series of statutes. The works protected are enumerated in section 4952 of the Revised Statutes as amended by the Act of March 3, 1891 (*The Chace Act*). The protection extends to any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, and to any painting, drawing, chromo, statue, statuary, and to models or designs intended to be perfected as works of the fine arts.

The scope of the Constitution.

In considering whether a work is within the protection of the Copyright Acts, not only must the enacting words of the statutes be considered, but also, and perhaps principally, the scope of the provision in the Constitution, which grants power to Congress to secure the protection of authors and artists.[4] The language of the Act must be read in connection with the Constitutional provision and be so construed as to promote the

[1] See p. 247. [2] See pp. 250–264. [3] See p. 266.

[4] *Bullinger* v. *MacKay* (1879), 15 Blatchf., 550; *Clayton* v. *Stone* (1828), 2 Paine, 382; *Brightley* v. *Littleton* (1888), 37 Fed. Rep., 103.

object and conform to the purpose expressed therein. The power given to Congress by the Constitution is a power "to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." In consideration of this restricted power the earlier decisions [1] construed the Acts of Congress as including only those works which showed a certain degree of intellectual labour in the arts or sciences. In *Clayton* v. *Stone* [2] protection was refused to a daily price current or review of the markets issued in a newspaper. Thompson, J., in giving judgment, said :—

"The Act was passed in execution of the power given by Congress, and the object therefore was the promotion of science; and it would certainly be a pretty extraordinary view of the sciences to consider a daily or weekly publication of the state of the market as falling within any class of them. They are of a more fixed, permanent, and durable character. The term science cannot with any propriety be applied to a work of so fluctuating and fugitive a form as that of a newspaper or price current, the subject-matter of which is daily changing, and is of mere temporary use. . . . The title of the Act of Congress is for the encouragement of learning, and was not intended for the encouragement of mere industry unconnected with learning and the sciences."

This high standard of intellectual requirement was not, however, strictly maintained. In *Brightley* v. *Littleton* [3] a blank form of application for a licence to sell liquor at retail, drawn in pursuance of the statutes in that behalf, was protected, and it was said that, although the matter claiming copyright must be original and possess some possible utility, "the originality may be of the lowest order and the utility barely perceptible." In *Ladd* v. *Oxnard* [4] the English cases of *Lamb* v. *Evans* [5] and *Leslie* v. *Young* [6] were cited with approval, and the Court agreed that "the quality and grade of original work required by the Courts under the Copyright Statutes are very moderate." Until the case of *Mott* v. *Clow*,[7] the tendency seems to have been to follow

[1] *Clayton* v. *Stone* (1828), 2 Paine, 382; *Baker* v. *Selden* (1879), 101 U.S. Rep., 99; *Wheaton* v. *Peters* (1834), 8 Pet., 591.
[2] (1828), 2 Paine, 382.
[3] (1888), 37 Fed. Rep., 103.
[4] (1896), 75 Fed. Rep., 703.
[5] [1893], 1 Ch., 218 (headings in trades directory).
[6] [1894], A. C., 335 (circular tours in time-tables).
[7] (1897), 53 U.S. App., 461.

the English judges to their extreme view, as expressed by Lord Halsbury in *Walter* v. *Lane*,[1] *i.e.* "that the copyright law requires neither literary merit nor intellectual labour nor originality either in thought or in language." The Court, however, in *Mott* v. *Clow*[2] refused to follow the English decisions. After reviewing the American, and particularly the earlier American decisions, they say :—

Illustrated Catalogues

"The result of these decisions would seem to place this construction upon the Constitutional provisions under consideration that only such writings and discoveries are included which are the result of intellectual labour; that the term writings may be liberally construed to include designs for engravings and prints that are original and are founded in the creative powers of the mind, the fruits of intellectu l labour; that prints upon a single sheet might be considered a book if it otherwise met the spirit of the constitutional provision; and that to be entitled to a copyright, the article must have, by and of itself, some value as a composition, at least to the extent of serving some purpose other than a mere advertisement or designation of the subject to which it is attached.'

The "book" before the Court was a catalogue in the form of a bound volume, containing illustrations of household wares offered for sale, and giving the dimensions and price of each. The Court referred to *Maple* v. *Junior Army and Navy Stores*[3] where a similar catalogue in England was protected.

"It is to be observed in this case that it was ruled largely upon the language of the Act of Parliament (5 & 6 Vict. c. 45). . . . It is to be here remarked that the Parliament of Great Britain, unlike the Congress of the United States, is unlimited in power, and with the construction and effect placed upon the preamble of the Act by the Court, there would seem to be little escape from the conclusion at which the Court arrived. In this country under the Constitution the power lodged with the Congress is not unlimited, but is restricted to the promotion of the progress of science and useful arts. The ruling of the English Court is therefore not pertinent except as it illustrates the subject."

The Court cited with approval *Baker* v. *Selden*,[4] which had expressly approved *Cobbett* v. *Woodward*,[5] an English case overruled in *Maple* v. *Junior Army and Navy Stores*;[6] they further cited and approved the judgment of Thompson, J., in

[1] [1900], A. C., 539.
[2] (1897), 53 U.S. App., 461.
[3] (1882), 21 Ch. D., 369.
[4] (1879), 101 U.S. Rep., 99.
[5] (1872), L. R., 14 Eq., 407.
[6] (1882), 21 Ch. D., 369.

Clayton v. *Stone*,[1] quoted above. The judgment concludes with the following paragraph :—

"It is possibly not beyond comprehension that pictures of slop-sinks, wash-bowls, and bath-tubs, with or without letterpress statement of dimensions and prices, though intended mainly for advertisement, may in localities where such conveniences are not in common use, be the means of instruction and of advancement in knowledge of the arts, and, when they are the products of original intellectual thought, may possibly come within the scope of the Constitutional provision. It is enough for the present purpose to say that, in our judgment, the Congress has not seen fit to enact a law which can reasonably be given so broad a construction."

In considering the authority of some of the cases cited below, the judgment in *Mott* v. *Clow*[2] must not be lost sight of. It is probable that some of these cases are not in accordance with it, or with the older cases, such as *Clayton* v. *Stone*[3] and *Baker* v. *Selden*[4] therein expressly approved. Subject to this note of warning, the following may be taken as examples of what have and what have not been accepted as works of art or literature within the scope of the Constitution and the Acts of Congress. Directories[5] and dictionaries[6] have both been protected. In the case of the latter, there is copyright in the definitions of the words, however short. A list of the credit ratings of marble, granite, and stone dealers of the United States and Canada was protected in *Ladd* v. *Oxnard*.[7] In *Clayton* v. *Stone*,[8] which has been approved as sound law,[9] a daily state of the market was refused protection. A racing guide containing a list of race-horses and statistics as to their age and performances was protected in one case,[10] and in the other case a list of trotting horses and their paces.[11] In *Brightley* v. *Littleton*[12] a blank form of application for liquor licence was held to be copyright. In *Carlisle* v. *Colusa County*[13] copyright was denied to a blank form of property statement for assessment purposes.

Directories.

Dictionaries.

Mercantile Statistics.

Forms of Application.

[1] (1828), 2 Paine, 382.
[2] (1897), 53 U.S. App., 461.
[3] (1828), 2 Paine, 382.
[4] (1879), 101 U.S. Rep., 99.
[5] *Bullinger* v. *MacKay* (1879), 15 Blatchf., 550.
[6] *Chils* v. *Gronland* (1890), 41 Fed. Rep., 145.
[7] (1896), 75 Fed. Rep., 703.
[8] (1828), 2 Paine, 382.
[9] *Mott* v. *Clow* (1897), 53 U.S. App., 461.
[10] *Egbert* v. *Greenberg* (1900), 100 Fed. Rep., 447.
[11] *American Trotting* v. *Gocher* (1895), 70 Fed. Rep., 237.
[12] (1888), 37 Fed. Rep., 103.
[13] (1893), 57 Fed. Rep., 979.

This latter decision appears, however, to have been partly on the ground that as the assessors were obliged to issue a form, it would embarrass their duties if forms drawn up by private persons were entitled to copyright.

A circular in pamphlet form used as an advertisement, and explaining a certain method of distribution of coupons to cash purchasers from certain merchants named in the pamphlet, has been held to be the subject of copyright.[1] The circuit judge, however, in his judgment, says: "It requires some stretch of imagination to say that this pamphlet comes within the purpose of Congress, the encouragement of learning, and the increase of useful knowledge, but the official charged with the duty has granted a copyright to this pamphlet, and his decision is accepted."[2]

Dramatic Works.

Dramatic works[3] have been protected, although not of a very high literary standard. In *Henderson* v. *Tompkins*[4] protection was given to a topical song which was designed merely to amuse. It was sufficient if it accomplished that purpose.

Law Reports.

Law Reports are protected so far as they consist of original intellectual matter[5] the protection may thus extend to the title-page, table of cases, the head notes, the statements of facts, the argument of counsel, the index, the order and arrangement of cases, the numbering and pagination of the volumes, the table of cases cited in the opinions, the subdivision of the index into condensed titles, and the cross references.[6] The original work of the reporter is alone protected.[7] In the opinion of the Court there is no copyright;[8] these constitute part of the law of the land open to all to make use of as they please, and neither the state, the judge, nor the reporter can acquire or confer any conclusive

[1] *Mutual Advertising Co.* v. *Refo* (1896), 76 Fed. Rep., 961.

[2] 76 Fed. Rep., at p. 963.

[3] *Aronson* v. *Fleckenstein* (1886), 28 Fed. Rep., 75; *Daly* v. *Webster* (1892), 1 U.S. App., 573; *Henderson* v. *Tompkins* (1894), 60 Fed. Rep., 758.

[4] (1894), 60 Fed. Rep., 758.

[5] *Callaghan* v. *Myers* (1888), 128 U.S. Rep., 617; *Wheaton* v. *Peters* (1834), 8 Pet., 591; *Little* v. *Hall* (1855), 18 How., 165; *Gould* v. *Banks* (1832), 8 Wend., 562; *Heine* v. *Appleton* (1853), 4 Blatchf., 125; *Cowen* v. *Banks* (1862), 24 How. Pr., 72.

[6] *Callaghan* v. *Myers* (1888), 128 U.S. Rep., 617.

[7] *Connecticut* v. *Gould* (1888), 34 Fed. Rep., 319; *Gray* v. *Russell* (1839), 1 Story, 11; *West* v. *Lawyers* (1896), 51 U.S. App., 216, 64 Fed. Rep., 360.

[8] *Wheaton* v. *Peters* (1834), 8 Pet., 591; *Nash* v. *Lathrop* (1886), 142 Mass., 29.

privilege of copying them. The same rule applies to the head notes in those states where they are prepared by the judge.[1] On the same grounds of public policy no one can have copyright in the statutes;[2] the legislature of the state cannot confer it on any one.[3] There may be copyright in the head notes and arrangement of a digest of the statutes.[4]

Statutes.

The contents of a book do not require to be entirely new; if partially old there will be copyright *quoad* the new material or new arrangement.[5] Thus there is copyright in notes and additions to an old work,[6] in a new arithmetic combining old material in new form,[7] in translations,[8] in the adaptation of an old drama introducing a new title, new dialogue, minor characters, scenery, and dramatic situations with the orchestration and orchestra part songs and music,[9] and in the dramatization of a novel.[10]

Notes and Additions. New Arithmetic. Adaptations.

In one case it was held that the adaptation of a musical piece from the notation suitable to one instrument to that suitable to another was not a sufficiently intellectual process to entitle the adapter to copyright in his adaptations.[11] It was said that "a mere mechanic could make the adaptation and accompaniment." Since then, however, it has been held that a musical arrangement is the subject of copyright. In *Thomas* v. *Lennox*[12] an orchestral accompaniment for a non-copyright oratorio by Gounod was held to be the subject of copyright. In *Carte* v. *Evans*[13] an arrangement for the pianoforte of the orchestral score of an opera was held to be copyright.

Musical Arrangement.

[1] *Banks* v. *Manchester* (1888), 128 U.S. Rep., 244; *Chase* v. *Sanborn* (1874), 4 Cliff., 306.

[2] *Davidson* v. *Wheelock* (1886), 27 Fed. Rep., 61; *Banks* v. *M'Divitt* (1875), 13 Blatchf., 163; *Howell* v. *Miller* (1898), 91 Fed. Rep., 129.

[3] Ibid.

[4] Ibid.

[5] *Emerson* v. *Davis* (1845), 3 Story, 768; *Lawrence* v. *Dana* (1869), 4 Cliff., 1; *Black* v. *Allen* (1893), 56 Fed. Rep., 764.

[6] *Brightley* v. *Littleton* (1888), 37 Fed. Rep., 103; *Gray* v. *Russell* (1839), 1 Story, 11; *Lawrence* v. *Dana* (1869), 4 Cliff., at p. 79; *Mead* v. *West* (1896), 80 Fed. Rep., 380.

[7] *Emerson* v. *Davis* (1845), 3 Story, 768.

[8] *Emerson* v. *Davis* (1845), 3 Story, at p. 780; *Shook* v. *Rankin* (1875), 6 Biss., 477.

[9] *Aronson* v. *Fleckenstein* (1886), 28 Fed. Rep., 75.

[10] *Boucicault* v. *Fox* (1862), 5 Blatchf., 87, at p. 100.

[11] *Jollie* v. *Jacques* (1850), 1 Blatchf., 618. See *Reed* v. *Carusi* (1845), 8 L. R., 411; 72 Fed. Cas., No. 11, 642.

[12] (1883), 14 Fed. Rep., 849.

[13] (1886), 27 Fed. Rep., 861.

New Editions.

Copyright in new editions runs *quoad* the new material from the date of the new edition.[1] The additions or corrections must be of substantial value. A work which is *publici juris* cannot be reclaimed by colourable and immaterial alterations or additions.[2]

Form of Publication.

A book need not be a book in the ordinary sense of the word; the word in the Act is not to be construed by reference to lexicographers: "the literary property to be protected by the Act is not to be determined by the size, form, or shape in which it makes its appearance, but by the subject-matter."[3] A single sheet containing literary matter will be protected as a book.[4] No doubt, however, the subject to be protected must be *ejusdem generis* as a book or leaflet. The subject-matter must convey, and the form must be suitably adapted for conveying, information to the reader. The copyright law embraces those things that are printed and published for information and not for use in themselves. Thus what is really a mechanical instrument, and if original entitled to protection under the patent law, will not be protected by the copyright law. In

Mechanical Devices.

Letter File.

Amberg File v. *Shea*[5] protection was claimed in a letter file. It was said that the spaces between the index letters were adjusted to the average requirements of the correspondent. These average requirements were ascertained by exhaustive research in different directories. Copyright was refused. In *Baker* v. *Selden*[6] blank account books of an original type or pattern were refused protection. The judge in that case drew the distinction between what was a proper subject of the patent laws and what was a proper subject of copyright law—"The object of the one is explanation, the object of the other is use."[7] In *Drury* v. *Ewing*[8] a "ladies' chart for cutting dresses and basques for ladies, and coats, jackets, &c., for boys" was protected. It is almost certain, however, that this decision would not now be accepted as sound. Mere labels will not

Account Book.

[1] *Lawrence* v. *Dana* (1869), 4 Cliff., 1; *Gray* v. *Russell* (1839), 1 Story, 11.

[2] *Snow* v. *Laird* (1900), 98 Fed. Rep., 813.

[3] *Clayton* v. *Stone* (1828), 2 Paine, 382; *Brightley* v. *Littleton* (1888), 37 Fed. Rep., 103; *Mott* v. *Clow* (1897), 53 U.S. App., 461.

[4] *Clayton* v. *Stone* (1828), 2 Paine, 382; *Drury* v. *Ewing* (1862), 1 Bond, 541.

[5] (1897), 53 U.S. App., 449.

[6] (1879), 101 U.S. Rep., 99.

[7] 101 U.S. Rep., at p. 105.

[8] (1862), 1 Bond, 541.

be protected as copyright works.[1] They may be protected by registration in the Patent Office.[2]

Originality.

Copyright may be obtained for works of the imagination, or for a mere collection and arrangement of material open to all mankind.[3] What is meant by originality as a requisite of copyright is that what is claimed as the subject of copyright, whether it be the composition or arrangement of matter, must not have been taken from some literary or artistic work already in existence. It need not be the first of its kind; the same thing may have been done before so as to produce identically the same result.[4] If the second author, artist, or composer goes about his work independently, searching out his material from the original sources, he is equally entitled to copyright with the first. Herein copyright law differs from the law of patents; in the former there may be two concurrent copyrights in what is identically the same creation, in the latter there can only be one patent, the first inventor being entitled.

Letters.

Letters may be the subject of copyright, whether of a business or private nature, and although never intended by the writer to be published as literary productions. In *Folsom* v. *Marsh*[5] the letters of George Washington were the subject of controversy. Story, J., in giving judgment, laid down the law as to the property in letters at some length:—

"There is no small confusion in the books with reference to the question of copyright in letters. Some of the *dicta* seem to suppose that no copyright can exist except in letters which are professedly literary, while others again recognise a much more enlarged and liberal doctrine upon the whole subject. In the first place I hold that the author of any letter or letters (and his representatives), whether they are literary compositions or familiar letters or letters of business, possess the sole and exclusive copyright therein; and that no persons, neither those to whom they are addressed nor other persons, have any right or authority to publish the same upon their own account or for their own benefit. But consistently with this right the persons to whom they are addressed may have,

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[1] *Coffeen* v. *Brunton* (1849), 4 M'Lean, 516; *Scoville* v. *Toland* (1848), 6 West Law, J., 84.

[2] Rev. St., sec. 4952.

[3] *Greene* v. *Bishop* (1858), 1 Cliff., 186; *Gray* v. *Russell* (1839), 1 Story, 11; *Emerson* v. *Davis* (1845), 3 Story, 768.

[4] *Gray* v. *Russell* (1839), 1 Story, 11; *Bullinger* v. *MacKay* (1879), 15 Blatchf., 550; *Brightley* v. *Littleton* (1888), 37 Fed. Rep., 103; *Johnson* v. *Donaldson* (1880), 3 Fed. Rep., 22.

[5] (1841), 2 Story, 100.

nay, must by implication possess the right to publish any letter or letters addressed to them upon such occasions as require or justify the publication or public use of them, but this right is strictly limited to such occasions. Thus a person may justifiably use and publish in a suit at law or in equity such letter or letters as are necessary and proper to establish his right to maintain the suit or defend the same. So if he be aspersed or misrepresented by the writer or accused of improper conduct in a public manner, he may publish such parts of such letter or letters, but no more, as may be necessary to vindicate his character and his reputation, or free him from unjust obloquy and reproach. If he attempt to publish such letter or letters on other occasions not justifiable, a Court of Equity will prevent the publication by an injunction as a breach of private confidence or contract or of the rights of the author, and *a fortiori* if he attempt to publish them for profit, for then it is not a mere breach of confidence or contract, but it is a violation of the exclusive copyright of the writer. In short, the person to whom letters are addressed has but a limited right or special property (if I may so call it) in such letters as a trustee, or bailee for particular purposes, either of information or of protection or of support of his own rights and character. The general property and the general rights incident to property belong to the writer, whether the letters are literary compositions or familiar letters or details of facts or letters of business. The general property in the manuscript remains in the writer and his representatives as well as the general copyright. *A fortiori* third persons standing in no privity with either party are not entitled to publish them to subserve their own private purposes of interest or curiosity or passion."

It is not quite accurate to say that the receiver of a letter is merely a trustee or bailee for particular purposes. Clearly the receiver of a letter is entitled to destory it unless there is any express or implied stipulation to the contrary, and probably he can prevent the sender from publishing it by refusing to produce it if it is in his possession.

No Copyright in Titles.

As a rule there can be no copyright in a title.[1] The deposit of the title-page with the Librarian of Congress does not give the author any exclusive right to the use of that title.[2] A title can only be protected as a trade mark in connection with a particular literary or artistic production which has become known to the public. The public must be shown to be

[1] *Isaacs* v. *Daly* (1875), 39 N. Y., 511; *Osgood* v. *Allen* (1872), 1 Holmes, 185; *Corbett* v. *Purdy* (1897), 80 Fed. Rep., 901; *Jollie* v. *Jacques* (1850), 1 Blatchf., 618.

[2] *Osgood* v. *Allen* (1872), 1 Holmes, 185; see *Roberts* v. *Myers* (1860), 13 L. R. (Mass.), 398; *Black* v. *Allen* (1893), 56 Fed. Rep., 764.

deceived or to be in danger of being deceived.[1] A title may be protected by registration as a trade mark.[2]

Photographs were first protected by the Statute of March 3, 1865; before then protection was refused to them under the head of prints, cuts, or engravings.[3] It seems to have been doubted at one time whether the protection of photographs was not *ultra vires* of the powers conferred by the Constitution. There is certainly an apparent difficulty in bringing a photograph within the expression "writings" used in the Constitution; but this word has received an extremely wide and liberal construction, and has been held to be capable of including any literary or artistic production of the intellect. Photographs have been now frequently protected, but it is not every photograph that will be protected, there must be some evidence that the photographer has exercised an intellectual choice of subject-matter, expression, arrangement, light, or other circumstances or conditions which go to the production of an artistic photograph.[4] It will be a question of fact for the Court or jury whether the photograph is a mere manual reproduction of subject-matter or an original work of art.[5] In a portrait there may be copyright in so far as the photographer has relied on his own judgment for the choice of light, background, pose, or attitude.[6] In one case the photograph of a yacht under sail was protected. It required the photographer to select and utilise the best effects of light, cloud, water, and general surroundings, and combine them under favourable conditions for depicting vividly and accurately the view of a yacht under sail.[7]

Photographs.

A slight colourable alteration in a non-copyright photograph will not entitle it to copyright.[8]

Engravings, cuts, and prints will be protected,[9] but there

[1] *Isaacs v. Daly* (1875), 39 N. Y., 511.

[2] Rev. St., secs. 4937-4947.

[3] *Wood* v. *Abbott* (1866), 5 Blatchf., 325.

[4] *Schreiber* v. *Thornton* (1883), 17 Fed. Rep., 603; *Burrow-Giles* v. *Sarony* (1884), 111 U.S. Rep., 53; *Falk* v. *Gast* (1891), 48 Fed. Rep., 262; *Falk* v. *Brett* (1891), 48 Fed Rep., 678; *Bolles* v. *Outing* (1899), 175 U.S. Rep., 262; 77 Fed. Rep., 966.

[5] *Bolles* v. *Outing* (1899), 175 U.S. Rep., 262; 77 Fed. Rep., 966.

[6] *Falk* v. *Gast* (1891), 48 Fed. Rep., 262; *Falk* v. *Brett* (1891), 48 Fed. Rep., 678; *Falk* v. *Donaldson* (1893), 57 Fed. Rep., 32.

[7] *Bolles* v. *Outing* (1899), 175 U.S. Rep., 262; 77 Fed. Rep., 966.

[8] *Snow* v. *Laird* (1900), 98 Fed. Rep., 813.

[9] *Binns* v. *Woodruff* (1821), 4 Wash. C. Ct., 48; *Ehret* v. *Pierce* (1880), 18 Blatchf. 302.

Engravings.

must be at least some merit in them as artistic or instructive productions. Thus the prints of common articles of household use in a tradesmen's catalogue,[1] drawings of billiard tables in a similar catalogue,[2] a card of specimen colours and tints of zinc paints,[3] and a poster with coloured drawings of a circus performance[4] have all been refused protection. If there is real artistic merit in a drawing it will not be disentitled to protection merely on the ground that it has been used as an advertisement.[5]

It has been held that playing cards printed in colours are entitled to protection as "prints."[6]

The Act of June 18, 1874, enacts that the protection of the Copyright Acts conferred on "engravings," "cuts," and "prints" shall not extend to prints or labels designed to be used for any articles of manufacture. This Act cannot be evaded by attempting to copyright the picture or drawing from which the label is designed. In *Schumacher* v. *Wogram*[7] the Court refused protection under the Copyright Acts to a picture representing a young woman holding a bouquet of flowers intended to be reproduced on labels for cigar boxes. The reason for refusing protection of the copyright law to such productions is that their only real value is as a trade mark connected with a particular article of manufacture.[8] They are not designed in themselves to instruct or amuse. As trade marks they will be protected if registered in the Patent Office. The fact that a picture could be readily lithographed and used as a label does not deprive it of copyright;[9] it must in order to lose its copyright have been made with the intention of being used as a label. If the painting itself were to be considered a label because copies might be so used, no masterpiece would be entitled to copyright. A painting,

Pictures.

[1] *Mott* v. *Clow* (1897), 53 U.S. App., 461.
[2] *Collender* v. *Griffith* (1878), 11 Blatchf., 212.
[3] *Ehret* v. *Pierce* (1880), 18 Blatchf., 302.
[4] *Courier* v. *Donaldson* (1900), 104 Fed. Rep., 993; *Bleistein* v. *Donaldson* (1899), 98 Fed. Rep., 608.
[5] *Yuengling* v. *Schile* (1882), 12 Fed. Rep., 97.
[6] *Richardson* v. *Miller* (1877), 3 L. and Eq. Rep. (Am.), 614.
[7] (1888), 35 Fed. Rep., 210.
[8] *Coffeen* v. *Brunlon* (1849), 4 M'L., 516; *Higgins* v. *Keuffel* (1891), 140 U.S. Rep., 428.
[9] *Schumacher* v. *Schwencke* (1885), 23 Blatchf., 373; 25 Fed. Rep., 466.

engraving, or print in order to be protected must be a pictorial representation of something and not merely a design.[1]

Section II.—Nationality of the Author.

Unfortunately the Acts of Congress are not clear as to how far the works of foreign authors, or the works of non-residents in the United States are protected.

Until 1891 the works of foreign authors not resident in the United States were denied protection. Sec. 4971 of the Revised Statutes ran as follows:—

"Sec. 4971. Nothing in this chapter shall be construed to prohibit the printing, publishing, importation, or sale of any book, map, chart, dramatic or musical composition, print, cut, engraving, or photograph, written, composed, or made by any person not a citizen of the United States nor resident therein." [2]

By the Act of 1891, the benefits of copyright are extended to the citizens of foreign countries which are proclaimed by the President as conferring reciprocal rights on American citizens. Sec. 4971 of the Revised Statutes is repealed. The Act of March 3, 1891, section 13, enacts—

"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."

The Act of March 3, 1891, section 5, amending the Revised Statutes, sec. 4959, enacts 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." (July 1, 1891.)

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[1] *Rosenbach* v. *Dreyfuss* (1880), 2 Fed. Rep., 217.

[2] *Yuengling* v. *Schile* (1882), 12 Fed. Rep., 97, 102.

On these sections two questions seem to be left open :—

(1) Is the test to be applied the nationality of (*a*) the author, or of (*b*) the proprietor of the manuscript, or other unpublished work, at the time of publication; or will it satisfy the Act if (*c*) either of these persons complies with the requisite conditions of nationality?

(2) Will residence in the United States or in one of the proclaimed countries confer the privileges on one who is not a citizen or subject of any of them?

1. It may be that it would be a sufficient compliance with the requirements of the Act if either the author or his assignee before publication were a citizen of the United States, or a subject or citizen of a proclaimed country. Section 1 amending the Revised Statutes, sec. 4952, gives the sole liberty to "the author, inventor, designer, or proprietor, and to the executors, administrators, or assigns of any such person." Section 13 "applies the Act" to citizens or subjects of certain foreign states or nations. Under the Revised Statutes, section 4971, before 1891 it was the nationality of the author alone that was considered, and it would have been no answer to have said that the assignee before publication was an American citizen or resident in the United States. Perhaps in 1891 the benefit was designedly extended to assignees before publication, who complied with the conditions and who had taken assignments from foreign authors who did not. On the whole, however, I am inclined to the opinion that it will not do merely to allege that the assignee of the uncopyrighted and unpublished work is a citizen of the United States or a subject or citizen of one of the proclaimed countries. It must, I think, be alleged that the author, inventor, designer, or proprietor *ab initio* has complied with the conditions as to nationality. By proprietor *ab initio* (and probably this is the true meaning of "proprietor" in section 1 of the Act of March 3, 1891 [1]), I mean one who compiles a work by his servants or agents, for instance, a body corporate, which cannot be said to be an "author, inventor, or designer," and yet is entitled to the whole property in the work of its servants as it grows up from day to day. I have not con-

[1] See *Yuengling* v. *Schile* (1882), 12 Fed. Rep., at p. 102.

sidered the assignee after publication. I think it must be abundantly clear that his nationality cannot be taken as the test, since if he took his assignment from a foreign author who did not comply with the conditions of nationality when the work was published, the work at the time of assignment would have become *publici juris*. If he took his assignment from one who complied with the conditions of nationality and copyrighted the work, the fact of his being an alien would not prevent him acquiring the copyright already secured.

2. Before 1891 residence in the United States, which was interpreted to mean permanent residence and not merely for the purposes of publication,[1] was sufficient to entitle an author to the privileges of the Copyright Acts. The provision now, under the Act of March 3, 1891, is that the Act shall only apply to a citizen of a foreign country which has been proclaimed. Reading the Act strictly a foreign resident in the United States but not a citizen thereof is excluded from protection which he formerly had, unless he is a citizen or subject of a proclaimed country. No doubt this was not intended to be the result of the Act of 1891, but the words are plain and unambiguous, and there seems no reason why they should not have effect according to their plain meaning. *A fortiori* a foreigner resident in, but not a subject of, one of the proclaimed countries would not be entitled to copyright.

The following States have been proclaimed as fulfilling one or other of the required conditions, and their citizens are therefore entitled to acquire copyright in the United States in the same way as an American citizen :—

Belgium, France, Great Britain, Switzerland	July 1, 1891.
Germany	April 15, 1892.
Italy	October 31, 1892.
Denmark	May 8, 1893.
Portugal	July 20, 1893.
Spain	July 10, 1895.
Mexico	Feb. 27, 1896.
Chili	May 25, 1896.

[1] *Boucicault* v. *Wood* (1867), 2 Biss., 34.

SECTION III.—NECESSARY FORMALITIES.

No person is entitled to copyright unless he—[1]

I. In the case of a book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or chromo—

(i.) Delivers (or mails within the United States) to the Librarian of Congress, *on or before the day of publication*, in the United States or elsewhere a *printed copy of the title* of the work.

(ii.) Delivers (or mails within the United States) to the Librarian of Congress, *not later than the day of publication*, in the United States or elsewhere *two copies* of the work.

II. In the case of a painting, drawing, statue, statuary, or a model or design for a work of the fine arts—[2]

(i.) Delivers (or mails within the United States) to the Librarian of Congress, *on or before the day of publication*, in the United States or elsewhere a *description of the work.*

(ii.) Delivers (or mails within the United States) to the Librarian of Congress, *not later than the day of publication*, in the United States or elsewhere *a photograph of the work.*

The proprietor of every copyright book or other article must deliver (or mail within the United States) to the Librarian of Congress a copy of every subsequent edition wherein any substantial changes shall be made.[3] Each volume of a book in two or more volumes, when such volumes are published separately, and the first one has not been issued before July 1, 1891, and each number of a periodical is to be considered an independent publication.[4] The requirements of the statute as to delivery of title and copies, and printing of notice must therefore be complied with in the case of each volume of a book or number of a periodical.

[1] Act of March 3, 1891, sec. 3, amending Revised Statutes, sec. 4956.
[2] Ibid.
[3] Act of March 3, 1891, amending Revised Statutes, sec. 4959.
[4] Act of March 3, 1891, sec. 11.

Conditions Precedent.—The deposit of title and delivery of copies as prescribed by the statutes are conditions precedent to copyright and not merely declaratory.[1] There is no common law right after publication, and therefore if a work is published without the proper formalities having been observed it becomes *publici juris*, and any one may make what use of it he pleases.[2] Ignorance of the law is no excuse even although a new Act has just been passed altering the time within which copies must be delivered.[3] In an action for infringement the declaration must set out in detail a compliance with the law as to formalities,[4] and the burden of proof thereof is on the complainant.[5] He must prove the deposit of title, delivery of copies, notice of copyright, and the date of publication. The latter is essential, as on it depends the validity of the entry.[6]

Delivery of the Title.—The copy of the title to be delivered must be "printed," *i.e.* the characters used must be those ordinarily used in printing, but they may be made by hand with a pen.[7] The work must be published within a reasonable time after the deposit of the title-page, otherwise the formalities will not have been complied with.[8] Two months' delay in mailing to the Librarian of Congress copies of a photograph after the filing of its title is not unreasonable.[9]

It will not do to publish a book under a substantially different title from that deposited. Immaterial variations in the title, or sub-title, or complete alteration of a description

[1] *Jollie* v. *Jacques* (1850), 1 Blatchf., 618; *Struve* v. *Schwedler* (1857), 4 Blatchf., 23; *Wheaton* v. *Peters* (1834), 8 Pet., 591; *Chase* v. *Sanborne* (1874), 4 Cliff., 306; *Merrell* v. *Tice* (1881), 104 U.S. Rep., 557; *Baker* v. *Taylor* (1848), 2 Blatchf., 82; *Carte* v. *Evans* (1886), 27 Fed. Rep., 861; *Thompson* v. *Hubbard* (1888), 131 U.S. Rep., 123; *Callaghan v. Myers* (1888), 128 U.S. Rep., 617; *Parkinson* v. *Lascelle* (1875), 3 Sawyer, 330; *Boucicault* v. *Hart* (1875), 13 Blatchf., 47; *Lawrence* v. *Dana* (1869), 4 Cliff., 1; *Ewer* v. *Coxe* (1824), 4 Wash. C. Ct., 487.

[2] *Wheaton* v. *Peters* (1834), 8 Pet., 591; *Merrell* v. *Tice* (1881), 104 U.S. Rep., 557; *Banks* v. *Manchester* (1888), 128 U.S., 244; *West* v. *Lawyers* (1896), 64 Fed. Rep., 360.

[3] *Osgood* v. *Aloe* (1897), 83 Fed. Rep., 470.

[4] *Chicago* v. *Butler* (1884), 19 Fed. Rep., 758; *Parkinson* v. *Lascelle* (1875), 3 Sawyer, 330; *Merrell* v. *Tice* (1881), 104 U.S., Rep., 557.

[5] *Osgood* v. *Aloe* (1897), 83 Fed. Rep., 470.

[6] *Chase* v. *Sanborne* (1874), 4 Cliff., 306.

[7] *Chapman* v. *Ferry* (1883), 18 Fed. Rep., 539.

[8] *Jeweller's* v. *Jeweller's* (1898), 84 Hun., 12; 155 N. Y., 241; see *Scribner* v. *Allen* (1892), 49 Fed. Rep., 854; *Boucicault* v. *Hart* (1875), 13 Blatchf., 47.

[9] *Falk* v. *Gast* (1891), 48 Fed. Rep., 262.

on the title-page will not make the deposit void. In *Donnelley* v. *Ivers*[1] the title deposited was "Over One Thousand Recipes. The Lake Side Cook Book: A Complete Manual of Practical, Economical, Palatable, and Healthful Cookery. Chicago: Donnelley, Lloyd & Company, 1878." The title on the book as published was "The Lake Side Cook Book, No. 1. A Complete Manual of Practical, Economical, Palatable, and Healthful Cookery. By N. A. D." It was held that the requirement as to the deposit of title having been "substantially, in good faith complied with," the objection was not tenable. What is required is, that the deposited title be sufficient to identify the book with substantial certainty. In *Carte* v. *Evans*,[2] the title filed was "Pianoforte Arrangement of the Comic Opera, The Mikado, or the Town of Titipu, by W. S. Gilbert and Sir Arthur Sullivan. By George L. Tracey." The book as published bore the title "Vocal Score of the Mikado, or The Town of Titipu. Arrangement for Pianoforte by George Lowell Tracey (of Boston, U.S.A.) of the above-named opera by W. S. Gilbert and Arthur Sullivan." This was held a sufficient deposit to protect the pianoforte accompaniment. In *Black* v. *Allen*[3] the title deposited was "An Outline of the Political and Economic History of the United States, with Maps and Charts: I. History and Constitution by Alexander Johnson, M.A.; II. Population and Industry by Francis A. Walker, LL.D." The title of the book as deposited was "United States: Part III. Political Geography and Statistics, copyright, 1888, by Francis A. Walker." In the absence of evidence that the defendant was deceived or misled by the change of the title the Court held that it was valid. In *Daly* v. *Brady*[4] the title of a drama deposited was "Under the Gaslight: A Drama of Life and Love in these Times." The actual title as published was "Under the Gaslight: A Romantic Panorama of the Streets and Homes of New York." The Court held that the change of title might deceive the public, and therefore the deposit of title was bad; but this decision was reversed in *Daly* v. *Webster*;[5] the variance was in the description.

[1] (1882), 20 Blatchf., 381.
[2] *Carte* v. *Evans* (1886), 27 Fed. Rep., 681.
[3] (1893), 56 Fed. Rep., 764.
[4] (1889), 39 Fed. Rep., 265.
[5] (1892), 1 U.S. App., 573.

"The title required may include a sub-title, but it does not include a description of the book upon the title-page."

An author may wish to change his title entirely after he has deposited the title-page. He may do this before the deposit of copies by depositing a fresh title-page; but it is questionable whether the duration of his copyright will run from the first deposit of title or from the deposit of the altered title.[1]

Delivery of Description.—Probably a short description is all that is required. If the title is in itself descriptive, probably that will be sufficient. The photograph of a painting, or other work of art which is required to be delivered, does not take the place of a description.[2]

Delivery of Copies.—Under the Revised Statutes before 1891 the printed copies had to be delivered "within ten days from the publication thereof." This was sufficiently complied with by the delivery of two copies on the day before publication.[3] The Act of 1891 now requires that the two printed copies shall be delivered "not later than the day of publication."

The copies deposited with the Librarian of Congress do not require to bear the statutory notice as to copyright.[4]

The memorandum given by the librarian is sufficient *primâ facie* evidence of the fact and date of deposit.[5] The librarian's date stamp on the book is not conclusive, and may be rebutted by other evidence of the actual date of deposit.[6] If the copyright matter is ordinarily bound up with other matter, the Librarian of Congress cannot insist on the delivery of the bound volume complete. It is a sufficient delivery to take the volume to pieces and deliver the loose sheets on which the copyright matter is printed.[7] Before 1891 the two copies

[1] *Black* v. *Allen* (1893), 56 Fed. Rep., 764.

[2] *Bennett* v. *Carr* (1899), 96 Fed. Rep., 213.

[3] *Belford* v. *Scribner* (1892), 144 U.S. Rep., 488; *Chapman* v. *Ferry* (1883), 18 Fed. Rep., 539; *Falk* v. *Donaldson* (1893), 57 Fed. Rep., 32.

[4] *Osgood* v. *Aloe* (1897), 72 Off. Gaz., 418.

[5] *Callaghan* v. *Myers* (1888), 128 U.S. Rep., at p. 655; *Belford* v. *Scribner* (1892), 144 U.S. Rep., 488; *Merrell* v. *Tice* (1881), 104 U.S. Rep., 557; *Blume* v. *Spear* (1887), 30 Fed. Rep., 629.

[6] *Black* v. *Allen* (1893), 56 Fed. Rep., 764.

[7] Ibid.

deposited had to be of the "best edition," but this appears to be no longer necessary.

Printing in the United States.—In the case of

i. books,
ii. chromos,
iii. lithographs,
iv. photographs,

the two copies required to be delivered must be printed from type set within the limits of 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.[1]

This requirement was introduced in 1891, when the privileges of copyright were extended to subjects and citizens of foreign countries. Formerly there was no obligation to print within the United States.

It has been held that a volume of music is not a "book" within the meaning of the provision in the statute enacting that the two copies delivered shall be printed in the United States.[2] It would seem to follow that the necessity of printing in the United States does not extend either to maps or charts, or even to dramatic compositions in book form. These are all dealt with specifically in the Act, and therefore, on the authority of *Littleton* v. *Oliver*,[3] do not come within the generic term "books."

Retrospective Provision.— By an Act of March 3, 1893, it is enacted—

"That any author, inventor, designer, or proprietor of any book or other article entitled to copyright, who has heretofore failed to deliver in the office of the Librarian of Congress two complete copies of such book, or description or photograph of such article within the time limited by title sixty, chapter three of the Revised Statutes relating to copyrights and the Acts in amendment thereof, and has complied with all other provisions thereof, who has before the 1st day of March 1893 delivered at the office of Librarian of Congress or deposited in the mail addressed to the Librarian of Congress two complete printed copies of such book, or

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[1] Act of March 3, 1891, sec. 3, amending Revised Statutes, sec. 4956.
[2] *Littleton* v. *Oliver* (1894), 62 Fed. Rep., 597. [3] Ibid.

description or photograph of such article, shall be entitled to all the rights and privileges of such title sixty, chapter three of the Revised Statutes and the Acts in amendment thereof."

Notice of Copyright.—No person can maintain an action for infringement of his copyright unless each published copy of his work bears one or other of the following notices :[1]—

"Entered according to Act of Congress in the year , by A. B., in the office of the Librarian of Congress at Washington.

Or :—

"Copyright, 18 , by A.B."

Books must bear the notice :—

"On the title-page or page immediately following." [2]

Designs for moulded decorative articles, tiles, plaques, or articles of pottery :—

"Upon the back or bottom of such articles or on such other place upon them as it has heretofore been usual . . . for the placing of manufacturers, merchants, and trade marks thereon." [3]

Other works, including musical compositions, photographs, pictures, engravings :—

"Upon some visible portion thereof, or of the substance upon which the same shall be mounted." [4]

The statutory requirements as to notice must be strictly complied with, and a departure from the exact words of one or other of the alternative forms may be fatal to the right of action. When the only notice on a book was "Entered according to Act of Congress, in the year 1878, by H. A. Jackson," it was held an insufficient notice as complying with neither of the two alternative forms.[5]

Slight variation.

A very slight variance in the words or the orders of the words, if the matter is substantially the same, will not, however, make a bad notice. Thus "1889, Copyrighted by B. J. Falk, N.Y.," has been held a good notice.[6] So also has "Copyright entered according to Act of Congress, 1889, by T. C. Hefel,

[1] Act of June 18, 1874, sec. 1. This section supersedes the Revised Statutes, sec. 4962.
[2] Ibid. [3] Act of August 1, 1882. [4] Act of June 18, 1874, sec. 1.
[5] *Jackson* v. *Walkie* (1886), 29 Fed. Rep., 15.
[6] *Falk* v. *Schumacher* (1891), 48 Fed. Rep., 222.

civil engineer." It was held to comply with the short alternative notice, viz.: "Copyright, 18 , by A. B.," the superfluous words being disregarded on the doctrine of *utile per inutile non vitiatur*.[1]

The name of the proprietor who takes out the copyright is an essential part of the notice. In *Osgood* v. *Aloe*[2] the following notice was printed on the page following the title-page, "Copyright, 1891; all rights reserved." This was held a bad notice, and the name of the publishers, who were also the proprietors, printed on the title-page was insufficient. There was nothing to show that they were proprietors as well as publishers. Copyright may be taken out in the name of a firm or a conventional trade name, and if that name is on the notice it is sufficient.[3] But it must be the full and proper name under which the proprietors are trading. Thus when *The Illustrated American Publishing Company* issued a paper entitled *The Illustrated American*, the following was held an insufficient notice on a crayon drawing published by the Company, viz.: "Copyrighted 1891, by *The Illustrated American*."[4] It seems, however, that it is not necessary for an individual to give his full name if what is given is sufficient for the purposes of identity. Thus the surname and the first letter of the Christian name,[5] and in one case the surname alone have been held sufficient.[6] The latter case was that of a photographer in Brooklyn. It was shown that there was only one photographer of that name in Brooklyn, and the notice ran "Copyright, '93, by Bolles, Brooklyn."[7] If the full name is given there is no necessity to give the address of the proprietor, even although he be a foreigner resident abroad.[8]

It will not do to put the name of an agent on the notice. In *Nifflin* v. *Dutton*[9] the authoress of "The Minister's Wooing" took out a copyright in the whole book in her own name.

[1] *Hefel* v. *Whitely* (1893), 54 Fed. Rep., 179; and see *Garland* v. *Gemmill* (1887), 14 S. C. R., 321.

[2] *Osgood* v. *Alue* (1897), 83 Fed. Rep., 470.

[3] *Scribner* v. *Allen & Co.* (1892), 49 Fed. Rep., 854; *Werckmeister* v. *Springer* (1894), 63 Fed. Rep., 808.

[4] *The Illustrated American* v. *New York Press* (1892), cited in argument, 1 U.S. Rep., 594.

[5] *Burrow-Giles* v. *Sarony* (1884), 111 U.S. Rep., 53.

[6] *Bolles* v. *Outing* (1899), 77 Fed. Rep., 966; 175 U.S. Rep., 262. [7] Ibid.

[8] *Werckmeister* v. *Springer* (1894), 63 Fed. Rep., 808.

[9] (1901), 107 Fed. Rep., 708.

Subsequently several chapters of the story were published serially in the *Atlantic Monthly*. The only notice of copyright in that magazine was in the name of the publishers, Ticknor and Fields. It was held that these chapters had not a sufficient notice. Great care must be taken in the case of serial publications. If a story is published in a magazine each part must be treated as a separate book, and must contain a notice of copyright by the author if he is the owner. When the book is published as a whole these notices must be repeated; it will not do merely to copyright the whole book afresh and print a new notice.

Date of Entry.—The date required is the year only; neither the day nor the month is necessary. The statement of a wrong year has been held fatal to the notice. In *Baker* v. *Taylor*[1] the true date of taking out copyright was 1846. The notice stated 1847 as the year, and this was held as bad notice, even although the error arose from mistake. But in *Callaghan* v. *Myers*[2] the notice put an earlier instead of a later date than the actual date of deposit; the true date being 1867, the notice declared copyright to have been entered in 1866. This was held an immaterial error, since it deceived no one, and would only operate to shorten the claimant's copyright by one year. In *Schumacher* v. *Wogram*[3] Wallace, J., doubted whether the declaration in the notice of a date earlier than the true date would not make the notice void. It is immaterial that the date on the notice is abbreviated if it is sufficiently clear what date is meant; thus, "Copyright, '94, by A. B.," is a good notice.[4]

It is extremely difficult to determine what date the law requires to be placed upon the second or subsequent edition of a book wherein substantial alterations or additions have been made. In the case of a reprint, I think it is clear that the date of the first edition, and that only, is the correct date; and even where alterations or additions have been made I think that that date is necessary, and I doubt whether it is necessary to add another notice giving the date of the revised edition. It would seem that a subsequent edition does not require to be "entered"

[1] (1848), 2 Blatchf., 82. [2] (1888), 128 U.S. Rep., 617. [3] (1888), 35 Fed. Rep., 210.
[4] *Snow* v. *Mast* (1895), 65 Fed. Rep., 995; *Bolles* v. *Outing* (1899), 175 U.S. Rep., 262.

in the same manner as the original edition; the statute is complied with by the deposit of a copy of every subsequent edition wherein any substantial changes shall be made. If this is done copyright in the alterations seems to have been procured. In *Lawrence* v. *Dana*[1] Clifford, J., held that it was not necessary in a subsequent edition to give the date of the entry of the first edition[2]; but I doubt if this is sound. On the whole, I think the correct view is that the matter peculiar to the first edition, whether it be printed in the first or any subsequent edition, must bear a notice with the date when that matter was first entered, and that the matter peculiar to any subsequent edition will be protected until the expiry of the copyright in the first edition, if it bears a notice with the date of the first edition only, and if a copy has been sent to the Librarian of Congress. I further think that the matter peculiar to subsequent editions may be protected for the full term of twenty-eight or thirty-two years from the date of the first publication of the edition in which it is first contained, if such edition is separately entered, by two copies of the title-page and of the book being deposited, and if it bears a notice with the date of such separate entry. I think, therefore, in every new edition in which there is a substantial alteration or addition there should as a matter of practice be a separate entry of copyright and separate notices on the title-page, one for each edition of the book.

The question may be raised as to whether a book is a subsequent edition or an entirely new book. In *Banks* v. *M'Divitt*,[3] the plaintiff had annotated the rules of the Supreme Court of New York. He had published such annotated editions in 1858 and 1871. In 1874 the rules were extensively amended, and the plaintiff published an annotated copy. It was held that this was not a subsequent edition of the original annotated rules, and therefore no notice of the original date of publication was required. I very much doubt whether this is a sound decision. It seems to me that in so far as the new book was the same as the old, it was a subsequent edition, and in order to retain protection required a notice of original publication.

[1] (1869), 4 *Cliff.* 1, at p. 61. [2] *Ibid.* [3] (1875), 13 Blatchf., 163.

Every published copy of every edition[1] of a work must have the statutory notice thereon; every proprietor who sues must have printed the notice on every copy published by him. If an assignee of a copyright fail to print a proper notice he will have no remedy even against his assignor for infringement.[2] From the wording of the Act of June 18, 1874, it seems that the printing of the notice is not now a condition precedent to copyright, but is only a condition of the right of action upon infringement. It is, I think, questionable whether the failure of A to print a proper notice will affect the right of B, his assignee, to sue for an infringement subsequent to the assignment. One who makes an unauthorised copy of a literary or artistic work is not exempt from liability merely because he can show that the copy from which he copied had no notice. His defence must be that such copy left the proprietor's hands without a proper notice.[3] The question has been raised, but not answered, whether if the proprietor grant a licence, and the licensee omits to insert a proper notice, the proprietor is without a remedy.[4]

Formerly if a book were published in several volumes at different times, it was sufficient to place the notice on the first volume only,[5] but now since the Act of 1891[6] each volume of a book and each number of a periodical is to be considered an independent publication, and the notice must be placed on each volume or part accordingly.

There is no special provision in the law of the United States as to newspapers and other periodical works, therefore each issue must be considered a separate work, and the requisite formalities complied with in each case.

Notice on Painting.—It was contended in one case[7] that there was no necessity to place the notice on an original painting, the Act only requiring notices to be placed on copies made therefrom. The Court held, however, that the original

[1] Act of June 18, 1874, sec. 1; *Thompson* v. *Hubbard* (1888), 131 U.S. Rep., 123.
[2] *Thompson* v. *Hubbard* (1888), 131 U.S. Rep., 123.
[3] *Falk* v. *Gast* (1891), 48 Fed. Rep., 262; *Falk* v. *Gast* (1893), 54 Fed. Rep., 890.
[4] *Springer* v. *Falk* (1894), 20 U.S. App., 296.
[5] *Dewight* v. *Appleton* (1842), 1 N.Y. Leg. Obs., 195.
[6] Act of March 3, 1891, sec. 11.
[7] *Pierce* v. *Werckmeister* (1896), 72 Fed. Rep. 57.

work was a "copy" within the meaning of the provision in the Act, and must be inscribed with the notice accordingly.

Maps in Atlas.—Each map contained in an atlas does not require to be separately copyrighted, or bear a separate notice of copyright. They are protected by a copyright of the entire work.[1] The same would, no doubt, apply to a volume of engravings or other works of art.

Publication.—There appears to be some doubt as to whether publication is necessary as a condition precedent to the statutory rights. The duration of copyright is to be measured from the date of the deposit of the title or description with the Librarian of Congress; but probably that in itself gives no proprietary right either in the title or the book. It has been suggested that it gives an "inchoate right," or an "equitable right, which Chancery will protect until the other acts may be done."[2] It may be that when the formalities have been completed by deposit of copies the right then acquired dates back to the deposit of title so as to give a statutory remedy against an infringement made between the two dates.[3] When the copies of the book have been deposited, the express conditions precedent of the statute have been performed; but the question has been raised whether there will be copyright unless within a reasonable time thereafter the book or other work is put in circulation among the public. In *Boucicault* v. *Hart*[4] the Court held that although the title-page had been filed there could be no copyright without "a deposit of copies and publication." In *The Jeweller's Mercantile Agency* v. *Jeweller's Publishing Company*[5] the New York Supreme Court, on a question as to whether an action should be founded on the Statute or at Common Law, held that although there had been deposit of title and deposit of copies in accordance with the Acts there could be no copyright, but only a common law right unless there had been a "publication." In *Ladd* v. *Oxnard*,[6] the circuit judge, Putnam, thought that the statutory

[1] *Black* v. *Allen* (1890), 42 Fed. Rep., 168.
[2] *Pulte* v. *Derby* (1852), 5 M'L., 328; M'Lean, J., at p. 332.
[3] See *Boucicault* v. *Wood* (1867), 2 Biss., 34.
[4] (1875), 13 Blatchf., 47.
[5] (1896), 84 Hun., 12.
[6] (1896), 75 Fed. Rep., 703.

right was perfected by deposit of copies, and that from then, until "publication," there were concurrent remedies under the Statute and at Common Law. After the decision in *Ladd* v. *Oxnard*[1] the decision in *The Jeweller's Mercantile Agency* v. *Jeweller's Publishing Company* was reviewed by the Appeal Court of New York.[2] The Court was unanimous in reversing the judgment below, and holding that the plaintiff's right of action was a statutory right and not a common law right. Three of the judges gave their decision on the ground that the facts proved showed a publication subsequent to deposit; but the other three gave it on the ground that the deposit itself was a publication and completed the statutory copyright. It is submitted that this latter is the correct view, and that, therefore, after deposit of the title-page and deposit of copies in due form nothing further is necessary to acquire copyright.

Apart from the question as to whether publication is necessary to complete the statutory right, several questions of importance may arise on the fact or date of publication, *e.g.*:—

1. The remedy at Common Law depends entirely on the absence of publication.
2. The due performance of the formalities of deposit of title and copies are relative to the date of publication.

The essence of publication consists in a disclosure of the thing itself, so that the public without discrimination of persons have an opportunity of enjoying its use.[3] The most usual method of publication of a literary or artistic work is the offering for sale, selling, or giving away of copies.[4] It is not necessary that a copy of the book be actually sold, it is sufficient if it be offered to the public. The act of publication is the act of the author, and cannot be dependent on the act of the purchaser.[5] Gratuitous distribution to members of the public, or leaving copies in a place to which the public

[1] (1896), 75 Fed. Rep., 703.
[2] (1898), 155 N.Y., 241.
[3] *Jeweller's* v. *Jeweller's* (1895), 84 Hun., 12.
[4] *Osgood* v. *Alve* (1897), 83 Fed. Rep., 470; *Gottisberger* v. *Aldine* (1887), 33 Fed. Rep., 381; *Baker* v. *Taylor* (1848), 2 Blatchf., 82.
[5] *Per* Parker, Ch. J., in *Jeweller's* v. *Jeweller's* (1898), 155 N.Y., at p. 251.

have access, such as an hotel, is publication.[1] The sale or distribution of copies, however, may be so limited to individuals, or particular classes of individuals, as not to amount to publication. When before the advertised date of publication an advance lot of books in quires unbound were sent to different publishers, with a request not to publish until bound copies should be sent, it was held, in the absence of evidence that the request was not complied with, that there had been no publication.[2] The author of a literary or artistic work may circulate it among his friends, or among a restricted class subject to conditions, and at the same time retain his common law right in unpublished work.[3] A teacher may circulate copies of his work among the members of his class without publishing the work.[4] In one case a sheet of miniature copies of engravings was sent round to picture dealers solely for their inspection and to solicit orders. This was held not to be a publication.[5] Copies of an unpublished opera given to the performers marked "Right of Representation and Reproduction Reserved" is not a publication.[6] The transmission of news over telegraphic instruments does not constitute a general publication.[7] In order to protect the common law right the distribution of copies must be strictly confined to individuals or to a class. If the man in the street may buy it there is a publication even although the work is of such a nature (*e.g.* a trade journal) as will practically be confined to a limited class.[8] It does not make it the less a publication that every purchaser of, or subscriber to, a literary or artistic work is bound by restrictive conditions as to its use. So long as the work is put within the reach of all and not limited to a class, it matters not what conditions are imposed on the individual subscriber.[9] Thus the sale of a book to all

[1] *D'Ole* v. *Kansas* (1899), 94 Fed. Rep., 840.

[2] *Black* v. *Allen* (1893), 56 Fed. Rep., 764; see *Baker* v. *Taylor* (1848), 2 Blatchf., 82; *Wall* v. *Gordon* (1872), 12 Abb. Pr. N.S. (N.Y.), 349.

[3] *Press Publishing Co.* v. *Monroe* (1896), 73 Fed. Rep., 196; and see *Blunt* v. *Patten* (1828), 2 Paine, 397; *Keene* v. *Wheatley* (1860), 9 Am. L. Reg., 45.

[4] *Bartlett* v. *Crittenden* (1847), 4 M'L., 301.

[5] *Falk* v. *Gast* (1893), 54 Fed. Rep., 890.

[6] *French* v. *Kreling* (1894), 63 Fed. Rep., 621.

[7] *Kiernan* v. *Manhattan* (1876), 50 How. Prac., 194.

[8] *Rigney* v. *Dalton* (1896), 77 Fed. Rep., 176.

[9] *Jeweller's* v. *Jeweller's* (1898), 155 N.Y., 241.

who paid for a course of instruction in a system for training the memory was held to be a publication notwithstanding that each sale was made under a contract not to disclose the contents to others.[1] A book may be published although it is not sold but issued on loan to subscribers with an express condition that the copy must be returned on the expiry of the subscription.[2] Publication of a book in a serial form reserving all other rights to the author, is such a publication as to abandon the copyright to the world, if steps have not been taken to copyright it before such publication.[3]

I have little doubt, but there is no definite authority, that a book may be published so as to destroy the common law right, although it is not printed. Circulation in manuscript would be enough.[4]

The public performance of a dramatic piece is not a publication of it so as to deprive the proprietor of his common law right in the manuscript.[5] The same rule probably applies to the oral delivery of a lecture or sermon, unless there is some act or circumstance from which it can be implied that the speaker intended to abandon the literary matter to the free use of the public.

It has been held by the Circuit Court of Appeals[6] that the exhibition of a picture in a public gallery is a publication of the picture so as to destroy the owner's rights, unless he has taken steps to secure a copyright. One of the three judges dissented from the judgment, but on what ground does not appear. In a case decided by a district judge,[7] shortly before the one just cited, the judge thought that the exhibition of a

[1] *Larrowe* v. *O'Loughlin* (1898), 88 Fed. Rep., 896.

[2] *Jeweller's* v. *Jeweller's* (1898), 155 N.Y., 241; *Ladd* v. *Oxnard* (1896), 75 Fed. Rep., 703.

[3] *Holmes* v. *Hurst* (1898), 174 U.S. Rep. 82; *Holmes* v. *Donohue* (1896), 77 Fed. Rep., 179; *Mifflin* v. *Dutton* (1901), 107 Fed. Rep., 708.

[4] See *Bartlett* v. *Crittenden* (1847), 4 M.L., 301; *Rees* v. *Peltzer* (1874), 75 Ill., 475; *Keene* v. *Wheatley* (1860), 9 Am. L. Rep., 45; *Palmer* v. *De Witt* (1872), 47 N.Y., 532.

[5] *Palmer* v. *De Witt* (1872), 47 N.Y., 532; *Aronson* v. *Fleckenstein* (1886), 28 Fed. Rep., 75; *Bartlett* v. *Crittenden* (1847), 4 M'L., 301; *Boucicault* v. *Hart* (1875), 13 Blatchf., 47; *Tompkins* v. *Halleck* (1882), 133 Mass., 32; *Keene* v. *Wheatley* (1860), 4 Phil., 157; *Keene* v. *Kimball* (1860), 16 Gray, 549; *Boucicault* v. *Fox* (1862), 5 Blatchf., 87; *Crowe* v. *Aiken* (1870), 2 Biss., 208; *Thomas* v. *Lennox* (1883), 14 Fed. Rep., 849; *Keene* v. *Clarke* (1867), 5 Rob. (N.Y.), 38; *Shook* v. *Rankin* (1875), 6 Biss., 477; *French* v. *Maguire* (1867), 55 How. (N.Y.) Prac., 471.

[6] *Pierce* v. *Werckmeister* (1896), 72 Fed. Rep., 57.

[7] *Werckmeister* v. *Springe* (1894), 63 Fed. Rep., 808.

painting in a public saloon did not work a forfeiture of the right to obtain copyright unless the general public was permitted to take copies at pleasure, and such permission would not be assumed in the absence of direct evidence. The same judge decided that neither the sale of a replica in a different size made before the principal picture by way of a study nor the publication of a crayon sketch in an exhibition catalogue was a publication of the picture. It is submitted that the exhibition of a picture in a public gallery is a publication. It seems to afford the public an opportunity of making every legitimate use of the contents of the picture. They could not make any greater use of the contents if they bought an engraving of the picture. It would not even then be lawful for them to make copies of the picture. As to the replica and the rough sketches in the catalogue, no doubt they were not "copies" of the picture, and therefore their publication could not entirely destroy the copyright in the picture; but if these were published without being copyrighted or without statutory notice, clearly the public could copy them, and to that extent the copyright in the design of the original picture would have been forfeited.

An unauthorised publication will not operate to forfeit the common law rights;[1] but if authorised by the owner it is immaterial that the publication constitutes a breach of contract with a licensee or part assignee.[2] Thus the author of a German unpublished play conveyed the performing rights in the United States to a citizen of the States, and contracted with him that he would not publish the play as a book. In breach of this contract the play was published in Germany under the authority of the author. It was held that such publication destroyed all literary rights in the United States.[3] When the defendant relies on previous publication he must definitely prove such publication, and that it was made with the consent of the owner.[4]

The Library of Congress.—All the copyright records are in

[1] *Palmer* v. *De Witt* (1872), 47 N.Y., 532; *Boucicault* v. *Wood* (1867), 2 Biss., 34; *Crowe* v. *Aiken* (1870), 2 Biss., 208.

[2] *Daly* v. *Walrath* (1899), 40 App. Div., N.Y., 220.

[3] Ibid.

[4] *Boucicault* v. *Wood* (1867), 2 Biss., at p. 39.

the Library of Congress at Washington, and are kept by the Librarian of Congress, who makes an annual report to Congress of the number and description of copyright publications.

The Librarian of Congress must record the name of each copyright work in a book kept for the purpose. The form of entry is as follows :—

"Library of Congress, to wit,—Be it remembered that on the day of , A. B. of , hath deposited in this office the title of a book (map, chart, or otherwise as the case may be, or description of the article), the title or description of which is in the following words, to wit: (here insert the title or description), the right whereof he claims as author (originator or proprietor as the case may be), in conformity with the laws of the United States respecting copyright.—C. D., Librarian of Congress."

The librarian must give a copy of the title or description under the seal of the Librarian of Congress to the proprietor whenever he requires it.

The Librarian of Congress is entitled to receive from the persons to whom the services are rendered the following fees :[1]—

1. For recording title or description .	50 c.
2. For a copy of such record under seal .	50 c.
3. For recording and certifying a written consignment	$1
4. For a copy of an assignment . .	$1

All fees so received must be paid into the Treasury of the United States.

The charge for recording the title or description of the work of a person not a citizen of, or resident in, the United States is $1.

The Librarian forwards a note of the title-entries to the Secretary of the Treasury, who must 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

[1] Act of 1891, sec. 4, amending Revised Statutes, sec., 4958; and see Act, June 18, 1874, sec. 2.

issued are furnished to all parties desiring them at a sum not exceeding $5 per annum.[1]

The Secretary and Postmaster-General are empowered and required to make and enforce such rules and regulations as will prevent the importation into the United States of all articles prohibited by the Copyright Acts.[2]

The Postmaster to whom a copyright book, title, or other article is delivered for the Librarian of Congress must, if requested, give a receipt therefor, and when so delivered he must mail it to its destination.[3]

For every failure on the part of the proprietor of any copyright to deliver or deposit in the mail either of the published copies, or description, or photograph, the proprietor of the copyright is liable to a penalty of $25, to be recovered by the Librarian of Congress in the name of the United States in an action in the nature of an action of debt in any district court of the United States, within the jurisdiction of which the delinquent may reside or be found.[4]

Section IV.—Immoral Works.

A work containing immoral matter will not receive the protection of the Courts.[5] A song containing the verse, "She's the hottest thing you ever seen," was not protected.[6] The introduction of obscene, profane, or libellous matter into a literary or artistic work does not render it *publici juris*; the copyright remains, but the Court will not entertain any action upon it. Thus in *Broder* v. *Zeno*[7] the Court said that their decision to refuse protection would not prevent the complainants from republishing their song, and by omitting the objectionable word thus secure a valid copyright. If an action is brought for the piracy of immoral matter it will be dismissed without costs to either party. The fact that a work such as playing cards

[1] Act of 1891, sec. 4.
[2] Ibid.
[3] Revised Statutes, sec. 4961.
[4] Revised Statutes, sec. 4960.
[5] *Martinetti* v. *Maguire* (1867), 1 Abb. U.S., 356; *Shook* v. *Daly* (1875), 49 How. Prac., 366; *Keene v. Kimball* (1860), 16 Gray, 549.
[6] *Broder* v. *Zeno* (1898), 88 Fed. Rep., 74.
[7] Ibid.

may, and probably will, be used for an unlawful purpose, does not disentitle it to protection.[1] A guide to the turf has been protected,[2] so has a list of records and trotters and pacers.[3]

SECTION V.—DURATION OF COPYRIGHT.

"Copyrights shall be granted for the term of twenty-eight years from the time of recording the title thereof."[4]

"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 copyright, 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."[5]

In *Callaghan* v. *Myers*[6] it was said that if by an error the notice of copyright on a published book bore a date prior to the actual year of publication the result would be not that the notice was bad, but that the term of copyright would date from the year specified in the notice.

Notice that the right to obtain an extended term is not given to the "proprietor;" therefore an employer whose servant did literary or artistic work in his employment would not be entitled to an extension. It seems doubtful whether the servant in such a case, although the actual author, would be entitled to an extension: it is thought not.

If the author, inventor, or designer assigns his copyright, he does not part with his right to an extension unless this is clearly intended by the transfer.[7] From the terms of the statute one might doubt whether the right to obtain an extension is assignable. No doubt a contract to assign it would be valid, and a document purporting to assign it

[1] *Richardson* v. *Miller* (1877), 3 L. and Eq. Rep. (Am.), 614.
[2] *Egbert* v. *Greenberg* (1900), 100 Fed. Rep., 447.
[3] *American Trotting Register* v. *Gocher* (1895), 70 Fed. Rep., 237.
[4] Revised Statutes, sec. 4953.
[5] Act of 1891, sec. 2.
[6] (1888), 128 U.S. Rep., 617.
[7] *Pierpont* v. *Fowle* (1846), 2 Wood. and Min., 23, 44; *Cowen* v. *Banks* (1862), 24 How. Prac., 72; see *Rundell* v. *Murray* (1821), Jac., 315.

would be held equivalent to such, so that on the extension being acquired the purchaser could compel an assignment.

If the author of an unpublished work conveys all right, title, and interest in it to another, he certainly cannot take out an extended term to run against his grantee.[1] It seems doubtful whether he can take it out at all. Certainly his grantee cannot, and probably the author could not for his benefit.

If the original term is invalid there will be no right to a renewal.[2]

[1] *Paige* v. *Banks* (1871), 13 Wall, 608; (1871), 7 Blatchf., 152.
[2] *Wheaton* v. *Peters* (1834), 8 Pet., 591, 654.

CHAPTER III

WHO IS THE OWNER OF THE COPYRIGHT?

UNDER Section 4952 of the Revised Statutes as amended by the Act of March 3, 1891, the statutory right is vested in "the author, inventor, designer, or proprietor, and the executors, administrators, or assigns of any such person."

Care must be taken in entering a copyright that it is entered by and in the name of the owner of the common law right in the literary or artistic work. The entry does not require to be in the name of the author or to disclose who he is. It must be in the name of the owner, and if entered in the name of any other person it will be a bad entry.[1] Thus, when a printer in his own name copyrighted a book of which he was not the owner, he could not maintain an action either for his own use or for the use of the owner.[2] Every action for infringement must be brought in the name of the owner of the copyright for the time being; and it would seem, if he is not the author himself, he must show a derivative title from the author.[3] The owner of a manuscript by an author unknown would not be entitled to copyright as "proprietor" and first publisher.[4]

SECTION I.—THE AUTHOR.

Primâ facie the author is owner of the copyright. If he is in a position of employment the right in his work may vest on creation in his employer; or he may have contracted in such a way that the property passes to another.[5] But some relation-

[1] *Lawrence* v. *Dana* (1869), 4 Cliff., 1.
[2] *Koppel* v. *Downing*, 24 Wash. L. R., 342.
[3] *Little* v. *Gould* (1851), 2 Blatchf., 165; *Green* v. *Bishop* (1858), 1 Cliff., 186, 198; *Yuengling* v. *Schile* (1882), 12 Fed. Rep., 97, 100.
[4] *Yuengling* v. *Schile* (1882), 12 Fed. Rep., at p. 106.
[5] *Heine* v. *Appleton* (1853), 4 Blatchf., 125.

ship or contract must be shown whereby the right passes, otherwise it remains the property of the author. The author who does work on commission does not necessarily part with his copyright, it may be expressly or impliedly reserved;[1] neither does an author under a publishing agreement necessarily convey his rights to the publisher.[2] In either case it will depend on a construction of the contract between the parties.

The author of a literary or artistic work is the man who creates it in his mind.[3] He may employ others in the execution of the details or in the merely manual or mechanical work and yet remain the sole author. The author of a photograph is the man who arranges the subject and makes choice of the time and light. It does not make him any less the sole owner of the work that he employs some one to take off the cap or perform other manual details. A man who compiles a dictionary or a directory may be the sole owner of it, although he has had scores of employees working up the separate parts for him.[4] But to constitute one an author he must show that his was the "inventive" or "creative" mind; it will not do that he has suggested a scheme and employed or procured some one else to carry it out independently;[5] he must by his own intellectual labour applied to the material of his composition produce an arrangement or compilation new in itself.[6] There may be joint authorship resulting in co-ownership.

When an unpublished work or copyright belongs to two or more persons in common, whether as co-authors or co-assignees, *either* of the two *may alone* sue a *wrong*doer,[7] and either may at his own expense publish the book without accounting to his co-owner.[8]

[1] *Press* v. *Munroe* (1896), 73 Fed. Rep., 196; *Black* v. *Allen* (1893), 56 Fed. Rep., 764.
[2] *Black* v. *Allen* (1893), 56 Fed. Rep., 764.
[3] *Burrow-Giles* v. *Sarony* (1884), 111 U.S., 53.
[4] *Bullinger* v. *MacKay* (1879), 15 Blatchf., 550.
[5] *Atwill* v. *Ferrett* (1846), 2 Blatchf., 39; *Roberts* v. *Myers* (1860), 13 L. R. Mass., 396.
[6] *Gray* v. *Russell* (1839), 1 Story, 11; Betts, J., in *Atwill* v. *Ferrett* (1846), 2 Blatchf., at p. 46.
[7] *Aronson* v. *Fleckenstein* (1886), 28 Fed. Rep., 75.
[8] *Carte* v. *Bailey* (1874), 64 Maine, 458.

Section II.—The Employer.

Probably in the case of a paid servant who does literary or artistic work for his master in the course of his employment, the master is the proprietor of the work even in its embryo state, and no conveyance, transfer, or consent by or on behalf of the servant is necessary to entitle the master to enter the copyright in his own name as proprietor. In such a case he does not require to show that he is the "author" of the work; he is a proprietor, and is entitled to the copyright as such.[1]

In the case of work done on commission the relationship of the parties is somewhat different. The author is not a servant but an independent contractor, and therefore his work does not *ab initio* vest in his employer. There is a strong presumption in the case of a commission to execute work not in existence at the time, that the work when executed is to belong unreservedly to the person giving the order.[2] The question depends, however, entirely on what the actual agreement between the parties was.[3] An author, although he does work on commission, may well reserve the copyright to himself, giving to his employer a licence for a particular purpose only.[4] If it has been agreed expressly or impliedly that the employer is to become owner of the copyright, then the delivery of the manuscript or other work in fulfilment of the contract will pass the author's literary or artistic common law right to the employer, and the latter may take the copyright in his own name as proprietor.[5] If the term of the contract were that the author should retain the copyright, copyright must be entered in the author's name.

[1] *Colliery* v. *Schools* (1899), 94 Fed. Rep., 152; *Schumacher* v. *Schwencke* (1885), 25 Fed. Rep., 466; *Mutual Advertising* v. *Refo* (1896), 76 Fed. Rep., 961; *Lawrence* v. *Dana* (1869), 4 Cliff., 1; *Little* v. *Gould* (1851), 2 Blatchf., 165; *Heine* v. *Appleton* (1853), 4 Blatchf., 125; but see *Pierpont* v. *Fowle* (1846), 2 Woodb. and M., 23; *Atwill* v. *Ferrett* (1846), 2 Blatchf., 39.

[2] *Dielman* v. *White* (1900), 102 Fed. Rep. 892

[3] *Boucicault* v. *Fox* (1862), 5 Blatchf., 87.

[4] *Press* v. *Munroe* (1896), 73 Fed. Rep., 196; *Black* v. *Allen* (1893), 56 Fed. Rep., 764.

[5] *Lawrence* v. *Dana* (1869), 4 Cliff., 1, at pp. 59, 66.

SECTION III.—THE STATE.

It has been questioned whether the Government of the United States or an individual State could take out a copyright for itself.[1] It does seem doubtful whether the State can *ab initio* be the proprietor of a copyright. As was pointed out in *Banks* v. *Manchester*:[2]—

"The State cannot properly be called a citizen of the United States or a resident therein, nor could it ever be in a condition to fall within the description in the Revised Statutes, section 4952 or section 4954."

A corporation, however, has been held capable of entering itself as the original proprietor of a copyright.[3] In the case of *Heine* v. *Appleton*,[4] where an artist was employed on a Government expedition to Japan on the terms that all his artistic and scientific work should be the property of the United States Government, and the artistic material was, with the artist's consent, published by order of Congress in the report of the expedition, it was said that the artistic matter had been abandoned to the free use of the public. It does not appear, however, whether Congress, if they had taken steps, could or could not have secured a copyright in the literary or artistic matter in the report. Whether or not the Government of the United States or a State could be lawfully entered as the original proprietors of a work, it cannot be seriously doubted that as assignees they could acquire a copyright in matter already copyrighted by an individual. This they would be entitled to purchase and hold as any other Government property, such as ships, guns, and stores. A copyright might be taken out by an individual minister for the benefit of the people.[5]

SECTION IV.—THE ASSIGNEE.

Before copyright has been secured the common law rights in a manuscript or other unpublished work may be conveyed

[1] *Banks* v. *Manchester* (1888), 128 U.S. Rep., at p. 253. [2] Ibid.
[3] *Schumacher* v. *Schwencke* (1885), 25 Fed. Rep., 466; *Mutual Advertising* v. *Refo* (1896), 76 Fed. Rep., 961.
[4] (1853), 4 Blatchf., 125.
[5] *Little* v. *Gould* (1851), 2 Blatchf., 165.

by parol; no writing or evidence in writing is required.[1] If a publisher takes a copyright in his own name with the knowledge and acquiescence of the author, the publisher is the lawful owner of the copyright subject to his accounting to the author in terms of the contract between them.[2] Under the Act of 1831, and until the Revised Statutes, 1874, were passed, it would seem that a manuscript could not be assigned except by writing.[3] Although the common law exclusive right of first production may pass by parol or delivery, it does not necessarily pass with possession or even with the ownership of the manuscript or other work. An author or other proprietor may sell documents, pictures, or other literary or artistic articles, reserving to himself the right of publication and right to acquire copyright and subsequently multiply copies.[4] If an author's manuscripts are sold in execution, the purchaser does not acquire the right of publication.

After copyright has been secured the assignment is governed by statute. Section 4955 of the Revised Statutes, 1874, provides that copyrights are assignable in law by any instrument in writing, and such assignment must be recorded in the office of the Librarian of Congress within sixty days after its execution; in default of which it is void as against any subsequent purchaser or mortgagee for a valuable consideration without notice.

It must be considered at least doubtful whether this section affects a question between the parties or between the assignee and one who does not claim through the assignor.[5] Mr. Drone, in his work on copyright, expresses an opinion that the first part of the section is merely permissive, and intended to

[1] *Callaghan* v. *Myers* (1888), 128 U.S. Rep., 617; *Black* v. *Allen* (1890), 42 Fed. Rep., 618; *Carte* v. *Evans* (1886), 27 Fed. Rep., 861; *Lawrence* v. *Dana* (1869), 4 Cliff., 1, at p. 59; *Little* v. *Gould* (1851), 2 Blatchf., 165.

[2] *Pulte* v. *Derby* (1852), 5 M'L., 328; *Little* v. *Gould* (1851), 2 Blatchf., 165; *Lawrence* v. *Dana* (1869), 4 Cliff., 1.

[3] Act of February 3, 1831, sec. 9; *Parton* v. *Prang* (1872), 3 Cliff., at p. 549; but see *contra*, *Lawrence* v. *Dana* (1869), 4 Cliff., 1, at p. 59; *Pulte* v. *Derby* (1852), 5 M'L., 328.

[4] *Parton* v. *Prang* (1872), 3 Cliff., 537; *Yuengling* v. *Schile* (1882), 12 Fed. Rep., 97; *Werckmeister* v. *Springer* (1894), 63 Fed. Rep., 808; *Stevens* v. *Gladding* (1854), 17 How., 447; *Stephens* v. *Cady* (1852), 14 How., 528; *Carte* v. *Bailey* (1874), 64 Maine, 458; see *MacKaye* v. *Mallory* (1882), 12 Fed. Rep., 328.

[5] *Webb* v. *Powers* (1847), 2 Woodb. and Min., 497; see *Gould* v. *Banks*, *Stephens* v. *Cady*, *Little* v. *Hall*, *ubi supra*.

show that if the assignment is in writing no formalities are required. I doubt if this is sound. I think that even as between assignor and the assignee the assignment must be in writing; but I think the assignee can, without recording the assignment, sue his assignor or any third person, except those who claim a title through the assignor.

An agreement to assign may be made by parol, and where there was no subsequent assignment in proper form damages could be recovered for breach of the agreement.[1]

Any alien friend may be an assignee of a copyright in the United States.[2]

The assignee appears to take with the copyright an assignment of the assignor's choses in action; he has been held entitled to sue in respect of infringements committed prior to assignment.[3]

An assignment need not necessarily be made by conveying the author's entire right to one person. It may be conveyed to two or more persons in common, or an undivided interest may be conveyed to one or more persons.[4] We have seen that the statutory right of reproduction is divisible from the right of property in the concrete work.[5] Thus an author may sell his painting or manuscript and retain the right to multiply copies. Further, the various rights of copyright may be split up as the holder pleases;[6] one may have the right of printing, another the right of translating, and a third the right of performing. The assignment may also be limited as to a particular country or countries,[7] the right to perform or print in America may be given to A, and the right to perform or print in Great Britain to B. Probably an assignment cannot be limited to a portion of the United States.[8] I do not think that a copyright could be assigned for a limited time.[9]

As a rule a licensee cannot sue in respect of an infringe-

[1] *Gould* v. *Banks* (1832), 8 Wend., 562.
[2] *Black* v. *Allen* (1893), 56 Fed. Rep., 764; *Carte* v. *Evans* (1886), 27 Fed. Rep., 861.
[3] *Gilmore* v. *Anderson* (1889), 38 Fed. Rep., 846.
[4] *Black* v. *Allen* (1893), 56 Fed. Rep., 764; *Carte* v. *Bailey* (1874), 64 Maine, 458.
[5] *Werckmeister* v. *Springer* (1894), 63 Fed. Rep., 808.
[6] *Publishing Co.* v. *Munroe* (1896), 73 Fed. Rep., 196.
[7] *Davies* v. *Vories*, 42 S.W., 707.
[8] *Keene* v. *Wheatley* (1860), 9 Am. L. Reg., 45.
[9] But see *Little* v. *Gould* (1851), 2 Blatchf., 165.

ment; but a licensee has been held the proper party to sue when he was an exclusive licensee, and by the terms of his licence was to bring all necessary suits.[1] Copyright passes by bequest or on intestacy to the executors or administrators of the owner.[2] On bankruptcy the bankrupt's copyrights may be applied for the benefit of the estate; but it would probably be necessary for the Court to order a transfer in conformity with the requirements of the Copyright Acts.[3] Probably a bankrupt's manuscripts and other private matter could not be published for the benefit of the estate without the consent of the bankrupt.

[1] *Aronson* v. *Fleckenstein* (1886), 28 Fed. Rep., 75. [2] Revised Statutes, sec. 4952.
[3] *Stephens* v. *Cady* (1852), 14 How., 528; *Stevens* v. *Gladding* (1854), 17 How., 451.

CHAPTER IV

INFRINGEMENT OF COPYRIGHT

THE exclusive right given by the statute is "the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending . . . and, in the case of a 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 dramatize and translate any of their works for which copyright shall have been obtained under the laws of the United States."[1]

SECTION 1.—WHAT IS A PIRATICAL COPY.

A copy of a literary or artistic work is such a reproduction of the original as will serve in whole or in part as a substitute for the original. Thus the plate from which a piratical engraving is intended to be struck is not a copy of the original engraving amounting to an infringement.[2] Neither when several stones are required to produce a lithograph is an impression of the first stone only giving a mere outline an infringement.[3] But a lithograph may be an infringement of a photograph if it produces the general conception even although the artistic detail and peculiar merit of the photograph are not reproduced.[4] It has also been held that a photograph may be infringed by the design thereof being stamped on leather for a chair seat.[5] A perforated scroll used for a mechanical musical instrument, such as a pianola or æolian, is not a piratical copy of the original music.[6]

[1] Act of March 3, 1891, sec. 1.
[2] *Harper* v. *Shoppell* (1886), 23 Blatchf., 431.
[3] *Morrison* v. *Pettibone* (1897), 87 Fed. Rep., 330.
[4] *Falk* v. *Donaldson* (1893), 57 Fed. Rep., 32; *Fishel* v. *Lueckel* (1892), 53 Fed. Rep., 499; *Springer* v. *Falk* (1894), 20 U.S. App., 296.
[5] *Falk* v. *Howell* (1888), 37 Fed. Rep., 202.
[6] *Kennedy* v. *McTammany* (1888), 33 Fed. Rep., 584.

It is equally an infringement to make copies of a copyright work for a private distribution as it is to make them for sale.[1] Strictly, even a single copy made for private use would be an infringement.

Copying may be Indirect.—A piratical taking need not necessarily be made direct from an authorised copy of the work alleged to be infringed. It may be taken from a derivative work, for instance, a painting may be infringed by copying an engraving made from it ;[2] or it may be taken from another unauthorised work. It would seem that it is not considered an infringement of copyright to publish and sell copies taken from the work before it was copyrighted, even although published and sold after it was copyrighted.[3] It might be a breach of contract or common law right.

The Intention need not be Bad.—There is no necessity for the plaintiff in an action for infringement to show either that the defendant when he took the matter knew that it was protected by copyright, or that he believed the use which he was making of the plaintiff's work was an unfair one.[4] The defendant may have been equally ignorant of fact and law, and yet he will be responsible for the result of his actions. Conversely, if in fact the defendant has not made an unfair use of the plaintiff's copyright work, it is immaterial to show either that he thought he was infringing the plaintiff's copyright or that he intended to carry his work further and actually to infringe the plaintiff's rights.[5] The intention of the defendant, however, may be material as evidence in a doubtful case.[6]

Proof of Copying.—The onus of proving an infringement is on the party making the charge.[7] Mere similarity is not

[1] *Ladd* v. *Oxnard* (1896), 75 Fed. Rep , 703.

[2] *Schumacher* v. *Schwencke* (1887), 30 Fed. Rep., 690.

[3] *Maloney* v. *Foote* (1900), 101 Fed. Rep., 264.

[4] *Lawrence* v. *Dana* (1869), 4 Cliff., 1, 81 ; *Folsom* v. *Marsh* (1841), 2 Story, 118 ; *Story* v. *Holcombe* (1847), 4 M'L., 310 ; *Reed* v. *Holliday* (1884), 19 Fed. Rep., 325 ; *Brady* v. *Daly* (1897), 83 Fed. Rep., 1007 ; *M'Lean* v. *Flemming* (1877), 96 U.S. Rep., 245 ; *Fishel* v. *Lueckel* (1892), 53 Fed. Rep., 499 ; *Morrison* v. *Pettibone* (1897), 87 Fed. Rep., 330 ; *Millet* v. *Snowden* (1843), 1 West L. J., 240 ; *Parker* v. *Hulme* (1849), 7 West L. J., 426.

[5] *Morrison* v. *Pettibone* (1897), 87 Fed. Rep., 330.

[6] *Lawrence* v. *Dana* (1869), 4 Cliff., 1, 81 ; *Webb* v. *Powers* (1847), 2 Wood and Min., 497.

[7] *Lawrence* v. *Dana* (1869), 4 Cliff., 1, p. 73.

sufficient; he must show that the work charged as a piracy was taken from his copyright work. The strongest evidence is usually in the coincidence of errors; but a few solitary instances are not conclusive. In a question between the authors of two rival law works,[1] it was held that the duplication of a few errors in citations was not sufficient evidence of piracy where there was obviously a great deal of further work and labour expended in the preparation of the alleged infringing work. In a question of an alleged infringing digest,[2] it was held that the mere verbal identity of the summary of one case where a large number of cases had been digested was not sufficient proof.

No Monopoly in Subject-Matter.—The right of copyright is an exclusive right of reproducing the whole or any part of an original literary or artistic work. It differs from a right of patent in that it does not prohibit another from producing and reproducing a work identically the same as the protected work, provided that he does so by going to the common sources of information and not by copying the protected work. Copyright creates no monopoly in the subject-matter. One man may compile tables of shipping and railway statistics; another may, without infringing the former's copyright, collect the same material and work it up for himself, producing, if accurately done and on the same principle, a very similar result.[3] In the same way arithmetics,[4] translations,[5] school grammars,[6] maps of a particular country,[7] biographies,[8] lithographs,[9] law books,[10] and other works[11] do not entitle their author to say to a subsequent worker in the same field that as he was there first he has a right to exclude others from competition. In one case[12] it was attempted to set up a monopoly in the biography of President Garfield, on the ground that the President had

[1] *Mead* v. *West* (1896), 80 Fed. Rep., 380.
[2] *West* v. *Lawyers* (1896), 51 U.S. App., 216.
[3] *Bullinger* v. *MacKay* (1879), 15 Blatchf. C. C., 550.
[4] *Emerson* v. *Davis* (1845), 3 Story, 768. [5] Ibid.
[6] *Gray* v. *Russell* (1839), 1 Story, 11. [7] *Blunt* v. *Patten* (1828), 2 Paine, 397.
[8] *Gilmore* v. *Anderson* (1889), 38 Fed. Rep., 846.
[9] *Johnson* v. *Donaldson* (1880), 3 Fed. Rep., 22.
[10] *Banks* v. *M'Divitt* (1875), 13 Blatchf., p. 163; *Mead* v. *West* (1896), 80 Fed. Rep., 380.
[11] *Banks* v. *M'Divitt* (1875), 13 Blatchf., at pp. 165, 6.
[12] *Gilmore* v. *Anderson* (1889), 38 Fed. Rep., 846.

selected a particular person for the work. The contention was rejected by the Court. Probably the only case in which an argument in favour of monopoly in a certain subject-matter has been sustained is that of *Thomas* v. *Lennox*.[1] The subject of the action was Gounod's Oratorio *The Redemption*. A pianoforte arrangement had been published without acquiring copyright, but the orchestral score had never been published. The defendants procured a composer to compose an orchestral score from the pianoforte arrangement. This they publicly performed. In an action for infringement of the common law right in the plaintiff's unpublished orchestral score, the Court, in granting an injunction, said :—

"In this respect an opera is more like a patented invention than a common book ; he who shall obtain similar results, better or worse, by similar means, though the opportunity is furnished by an unprotected book, should be held to infringe the rights of the composer."

It is almost certain that this is bad law ;[2] it is contrary to the whole principle of copyright, and there is no substantial reason why an exception should be made in favour of a musical adaptation and not in that of a map or any other literary or musical work.

Taking a Substantial Part.—In *Lawrence* v. *Dana*, Clifford, J., said :—

"Copying is not confined to literal repetition, but includes also the various modes in which the matter of any publication may be adopted, imitated, or transferred, with more or less colourable alterations to disguise the source from which the material was derived ; nor is it necessary that the whole, or even the larger portion of the work, should be taken in order to constitute an invasion of copyright."[3]

In *Folsom* v. *Marsh*, Story, J., said :—

"If so much is taken that the value of the original is sensibly diminished, or the labours of the original author are substantially, to an

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[1] *Thomas* v. *Lennox* (1883), 14 Fed. Rep., 849.

[2] See *Carte* v. *Duff* (1885), 25 Fed. Rep., 183.

[3] Clifford, J., in *Lawrence* v. *Dana* (1869), 4 Cliff., at p. 80 ; *Gray* v. *Russell* (1839), 1 Story, 11 ; *Folsom* v. *Marsh* (1841), 2 Story, 100 ; *Farmer* v. *Elstner* (1888), 33 Fed. Rep., 494 ; *Story* v. *Holcombe* (1847), 4 M'L., 315 ; *Emerson* v. *Davis* (1845), 3 Story, at p. 795 ; *Reed* v. *Holliday* (1884), 19 Fed. Rep., 325 ; *Greene* v. *Bishop* (1858), 1 Cliff., 186.

injurious extent, appropriated by another, that is sufficient in point of law to constitute a piracy *pro tanto*. The entirety of the copyright is the property of the author, and it is no defence that another person has appropriated a part and not the whole of any property."[1]

To constitute an infringement there must be a taking of a material part of the original matter from another's work.[2] To determine what is a material part is often a question of extreme difficulty and nicety. It depends on the quantity and quality of the matter taken, the object with which it is taken, the relation of the works to one another, the proportion of the matter taken to the complete works, but more particularly to the work of the borrower, the extent to which the work borrowed from is injured, and the extent to which the borrower makes profit from the introduction of the borrowed matter.[3] In the case of *Morrison* v. *Pettibone*,[4] a district judge held that the taking of the mere outline of a copyright photograph was not a copying within the meaning of the statutes. In this case it had been intended by the defendant to make an entire reproduction of the photograph by the process of lithography. The stones were all in actual readiness, but only one had been used, giving the initial colour and exterior lines of the intended lithograph. In one case where a few references had been taken by the author of one law book from another, a preliminary injunction was refused on the ground of small amount.[5] The alleged infringement of a copyright photograph need not, however, be substantially identical in order to ensure conviction; it is sufficient if a substantial portion of the main design, distinctive ideas, or characteristic features are taken.[6] Taking the boundaries of townships from a copyright map has been held to be an infringement.[7] The taking of a single scene from

[1] Story, J., in *Folsom* v. *Marsh* (1841), 2 Story, at p. 115.

[2] *Lawrence* v. *Dana* (1869), 4 Cliff., 1, 81, 83: *Perris* v. *Hexamer* (1878), 99 U.S. Rep., 674; *Morrison* v. *Pettibone* (1897), 87 Fed. Rep., 330.

[3] Although this is an element in the question of substantiality, it is no answer to a charge of infringement to say that the infringing composition would have been equally valuable without the borrowed matter. *Brady* v. *Daly* (1897), 83 Fed. Rep., 1007.

[4] (1897), 87 Fed. Rep., 330.

[5] *Howell* v. *Miller* (1898), 91 Fed. Rep., 129.

[6] *Springer* v. *Falk* (1894), 20 U.S. App., 296; *Falk* v. *Donaldson* (1893), 57 Fed. Rep., 32; *Fishel* v. *Lueckel* (1892), 53 Fed. Rep., 499.

[7] *Farmer* v. *Calvert* (1872), 5 Am. L.T.R., 168; see *Sanborn* v. *Dakin* (1889), 39 Fed. Rep., 260.

the drama of another may be an infringement.[1] It is no answer to an action for infringement to say that the defendant's book in no way rivals or competes with the plaintiff's work.[2] That is merely a question of damages.

Fair Use.—Although a man is not permitted to take the whole or part of another's work in the compilation of his own, he is entitled to make of that other's work what is known as a "fair use," for the purpose of a new work. One may use another's book as a guide to authorities;[3] for supplying suggestions as to treatment of a subject;[4] and for the purpose of checking the accuracy[5] of a completed work. One may use it as a storehouse of information; but in a rival work it will be an infringement to take any of the facts as arranged, or to take any of the language of the other's book, except for the purposes of criticism.

Shipman, J., says in *Banks* v. *M'Divitt*:[6]—

"I do not understand that the rule prohibits an examination of previous works by the compiler before he has finished his own book, or the mere obtaining of ideas from such previous works.

"It may be laid down as the clear result of the authorities in cases of this nature that the true test of piracy or not is to ascertain whether the defendant has in fact used the plan, arrangements, and illustrations of the plaintiff as the model of his own book with colourable alterations and variations only to disguise the use thereof; or whether his work is the result of his own labour, skill, and use of common materials and common sources of knowledge open to all men, and the resemblances are either accidental or arising from the nature of the subject."[7]

A dramatist must not take the plot, the characters, the scenes, or situations from the drama of another.[8] A musician must not take his melody from that of another composer.[9] The compiler of a digest must not borrow verbatim from the

[1] *Daly* v. *Palmer* (1868), 6 Blatchf., 256; *Daly* v. *Webster* (1892), 1 U.S. App., 611; *Brady* v. *Daly* (1897), 83 Fed. Rep., 1007.

[2] *Falk* v. *Donaldson* (1893), 57 Fed. Rep., 32; *Falk* v. *Howell* (1888), 37 Fed. Rep., 202.

[3] *Mead* v. *West* (1896), 80 Fed. Rep., 380; *List* v. *Keller* (1887), 30 Fed. Rep., 772.

[4] Ibid. [5] *List* v. *Keller* (1887), 30 Fed. Rep., 772.

[6] (1875), 13 Blatchf., at p. 166.

[7] Story, J., in *Emerson* v. *Davis* (1845), 3 Story, at p. 793.

[8] *Daly* v. *Palmer* (1868), 6 Blatchf., 256; *Daly* v. *Webster* (1892), 1 U.S. App., 573; *Goldmark* v. *Kreling* (1888), 35 Fed. Rep., 661.

[9] *Broder* v. *Zeno* (1898), 88 Fed. Rep., 74; *Blume* v. *Spear* (1887), 30 Fed. Rep., 629; *Jollie* v. *Jacques* (1850), 1 Blatchf., 618.

headnotes in the reports.[1] The compiler of a directory must discover and make his own selection of the matter to be comprised in it.[2] The designer of a map must not take the position of his towns and boundaries from a copyright map.[3] The compiler of a dictionary must not take his definitions from another's copyright dictionary.[4] The writer of a law book must not take his citations and references from the work of another.[5] It is no answer to a charge of infringement for the defendant to say he could have produced the same result with a little extra trouble. He is not thereby entitled to appropriate the plaintiff's labours.[6] A man may take ideas from the work of another and put his own material into a similar form.[7] If one man writes a book on physiognomy on a new system, another may adopt his system and from his own research write a similar book. So the copyrighting of tables showing the standing and credit of the citizens of a state does not prevent another from compiling similar tables.[8] The sketch of a detective which was said to convey an original idea was held not to have been infringed by another drawing carrying out the same idea but differently executed.[9] There is no copyright in a method of advertising,[10] so that if a tradesman issues a circular describing a particular method of obtaining goods by collecting discount coupons, although another tradesman may not copy his circular he may adopt the same system and issue a catalogue of his own, describing the system in his own words.[11] There is no infringement of a drama in adopting from it a mechanical contrivance, such as a tank filled with water to represent a river on the stage.[12] In

[1] *West* v. *Lawyers* (1894), 64 Fed. Rep., 361.

[2] *List Publishing Co.* v. *Keller* (1887), 30 Fed. Rep., 772.

[3] *Sanborn* v. *Dakin* (1889), 39 Fed. Rep., 266; *Farmer* v. *Calvert* (1872), 5 Am. L.T.R., 168.

[4] *Chils* v. *Gronlund* (1890), 41 Fed. Rep., 145; *Webb* v. *Powers* (1847), 2 Wood. and Min., 497.

[5] *Banks* v. *M'Divitt* (1875), 13 Blatchf., 163; *Mead* v. *West* (1896), 80 Fed. Rep., 380; *Howell* v. *Miller* (1898), 91 Fed. Rep., 129.

[6] *Banks* v. *M'Divitt* (1875), 13 Blatchf., 163.

[7] *Mead* v. *West* (1896), 80 Fed. Rep., 380.

[8] *Burnell* v. *Chown* (1895), 69 Fed. Rep., 993.

[9] *Munro* v. *Smith* (1890), 42 Fed. Rep., 266.

[10] *Ehret* v. *Pierce* (1880), 18 Blatchf., 302; *Mutual Advertising Co.* v. *Refo* (1896), 76 Fed. Rep., 961.

[11] *Mutual Advertising Co.* v. *Refo* (1896), 76 Fed. Rep., 961.

[12] *Serrana* v. *Jefferson* (1888), 33 Fed. Rep., 347.

the case of *Bullinger* v. *MacKay*[1] it is suggested by Benedict, J., in his judgment that there might be copyright in a novel system of arranging matter in a statistical work. It is submitted that this is wrong, and that even if the arrangement was an original one there would be no infringement in taking the method of arrangement and applying it independently.

Improvement no Excuse.—It is no answer to an action for infringement for the defendant to say that he has made a good work out of a bad one, and so benefited the literary or artistic world.[2] Even although I correct errors and make necessary additions so as to create from a worthless a useful book, I am not entitled so to deal with another author's work without his permission. Good or bad, an author is entitled to do what he likes with his own work and to prevent others making an unfair use of his labours.[3]

Different Object.—When a subsequent book is written with a different object from a previous publication it may be legitimate to take considerable extracts from the earlier work. To what extent this will be permitted must depend upon the relative value of the matter taken, and the purpose for which it is taken.[4] It is not an absolute answer to an action for infringement to say that the matter was taken for an entirely different purpose from that for which it was used in the original work. If the taking in any way supersedes the uses to which the matter taken might have been put by its original author there is an infringement.[5] Thus where the main design of a photograph was reproduced on stamped leather,[6] and where the author of a life of Garfield for the young borrowed largely from a biography of Garfield written for political campaigns,[7] there was held to be infringement. It is the nature and value of the extracts more than their length or number that must determine whether it was legitimate to take them or not.

[1] (1879), 15 Blatchf., 550.

[2] *Ladd* v. *Oxnard* (1896), 75 Fed. Rep., 703; *Brightley* v. *Littleton* (1888), 37 Fed. Rep., 103, *Mead* v. *West* (1896), 80 Fed. Rep., 380; *Springer* v. *Falk* (1894), 20 U.S. App., 296.

[3] *Drury* v. *Ewing* (1862), 1 Bond., 549.

[4] *Story* v. *Holcombe* (1847), 4 M'L., 306; *Webb* v. *Powers* (1847), 2 Wood. and Min., 497, 512.

[5] *Falk* v. *Donaldson* (1893), 57 Fed. Rep., 32.

[6] *Falk* v. *Howell* (1888), 37 Fed. Rep., 202.

[7] *Gilmore* v. *Anderson* (1889), 38 Fed. Rep., 846.

In *Gray* v. *Russell*,[1] Story, J., says :—

"*Non numerantur, ponderantur*; the quintessence of a work may be piratically extracted so as to leave a mere *caput mortuum*, by a selection of all the important passages in a comparatively moderate space."

Extract for Review.—Extracts may be taken from a work for the purpose of reviewing or criticising it, or writing a treatise in answer.

"Reviewers may make extracts sufficient to show the merits or demerits of the work, but they cannot so exercise the privilege as to supersede the original work. Sufficient may be taken to give a correct view of the whole; but the privilege of making extracts is limited to those objects, and cannot be exercised to such an extent that the review shall become a substitute for the book reviewed."[2]

A reviewer must not tear the heart out of a book.

Abridgments.—What is called a *bonâ fide* abridgment is held to be a fair use of another's work.[3] The opinions of the judges in the older cases were derived from the English case law on the subject. I think it is doubtful whether the English abridgment cases would now be sustained, as the principle involved is clearly against all the more recent doctrines as to infringement. In America, however, the judges, although disagreeing more or less with the case law as to abridgment, have felt themselves bound by precedent to hold that a fair abridgment is not a piracy.

In *Story* v. *Holcombe*,[4] M'Lean, J., said :—

"If this was an open question, I should feel little difficulty in determining it. An abridgment should contain an epitome of the work abridged—the principles in the condensed form of an original book. Now it would be difficult to maintain that such a work did not affect the sale of the book abridged. The argument that the abridgment is suited to a different class of readers by its cheapness, and will be purchased on that account by persons unable and unwilling to purchase the work at large, is not satisfactory. This to some extent may be true, but are there not

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[1] (1839), 1 Story, 11; see *Story* v. *Holcombe* (1847), 4 M'L., 306; *Folsom* v. *Marsh* (1841), 2 Story, 100, 116.

[2] Gifford, J., in *Lawrence* v. *Dana* (1869), 4 Giff., 82; see Story, J., in *Folsom* v. *Marsh* (1841), 2 Story, p. 106; *Story* v. *Holcombe* (1847), 4 M'L., at p. 309.

[3] *Lawrence* v. *Dana* (1869), 4 Cliff., p. 78; *Story* v. *Holcombe* (1847), 4 M'L., 309; *Folsom* v. *Marsh* (1841), 2 Story, 106; *Gray* v. *Russell* (1839), 1 Story, 11; *Stowe* v. *Thomas* (1853), 2 Wall. Jr., p. 547; *Keene* v. *Wheatley* (1860), 9 Am. L. R., 45.

[4] (1847), 4 M'L., 306.

many who are able to buy the original work who will be satisfied with the abridgment. . . . The reasoning on which the right to abridge is founded therefore seems to me to be false in fact. It does to some extent in all cases, and not unfrequently to a great extent, impair the rights of the author —a right secured by law. . . . But a contrary doctrine has been long established in England under the Statute of Anne, which in this respect is similar to our own Statute, and in this country the same doctrine has prevailed. I am therefore bound by precedent, and I yield to it in this instance more as a principle of law than a rule of reason or justice."[1]

In *Lawrence* v. *Dana*,[2] Clifford, J., took a similar view :—

"Whatever might be thought, if the question was an open one, it is too late to agitate it at the present time, as the rule is settled that the publication of an unauthorised but *bonâ fide* abridgment or digest of a published literary copyright, in a certain class of cases at least, is no infringement of the original."

The learned judge then lays down some restriction on the free right to abridge :—

"Unless it be denied that a legal copyright secures to the author 'the sole right and liberty of printing, reprinting, publishing, and binding the book' copyrighted, it cannot be held that an abridgment or digest of any kind of the contents of the copyrighted publication, which is of a character to supersede the original work, is not an infringement of the franchise secured by the copyright. What constitutes a fair and *bonâ fide* abridgment in the sense of law is, or may be, under particular circumstances, one of the most difficult questions which can well arise for judicial consideration; but it is well settled that a mere selection or different arrangement of parts of the original work into a smaller compass will not be held to be such an abridgment."[3]

I think that to-day the Courts in America as well as England would, if the question of abridgments were to come before them, cut down the right of the abridger very considerably. I could not advise any one that he was safe in making an abridgment of another's work; certainly he must avoid making any extracts from the work abridged; the use of any of the author's language literally or colourably taken would undoubtedly be piratical.

[1] *Story* v. *Holcombe* (1847), 4 M'L., 308, 309.
[2] (1869), 4 Cliff., 78.
[3] *Lawrence* v. *Dana* (1869), 4 Cliff., pp. 78, 79.

Translations.—Authors and their assigns have the exclusive right of translating their works into any language.[1] Before 1891 the translating right had to be expressly reserved by the author, presumably by notice printed on every published copy of his work.[2] No reservation is now required. Before 1870 there was no exclusive right of translation at all.[3] The same remarks apply to the right of dramatization. The right of dramatization probably does not prevent a stranger from making a dramatic version for his own private use; but it would prohibit any public use of such a version whether by publication in print or representation on the stage.

Dramatic Performing Right.—In the case of dramatic works the author and his assigns have the sole right of performing the same in public.[4] This right was first given by Act of Congress in 1856.[5] In *Daly* v. *Palmer*,[6] Blatchford, J., defines the scope of the Act:—

"A composition, in the sense in which that word is used in the Act of 1856, is a written or literary work invented or set in order. A dramatic composition is such a work in which the narrative is not related, but is represented by dialogue and action. When a dramatic composition is represented in dialogue and action by persons who represent it as real by performing or going through with the various parts or characters assigned to them severally, the composition is acted, performed, or represented; and if the representation is in public, it is a public representation. To act in the sense of the Statute is to represent as real by countenance, voice, or gesture that which is not real. A character in a play who goes through with a series of events on the stage without speaking, if such be his part in the play, is none the less an actor in it than one who, in addition to motions and gestures, uses his voice. A pantomime is a species of theatrical entertainment, in which the whole action is represented by gesticulation without the use of words. A written work consisting wholly of directions, set in order for conveying the ideas of the author on a stage or public place by means of characters who represent the narrative wholly by action is as much a dramatic composition designed or suited for public representation as if language or dialogue were used in it to convey some of the ideas."[7]

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[1] Act of March 3, 1891, sec. 1.
[2] Act of July 18, 1870; Revised Statutes, 1874, sec. 4952.
[3] *Stowe* v. *Thomas* (1853), 2 Wall. Jr., 547.
[4] Act of March 3, 1891, sec. 1.
[5] Act of Congress, Aug. 18, 1856.
[6] (1868), 6 Blatchf., 256, at p. 264.
[7] (1868), 6 Blatchf., at p. 264.

It will be an infringement of performing right to take a single scene from another's drama.[1] It is more important to consider what is a dramatic representation than what is a dramatic composition. If a composition not primarily intended for representation is publicly represented without permission, even if it was not a "dramatic composition," the person representing will be liable for having dramatized it if the representation is dramatic. There can be a dramatic representation by one actor only, and many music hall songs are undoubtedly dramatically represented.

Musical Rights.—Before 1897 there was no exclusive performing right in musical compositions as such. It might have been protected from performance if it could be shown to be part of a dramatic piece.[2] By the Act of January 6, 1897, performing right in musical compositions was first created. The protection is now substantially the same as in the case of dramatic pieces.

Section II.—Prohibited Acts, and Remedies.

It is an infringement, subject to the remedies stated below, to do any of the following acts in respect of a copyright work.

In the case of :—

1. *Books* :[3] without the consent of the proprietor in writing signed in the presence of two witnesses.
    1. To print or publish.
    2. To dramatize or translate.
    3. To import.
    4. Knowingly to sell or expose for sale copies unlawfully made or imported.

The owner's remedies are :—

1. Forfeiture of copies.
2. Damages.
3. Injunction.
4. Account of profits.

[1] *Brady* v. *Daly* (1899), 175 U.S. Rep., 148 ; *Daly* v. *Webster* (1892), 1 U.S. App., 573.
[2] See *Carte* v. *Duff* (1885), 25 Fed. Rep., 183.
[3] Act of 1891, sec. 7, amending Revised Statutes, sec. 4964.

II. *Maps,*[1] *charts, dramatic or musical compositions, prints, art engravings, photographs, chromos, paintings, drawings, statues, statuary models and designs for the fine arts*; without the consent of the proprietor in writing signed in the presence of two witnesses.

1. To engrave, etch, work, or copy.
2. To print or publish.
3. To dramatize or translate.
4. To import.
5. Knowingly to sell or expose for sale copies unlawfully made or exported.

The owner's remedies are:—

1. Forfeiture of plates and sheets.
2. Penalty of $1 for every sheet found in defendant's possession.
3. Penalty of $10 for every copy of a painting, statue, or statuary.
4. In the case of a photograph made from any object not a work of fine art, the sum to be recovered shall not be less than $100 nor more than $5000.
5. In the case of a work of the fine arts or photograph thereof, the sum to be recovered shall not be less that $250 nor more than $10,000.
6. Injunction.

One-half of the penalties under the Act of March 2, 1895, go to the proprietor of the copyright and the other half to the use of the United States.[2]

A series of sheets containing tabulated information has been held not to be entitled to protection as charts but only as a book.[3] An engraving or cut contained in a book or volume will not be protected as a cut unless it is separately copyrighted as such.[4]

[1] Act of March 2, 1895, amending Revised Statutes, sec. 4965, and Act of 1891, sec. 8.

[2] It has been suggested that this division of penalties applies only to "paintings, statues, and statuary." *Thornton* v. *Schreiber* (1887), 7 How., 8 Sup. Ct., 618.

[3] *Taylor* v. *Gilman* (1885), 24 Fed. Rep., 632.

[4] *Bennett* v. *Boston* (1900), 101 Fed., Rep., 445.

III. *Dramatic or musical compositions*:[1] without the consent of the proprietor.

1. Publicly to perform or represent.

The owner's remedies are:—

1. Damages not less than $100 for the first, and not less than $50 for every subsequent performance.
2. If done wilfully and for profit it is a misdemeanour, and the offender may on conviction be imprisoned for a period not exceeding a year.
3. Injunction.

Damages cannot be recovered in a suit in equity, the remedy being limited to an injunction and profits.[2]

Account of Profits.—The right to an account of profits is an equitable remedy, and incidental to the statutory right, although not expressly conferred by the statute.[3]

If a work is in part piratical and in part innocent, then if the piratical part can be distinctly separated it will be separately condemned and the profits apportioned.[4] If the piratical matter is so mixed up with the rest that it cannot be distinctly separated, the profits awarded will be the whole profits on the sale of the book.[5] When the defendant has sold a book twice, having bought it back second-hand, the profits include the profits on both sales.[6] The cost of producing copies which the defendant did not sell cannot be estimated in reduction of profits.[7] There will be no decree for profits unless there are means of determining in a reliable manner what sum the defendant received for books.[8]

[1] Act of Jan. 6, 1897, amending Revised Statutes, sec. 4966.

[2] *Chapman* v. *Ferry* (1882), 12 Fed. Rep., 693.

[3] *Stevens* v. *Gladding* (1854), 17 How., 447; *Falk* v. *Gast* (1893), 54 Fed. Rep., 890; *Belford* v. *Scribner* (1892), 144 U.S. Rep., 488; *Chapman* v. *Ferry* (1882), 12 Fed. Rep., 693.

[4] *West* v. *Lawyers* (1894), 64 Fed. Rep., 360; *Belford* v. *Scribner* (1892), 144 U.S. Rep., 488; *Farmer* v. *Elstner* (1888), 33 Fed. Rep., 494.

[5] *Callaghan* v. *Myers* (1888), 128 U.S. Rep., 617; *Lawrence* v. *Dana* (1869), 4 Cliff., 85; *Elizabeth* v. *Pavement Co.* (1877), 97 U.S. Rep., 126, 139.

[6] *Callaghan* v. *Myers* (1888), 128 U.S. Rep., 617.

[7] Ibid.

[8] *Gilmore* v. *Anderson* (1890), 42 Fed. Rep., 267.

Damages.—Damages may be awarded in lieu of or as supplementary to an account of profits. The measure of damages is the diminution in the plaintiff's sales due to the publication of the defendant's book.

The minimum statutory damages given for infringement of performing rights are remedial but not penal, and the strict rules of evidence in criminal cases do not apply.[1] The penalties given for infringement of maps, &c., are of a penal nature.[2]

In respect of maps, musical and dramatic compositions, works of art, &c., there is no right of action to recover damages merely as such; the remedy is limited to the prescribed forfeiture and penalties.[3]

Penalties.—Penalty for "each sheet" does not mean for each copy. Where a large number of lithograph copies of a photograph were printed on one sheet it was held that only one penalty was recoverable for the whole sheet.[4] Cutting up or binding the sheets does not increase nor diminish the number of the sheets.[5] Only those sheets which are "found in the defendant's possession" are penalised.[6] They must be alleged and proved to have been actually discovered in the defendant's possession before the bringing of the action,[7] and not merely be found by the jury to have been in his possession. They need not necessarily have been found by the plaintiff or any one acting on his behalf.[8] An employee who holds possession for his master is not liable in penalties.[9] Penalties cannot be recovered in a suit in equity.[10]

Forfeiture.[11]—It seems doubtful whether the forfeiture of

[1] *Daly* v. *Brady* (1895), 69 Fed. Rep., 285; *Atwill* v. *Ferrett* (1846), 2 Blatchf., 39; Revised Statutes, sec. 860.

[2] *Taylor* v. *Gilman* (1885), 24 Fed. Rep., 632; *Johnson* v. *Donaldson* (1880), 3 Fed. Rep., 22; *Chapman* v. *Ferry* (1882), 12 Fed. Rep., 693.

[3] *Thornton* v. *Schreiber* (1887), 7 How., at p. 614; *Springer* v. *Falk* (1894), 20 U.S. App., 296.

[4] *Falk* v. *Heffron* (1893), 56 Fed. Rep., 299.

[5] Ibid.

[6] Revised Statutes, sec. 4965.

[7] *Bolles* v. *Outing* (1899), 77 Fed. Rep., 966; *Reed* v. *Carusi* (1845), 72 Fed. Cas., No. 11,642; *Backus* v. *Gould* (1849), 7 How., 798; *Thornton* v. *Schreiber* (1887), 124 U.S. Rep., 612; *Falk* v. *Curtis* (1901), 107 Fed. Rep., 126; (1900), 98 Fed. Rep., 989; *Child* v. *New York Times* (1901), 110 Fed. Rep., 527.

[8] *Falk* v. *Curtis* (1900), 100 Fed. Rep., 77.

[9] *Thornton* v. *Schreiber* (1887), 124 U.S. Rep., 612.

[10] *Chapman* v. *Ferry* (1882), 12 Fed. Rep., 693.

[11] Previous demand is not a condition precedent; *Hegemen* v. *Springer* (1901), 110 Fed. Rep., 374.

copies of a book under section 4964 of the Revised Statutes can be enforced unless the whole book is copied. It was held under the Act of 1831 that they could not,[1] but I doubt if this is sound.

The statutes give no right of action to the proprietor of a map, photograph, dramatic or musical work, artistic work, &c., to recover from an infringer the value of copies which have passed from his possession.[2]

Injunction.[3]—A preliminary injunction is granted, but only in a plain case,[4] to stay further damage. The Court will always consider which party is likely to suffer most from the erroneous granting or refusing of an injunction. In doubtful cases an injunction will not be granted simpliciter, but the defendants may be required to keep an acccunt and give a bond to answer damages.[5] An injunction will go at the hearing without reference to the question of special damage.[6]

Who is Liable.—The sale of a play with a view to unauthorised representation makes the seller a joint infringer of the performing right.[7] The manager of a company is not personally liable for an infringement made by the company without his knowledge and against his express instructions.[8] A company is liable in penalties as well as an individual.[9] The printer and publisher of a piratical book are liable equally with the writer.[10] One who procures an infringement to be made is liable.[11]

An employer whose servants or agents infringe the copyright of others is undoubtedly liable in damages for the wrongful acts of his servants done in the course of their employment. Thus one who compiles a directory is responsible for the piratical acts of his canvassers, even although they acted con-

[1] *Rogers* v. *Jewett* (1858), 12 L. R., 339.
[2] *Sarony* v. *Ehrich* (1886), 28 Fed. Rep., 79.
[3] See *Williams* v. *Smythe* (1901), 110 Fed. Rep., 961.
[4] *Harper* v. *Holman* (1897), 84 Fed. Rep., 224; *Colliery* v. *Schools* (1899), 24 Fed. Rep., 152; *Little* v. *Gould* (1851), 2 Blatchf., at p. 184.
[5] *Hubbard* v. *Thompson* (1882), 14 Fed. Rep., 689; *Trow* v. *Boyd* (1899), 97 Fed. Rep., 586.
[6] *Reed* v. *Holliday* (1884), 19 Fed. Rep., 325; *Black* v. *Allen* (1893), 56 Fed. Rep., 764.
[7] *Daly* v. *Palmer* (1868), 6 Blatchf., 256.
[8] *Stuart* v. *Smith* (1895), 68 Fed. Rep., 189.
[9] *Falk v. Curtis* (1900), 98 Fed. Rep., 989.
[10] *Belford* v. *Scribner* (1892), 144 U.S. Rep., 488.
[11] *Fishel* v. *Lueckel* (1892), 53 Fed. Rep., 499.

trary to his express instructions.[1] But it has been held that a man is not liable for forfeitures or penalties on account of acts done without his knowledge or consent by his servants or agents in his employment. When an agent had full authority to advertise his principal's teas as he thought fit and pirated some election statistics in doing so, it was held that his principal could not be liable in forfeitures or penalties for acts done in his absence and without his authority or knowledge.[2] In another case it was held that the proprietor of a newspaper was not responsible in forfeiture or penalties for a piratical copy of a map which appeared in his newspaper during his absence from the management and control.[3] It will be observed that if these cases are sound the proprietor of the copyright in a map, &c., or artistic work has no remedy in either penalties or damages against the proprietor of an infringing publication unless he can show that the piratical matter was inserted with his knowledge or consent. This follows from the above decisions that the specific penalties constitute the only remedy by way of damages which the proprietor of these works can recover.[4]

Limitation of Action.—No action can be maintained in any case of forfeiture or penalty under the copyright laws unless the same is commenced within two years after the cause of action has arisen.[5] This includes all claims, not only those for forfeiture and penalty so-called, but for damages under Revised Statutes, sec. 4964, in respect of books.[6]

Acquiescence.—Mere delay on the part of the plaintiff in pursuing his remedy is no defence to an action for infringement.[7] A preliminary injunction may be refused on the ground of delay. The remedy on the final hearing will not be barred by laches or acquiescence, unless it is tantamount to fraud for

[1] *Trow* v. *Boyd* (1899), 97 Fed. Rep., 586.

[2] *Taylor* v. *Gilman* (1885), 24 Fed. Rep., 632.

[3] *M'Donald* v. *Hearst* (1899), 95 Fed. Rep., 656.

[4] *Thornton* v. *Schreiber* (1887), 7 How., at p. 614; *Springer* v. *Falk* (1894), 20 U.S. App., 296.

[5] Revised Statutes, sec. 4968.

[6] *Wheeler* v. *Cobbey* (1895), 70 Fed. Rep., 487; *Daly* v. *Brady* (1895), 69 Fed. Rep., 285; see *Brady* v. *Daly* (1899), 175 U.S. Rep., at p. 158.

[7] *Black* v. *Allen* (1893), 56 Fed. Rep., 764.

the plaintiff to insist on his legal rights.[1] A right may perhaps be abandoned by allowing numerous members of the public to exercise it without licence or objection.[2]

Pleading.—In pleading, the plaintiff does not have to allege the facts which make him proprietor.[3] If it is disputed, it is for the defendant to allege and prove facts to the contrary.[4] The plaintiff, however, must allege specifically a compliance with the statutory formalities, although he need not allege that publication took place within a reasonable time after the deposit of the title.[5]

In all actions arising under the laws respecting copyrights, the defendant may plead the general issue, and give the special matter in evidence.[6]

Penalties for affixing False Notice.—Every person who shall insert or impress a copyright notice, "or words of the same import, in or upon any book, map, chart, dramatic or musical composition, print, cut, engraving or photograph or other article, whether such article be subject to copyright or otherwise, for which he has not obtained a copyright, or shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country; or shall import any book, photograph, chromo or lithograph, or other article bearing such notice of copyright, or words of the same purport which is not copyrighted in this country, shall be liable to a penalty of $100, recoverable one-half for the person who shall sue for such penalty, and one-half to the use of the United States."[7]

This section was amended in 1891 and again in 1897. It now reads as above. Before 1897 the penalty was not recoverable from one who sold copies, knowing them to contain a false notice, unless he had made the book or caused the notice

[1] *Hill* v. *Epley* (1858), 31 Penn. St., 331; *Laurence* v. *Dana* (1869), 4 Cliff., 83; *Heine* v. *Appleton* (1853), 4 Blatchf., 125; *Menendez* v. *Holt* (1888), 128 U.S., 514; *Keene* v. *Clarke* (1867), 5 Robertson, N.Y., 38, 66, 67.

[2] *Boucicault* v. *Wood* (1867), 2 Biss., 34.

[3] *Falk* v. *Schumacher* (1891), 48 Fed. Rep., 232.

[4] Ibid.

[5] *Scribner* v. *Allen* (1892), 49 Fed. Rep., 854.

[6] Revised Statutes, sec. 4969; sec. 914; see *Johnston* v. *Klopsch* (1898), 88 Fed. Rep., 692.

[7] Revised Statutes, sec. 4963, amended Act, March 3, 1897.

to be inserted.[1] Before 1897 also there could be no conviction unless the article on which the false notice was impressed was a copyrightable article.[2]

The penalty is not recoverable for each copy, but for each issue. Where chromos were struck off in large numbers for advertising purposes, each separate batch being printed with a different trade name for different customers, it was held that the penalty was recoverable on each batch.[3] For a notice to incur the penalty as a false notice, it is not necessary that it should have been printed as directed by the Acts. It will be subject to the penalty even although printed in another part of the book.[4] Rough prints of a picture made for the pu.pose of advertisement bore a false notice, and were held to have incurred the penalty.[5] It is not unlawful to impress a notice of copyright on a rough copy of a copyright picture, even although such copy is not separately copyrighted.[6] Liability will not attach unless the notice contains the essentials of a sufficient copyright notice, viz. "name," "claim of exclusive right," and "date when obtained." Thus where the date was omitted no penalties were recovered.[7] Any one who causes a false notice to be impressed is equally liable with the person who himself impresses it.[8]

Importing Books Printed Outside the United States.—If copyright has been secured in the United States, importation of any book, chromo, lithograph, or photograph, or any plates of the same, not made from type set, negatives, or drawings on stone made within the limits of the United States,[9] is prohibited, either with or without the consent of the owner of the copyright,

Except—

1. Works printed or manufactured more than twenty years at the date of importation.[10]

[1] *Ross* v. *Raphael Tuck* (1898), 91 Fed. Rep., 128.
[2] *Rosenbach* v. *Dreyfus* (1880), 2 Fed. Rep., 217.
[3] *Taft* v. *Stephens* (1889), 39 Fed. Rep., 781.
[4] *Rigney* v. *Raphael Tuck* (1896), 77 Fed. Rep., 173.
[5] *Rigney* v. *Dalton* (1896), 77 Fed. Rep., 176. [6] Ibid.
[7] *Hoertel* v. *Raphael Tuck* (1899), 94 Fed. Rep., 844.
[8] *Rigney* v. *Dalton* (1896), 77 Fed. Rep., 176.
[9] Revised Statutes, sec. 4956, amended March 3, 1891, 26 S. L., 1107.
[10] 26 S. L., 604.

2. Books and pamphlets printed exclusively in languages other than English.[1]
3. Books and music in raised print used exclusively by the blind.[2]
4. Works imported by authority for the use of the U.S. or the Library of Congress.[3]
5. Books, maps, lithographic prints and charts specially imported, not more than two copies in any one invoice, in good faith, for the use of societies, schools, colleges, &c.[4]
6. Books imported for use and not for sale subject to payment of duty, and not more than two copies at any one time.[5]
7. Newspapers and magazines, if they contain no infringement of U.S. copyright.[6]

[1] 26 S. L., 604. [2] Ibid. [3] Ibid. [4] Ibid.
[5] Revised Statute, sec. 4956, amended March 3, 1891. 26 S. L., 694. [6] Ibid.

CHAPTER V

COMMON LAW RIGHTS

SECTION I.—PUBLISHED WORK.

AFTER a work has been published it has no protection in the nature of copyright except under an Act of Congress.[1] If either from the nature of the work, or from the want of conforming with the formalities of the Act, there is no statutory protection, then there can be no exclusive right of copying the work. After a drama or musical piece has been published as a book, not only the copyright in it but also the performing right depends entirely on statutory protection.[2] Performance on the stage not being a publication, affects neither the right of copy nor the performing right.

Although there is no right of copy in a published work except under statute, there are certain common-law rights based on fraud or implied contract which are incident thereto, and which neither depend on nor are affected by statutory protection.

Passing off.—One man is not entitled so to produce his book as to lead the public to believe it is the work of another.[3] The same or a similar title is the most usual method of passing off. One cannot monopolise a purely descriptive title such as "Latin Grammar" or "Guide to the Alps;" but it was held a passing off to take the title, "The *Fram* Expedition—Nansen in

[1] *Wheaton* v. *Peters* (1834), 8 Pet., 591; *Banks* v. *Manchester* (1888), 128 U.S. Rep., 244; *Jeweller's* v. *Jeweller's* (1898), 155 N.Y., 241; *Holmes* v. *Hurst* (1898), 174 U.S. Rep., 82; *Palmer* v. *De Witt* (1872), 47 N.Y., 532; *West* v. *Lawyer's* (1896), 64 Fed. Rep., 360; *Parton* v. *Prang* (1872), 3 Cliff., 537; *Merrell* v. *Tice* (1881), 104 U.S. Rep., 557; *Boucicault* v. *Hart* (1875), 13 Blatchf., 47; *Boucicault* v. *Fox* (1862), 5 Blatchf., 87; *Boucicault* v. *Wood* (1867), 7 Am. L. R., 550; 2 Bis., 34; *Daly* v. *Walrath* (1899), 40 App. Div. N.Y., 220; *Carte* v. *Ford* (1883), 15 Fed. Rep., 439; *Carte* v. *Duff* (1885), 25 Fed. Rep., 183; *Rees* v. *Peltzer* (1874), 75 Ill., 475; *Ewer* v. *Coxe* (1824), 4 Wash. C. C., 487.

[2] *Boucicault* v. *Hart* (1875), 13 Blatchf., 47; *Daly* v. *Walrath* (1899), 40 App. Div. N.Y., 220; *Carte* v. *Ford* (1883), 15 Fed. Rep., 439; *Carte* v. *Duff* (1885), 25 Fed. Rep., 183.

[3] *M'Lean* v. *Fleming* (1877), 96 U.S. Rep., 245; *Estes* v. *Williams* (1884), 21 Fed. Rep., 189; *Social Register* v. *Howard* (1894), 60 Fed. Rep., 270.

the Frozen World;"[1] so the title "Social Register" to a select list of residents in a certain district was infringed by a similar list bearing the title "Howard's Social Register."[2] It is immaterial in a question of passing off that the book itself is unprotected from copying. Thus an English magazine called "Chatterbox" was largely sold in the United States, but was not copyright. Although it would have been quite legal to have copied the English magazine and sold such copies under its own title, it was not permissible to publish another magazine under the title of "Chatterbox."[3] In another case it was held that one might not adopt the title of another's operetta for his own, even although the songs and vocal scores of the operetta had been published under the title without securing copyright.[4]

It is not a passing off to reprint another man's book and sell it in his own name, and if the copyright has expired he has no redress.[5] He has no property in his own name as such. After the copyright had expired in "Webster's Dictionary," Webster's assignee was held to have no ground for restraining any one from reprinting and selling "Webster's Dictionary" under that title.[6] Even where the name was a pseudonym, "Mark Twain," the author was not entitled to prevent others from printing and selling some non-copyright work of his as "Sketches by Mark Twain."[7]

A man may prevent the publication under his name of a book of which he is not the author or which has been mutilated without his authority.[8] Henry Drummond, the evangelist, delivered a series of lectures at Boston, Massachusetts, on "The Evolution of Man." Eight out of twelve lectures were partially printed with the author's consent in the British Weekly, and no copyright was secured in America. It was held that Professor Drummond was entitled to restrain a reprint of these published lectures reproduced with material alterations, and

[1] *Harper* v. *Holman* (1897), 84 Fed. Rep., 224.
[2] *Social Register* v. *Howard* (1894), 60 Fed. Rep., 270.
[3] *Estes* v. *Williams* (1884), 21 Fed. Rep., 189; *Estes* v. *Leslie* (1886), 27 Fed. Rep., 22.
[4] *Aronson* v. *Fleckenstein* (1886), 28 Fed. Rep., 75.
[5] *Merriam* v. *Holloway* (1890), 43 Fed. Rep., 450; *Merriam* v. *Famous Shoe* (1891), 47 Fed. Rep., 411.
[6] Ibid.
[7] *Clemens* v. *Belford* (1883), 14 Fed. Rep., 728.
[8] *Clemens* v. *Belford* (1883), 14 Fed. Rep., 728; *Drummond* v. *Altemus* (1894), 60 Fed. Rep., 338.

represented as being the complete series of lectures.[1] An author who has parted with or lost his copyright has no right to regulate the manner in which his work may be published, provided that there is no misrepresentation causing injury to the author's name[2]

In one case,[3] however, the defendants were restrained from a similar proceeding on the ground of unfair trading. They bought second-hand school books published by the plaintiff, and rebound them so as to have the exact appearance of the plaintiff's books when new. It was held that they were entitled to do this without infringing any right of the plaintiff in their copyright book; but it was also held that it was not fair trading to sell the rebound books without sufficient notice that they were rebound.

If there have been several editions of a book, the copyright in the first of which only has expired, the author may restrain a publisher from reprinting and publishing the first edition so as to lead the public to believe that it is a later edition still copyright.[4] The owner of a series of novels, published in two editions, cannot prevent a third person buying a large quantity of the sixth edition and binding them so as to somewhat resemble the dearer edition.[5] When the "Encyclopædia Britannica" was published, only a few of the articles were copyright in America. It was held that it was permissible for an American publisher to reprint the whole work so far as not copyright, and to substitute new articles for the copyright articles, and so long as there was no attempt to defraud the public to publish it as the "Encyclopædia Britannica" so revised.[6]

SECTION II.—UNPUBLISHED WORK.

Unpublished work is protected from interference by the common law of England, which was brought to and adopted

[1] *Drummond* v. *Altemus* (1894), 60 Fed. Rep., 338.
[2] *Kipling* v. *Fenno* (1900), 106 Fed. Rep., 692.
[3] *Doan* v. *American Book Co.* (1901), 105 Fed. Rep., 772.
[4] *Merriam* v. *Famous Shoe* (1891), 47 Fed. Rep., 411; *Merriam* v. *Texas Siftings* (1892), 49 Fed. Rep., 944.
[5] *Dodd* v. *Smith* (1891), 144 Pa., 340.
[6] *Black* v. *Ehrich* (1891), 44 Fed. Rep., 793.

by the United States.[1] When the common law is asserted one must look to the law of the State in which the controversy originated,[2] since although the common law of England was adopted, it was adopted only so far as its principles were suited to the conditions of the colonies at the time, and some States have incorporated with their laws more and some less. The rights at common law in unpublished work were not abrogated by Acts of Congress establishing copyright in published work.

The author of an unfinished work has the right at common law to prevent any one from making any unauthorised use of his work.[3] The author may without publishing make a communication of the contents of his work to a limited number,[4] and he may prescribe to them what conditions he pleases.[5] A play or song is not published by performance nor a lecture by delivery.[6] A work of art is probably published by public exhibition,[7] but not by a private view. A spectator of an unpublished play is not entitled to reproduce substantial parts of it even from memory.[8] Similarly with a musical work or lecture.

An alien author has an equal right with a citizen of the United States to sue at common law for interference with his manuscript.[9] A statutory remedy is given for the unauthorised printing or publishing of any manuscript. The offender is liable "for all damages occasioned by such injury."[10] This statutory remedy neither destroys nor limits the common law

[1] *Wheaton* v. *Peters* (1834), 8 Pet., 591; *Little* v. *Hall* (1855), 18 How., 165; *Bartlett* v. *Crittenden* (1847), 4 M'L., 301; *Palmer* v. *De Witt* (1872), 47 N.Y., 532.

[2] *Wheaton* v. *Peters* (1834), 8 Pet., 591; *Jones* v. *Thoms* (1843), 1 N.Y. Leg. Obs., 408; *French* v. *Maguire* (1878), 55 How. (N.Y.) Pr., 471; *Oertel* v. *Wood* (1870), 40 How. Pr., 10; *Oertel* v. *Jacoby* (1872), 44 How. Pr., 179; *Rees* v. *Peltzer* (1874), 75 Ill., 475; *Crowe* v. *Aiken* (1870), 2 Biss., 208; *Carte* v. *Bailey* (1874), 64 Maine, 458.

[3] *Wheaton* v. *Peters* (1834), 8 Pet., 591; *Palmer* v. *De Witt* (1872), 47 N.Y., 532; *Goldmark* v. *Kreling* (1885), 25 Fed. Rep., 349; *Daly* v. *Walrath* (1899), 40 App. Div. N.Y., 220; 28 Chic. Leg. News, 49.

[4] See p. 262, *supra*.

[5] *Parton* v. *Prang* (1872), 3 Cliff., 537.

[6] See p. 263, *supra*.

[7] *Oertel* v. *Wood* (1870), 40 How. Pr., 10; *Oertel* v. *Jacoby* (1872), 44 How. Pr., 179.

[8] *Tompkins* v. *Halleck* (1882), 133 Mass., 32; overruling *Keene* v. *Kimball* (1860), 16 Gray, 549; see *French* v. *Maguire* (1878), 55 How. (N.Y.) Pr., 471; *Crowe* v. *Aiken* (1870), 2 Biss., 208.

[9] *Palmer* v. *De Witt* (1872), 47 N.Y., 532.

[10] Act of March 3, 1891, sec. 9, amending Revised Statutes, 4967.

right.[1] No new right is secured.[2] The practical result is that an alternative remedy in the Federal tribunals is provided where the parties are subjects of the same State. The plaintiff may proceed either in the State Court or the Federal Court.[3] Manuscript under this section is limited to the meaning of a written document. It does not include a picture.[4]

[1] *Press* v. *Munroe* (1896), 73 Fed. Rep., 196.
[2] *Palmer* v. *De Witt* (1872), 47 N.Y., 532.
[3] Ibid.
[4] *Parton* v. *Prang* (1872), 3 Cliff., 537.

APPENDIX

THE ENGRAVING COPYRIGHT ACT, 1734.

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.

I. 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, be it enacted, That from and after the Twenty-fourth Day of June, which shall be in the Year of our Lord One thousand seven hundred and thirty-five, every Person who shall invent and design, engrave, etch, or work in Mezzotinto or Chiaro Oscuro, or, from his own Works and Invention, shall cause to be designed and engraved, etched, or worked in Mezzotinto or Chiaro Oscuro, any historical or other Print or Prints,[1] 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

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

Proprietor's Name to be affixed to each Print.

Penalty on Printsellers or others pirating same.

[1] See pp. 152-4.

disposed of, any such Print or Prints without such Consent first had and obtained as aforesaid, then such Offender or Offenders shall forfeit the Plate or Plates on which such Print or Prints are or shall be copied, and all and every Sheet or Sheets (being part of or whereon such Print or Prints are or shall be so copied or printed) to the Proprietor or Proprietors of such original Print or Prints, who shall forthwith destroy and damask the same; and further, that every such Offender or Offenders shall forfeit Five Shillings for every Print which shall be found in his, her, or their Custody, either printed or published, and exposed to Sale, or otherwise disposed of contrary to the true Intent and Meaning of this Act, the One Moiety thereof to the King's most Excellent Majesty, His Heirs and Successors, and the other Moiety thereof to any Person or Persons that shall sue for the same, to be recovered in any of His Majesty's Courts of Record at Westminster, by Action of Debt, Bill, Plaint, or Information, in which no Wager of Law, Essoign, Privilege, or Protection, or more than One Imparlance, shall be allowed:

Not to extend to Purchasers of Plates from the original Proprietors.

II. Provided nevertheless, That it shall and may be lawful for any Person or Persons, who shall hereafter purchase any Plate or Plates for printing, from the Original Proprietors thereof, to print and reprint from the said Plates, without incurring any of the Penalties in this Act mentioned.

Limitation of Actions.

III. *And if any Action or Suit shall be commenced or brought against any Person or Persons whatsoever, for doing or causing to be done any Thing in pursuance of this Act, the same shall be brought within the Space of Three Months after so doing; and the Defendant and Defendants, in such Action or Suit, shall or may plead the General Issue, and give the special Matter in Evidence; and if upon such Action or Suit a Verdict shall be given for the Defendant or Defendants, or if the Plaintiff or Plaintiffs become nonsuited, or discontinue his, her, or their Action or Actions, then the Defendant or Defendants shall have and recover full Costs, for the Recovery whereof he shall have the same Remedy, as any other Defendant or Defendants in any other Case hath or have by Law:*[1]

General Issue.

IV. Provided always, That if any Action or Suit shall be commenced or brought against any Person or Persons, for any Offence committed against this Act, the same shall be brought within the Space of Three Months after the Discovery of every such Offence, and not afterwards; any Thing in this Act contained to the contrary notwithstanding.

Clause relating to J. Pine.

V. *And whereas John Pine of London, Engraver, doth propose to engrave and publish a Set of Prints copied from several Pieces of Tapestry in the House of Lords, and His Majesty's Wardrobe, and other Drawings relating to the Spanish Invasion, in the Year of our Lord One thousand five hundred and eighty-eight; be it further enacted by the Authority aforesaid, That the said John Pine shall be entitled to the Benefit of this Act, to all Intents and Purposes whatsoever, in the same Manner as if the said John Pine had been the Inventor and Designer of the said Prints.*[2]

[1] Repealed by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).
[2] Repealed by Stat. Law Rev. Act, 1867.

VI. *And be it further enacted by the Authority aforesaid, That this Act shall be deemed, adjudged, and taken to be a Public Act, and be judicially taken notice of as such by all Judges, Justices, and other Persons whatsoever, without specially pleading the same.*[1] Public Act.

THE ENGRAVING COPYRIGHT ACT, 1766.

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; *and for vesting in, and securing to, Jane Hogarth, Widow, the Property in certain Prints.*[2]

Preamble reciting Act 8, G 2.

I. 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, That from and after the First Day of January One thousand seven hundred and sixty-seven, all and every Person and Persons who shall invent or design, engrave, etch, or work in Mezzotinto or Chiaro Oscuro, or, from his own Work, Design, or Invention, shall cause or procure to be designed, engraved, etched, or worked in Mezzotinto or Chiaro Oscuro, any Historical Print or Prints, or any Print or Prints of any Portrait, Conversation, Landscape, or Architecture, Map, Chart, or Plan, or any other Print or Prints whatsoever, shall have, and are hereby declared to have, the Benefit and Protection of the said Act, and this Act, under the Restrictions and Limitations herein-after mentioned.

The original Inventors, Designers, or Engravers, &c., of Historical and other Prints, and such who shall cause Prints to be done from Works, &c., of their own Invention, and also such as shall engrave, &c., any Print taken from any Picture, Drawing, Model, or Sculpture, are entitled to the Benefit and Protection of the recited and present Act; and those who shall engrave or import for Sale Copies of such Prints are liable to Penalties.

II. And from and after the said First Day of January One thousand seven hundred and sixty-seven, all and every Person and Persons who shall engrave, etch, or work in Mezzotinto or Chiaro Oscuro, or cause to be engraved, etched, or worked, any Print taken from any Picture, Drawing, Model, or Sculpture, either ancient or modern, shall have, and are hereby declared to have, the Benefit and Protection of the said Act, and this Act, for the Term herein-after mentioned, in like Manner as if such Print had been graved or drawn from the Original Design of such Graver, Etcher, or Draughtsman; and if any Person shall engrave, print and publish, or import for Sale, any Copy of any such Print, contrary to the true Intent and Meaning of this and the said former Act, every such Person shall be liable to the Penalties contained in the said Act, to be recovered as therein and herein-after is mentioned.

III. *And whereas William Hogarth, late of the City of Westminster, Painter and Graver, did etch and engrave, and cause to be etched and engraved, several Prints from his own Invention and Design, the Property and sole Right of vending all such Prints being secured to him the said*

[1] Repealed by Stat. Law Rev. Act, 1887. [2] Ibid.

The sole Right of printing and re-printing the late W. Hogarth's Prints,

vested in his Widow and Executrix for the Term of 20 years.

Penalty of copying, &c., of any of them, before the Expiration of the said Term;

William Hogarth for the Term of Fourteen Years from their first Publication, by the said former Act of Parliament; which said Property, by his last Will, became vested in his Widow and Executrix: And whereas since the first Publication of several of the said Prints, the Term of Fourteen Years is expired, and several base Copies of the same have been since printed and published, whereby the Sale of the Originals has been considerably lessened, to the great Detriment of the said Widow and Executrix: And whereas since the Publication of others of the said Prints, the Term of Fourteen Years is now near expiring: Be it enacted by the Authority aforesaid, That Jane Hogarth, Widow and Executrix of the said William Hogarth, shall have the sole Right and Liberty of printing and reprinting all the said Prints, Etchings, and Engravings, of the Design and Invention of the said William Hogarth, for and during the Term of Twenty Years, to commence from the said First Day of January One thousand seven hundred and sixty-seven; and that all and every Person and Persons who shall at any Time hereafter, before the Expiration of the said Term of Twenty Years, engrave, etch, or work in Mezzotinto or Chiaro Oscuro, or otherwise copy, sell, or expose to Sale, or cause or procure to be etched, engraved, or worked in Mezzotinto or Chiaro Oscuro, any of the said Works of the said William Hogarth, shall be liable to the Penalties and Forfeitures contained in this and the said former Act of Parliament; to be recovered in like Manner as in and by this and the said former Act are given, directed, and appointed.[1]

such Copies excepted as were made and exposed to Sale after the Term of 14 Years, for which the said Works were first licensed, &c.

IV. *Provided nevertheless, That the Proprietor or Proprietors of such of the Copies of the said William Hogarth's Works, which have been copied and printed, and exposed to Sale, after the Expiration of the Term of Fourteen Years from the Time of their first Publication by the said William Hogarth, and before the said First Day of January, shall not be liable or subject to any of the Penalties contained in this Act; anything herein-before contained to the contrary thereof in anywise notwithstanding.*[2]

Penalties may be sued for as by the recited Act is directed; and be recovered with full Costs; provided the Prosecution be commenced within 6 months after the Fact.

V. And all and every the Penalties and Penalty inflicted by the said Act, and extended, and meant to be extended, to the several Cases comprised in this Act, shall and may be sued 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.

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

The Right intended to be secured by this and the former

VII. And the sole Right and Liberty of printing and reprinting intended to be secured and protected by the said former Act and this Act, shall be extended, continued, and be vested in the respective Proprietors, for the Space of Twenty-eight Years, to commence from the Day of the first Publishing of any of the Works respectively herein-before and in the said former Act mentioned.

[1] Repealed by Stat. Law Rev. Act, 1867. [2] Ibid.

VIII. *And if any Action or Suit shall be commenced or brought against any Person or Persons whatsoever for doing, or causing to be done, anything in pursuance of this Act, the same shall be brought within the Space of Six Calendar Months after the Fact committed; and the Defendant or Defendants in any such Action or Suit shall or may plead the General Issue, and give the Special Matter in Evidence; and if, upon such Action or Suit, a Verdict shall be given for the Defendant or Defendants, or if the Plaintiff or Plaintiffs become nonsuited, or discontinue his, her, or their Action or Actions, then the Defendant or Defendants shall have and recover full Costs; for the Recovery whereof he shall have the same Remedy as any other Defendant or Defendants, in any other Case, hath or have by Law.*[1]

Act, vested in the Proprietors for the Term of 28 Years from the first Publication.

Limitation of Actions.

General Issue.

Full Costs.

THE COPYRIGHT ACT, 1775.[2]

(UNIVERSITY COPYRIGHT), 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:

I. WHEREAS Authors have heretofore bequeathed or given, and may hereafter bequeath or give the Copies of Books composed by them to or in Trust for one of the two Universities in that Part of Great Britain called England, or to or in Trust for some of the Colleges or Houses of Learning within the same, or to or in trust for the four Universities in Scotland, or to or in trust for the several Colleges of Eton, Westminster, and Winchester,[3] and in or by their several Wills or other instruments of Donation, have directed or may direct that the Profits arising from the printing and reprinting such Books shall be applied and appropriated as a Fund for the Advancement of Learning and other beneficial Purposes of Education within the said Universities and Colleges aforesaid: And whereas such useful Purposes will frequently be frustrated unless the sole printing and reprinting of such Books the Copies of which have been or shall be so bequeathed or given as aforesaid, be preserved and secured to the said Universities, Colleges, and Houses of Learning respectively in Perpetuity: Be it enacted, That the said Universities and Colleges respectively shall, at their respective Presses, have, for ever, the sole liberty of printing and reprinting all such Books, as shall at any time heretofore have been, or (having not been heretofore published[4] or assigned) shall at any time hereafter be bequeathed, or otherwise given by the Author or Authors of the same respectively or the Representatives of such Author or Authors, to or in Trust for the said Universities or to or in Trust for any College or House of Learning within the same, or to or in Trust for the said four Universities in Scotland, or to or in Trust for the said Colleges of Eton, Westminster, and Winchester, or any of them, for the Purposes aforesaid, unless the same shall have been bequeathed or given, or shall after be bequeathed or given, for any Term of Years or other limited Term: any Law or Usage to the contrary hereof in anywise notwithstanding.

Preamble.

Universities, &c., in England and Scotland to have for ever the sole Right of printing, &c., such Books as have been, or shall be, bequeathed to them, unless the same have been, or shall be given for a limited Time.

[1] Repealed by The Public Authorities Protection Act, 1893.

[2] See p. 61.

[3] 41 Geo. III., c. 107, extends the privileges of this Act to Dublin.

[4] See p. 61.

After 24th June, 1775, Persons printing or selling such Books shall forfeit the same, and also 1d. for every sheet;

II. And if any Bookseller, Printer, or other Person whatsoever, from and after June 24, 1775, shall print, reprint, or import, or cause to be printed, reprinted, or imported, any such Book or Books; or, knowing the same to be so printed or reprinted, shall sell, publish, or expose to Sale, or cause to be sold, published, or exposed to Sale, any such Book or Books; then such Offender or Offenders shall forfeit such Book or Books, and all and every Sheet or Sheets, being Part of such Book or Books, to the University, College, or House of Learning respectively, to whom the Copy of such Book or Books shall have been bequeathed or given as aforesaid, who shall forthwith damask and make waste Paper of them; and further, that every such Offender or Offenders shall forfeit One Penny for every Sheet which shall be found in his, her, or their Custody, either printed or printing, published or exposed to Sale, 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 who shall sue for the same; to be recovered in any of His Majesty's Courts of Record at Westminster, or in the Court of Session in Scotland, 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.

one Moiety to His Majesty, and the other to the Prosecutor.

Nothing in this Act to grant any exclusive Right longer than such Books are printed at the presses of the Universities. Universities may sell Copy Rights in like manner as any Author.

III. Provided nevertheless, That nothing in this Act shall extend to grant any exclusive Right otherwise than so long as the Books or Copies belonging to the said Universities or Colleges are printed only at their own Printing Presses within the said Universities or Colleges respectively, and for their sole Benefit and Advantage; and that if any University or College shall delegate, grant, lease, or sell their Copy Rights, or exclusive Rights of printing the Books hereby granted, or any Part thereof, or shall allow, permit, or authorise any Person or Persons, or Bodies Corporate, to print or reprint the same, that then the Privileges hereby granted are to become void and of no Effect, in the same Manner as if this Act had not been made[1]; but the said Universities and Colleges, as aforesaid, shall nevertheless have a Right to Sell such Copies so bequeathed or given as aforesaid, in like Manner as any Author or Authors now may do under the Provisions of the Statute of 8 Anne.

No person subject to Penalties for printing, &c., Books already bequeathed, unless they be entered before 24th June, 1775. All Books that may hereafter be bequeathed must be entered within

IV. And Whereas many Persons may through Ignorance offend against this Act, unless some Provision be made whereby the Property of every such Book as is intended by this Act to be secured to the said Universities, Colleges, and Houses of Learning within the same, and to the said Universities in Scotland, and to the respective Colleges of Eton, Westminster, and Winchester, may be ascertained and known; be it therefore enacted that nothing in this Act contained shall be construed to extend to subject any Bookseller, Printer, or other Person whatsoever, to the Forfeitures or Penalties herein mentioned, for or by reason of the printing or reprinting, importing or exposing to Sale any Book or Books, unless the Title to the Copy of such Book or Books, which has or have been already bequeathed or given to any of the said Universities or Colleges aforesaid, be entered in the Register Book of the Company of Stationers

[1] See p. 61.

kept for that Purpose, in such Manner as hath been usual, on or before June 24, 1775; and of all and every such Book or Books as may or shall hereafter be bequeathed or given as aforesaid, be entered in such Register within the space of two Months after any such Bequest or Gift shall have come to the knowledge of the Vice-Chancellors of the said Universities, or Heads of Houses and Colleges of Learning, or of the Principal of any of the said four Universities respectively; for every of which Entries so to be made as aforesaid the Sum of Sixpence shall be paid, and no more; which said Register Book shall and may, at all seasonable and Convenient Times, be referred to and inspected by any Bookseller, Printer, or other Person without any Fee or Reward; and the Clerk of the said Company of Stationers shall, when and as often as thereunto required, give a Certificate under his Hand of such Entry or Entries, and for every such Certificate may take a Fee not exceeding Sixpence.

two months after such Bequest shall be known.

6d. to be paid for each entry in the Register Book, which may be inspected without Fee. Clerk to give a Certificate, being paid 6d.

V. And if the Clerk of the said Company of Stationers for the Time being shall refuse or neglect to register or make such Entry or Entries, or to give such Certificate, being thereunto required by the Agent of either of the said Universities or Colleges aforesaid, lawfully authorised for that Purpose, then either of the said Universities or Colleges aforesaid, being the Proprietor of such Copy Right or Copy Rights as aforesaid (Notice being first given of such Refusal by Advertisement in the Gazette) shall have the like Benefit as if such Entry or Entries, Certificate or Certificates, had been duly made and given; and the Clerk so refusing shall, for every such Offence, forfeit £20 to the Proprietor or Proprietors of every such Copy Right; to be recovered in any of His Majesty's Courts of Record at Westminster, or in the Court of Session in Scotland, by Action of Debt, Bill, Plaint, or Information, in which no Wages of Law, Essoign, Privilege, Protection, or more than One Imparlance, shall be allowed.

If Clerk refuse or neglect to make Entry, &c., Proprietor of such Copy Right to have like Benefit as if such Entry had been made, and the Clerk shall forfeit £20.

VI. [*Clause enacting that no person shall be entitled to penalties under* 8 *Anne unless the Title to the copy of the whole book be entered at Stationers' Hall and* 9 *copies delivered for the use of the several libraries:* Repealed Stat. Law Rev. Act, 1861.]

8 Anne. Delivery of Copies.

VII. *And if any Action or Suit shall be commenced or brought against any Person or Persons whatsoever, for doing or causing to be done, any thing in pursuance of this Act, the Defendants in such Action may plead the General Issue, and give the Special Matter in Evidence; and if upon such Action a Verdict, or if the same shall be brought in the Court of Session in Scotland, a Judgment be given for the Defendant, or the Plaintiff become non-suited and discontinue his Action, then the Defendant shall have and recover his full Costs, for which he shall have the same Remedy as a Defendant in any Case by Law hath.*[1]

Limitation of Actions.

VIII. [*Clause providing that the Act shall be deemed a Public Act:* Repealed Stat. Law Rev. Act, 1887.]

Public Act.

[1] This section is repealed by the Public Authorities Protection Act, 1893, and the provisions of that Act substituted therefor in so far as they may be held to apply.

THE PRINTS COPYRIGHT ACT, 1777.

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.

Recital of Acts 8 G. 2, and 7 G. 3.

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 herein-after mentioned and contained; be it enacted 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

After 24th June, 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.

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.*[1]

THE SCULPTURE COPYRIGHT ACT, 1814.

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. [18th May 1814.]

38 G. 3 c. 71.

I. 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: Be it enacted 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,[2] or Model, or Copy, or Cast, of the Human Figure or Human Figures, or of any Bust or Busts, or of any Part or Parts of the Human Figure, clothed in Drapery or otherwise, or of any Animal or Animals, or of any Part or Parts of any Animal combined with the Human Figure or otherwise, or of any Subject being Matter of Invention in Sculpture or of any Alto or Basso-Relievo representing any of the Matters or Things herein-before mentioned, or any Cast from Nature of the Human Figure, or of any Part or Parts of the Human Figure, or of any Cast from Nature of any Animal, or of any Part or Parts of any Animal, or of any such Subject containing or representing any of the Matters and Things herein-before mentioned, whether separate or combined, shall have the sole Right and Property of all and in every such new and original Sculpture, Model, Copy and Cast of the Human Figure or Human Figures, and of all and in every such Bust or Busts, and of all and in every such Part or Parts of the Human Figure, clothed in Drapery or otherwise, and of all and in every such new and original Sculpture, Model, Copy and Cast, representing any Animal or Animals, and of all and in every such Work representing any Part or Parts of any Animal combined with the Human Figure or otherwise, and of all and in every such new and original Sculpture, Model, Copy and Cast of any Subject, being Matter of Invention in Sculpture, and of all and in every such new and original Sculpture, Model, Copy and Cast in Alto or Basso-Relievo, representing any of the Matters or Things herein-before mentioned, and of every such Cast from Nature, for the Term of Fourteen Years from

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

[1] A "full and reasonable indemnity" is substituted by 5 & 6 Vict. c. 97, sec. 2. These words in the above section printed in italics were subsequently repealed by Stat. Law Rev. Act, 1861.

[2] See p. 161.

first putting forth or publishing [1] 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 Proprietors for 14 Years.

II. And the sole Right and Property of all Works, which have been put forth or published under the Protection of the said recited Act, shall be extended, continued to and vested in the respective Proprietors thereof, for the Term of Fourteen Years, to commence from the Date when such last-mentioned Works respectively were put forth or published.

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

III. And if any Person or Persons shall, within such Term of Fourteen Years, make or import, or cause to be made or imported, or exposed to Sale, or otherwise disposed of, any pirated Copy or pirated Cast of any such new and original Sculpture, or Model or Copy, or Cast of the Human Figure or Human Figures, or of any such Bust or Busts, or of any such Part or Parts of the Human Figure clothed in Drapery or otherwise, or of any such Work of any Animal or Animals, or of any such Part or Parts of any Animal or Animals combined with the Human Figure or otherwise, or of any such Subject being Matter of Invention in Sculpture, or of any such Alto or Basso-Relievo representing any of the Matters or Things herein-before mentioned, or of any such Cast from Nature as aforesaid, whether such pirated Copy or pirated Cast be produced by moulding or copying from, or imitating in any way, any of the Matters or Things put forth or published under the Protection of this Act, or of any Works which have been put forth or published under the Protection of the said recited Act, the Right and Property whereof is and are secured, extended and protected by this Act, in any of the Cases as aforesaid, to the Detriment, Damage, or Loss of the original or respective Proprietor or Proprietors of any such Works so pirated; then and in all such Cases the said Proprietor or Proprietors, or their Assignee or Assignees, shall and may, by and in a Special Action upon the Case to be brought against the Person or Persons so offending, receive such Damages as a Jury on a Trial of such Action shall give or assess, *together with Double Costs of Suit.*[2]

Damages and Double Costs.

Purchasers of Copy Right secured in the same.

IV. Provided nevertheless, That no Person or Persons who shall or may hereafter purchase the Right or Property of any new and original Sculpture or Model, or Copy or Cast, or of any Cast from Nature, or of any of the Matters and Things published under or protected by virtue of this Act, of the Proprietor or Proprietors, expressed in a Deed in Writing signed by him, her, or them respectively, with his, her, or their own Hand or Hands, in the Presence of and attested by Two or more credible Witnesses, shall be subject to any Action for copying or casting, or vending the same, any Thing contained in this Act to the contrary notwithstanding.

Limitation of Actions.

V. Provided always, That all Actions to be brought as aforesaid, against any Person or Persons for any Offence committed against this

[1] See p. 162.

[2] A "full and reasonable indemnity" is substituted by 5 & 6 Vict. c. 97, sec. 2.

Act, shall be commenced within Six Calendar Months next after the Discovery of every such Offence, and not afterwards.

An additional Term of 14 Years, in case the Maker of the original Sculpture, &c., shall be living.

VI. Provided always, That from and immediately after the Expiration of the said Term of Fourteen Years, the sole Right of making and disposing of such new and original Sculpture, or Model, or Copy, or Cast of any of the Matters or Things herein-before mentioned, shall return to the Person or Persons who originally made or caused to be made the same, if he or they shall be then living, for the further Term of Fourteen Years, *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 herein-before mentioned, previous to the passing of this Act.*[1]

THE DRAMATIC COPYRIGHT ACT, 1833.

3 & 4 WILL. IV.

An Act to amend the Laws relating to Dramatic Literary Property.

[10th June 1833.]

54 G. 3 c. 156.

I. *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 re-printing such Books 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:*[2] *Be it therefore enacted*, That the Author of any Tragedy, Comedy, Play, Opera, Farce, or any other Dramatic Piece[3] 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[4] to be represented, at any Place or Places of Dramatic Entertainment[5] 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 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 the Author of any such Production, printed and published within Ten Years before the passing of

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.

[1] Repealed Stat. Law Rev. Act, 1873 (1).
[2] Repealed Stat. Law Rev. Act, 1890 (2).
[3] See p. 123. [4] See p. 139. [5] See p. 135.

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,[1] 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 subject to 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.

II. 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[2] 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*,[3] 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.

III. Provided nevertheless, That all Actions or Proceedings for any Offence or Injury 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 no effect.

Explanation of Words.

IV. 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.

[1] See p. 126. [2] See p. 142.

[3] A "full and reasonable indemnity" substituted by 5 & 6 Vict. c. 97, sec. 2. See p. 144.

THE LECTURES COPYRIGHT ACT, 1835.[1]

5 & 6 WILL. IV. c. 65.

An Act for preventing the Publication of Lectures without Consent.

[9th September 1835.]

1. *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*[2] 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 if any Person shall, by taking down the same in Short Hand or otherwise in Writing, or in any other Way, obtain or make a Copy of such Lecture 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 to the true Intent and Meaning of this Act, the one Moiety thereof to His Majesty, 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.*[3]

Authors of Lectures, or their Assigns, to have the sole Right of publishing them.

Penalty on other persons publishing, &c., Lectures without Leave.

II. 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.

Penalty on Printers or Publishers of Newspapers publishing Lectures without Leave.

III. No Person allowed for certain Fee and Reward, or otherwise, to attend and be present at any Lecture delivered in any Place, shall be

Persons having

[1] See p. 57.

[2] Repealed Stat. Law Rev. Act, 1890.

[3] Repealed Stat. Law Rev. Act, 1888 (2).

Leave to attend Lectures not on that Account licensed to publish them.

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.
8 Anne, c. 19.
54 G. 3 c. 156.

IV. 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.

Act not to extend to Lectures delivered in unlicensed Places, &c.

V. 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.

THE PRINTS AND ENGRAVINGS COPYRIGHT ACT, 1836.

6 & 7 Will. IV. c. 59.

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

17 G. 3 c. 57.

Provisions of Recited Act extended to Ireland.

I. Whereas an Act was passed (17 G. III. c. 57): And whereas it is desirable to extend the Provisions of the said Act to Ireland: Be it therefore enacted, That from and after the Passing of this Act all the Provisions contained in the said recited Act and of all other Acts therein recited, shall be and the same are hereby extended to the United Kingdom of Great Britain and Ireland.

Penalty on engraving or publishing any Print without Consent of Proprietor.

II. 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.*[1]

THE COPYRIGHT ACT, 1836.

6 & 7 WILL. IV. c. 110.

An Act to repeal so much of 54 Geo. III. c. 156 as requires the delivery of a Copy of every published Book to the Libraries of Sion College, the Four Universities of Scotland and of the King's Inns in Dublin. [20th August 1836.]

I. [Clause repealing 54 Geo. III. c. 156 in so far as it requires the delivery of books to the above libraries: Repealed Stat. Law Rev. Act, 1874.]

II. It shall be lawful for the Treasury from time to time to issue and pay out of the consolidated fund of the United Kingdom of Great Britain and Ireland to the person or persons or body politic or corporate, proprietors or managers of each of the aforesaid libraries, such an annual sum as may be equal in value to and compensation for the loss which any such library may sustain by reason of the said Act being repealed so far as relates to such library; such annual compensation to be ascertained and determined according to the value of the books which may have been actually received by each such library in such manner as the Treasury shall direct upon an average of the three years ending June 30, 1836.

III. The person or persons or body politic or corporate, proprietors or managers of the library for the use whereof any such book would have been delivered, shall and they are hereby required to apply the annual compensation hereby authorised to be made in the purchase of books of literature, science and the arts, for the use of and to be kept and preserved in such library. Provided always that it shall not be lawful for the Treasury to direct the issue of any sum of money for such annual compensation until sufficient proof shall have been adduced before them of the application of the money last issued to the purpose aforesaid.

THE COPYRIGHT ACT, 1842.

5 & 6 VICT. c. 45.

An Act to amend the Law of Copyright. [1st July 1842.]

I. *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*[2]*: Be it enacted, That from the passing of this*

[1] 5 & 6 Vict. c. 97, sec. 2, substitutes "a full and reasonable indemnity."
[2] Repealed Stat. Law Rev. Act 1890 (2). See p. 13.

Repeal of former Acts; 8 Anne, c. 19. 41 G. 3 c. 107. 54 G. 3 c. 156.

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.[1]

Interpretation of Act.

II. In the Construction of this Act the Word "Book"[2] shall be construed to mean and include every volume, Part or Division of a Volume, Pamphlet, Sheet of Letter-press, Sheet of Music, Map,[3] Chart, or Plan separately published[4]; the Words "Dramatic Piece"[5] shall be construed to mean and include every Tragedy, Comedy, Play, Opera, Farce, or other scenic, musical, or dramatic Entertainment; 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; the Words "personal Representative" shall be construed to mean and include every Executor, Administrator, and next of Kin entitled to Administration; 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[6]; 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 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

III. The Copyright in every Book which shall after the passing of this Act be published[7] in the Lifetime of its Author[8] 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

[1] Repealed Stat. Law Rev. Act, 1874 (2).
[2] See p. 10.
[3] See pp. 36, 148.
[4] See p. 12.
[5] See p. 123.
[6] See p. 74.
[7] See p. 38.
[8] See pp. 42, 62.

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 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.

the Lifetime of the Author;

if published after the Author's Death.

IV. *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*,[1] the Copyright which at the Time of passing this Act shall subsist in any Book theretofore published (except as herein-after 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 herein-after 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.

V.[2] *And whereas it is expedient to provide against the Suppression of Books of Importance to the Public*,[3] 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 it shall be lawful for such Complainant to publish such Book according to such Licence.

Judicial Committee of the Privy Council may license the Republication of Books which the Proprietor refuses to republish after Death of the Author.

VI.[4] 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 Letter-press, or in

Copies of Books published after the passing of this Act, and of all subsequent

[1] Repealed Stat. Law Rev. Act, 1890 (2).
[2] See p. 119.
[3] Repealed Stat. Law Rev. Act, 1890 (2).
[4] See p. 55.

Editions, to be delivered within certain Times at the British Museum.

the Maps, Prints, or other Engravings belonging thereto, and whether the first Edition of 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.

Mode of delivering at the British Museum.

VII. 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 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.

VIII.[1] 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 of 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.

[1] See p. 56.

Publishers may deliver the Copies to the Libraries, instead of at the Stationers' Company.

IX. Provided also, 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 Officer of the Stationers' Company.

Penalty for Default in delivering Copies for the Use of the Libraries.

X. 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.

XI.[1] A Book of Registry, wherein may be registered, as herein-after enacted, the Proprietorship in the Copyright of Books, and Assignments thereof, and in Dramatic and Musical Pieces, whether in Manuscript or otherwise, and Licences affecting such Copyright, shall be kept at the Hall of the Stationers' Company, by the Officer appointed by the said Company for the Purposes of this Act, and shall at all convenient Times be open to the Inspection of any Person, on Payment of One Shilling for every Entry which shall be searched for or inspected in the said Book; and that such Officer shall, whenever thereunto reasonably required, give a Copy of any Entry in such Book, certified under his Hand, and impressed with the Stamp of the said Company, to be provided by them for that Purpose, and which they are hereby required to provide, to any Person requiring the same, on Payment to him of the Sum of Five Shillings; and such Copies so certified and impressed shall be received in Evidence in all Courts, and in all summary Proceedings, and shall be *primâ facie* Proof[2] 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 a false Entry in the Book of Registry a Misdemeanour.

XII. 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.

[1] See pp. 47, 49–53.

[2] See p. 53.

Entries of Copyright may be made in the Book of Registry.

XIII.[1] 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 it shall be lawful for every such registered Proprietor to assign his Interest,[2] 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.

XIV.[3] 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,*[4] for an Order that such Entry may be expunged or varied; and upon any such Application *by Motion or Summons to either of the said Courts, or to a Judge as aforesaid,*[5] such Court *or Judge*[6] shall make such Order for expunging, varying, or confirming such Entry, either with or without Costs, as to such Court *or Judge*[7] 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.

XV. If any Person shall, in any Part of the British Dominions, print or cause to be printed,[8] either for Sale or Exportation, any Book in which there shall be subsisting Copyright, without the Consent in Writing[9] 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.

[1] See p. 46. [2] See p. 78. [3] See p. 54.
[4] Repealed Stat. Law Rev. Act, 1893 (1). [5] Ibid. [6] Ibid.
[7] Ibid. [8] See p. 85. [9] See pp. 75, 77, 118.

In Actions for Piracy the Defendant to give Notice of the Objections to the Plaintiff's Title on which he means to rely.

XVI. 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[1]; 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.

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.

XVII.[2] 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 re-printed 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[3] 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

[1] See p. 92. [2] See p. 91. [3] Ibid..

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.

As to the Copyright in Encyclopædias, Periodicals, and Works published in a Series, Reviews, or Magazines.

XVIII.[1] 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,[2] and shall have employed or shall employ any 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,[3] on the Terms[4] that the Copyright therein shall belong to such Proprietor,[5] Projector, Publisher, or Conductor, and paid[6] 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[7] 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: 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.

Proviso for Authors who have reserved the Right of publishing their Articles in a separate Form.

Proprietors of Encyclopædias, Periodicals, and Works published in a Series, may enter at once at Stationers' Hall, and

XIX.[8] 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, [illegible] 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

[1] See p. 66.
[2] See p. 67.
[3] See p. 68.
[4] Ibid.
[5] There may be joint employers. See p. 71.
[6] See p. 71.
[7] See p. 72.
[8] See pp. 49-53.

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.

thereon have the Benefit of the Registration of the Whole.

XX. *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 Time 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;*[1] the Provisions of the said Act of His late Majesty, and of this Act, shall apply to Musical Compositions,[2] and 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,[3] for the Term in this Act provided for the Duration of Copyright in Books; and the Provisions herein-before enacted in respect of the Property of such Copyright, and of registering[4] 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 Person having the sole Liberty of representing or performing, or causing to be represented or performed the 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.

The Provisions of 3 & 4 W. 4. 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.

XXI. 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.

Proprietors of Right of Dramatic Representationsshall have all the Remedies given by 3 & 4 W. 4 c. 15.

XXII. 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,[5] wherein shall be expressed the Intention of the Parties that such Right should pass by such Assignment.

Assignment of Copyright of a Dramatic Piece not to convey the Right of Representation.

XXIII.[6] 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

Books pirated shall become the Property of

[1] Repealed Stat. Law Rev Act, 1890 (2).
[2] See p. 131.
[3] See p. 67.
[4] See p. 131.
[5] See p. 135.
[6] See p. 89.

the Proprietor of the Copyright, and may be recovered by Action.

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 commencing after this Act shall sue or proceed for any Infringement before making Entry in the Book of Registry.

Proviso for Dramatic Pieces.

XXIV.[1] 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 Laws relating to Dramatic Literary Property, or of this Act, although no Entry shall be made in the Book of Registry aforesaid.[2]

Copyright shall be Personal Property.

XXV. 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 Movable Estate.

General Issue.

XXVI. *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 Action 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 Defendant in any Case by Law hath;*[3] and 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[4] next after such Offence committed, or else the same shall be void and of none effect; 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 herein-before mentioned.

Limitation of Actions;

not to extend to Actions, &c., in respect of the Delivery of Books.

[1] See p. 47.

[2] See p. 133.

[3] The whole of section 26 is repealed by the Public Authorities Protection Act, 1803, in so far as that Act applies. The result is probably that the first part of the section, printed in italics, is entirely repealed. The second part of the section is probably not repealed except in respect of actions against a person or body for acts done in performance of a public duty.

[4] See p. 91.

XXVII. Provided always, 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 the Rights of the Universities, and the Colleges of Eton, Westminster, and Winchester.

XXVIII. Provided also, 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, any thing herein contained to the contrary notwithstanding. Saving all subsisting Rights, Contracts, and Engagements.

XXIX. This Act shall extend to the United Kingdom of Great Britain and Ireland, and to every Part of the British Dominions. Extent of the Act.

XXX. *This Act may be amended or repealed by any Act to be passed in the present Session of Parliament*[1] Act may be amended this Session.

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 .

(Signed) *A.B.*
C.D.

Witness

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

[1] Repealed Stat. Law Rev. Act, 1874.

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.*

THE INTERNATIONAL COPYRIGHT ACT, 1844.

7 & 8 Vict. c. 12.

An Act to amend the Law relating to International Copyright.

[10th May 1844.]

I. *Whereas by an Act passed in the Session of Parliament held in the First and Second Years of the Reign of Her present Majesty, intituled An Act for securing to Authors in certain Cases the Benefit of international Copyright (and which Act is herein-after, for the sake of Perspicuity, designated as "the International Copyright Act"), Her Majesty was empowered by Order in Council to direct that the Authors of Books which should after a future Time, to be specified in such Order in Council, be published in any Foreign Country, to be specified in such Order in Council, and their Executors, Administrators, and Assigns, should have the sole Liberty of printing and reprinting such Books within the British Dominions for such Term as Her Majesty should by such Order in Council direct, not exceeding the Term which Authors, being British Subjects, were then, (that is to say) at the Time of passing the said Act, entitled to in respect of Books first published in the United Kingdom; and the said Act contains divers Enactments securing to Authors and their Representatives the Copyright in the Books to which any such Order in Council should extend: 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 herein-after, 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 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 herein-after, for the sake of Perspicuity,*

1 & 2 Vict. c. 59.

5 & 6 Vict. c. 45.

3 & 4 W. 4 c. 15.

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, of 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 herein-after mentioned; (that is to say,) an Act passed in the Eighth Year of the Reign of His late Majesty King George the Second,

8 G. 2 c. 13. *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,*

7 G. 3 c. 38. *intituled An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of King George the Second, for Encouragement of the Arts of designing, engraving, and etching historical and other Prints; and for vesting in and securing to Jane Hogarth, Widow, the Property in certain Prints; an Act passed in the Seventeenth Year of the Reign of His*

17 G. 3 c. 57. *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*

6 & 7 W. 4 c. 59. *of His late Majesty King William the Fourth, intituled An Act to extend the Protection of Copyright in Prints and Engravings to Ireland; (and which said Four several Acts are herein-after, for the sake of Perspicuity, designated as the Engraving Copyright Acts;) every Person who invents or designs, engraves, etches, or works in Mezzotinto or Chiaro-oscuro, or from his own Work, Design, or Invention causes or procures to be designed, engraved, etched, or worked in Mezzotinto or Chiaro-oscuro any historical Print or Prints, or any Print or Prints of any Portrait, Conversation, Landscape, or Architecture, Map, Chart, or Plan, or any other Print or Prints whatsoever, and every Person who engraves, etches, or works in Mezzotinto or Chiaro-oscuro, or causes to be engraved, etched, or worked, any Print taken from any Picture, Drawing, Model, or Sculpture, either ancient or modern, notwithstanding such Print shall not have been graven or drawn from the original Design of such Graver, Etcher, or Draftsman, is entitled to the Copyright of such Print for the Term of Twenty-eight Years from the first publishing thereof; and by the said several Engraving Copyright Acts it is provided that the Name of the Proprietor shall be truly*

engraved on each Plate, and printed on every such Print, and Remedies are provided for the Infringement of such Copyright: And 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 further Encouragement to such Arts, (and which said Acts are, for the sake of Perspicuity, herein-after designated as the Sculpture Copyright Acts,) every Person who makes or causes to be made any new and original Sculpture, or Model or Copy or Cast of the Human Figure, any Bust or Part of the Human Figure clothed in Drapery or otherwise, any Animal or Part of any Animal combined with the Human Figure or otherwise, any Subject, being Matter of Invention in Sculpture, any Alto or Basso-Relievo, representing any of the Matters aforesaid, or any Cast from Nature of the Human Figure or Part thereof, or of any Animal or Part thereof, or of any such Subject representing any of the Matters aforesaid, whether separate or combined, is entitled to the Copyright in such new and original Sculpture, Model, Copy, and Cast, for Fourteen Years from first putting forth and publishing the same, and for an additional Period of Fourteen Years in case the original Maker is living at the End of the first Period; and by the said Acts it is provided that the Name of the Proprietor, with the Date of the Publication thereof, is to be put on all such Sculptures, Models, Copies, and Casts, and Remedies are provided for the Infringement of such Copyright: And whereas the Powers vested in Her Majesty by the said International Copyright Act are insufficient to enable Her Majesty to confer upon Authors of Books first published in Foreign Countries Copyright of the like Duration, and with the like Remedies for the Infringement thereof, which are conferred and provided by the said Copyright Amendment Act with respect to Authors of Books first published in the British Dominions; and the said International Copyright Act does not empower Her Majesty to confer any exclusive Right of representing or performing Dramatic Pieces or Musical Compositions first published in Foreign Countries upon the Authors thereof, nor to extend the Privilege of Copyright to Prints and Sculpture first published abroad; and it is expedient to vest increased Powers in Her Majesty in this respect, and for that Purpose to repeal the said International Copyright Act, and to give such other Powers to Her Majesty, and to make such further Provisions, as are herein-after contained:[1] *the said recited Act herein designated as the International Copyright Act shall be and the same is hereby repealed.*[2]

38 G. 3 c. 71.

54 G. 3 c. 56.

Repeal of International Copyright Act.

II. 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

Her Majesty, by Order in Council, may direct that Authors, &c., of Works first published in

[1] Repealed Stat. Law Rev. Act, 1891

[2] Repealed Stat. Law Rev. Act, 1874 (2).

Foreign Countries shall have Copyright therein within Her Majesty's Dominions.

Executors, Administrators, and Assigns, shall have the Privilege of Copyright therein during such Period or respective Periods as shall be defined in such Order, not exceeding, however, as to any of the above-mentioned Works, the Term of Copyright which Authors, Inventors, Designers, Engravers, and Makers of the like Works respectively first published in the United Kingdom may be then entitled to under the herein-before recited Acts respectively, or under any Acts which may hereafter be passed in that Behalf.

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.

III. 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 been registered as herein-after 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 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 this Country shall apply to the Prints, Sculptures, &c., to which such Order relates.

IV. 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 herein-after is provided, in such and the same Manner as if such Articles and other Works of Art were first published in the United Kingdom, save and except such of the said Enactments or such Parts thereof as shall be excepted in such Order.

Her Majesty may, by Order in Council, direct that Authors and Composers of Dramatic Pieces and Musical Compositions first publicly represented

V. 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 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 herein-after 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.

and performed in Foreign Countries shall have similar Rights in the British Dominions.

VI. Provided always, 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 herein-after 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

Particulars to be observed as to Registry and to Delivery of Copies.

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.

VII. Provided always, 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.

VIII. And be it enacted, That the several Enactments in the said Copyright Amendment Act contained with relation to keeping the said Register Book, and the Inspection thereof, the Searches therein, and the Delivery of certified and stamped Copies thereof, the Reception of such Copies in Evidence, the making of false Entries in the said Book, and the Production in Evidence of Papers falsely purporting to be Copies of Entries in the said Book, the Applications to the Courts and Judges by Persons aggrieved by Entries in the said Book, and the expunging and varying such Entries, shall apply to the Books, Dramatic Pieces, and Musical Compositions, Prints, Articles of Sculpture, and other Works of Art, to which any Order in Council issued in pursuance of this Act shall extend, and to the Entries and Assignments of Copyright and Proprietorship therein, in such and the same Manner as if such Enactments were here expressly enacted in relation thereto, save and except that the Forms of Entry prescribed by the said Copyright Amendment Act may be varied to meet the Circumstances of the Case, and that the Sum to be demanded by the Officer of the said Company of Stationers for making any Entry required by this Act shall be One Shilling only.

As to expunging or varying Entry grounded in wrongful first Publication.

IX. Every Entry made in pursuance of this Act of a first Publication shall be *prima 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.

X. 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.

XI. 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.

XII. Provided always, 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

XIII. 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 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

different Classes of Works.

Stationers' Company, as herein-before is mentioned, may be different for different Foreign Countries and for different Classes of Books or other Articles.

No Order in Council to have any Effect unless it states that reciprocal Protection is secured.

XIV. *Provided always, That no such Order in Council shall have any Effect unless it shall be therein stated, as the Ground for issuing the same, that due Protection has been secured by the Foreign Power so named in such Order in Council for the Benefit of Parties interested in Works first published in the Dominions of Her Majesty similar to those comprised in such Order.*[1]

Orders in Council to be published in Gazette, and to have same Effect as this Act.

XV. Every Order in Council to be made under the Authority of this Act shall as soon as may be after the making thereof by Her Majesty in Council be published in the London Gazette, and from the Time of such Publication shall have the same Effect as if every Part thereof were included in this Act.

Orders in Council to be laid before Parliament.

XVI. 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.

Orders in Council may be revoked.

XVII. *It shall be lawful for Her Majesty by an Order in Council from Time to Time to revoke or alter any Order in Council previously made under the Authority of this Act, but nevertheless without Prejudice to any Rights acquired previously to such Revocation or Alteration.*[2]

Translations.

XVIII. *Provided always, That nothing in this Act contained shall be construed to prevent the printing, Publication, or Sale of any Translation of any Book the Author whereof and his Assigns may be entitled to the Benefit of this Act.*[3]

Authors of Works first published in Foreign Countries not entitled to Copyright except under this Act.

XIX.[4] Neither the Author of any Book, nor the Author or Composer of any Dramatic Piece or Musical Composition, nor the Inventor, Designer, or Engraver of any Print, nor the Maker of any Article of Sculpture, or of such other Work of Art as aforesaid, which shall after the passing of this Act be first published out of Her Majesty's Dominions, shall have any Copyright therein respectively, or any exclusive Right to the public Representation or Performance thereof, otherwise than such (if any) as he may become entitled to under this Act.

Interpretation Clause.

XX. In the Construction of this Act the Word "Book" shall be construed to include "Volume," "Pamphlet," "Sheet of Letter-press," "Sheet of Music," "Map," "Chart," or "Plan;" and the Expression "Articles of Sculpture" shall mean all such Sculptures, Models, Copies, and Casts as are described in the said Sculpture Copyright Acts, and in respect of which the Privileges of Copyright are thereby conferred; and the Words "printing" and "reprinting," shall include engraving and any other Method of multiplying Copies; and the Expressions "Order of

[1] Repealed International Copyright Act, 1886, sec. 12.
[2] Ibid. [3] Ibid. [4] See pp. 41, 128, 151, 162, 168.

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.

XXI. *This Act may be amended or repealed by any Act to be passed in this present Session of Parliament.*[1] Act may be repealed this Session.

THE COLONIAL COPYRIGHT ACT, 1847.[2]

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.

[22nd July 1847.]

I. *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:*[3] 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 5 & 6 Vict. c. 45. 8 & 9 Vict. c. 93. Her Majesty may suspend in certain Cases the

[1] Repealed Stat. Law Rev. Act, 1874 (2).

[2] Usually known as The Foreign Reprints Act. See p. 187.

[3] Repealed Stat. Law Rev. Act, 1891.

Prohibitions against the Admission of pirated Books into the Colonies in certain Cases.

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 herein-before 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, any thing in the said last-recited Act or in any other Act to the contrary notwithstanding.

Orders in Council to be published in Gazette. Orders in Council and the Colonial Acts or Ordinances to be laid before Parliament.

II. Every such Order in Council shall, within One Week after the issuing thereof, be published in the *London Gazette*, and 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.

Act may be amended, &c.

III. *And be it enacted, This Act may be amended or repealed by any Act to be passed in the present Session of Parliament.*[1]

COPYRIGHT IN DESIGNS ACT, 1850.

13 & 14 Vict. c. 104.

An Act to extend and amend the Acts relating to the Copyright of Designs. [14th August 1850.]

Registration of Sculpture, Models, &c.

VI. *The Registrar of Designs, upon Application by or on behalf of the Proprietor of any Sculpture, Model, Copy, or Cast within the Protection of the Sculpture Copyright Acts, and upon being furnished with such Copy, Drawing, Print, or Description, in Writing or in Print, as in the Judgment of the said Registrar shall be sufficient to identify the particular Sculpture, Model, Copy, or Cast in respect of which Registration is desired, and the Name of the Person claiming to be Proprietor, together with his Place of Abode or Business or other Place of Address, or the Name, Style, or Title of the Firm under which he may be trading, shall register such Sculpture, Model, Copy, or Cast in such Manner and Form as shall from Time to Time be prescribed or approved by the Board of Trade for the whole or any Part of the Term during which Copyright in such Sculpture, Model,*

[1] Repealed Stat. Law Rev. Act, 1875.

Copy, or Cast may or shall exist under the Sculpture Copyright Acts; and whenever any such Registration shall be made, the said Registrar shall certify under his Hand and Seal of Office, in such Form as the said Board shall direct or approve, the Fact of such Registration, and the Date of the same, and the Name of the registered Proprietor, or the Style or Title of the Firm under which such Proprietor may be trading, together with his Place of Abode or Business or other Place of Address.[1]

Benefits conferred by Registration of Sculpture, &c.

VII. *If any Person shall, during the Continuance of the Copyright in any Sculpture, Model, Copy, or Cast which shall have been so registered as aforesaid, make, import, or cause to be made, imported, exposed for Sale, or otherwise disposed of, any pirated Copy or pirated Cast of any such Sculpture, Model, Copy, or Cast, in such Manner and under such Circumstances as would entitle the Proprietor to a special Action on the case under the Sculpture Copyright Acts, the Person so offending shall forfeit for every such Offence a Sum not less than Five Pounds and not exceeding Thirty Pounds to the Proprietor of the Sculpture, Model, Copy, or Cast whereof the Copyright shall have been infringed; and for the Recovery of any such Penalty the Proprietor of the Sculpture, Model, Copy, or Cast which shall have been so pirated shall have and be entitled to the same Remedies as are provided for the Recovery of Penalties incurred under the Designs Act, 1842: Provided always, that the Proprietor of any Sculpture, Model, Copy, or Cast which shall be registered under this Act shall not be entitled to the Benefit of this Act, unless every Copy or Cast of such Sculpture, Model, Copy, or Cast which shall be published by him after such Registration shall be marked with the Word "registered," and with the Date of Registration.*[2]

THE INTERNATIONAL COPYRIGHT ACT, 1852.

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. [28th May 1852.]

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

[1] Repealed; Patents, Designs, and Trade Marks Act, 1883. [2] Ibid.

Subject of Copyright which may hereafter be concluded with any Foreign Power: Be it enacted as follows:—

I. *The 18th Section of 7 Vict. c. 12 shall be repealed so far as the same is inconsistent with the provisions hereinafter contained.*

II. *Her Majesty may by Order in Council*[1] *direct that the Authors of Books which are after a future Time to be specified in such Order, published in any foreign Country to be named in such Order, their Executors, Administrators, and Assigns, shall, subject to the Provisions hereinafter contained or referred to, be empowered to prevent the Publication in the British Dominions of any Translations of such Books 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 Books herein-after mentioned are respectively first published, and in the case of Books published in Parts not extending as to each Part beyond the Expiration of Five Years from the Time at which the authorised Translation of such Part is first published.*

III. *Subject to any Provisions or Qualifications contained in such Order and to the provisions herein contained or referred to, the Laws and Enactments for the Time being in force for the purpose of preventing the Infringement of Copyright in Books published in the British Dominions, shall be applied for the Purpose of preventing the publication of Translations of the Books to which such Order extends which are not sanctioned by the Authors of such Books, except only such Parts of the said Enactments as relate to the Delivery of Copies of Books for the Use of the British Museum and for the Use of the other Libraries therein referred to.*

IV. *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 herein-after 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 herein-after mentioned are first published or publicly represented.*

V. *Subject to any Provisions or Qualifications contained in such last-mentioned Order and to the Provisions herein-after 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 last-mentioned Order extends, which are not sanctioned by the Authors thereof.*[2]

[1] Works produced in the followng countries received protection under this Act. The dates appended are the dates of the respective Orders in Council: France, Order in Council dispensed with; Prussia, Oct. 19, 1855; Belgium, Feb. 8, 1855; Italy, Sept. 9, 1865; Sardinia, Feb. 4, 1861; Spain, Sept. 24, 1857; Nov. 20, 1880.

[2] Secs. I.–V. repealed; Int. Copyright Act, 1886, sec. 12.

VI. 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.

VII. Notwithstanding any thing 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.

VIII. *No Author, or his Executors, Administrators, or Assigns shall be entitled to the Benefit of this Act, or of any Order in Council issued in pursuance thereof, in respect of the Translation of any Book or Dramatic Piece, if the following Requisitions are not complied with; (that is to say)*

1. *The original Work from which the Translation is to be made must be registered and a Copy thereof deposited in the United Kingdom in the manner required for Original Works by the said International Copyright Act within Three Calendar Months of its First Publication in the Foreign Country:*

2. *The Author must notify on the Title Page of the original Work, or if it is published in Parts on the Title Page of the first Part, or if there is no Title Page on some conspicuous Part of the Work, that it is his Intention to reserve the Right of Translating it:*

3. *The Translation sanctioned by the Author, or a Part thereof, must be published either in the country mentioned in the Order in Council, by virtue of which it is to be protected, or in the British Dominions, not later than One Year after the Registration and Deposit in the United Kingdom of the original Work, and the whole of such Translation must be published within Three Years of such Registration and Deposit:*

4. *Such Translation must be registered, and a Copy thereof deposited in the United Kingdom within a Time to be mentioned in that Behalf in the Order by which it is protected, and in the Manner provided by the said International Copyright Act for the Registration and Deposit of Original Works:*

5. *In the Case of Books published in Parts each Part of the original Work must be registered and deposited in this Country in the Manner required by the said International Copyright Act within Three Months after the first Publication thereof in the Foreign Country:*

6. *In the Case of Dramatic Pieces the Translation sanctioned by the Author must be published within Three Calendar Months of the Registration of the Original Work:*

7. The above Requisitions shall apply to Articles originally published in Newspapers or Periodicals, if the same be afterwards published in separate form, but shall not apply to such Articles as originally published.[1]

IX. All Copies of any Works of Literature or Art wherein there is any subsisting Copyright by virtue of the International Copyright Act and this Act, or of any Order in Council made in pursuance of such Acts or either of them, and which are printed, reprinted, or made in any Foreign Country, except that in which such Work shall be first published, and all 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 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 Provision of 5 & 6 Vict. c. 45, 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.

X. The Provisions herein-before contained shall be incorporated with the International Copyright Act, and shall be read and construed therewith as One Act.

XI. [*Clause dispensing with a further Order in Council in respect of the Convention with France*, Rep. Int. Cop. Act, 1886, sec. 12].

XII., XIII. [*Clauses dealing with Duties on imported Works*, Rep. Stat. Law Rev. Act, 1875].

XIV. And Whereas by the Four several Acts of Parliament following; (that is to say) 8 Geo. II. c. 13; 7 Geo. III. c. 38; 17 Geo. III. c. 57; 6 & 7 Will. IV. c. 59, Provision is made for securing to every Person who invents or designs, engraves, etches, or works in Mezzotinto or Chiaro oscuro, or, from his own Work, Design, or Invention, causes or procures to be designed, engraved, etched, or worked in Mezzotinto or Chiaro oscuro any Historical Print or Prints, or any Print or Prints of any Portrait, Conversation, Landscape, or Architecture, Map, Chart or Plan, or any other Print or Prints whatsoever, and to every Person who engraves, etches, or works in Mezzotinto or Chiaro oscuro, or causes to be engraved, etched, or worked, any Print taken from any Picture, Drawing, Model, or Sculpture, notwithstanding such Print has not been graven or drawn from his own original Design, certain Copyrights therein defined: And whereas doubts are entertained whether the Provisions of the said Acts extend to

[1] Sec. viii. is repealed: Int. Cop. Act, 1886, sec. 12.

Lithographs and certain other Impressions, and it is expedient to remove such Doubts:

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.

THE FINE ARTS COPYRIGHT ACT, 1862.

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. [29th July 1862.]

WHEREAS by Law, as now established, the Authors of Paintings, Drawings, and Photographs have no Copyright in such their Works, and it is expedient that the Law should in that respect be amended:

Copyright in Works hereafter made or sold to vest in the Author for his Life and for Seven Years after his Death.

I. The Author, being a British Subject or resident[1] within the Dominions of the Crown, of every original Painting, Drawing, and Photograph[2] 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,[3] 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,[4] or shall be made or executed for or on behalf of any other Person for a good or a valuable Consideration,[5] 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

II. 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.

[1] See p. 170. [2] See p. 167. [3] See p. 181.
[4] See p. 174. [5] See p. 175.

the same Subjects in other Works, Assignments, Licences, &c., to be in Writing.

III. All Copyright under this Act shall be deemed Personal or Movable Estate, and shall be assignable at Law, and every Assignment thereof, and every License 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.

IV.[1] 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.

V. 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.

VI. 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

[1] See p. 171.

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,[1] 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[2] shall forfeit to the Proprietor of the Copyright for the Time being a Sum not exceeding Ten Pounds[3]; 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.

VII. 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:

Penalties.

Every Offender under this Section shall, upon Conviction, forfeit to the Person aggrieved a Sum not exceeding Ten Pounds, or not exceeding

[1] See p. 179. [2] Ibid. [3] See p. 180.

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.

Recovery of pecuniary Penalties.

VIII. 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 herein-before and in any such Act as aforesaid empowered to recover the same respectively, and herein-after 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,*[1] 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*,[2] Suspension, Reduction, or otherwise.

Superior Courts of Record in which any Action is pending may make an Order

IX. 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,

[1] Repealed Stat. Law Rev. Act, 1893 (1). [2] Ibid.

and to give such Direction respecting such Action, Injunction, Inspection, and Account, and the Proceedings therein respectively, as to such Court or Judge may seem fit. for an Injunction, Inspection, or Account.

X. 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. Importation of pirated Works prohibited. Application in such Cases of Customs Acts.

XI. 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 [1] 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. Saving of Right to bring Action for Damages.

XII. This Act shall be considered as including the Provisions of the Act passed in the Session of Parliament held in the Seventh and Eighth Years of Her present Majesty, intituled An Act to amend the Law relating to International Copyright, in the same Manner as if such Provisions were Part of this Act. Provisions of 7 & 8 Vict. c. 12 to be considered as included in this Act.

[1] See p. 178.

THE INTERNATIONAL COPYRIGHT ACT, 1875.

38 VICT. C. 12.

An Act to amend the Law relating to International Copyright.

[13th May 1875.]

15 Vict. c. 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 therein-after 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:"

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.[1] *Be it therefore enacted as follows, viz.:—*

Section 6 of recited Act not to apply to dramatic pieces in certain cases.

I. In any case in which, by virtue of the enactments herein-before 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 translations thereof as if the said sixth section of the said Act were hereby repealed.

[1] Repealed Stat. Law Rev. Act, 1893 (2).

THE CANADA COPYRIGHT ACT, 1875.[1]

38 & 39 VICT. C. 53.

An Act to give effect to an Act of the Parliament of the Dominion of Canada respecting Copyright. [2nd August 1875.]

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:[2]

Be it enacted as follows:—

Short title of Act.

I. This Act may be cited for all purposes as The Canada Copyright Act, 1875.

Definition of terms.

II. 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.

III. 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.

IV. 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

[1] See p. 188.

[2] Repealed Stat. Law Rev. Act, 1893 (a).

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.

V. 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 CUSTOMS LAWS CONSOLIDATION ACT, 1876.

39 & 40 VICT. C. 36.

XLII. The goods enumerated and described in the following table of prohibitions and restrictions inwards are hereby prohibited to be imported or brought into the United Kingdom, save as thereby excepted, and if any goods so enumerated and described shall be imported or brought into the United Kingdom contrary to the prohibitions or restrictions contained therein, such goods shall be forfeited, and may be destroyed or otherwise disposed of as the Commissioners of Customs may direct.

A TABLE OF PROHIBITIONS AND RESTRICTIONS INWARDS.

Goods prohibited to be imported.—Books wherein the Copyright shall be first subsisting, first composed or written or printed in the United Kingdom, and printed or reprinted in any other Country as to which the proprietor of such Copyright or his agent shall have given to the Commissioners of Customs a notice in writing, duly declared, that such Copyright subsists, such notice also stating when such Copyright will expire.[1]

XLIV. The Commissioners of Customs shall cause to be made and to be publicly exposed at the Custom Houses in the several ports in the United Kingdom lists of all books wherein the Copyright shall be subsisting, and as to which the proprietor of such Copyright, or his agent, shall have given notice in writing to the said Commissioners that such Copyright exists, stating in such notice when such Copyright expires, accompanied by a declaration made and subscribed before a collector of Customs or a justice of the peace that the contents of such notice are true.

XLV. If any person shall have cause to complain of the insertion of any book in such lists, it shall be lawful for any judge at chambers, on the application of the person so complaining, to summons calling upon the person upon whose notice such book shall have been so inserted to appear before any such judge at a time to be appointed in such summons, to show cause why such book shall not be expunged from such

[1] See p. 91.

lists, and any such judge shall at the time so appointed proceed to hear and determine upon the matter of such summons and make his order thereon in writing; and upon service of such order or a certified copy thereof, upon the Commissioners of Customs or their secretary for the time being, the said Commissioners shall expunge such book from the list, or retain the same therein according to the tenor of such order; and in case such book shall be expunged from such list, the importation thereof shall not be deemed to be prohibited. If at the time appointed in any such summons the person so summoned shall not appear before such judge, then upon proof by affidavit that such summons or a true copy thereof has been personally served upon the person so summoned, or sent to him by post to or left at his last known place of abode or business, any such judge may proceed *ex parte* to hear and determine the matter; but if either party be dissatisfied with such order he may apply to a superior Court to review such decision and to make such further order thereon as the Court may see fit: Provided always that nothing herein contained shall affect any proceeding at law or in equity which any party aggrieved by reason of the insertion of any book pursuant to any such notice, or the removal of any book from such list pursuant to any such order or by reason of any false declaration under this Act, might or would otherwise have against any party giving such notice or obtaining such order or making such false declaration.

CLII. Any books wherein the copyright shall be subsisting, first composed or written or printed in the United Kingdom, and printed or reprinted in any other country, shall be and are hereby absolutely prohibited to be imported into the British possessions abroad: Provided always that no such books shall be prohibited to be imported as aforesaid, unless the proprietor of such copyright, or his agent, shall have given notice in writing to the Commissioners of Customs that such copyright subsists, and in such notice shall have stated when the copyright will expire: and the said Commissioners shall cause to be made and transmitted to the several ports in the British possessions abroad, from time to time to be publicly exposed there, lists of books respecting which such notice shall have been duly given, and all books imported contrary thereto shall be forfeited: but nothing herein contained shall be taken to prevent Her Majesty from exercising the powers vested in her by 10 & 11 Vict. c. 95 to suspend in certain cases such prohibition.

THE COPYRIGHT (MUSICAL COMPOSITIONS) ACT, 1882.

45 & 46 VICT. c. 40.

An Act to amend the law of Copyright relating to Musical Compositions.

[10th August 1882.]

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.[1]

[1] Repealed Stat. Law Rev. Act, 1898.

Be it therefore enacted as follows:—

Printed notice restraining public performance.

I.[1] 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.

II. In case 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.

III. 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. 4 c. 15.

IV. *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*

[1] See p. 131.

penalty or damages, be in the discretion of the court or judge before whom such action or proceedings shall be tried.[1]

V. This Act may be cited as the Copyright (Musical Compositions) Act, 1882. Short title.

THE INTERNATIONAL COPYRIGHT ACT, 1886.

49 & 50 VICT. C. 33.

An Act to amend the Law respecting International and Colonial Copyright. [25th June 1886.]

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:[2]

Be it therefore enacted as follows:—

I.—(1.) This Act may be cited as the International Copyright Act, 1886. Short titles and construction.

(2.) The Acts specified in the first part of the First Schedule to this Act, 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.

II. The following provisions shall apply to an Order in Council under the International Copyright Acts:— Amendment as to extent and effect of order under 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

[1] Repealed Copyright (Musical Compositions) Act, 1888.

[2] Repealed Stat. Law Rev. Act, 1898.

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.

III.—(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.

IV.—(1.) Where an order respecting any foreign country is made under the International Copyright Acts the provisions of those Acts with respect to the registry and delivery of copies of works shall not apply to works produced in such country except so far as provided by the order.

(2.) Before making an Order in Council under the International Copyright Acts in respect of any foreign country, Her Majesty in Council shall be satisfied that that foreign country has made such provisions (if any) as it appears to Her Majesty expedient to require for the protection of authors of works first produced in the United Kingdom.

Restriction on translation.

V.—(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.

VI.[1] 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.

VII. 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.

VIII.—(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:[2]

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

[1] See p. 197.

[2] See pp. 40, 187, 191; 7 & 8 Vict. c. 12, sec. 19.

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.[1]

Application of International Copyright Acts to colonies.

IX. 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.

X.—(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.

XI. 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.

[1] See p. 186.

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.

XII. *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:* Repeal of Acts.

Provided as follows:[1]

(*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.*

SCHEDULES.

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.

[1] Repealed Stat. Law Rev. Act, 1898.

PART II.

Session and Chapter.	Title.	Enactment referred to.
25 & 26 Vict. c. 68. .	An Act for amending the law relating to copyright in works of the fine arts, and for repressing the commission of fraud in the production and sale of such works.	Section twelve.

SECOND SCHEDULE.—COPYRIGHT ACTS.

Session and Chapter.	Title.	Short Title.
8 Geo. 2, c. 13. . .	An Act for the encouragement of the arts of designing, engraving, and etching, historical, and other prints by vesting the properties thereof in the inventors and engravers during the time therein mentioned.	The Engraving Copyright Act, 1734.
7 Geo. 3, c. 38. . .	An Act to amend and render more effectual an Act made in the eighth year of the reign of King George the Second, for encouragement of the arts of designing, engraving, and etching, historical and other prints, and for vesting in and securing to Jane Hogarth, widow, the property in certain prints.	The Engraving Copyright Act, 1766.
15 Geo. 3, c. 53. .	An Act for enabling the two Universities in England, the four Universities in Scotland, and the several Colleges of Eton, Westminster, and Winchester, to hold in perpetuity their copyright in books given or bequeathed to the said universities and colleges for the advancement of useful learning and other purposes of education; and for amending so much of an Act of the eighth year of the reign of Queen Anne, as relates to the delivery of books to the warehouse keeper of the Stationers' Company for the use of the several libraries therein mentioned.	The Copyright Act, 1775.

SECOND SCHEDULE.—COPYRIGHT ACTS.—(*Continued*).

Session and Chapter.	Title.	Short Title.
17 Geo. 3. c. 57.	An Act for more effectually securing the property of prints to inventors and engravers by enabling them to sue for and recover penalties in certain cases.	The Prints Copyright Act, 1777.
54 Geo. 3, c. 56.	An Act to amend and render more effectual an Act of His present Majesty for encouraging the art of making new models and casts of busts and other things therein mentioned, and for giving further encouragement to such arts.	The Sculpture Copyright Act, 1814.
3 Will. 4, c. 15.	An Act to amend the laws relating to Dramatic Literary Property.	The Dramatic Copyright Act. 1833.
5 & 6 Will. 4, c. 65.	An Act for preventing the publication of Lectures without consent.	The Lectures Copyright Act, 1835.
6 & 7 Will. 4, c. 69.	An Act to extend the protection of copyright in prints and engravings to Ireland.	The Prints and Engravings Copyright Act, 1836.
6 & 7 Will. 4, c. 110.	An Act to repeal so much of an Act of the fifty-fourth year of King George the Third, respecting copyrights, as requires the delivery of a copy of every published book to the libraries of Sion College, the four Universities of Scotland, and of the King's Inns in Dublin.	The Copyright Act, 1836.
5 & 6 Vict. c. 45.	An Act to amend the law of copyright.	The Copyright Act, 1842.
10 & 11 Vict. c. 95.	An Act to amend the law relating to the protection in the Colonies of works entitled to copyright in the United Kingdom.	The Colonial Copyright Act, 1847.
25 & 26 Vict. c. 68.	An Act for amending the law relating to copyright in works of the fine arts, and for repressing the commission of fraud in the production and sale of such works.	The Fine Arts Copyright Act, 1862.

THIRD SCHEDULE.—ACTS REPEALED.

Session and Chapter.	Title.	Extent of Repeal.
7 & 8 Vict. c. 12.	An Act to amend the law relating to international copyright.	Sections fourteen, seventeen, and eighteen.
15 & 16 Vict. c. 12.	An Act to enable Her Majesty to carry into effect a convention with France on the subject of copyright, to extend and explain the International Copyright Acts, and to explain the Acts relating to copyright engravings.	Sections one to five both inclusive, and sections 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.

THE COPYRIGHT (MUSICAL COMPOSITIONS) ACT, 1888.

51 & 52 VICT. C. 17.

An Act to amend the Law relating to the Recovery of Penalties for the unauthorised Performance of Copyright Musical Compositions.

[5th July 1888.]

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.

I. 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.

II. 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.

Costs to be in discretion of judge. 45 & 46 Vict. c. 40.

III. 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.[1]

Proprietor not wilfully permitting such performance to be exempt.

IV. 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.

Saving for operas and plays.

V. This Act may be cited as the Copyright (Musical Compositions) Act, 1888.

Short title.

THE REVENUE ACT, 1889.

52 & 53 VICT. C. 42.

I. The following goods shall from and after the passing of this Act be included amongst the goods enumerated and described on the table of prohibitions and restrictions contained in Section 42 of the Customs Consolidation Act, 1876, namely:

Books, first published in any country or state other than the United Kingdom, wherein under the International Copyright Act, 1886, or any other Act or any Order in Council made under the authority of any Act, there is a subsisting Copyright in the United Kingdom, printed or reprinted in any country or state other than the country or state in which they were first published,[2] and as to which the owner of the copyright or his agent in the United Kingdom has given to the Commissioners of Customs in the manner prescribed by Section 44 of the Customs Consolidation Act, 1876, a notice in such form and giving such particulars as those Commissioners require, and accompanied by a declaration as provided in that Section.

INTERNATIONAL CONVENTIONS

THE BERNE CONVENTION, 1886.

ARTICLE I.

The Contracting States are constituted into an Union for the protection of the rights of authors over their literary and artistic works.

[1] See p. 144. [2] See p. 201.

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.[1]

The enjoyment of these rights is subject to the accomplishment of the conditions and formalities described 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.

[1] Those portions of the Convention printed in italics have been altered by the Additional Act of Paris, 1896. Norway, although a signatory of the Convention, has not acceded to the Additional Act.

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.[1]

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.

[1] See paragraph 2 of Final Protocol.

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,[1] 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.[2]

An international office is established, under the name of "Office of the International Union for the Protection of Literary and Artistic Works."

This Office, of which the expenses will be borne by the Administrations

[1] See paragraph 4 of Final Protocol.

[2] See paragraph 5 of Final Protocol.

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 nowise affects the maintenance of existing Conventions between the Contracting States, provided always that such Conventions confer on authors, or their lawful representatives, rights more extended than those secured by the Union, or contain other stipulations which are not contrary to the said Convention.

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 that 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.

Procès-verbal of Signature.

The undersigned Plenipotentiaries, assembled this day to proceed with the signature of the Convention with reference to the creation of an International Union for the protection of literary and artistic works, have exchanged the following declarations :—

1. With reference to the accession of the Colonies or foreign possessions provided for by Article XIX. of the Convention :

The Plenipotentiaries of His Catholic Majesty the King of Spain reserve to the Government the power of making known His Majesty's decision at the time of the exchange of ratifications.

The Plenipotentiary of the French Republic states that the accession of his country carries with it that of all the French Colonies.

The Plenipotentiaries of Her Britannic Majesty state that the accession of Great Britain to the Convention for the protection of literary and artistic works comprises the United Kingdom of Great Britain and Ireland, and all the Colonies and foreign possessions of Her Britannic Majesty.

At the same time they reserve to the Government of Her Britannic Majesty the power of announcing at any time the separate denunciation of the Convention by one or several of the following Colonies or possessions, in the manner provided for by Article XX. of the Convention, namely :—

India, the Dominion of Canada, Newfoundland, the Cape, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, and New Zealand.

2. With respect to the classification of the countries of the Union having regard to their contributory part to the expenses of the International Bureau (No. 5 of the Final Protocol) :

The Plenipotentiaries declare that their respective countries should be ranked in the following classes, namely :—

Germany in the first class.
Belgium in the third class.
Spain in the second class.
France in the first class.
Great Britain in the first class.
Haiti in the fifth class.
Italy in the first class.
Switzerland in the third class.
Tunis in the sixth class.

The Plenipotentiary of the Republic of Liberia states that the powers which he has received from his Government authorise him to sign the Convention, but that he has not received instructions as to the class in which his country proposes to place itself with respect to the contribution to the expenses of the International Bureau. He, therefore, reserves that question to be determined by his Government, who will make known their intention on the exchange of ratifications.

In witness whereof, the respective Plenipotentiaries have signed the present *procès-verbal.*

Done at Berne, the 9th day of September 1886.

Procès-verbal recording Deposit of Ratifications.

In accordance with the stipulations of Article XXI., paragraph 1, of the Convention for the creation of an International Union for the protection of literary and artistic works, concluded at Berne on the 9th September 1886, and in consequence of the invitation addressed to that effect by the Swiss Federal Council to the Governments of the High Contracting Parties, the Undersigned assembled this day in the Federal Palace at Berne for the purpose of examining and depositing the ratifications of :—

Her Majesty the Queen of Great Britain and Ireland, Empress of India,

His Majesty the Emperor of Germany, 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 Haiti,

His Majesty the King of Italy,

The Council of the Swiss Confederation,

His Highness the Bey of Tunis,

to the said International Convention, followed by an Additional Article and Final Protocol.

The instruments of these acts of ratification having been produced and found in good and due form, they have been delivered into the hands of the President of the Swiss Confederation, to be deposited in the archives of the Government of that country, in accordance with clause No. 7 of the Final Protocol of the International Convention.

In witness whereof the undersigned have drawn up the present *procès-verbal*, to which they have affixed their signatures and the seals of their arms.

Done at Berne, the 5th September 1887, in nine copies, one of which shall be deposited in the archives of the Swiss Confederation with the instruments of ratification.

For Great Britain . .	(L.S.)	F. O. ADAMS.
For Germany . . .	(L.S.)	ALFRED VON BÜLOW.
For Belgium . . .	(L.S.)	HENRY LOUMYER.
For Spain . . .	(L.S.)	COMTE DE LA ALMINA.
For France . . .	(L.S.)	EMMANUEL ARAGO.
For Haiti . . .	(L.S.)	LOUIS-JOSEPH JANVIER.
For Italy . . .	(L.S.)	FÈ.
For Switzerland . .	(L.S.)	DROZ.
For Tunis . . .	(L.S.)	H. MARCHAND.

Protocol.

On proceeding to the signature of the *procès-verbal* recording the deposit of the acts of ratification given by the High Parties Signatory to the Convention of the 9th September 1886, for the creation of an International Union for the protection of literary and artistic works, the Minister of Spain renewed, in the name of his Government, the declaration recorded in the *procès-verbal* of the Conference of the 9th September 1886, according to which the accession of Spain to the Convention includes that of all the territories dependent upon the Spanish Crown.

The Undersigned have taken note of this declaration.

In witness whereof they have signed the present Protocol, done at Berne, in nine copies, the 5th September 1887.

ORDER IN COUNCIL, NOVEMBER 28, 1887.

BRITISH ORDER IN COUNCIL giving effect to the International Copyright Convention with Belgium, France, Germany, Haiti, Italy, Spain, Switzerland, and Tunis, of September 9, 1886.

[Windsor, November 28, 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 5th September 1887, between Her Majesty the Queen and the Governments of the foreign countries following, that is to say:

Belgium, France, Germany, Haiti, 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 [1]:

Belgium, France, Germany, Haiti, 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.

[1] The following countries subsequently acceded to the Berne Convention and joined the Copyright Union. By various Orders in Council of the respective dates given hereunder the provisions of the International Copyright Acts and of the above Order in Council were extended to the acceding countries, viz. :—

Luxemburg, August 10, 1888; Monaco, October 15, 1889; Montenegro, May 11, 1893; Norway, August 1, 1896; Japan, August 8, 1899.

Montenegro subsequently seceded August 9, 1899.

6. Section 6 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[1]: 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 December 6, 1887, 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 necessary orders herein accordingly.

FIRST SCHEDULE.

[BERNE CONVENTION, 1886, WITH ADDITIONAL ARTICLE AND FINAL PROTOCOL.]

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 Entry.
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
Hesse-Darmstadt	5th February 1862
Italy	9th September 1865
German Empire	24th September 1886

[1] All the Orders in Council under the International Copyright Acts, 1844 and 1852.

The Order in Council of 5th August 1875, revoking the application of Section 6 of 15 & 16 Vict. c. 12 to dramatic pieces referred to in the Order in Council of 10th January 1852 with respect to works first published in France.

THE ADDITIONAL ACT OF PARIS, 1896.

ARTICLE I.

The International Convention of the 9th September 1886, is modified as follows:—

1. Article II.—The first paragraph of Article II. shall run as follows:—

"Authors belonging to any one of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether unpublished, or published for the first time in one of those countries, the rights which the respective laws do now or shall hereafter grant to nationals."

A fifth paragraph is added in these terms:—

"Posthumous works are included among those to be protected."

2. Article III.—Article III. shall run as follows:—

"Authors not belonging to one of the countries of the Union, who shall have published or caused to be published for the first time their literary or artistic works in a country which is a party to the Union, shall enjoy, in respect of such works, the protection accorded by the Berne Convention, and by the present Additional Act."

3. Article V.—The first paragraph of Article V. shall run as follows:—

"Authors belonging to any one 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 during the entire period of their right over the original work. Nevertheless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a period of ten years from the date of the first publication of the original work, by publishing or causing to be published in one of the countries of the Union, a translation in the language for which protection is to be claimed."

4. Article VII.—Article VII. shall run as follows:—

"Serial stories, including tales, published in the newspapers or periodicals of one of the countries of the Union, may not be reproduced, in original or translation, in the other countries, without the sanction of the authors or of their lawful representatives.

"This stipulation shall apply equally to other articles in newspapers or periodicals, when the authors or editors shall have expressly declared in the newspaper or periodical itself in which they shall have been published that the right of reproduction is prohibited.

In the case of periodicals it shall suffice if such prohibition be indicated in general terms at the beginning of each number.

"In the absence of prohibition, such articles may be reproduced on condition that the source is acknowledged.

"In any case, the prohibition shall not apply to articles on political questions, to the news of the day, or to miscellaneous information."

5. Article XII.—Article XII. shall run as follows :—

"Pirated works may be seized by the competent authorities of the countries of the Union where the original work is entitled to legal protection.

"The seizure shall take place conformably to the domestic law of each State."

6. Article XX. The second paragraph of Article XX. shall run as follows :—

"Such denunciation shall be made to the Government of the Swiss Confederation. It 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 II.

The final Protocol annexed to the Convention of the 9th September 1886, is modified as follows :—

1. No. 1.—This clause shall run as follows :—

"As regards Article IV., it is agreed as follows :

"(A.) In countries of the Union where protection is accorded not only to architectural plans, but also to the architectural works themselves, these works shall be admitted to the benefits of the Berne Convention and of the present Additional Act.

"(B.) Photographic works and works produced by an analogous process shall be admitted to the benefits of these engagements in so far as the laws of each State may permit, and to the extent of the protection accorded by such laws to similar national works.

"It is understood that an authorised photograph of a work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the Berne Convention and by the present Additional Act, 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. No. 4.—This clause shall run as follows :—

"The common agreement contemplated in Article XIV. of the Convention is established as follows :

"The application of the Berne Convention and of the present Additional Act to works which have not fallen into the public domain within the country of origin at the time when these engagements come into force, shall operate according to such stipulations on this head as may be contained in special Conventions either actually existing or to be concluded hereafter.

"In the absence of such stipulations between any of the 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.

"The stipulations of Article XIV. of the Berne Convention and of the present clause of the Final Protocol shall apply equally to the exclusive right of translation, in so far as such right is established by the present Additional Act.

"The temporary stipulations noted above shall be applicable to countries which may hereafter accede to the Union."

Article III.

The countries of the Union which are not parties to the present Additional Act, shall at any time be allowed to accede thereto on their request to that effect. This stipulation shall apply equally to countries which may hereafter accede to the Convention of the 9th September 1886. It will suffice for this purpose that such accession should be notified in writing to the Swiss Federal Council, who shall in turn communicate it to the other Governments.

Article IV.

The present Additional Act shall have the same force and duration as the Convention of the 9th September 1886.

It shall be ratified, and the ratifications shall be exchanged at Paris, in the manner adopted in the case of that Convention, as soon as possible, and within the space of one year at the latest.

It shall come into force as regards those countries which shall have ratified it three months after such exchange of ratifications.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Paris in a single transcript, the 4th May 1896.

Procès-Verbal recording Deposit of Ratification.

Circumstances having prevented action being taken within the period of delay originally fixed for the exchange of the ratifications of the Additional Act of the 4th May 1896, modifying Articles II., III., V., VII., XII., and XX. of the Convention of the 9th September 1886, and clauses 1 and 4 of the Final Protocol annexed thereto, as well as of the Declaration interpreting certain stipulations of the Convention of Berne of the 9th September 1886, and of the Additional Act signed at Paris on the 4th May 1896, it has been unanimously agreed that that period should be prolonged until this day.

In consequence whereof the Undersigned have met together in order to deposit the instruments in question.

Germany, Belgium, Spain, France, Italy, Luxemburg, Monaco, Montenegro, Switzerland, and Tunis have ratified both engagements.

Great Britain has ratified the Additional Act alone, on behalf of the United Kingdom, as well as of all the British Colonies and Possessions.

Norway has only ratified the interpretative Declaration.

The respective ratifications having been produced and found to be in good and due form, have been handed to the French Minister for Foreign Affairs, in order that they may be deposited in the archives of the Ministry, such deposit to be held equivalent to an exchange of ratifications.

In faith of which the Undersigned have prepared the present Record of deposit, to which they have affixed their seals.

Done at Paris, the 9th September 1897.

For Germany:
(L.S.) (Signed) Von MÜLLER.
For Belgium:
(L.S.) (Signed) Baron ALB. FALLON.
For Spain:
(L.S.) (Signed) Le Marquis DE NOVALLAS.
For France:
(L.S.) (Signed) G. HANOTAUX.
For Great Britain:
(L.S.) (Signed) EDMUND MONSON.
For Italy:
(L.S.) (Signed) G. TORNIELLI.
For Luxemburg:
(L.S.) (Signed) EUGÈNE LOUIS BASTIN.
For Monaco:
(L.S.) (Signed) J. DEPELLEY.
For Montenegro:
(L.S.) (Signed) H. MARCEL.
For Norway:
(L.S.) (Signed) Comte WRANGEL.
For Switzerland:
(L.S.) (Signed) DUPLAN.
For Tunis:
(L.S.) (Signed) RENAULT.

Certified to be a correct copy.
(L.S.) (Signed) PH. CROSIER,
Minister Plenipotentiary,
Chef du Service du Protocole.

ORDER IN COUNCIL, MARCH 7, 1898.

WHEREAS, &c. (Preamble recites the Berne Convention, 1886, Order in Council November 28, 1887, other Orders in Council affecting countries subsequently acceding, and the Additional Act of Paris.)

And whereas Her Majesty in Council is satisfied that the foreign countries named in the body of this Order and parties to the said Additional Act 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 Additional Act of the Berne Convention set forth in the 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: [1]—

Germany,
Belgium,
Spain,
France,
Italy,
Luxemburg,
Monaco,
Montenegro,
Switzerland, and
Tunis.

(3.) The fourth article of the Order in Council of November 28, 1887, shall as from the commencement of this Order cease to apply to the foreign countries to which this Order extends:

(4.) The Order in Council of November 28, 1887, shall continue to be of full force and effect save in so far as the same is varied by this Order.

(5.) Nothing contained in this Order shall prejudicially affect any right acquired or accrued before the commencement of this Order by virtue of the said Order in Council of November 28, 1887, or otherwise, 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.

(6.) 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.

(7.) This Order shall be construed as if it formed part of The International Copyright Act, 1886.

(8.) This Order shall come into operation on the date hereof, 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.

TREASURY MINUTE

TREASURY MINUTE[2] DEALING WITH THE COPYRIGHT IN GOVERNMENT PUBLICATIONS, AUGUST 31, 1887.

My Lords take into consideration the correspondence which has passed between the Treasury and the Stationery Office on the subject of Copyright in Government publications.

[1] The following countries subsequently acceded to the Additional Act of Paris. By Orders in Council of the respective dates given hereunder the provisions of the above Order in Council are extended to the acceding countries, viz.:—

Haiti, May 19, 1898; Japan, August 8, 1899.
Montenegro subsequently seceded August 9, 1899.

[2] See p. 60.

The law gives to the Crown, or the assignee of the Crown, the same right of copyright as to a private individual. Consequently, if a servant of the Crown, in the course of his duty for which he is paid, composes any document, or if a person is specially employed and paid by the Crown for the purpose of composing any document, the copyright in the document belongs to the Crown as it would in the case of a private employer.

The majority of publications issued under the authority of the Government have no resemblance to the works published by private publishers, and are published for the information of the public and for public use, in such manner as any one of the public may wish, and it is desirable that the knowledge of their contents should be diffused as widely as possible.

In other cases the Government publishes at considerable cost works in which few persons only are interested, but which are published for the purpose of promoting literature and science.

These works are of precisely the same character as those published by private enterprise.

In order to prevent an undue burden being thrown on the taxpayer by these works, and to enable the Government to continue the publication of works of this character to the same extent as heretofore, it is necessary to place them, as regards copyright, in the same position as publications by private publishers. If the reproduction of them, or of the most popular portions of them, by private publishers, is permitted, the private publisher will be able to put into his own pocket the profits of the work, which ought to go in relief of the general public, the taxpayers.

The question, then, is, what are the classes of works the reprcduction of which is to be restricted, or to be left unrestricted?

Government publications may be classified as follows:—

(1.) Reports of Select Committees of the two Houses of Parliament, or of Royal Commissions.

(2.) Papers required by Statute to be laid before Parliament, *e.g.*, Orders in Council, Rules made by Government Departments, Accounts, Reports of Government Inspectors.

(3.) Papers laid before Parliament by Command, *e.g.*, Treaties, Diplomatic Correspondence, Reports from Consuls and Secretaries of Legation, Reports of Inquiries into Explosions or Accidents, and other Special Reports made to Government Departments.

(4.) Acts of Parliament.

(5.) Official books, *e.g.*, Queen's Regulations for the Army or Navy.

(6.) Literary or quasi-literary works, *e.g.*, the Reports of the *Challenger* Expedition, the Rolls Publication, the forthcoming State Trials, the "Board of Trade Journal."

(7.) Charts and Ordnance Maps.

As respects the first five classes of publications, the reproduction of them, with certain exceptions, should not be restricted in any form whatever. Indeed, in most cases it is desirable that they should be made known to the public as widely as possible.

The first exception is, that Acts of Parliament and official books should not, except when published under the authority of the Government, purport on the face of them to be published by authority.

The second exception is, where a work of a literary or quasi-literary character comes accidentally within these classes. For example, the Reports of the Historical Manuscripts Commission would, but for the fact that they were produced under the direction of a Commission instead of under the Master of the Rolls, be published in the ordinary manner like the Rolls publications, and come within Class 6.

So, again, a Report to a Government Department may be laid before Parliament made by a person of eminent scientific knowledge who is willing to give the Government and the public the advantage of his knowledge, but not to allow it to be reproduced for the private benefit of an individual publisher. Mr. Whitehead's Reports on Injurious Insects are an instance of this case.

Other exceptions will, no doubt, from time to time occur, which can only be dealt with as they arise.

As regards the sixth and seventh classes above mentioned, it seems desirable that the copyright in them should be enforced in the interests of the taxpayer, and of literature and science. For, as pointed out above, unless copyright is enforced, cheap copies of the works, or of the popular portion of them, can be produced by private publishers, who reap the profit at the expense of the taxpayer. And as such works are in any case a burden on the taxpayer, the greater the burden the fewer works can the Government, with justice to the taxpayer, undertake.

Notice of the intention to enforce the copyright in any work should be given to the public. In the case of future works this notice can be given by prefixing to the work a notice to the effect that the rights of copyright are reserved. In the case of past works it will be desirable to inform the publishing trade of the works the reproduction of which, without permission, is forbidden.

As respects Acts of Parliament, the Government, in obedience to the wishes of Parliament expressed by Select Committees, are bound to publish an edition of them by authority as cheaply as practicable, and a nearly similar remark applies to official publications. For this purpose the Comptroller of the Stationery Office shall be appointed Her Majesty's Printer, but care will be taken not to infringe on any existing privileges granted by the Crown.

Let instructions be given to the Comptroller of the Stationery Office and to the Solicitor in pursuance of this Minute.

AMERICAN STATUTES

REVISED STATUTES, 1874.

TITLE lx. c. 3. [Approved June 22, 1874.]

Copyrights to be under charge of Librarian of Congress.

SEC. 4948. All records and other things relating to copyrights and required by law to be preserved shall be under the control of the Librarian of Congress, and kept and preserved in the Library of Congress; and the Librarian of Congress shall have the immediate care and supervision thereof, and, under the supervision of the joint committee of Congress on the Library, shall perform all acts and duties required by law touching copyrights.

Seal of Office.

SEC. 4949. The seal provided for the office of the Librarian of Congress shall be the seal thereof, and by it all records and papers issued from the office and to be used in evidence shall be authenticated.

Bond of Librarian.

SEC. 4950. The Librarian of Congress shall give a bond, with sureties, to the Treasurer of the United States, in the sum of five thousand dollars, with the condition that he will render to the proper officers of the Treasury a true account of all monies received by virtue of his office.

Annual Report.

SEC. 4951. The Librarian of Congress shall make an annual report to Congress of the number and description of copyright publications for which entries have been made during the year.

What publications may be entered for Copyright.

SEC. 4952. *Any Citizen of the United States or resident therein who shall be the author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print,*[1] *or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, or of models or designs intended to be perfected as works of the 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 case of a dramatic composition of publicly performing or representing it, or causing it to be performed or represented by others. And authors may reserve the right to dramatize or to translate their own works.*[2]

Term of Copyrights.

SEC. 4953. Copyrights shall be granted for the term of twenty-eight years from the time of recording the title thereof, in the manner hereinafter directed.

Continuance of Term.

SEC. 4954. *The author, inventor, or designer, if he be still living and a citizen of the United States or resident therein, 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 person 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]

Assignment of Copyrights and recording.

SEC. 4955. Copyrights shall be assignable in law by any instrument of writing, and such assignment shall be recorded in the office of the Librarian of Congress within sixty days after its execution; in default of which it shall be void as against any subsequent purchaser, or mortgagee for a valuable consideration, without notice.

Deposit of title and published copies.

SEC. 4956. *No person shall be entitled to a copyright unless he shall, before publication, 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 printed copy of the title of the book or other article, or a description of the painting, drawing, chromo, 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 within ten days from the publication thereof*[4] *deliver*

[1] Not to include labels. Act of Congress, June 18, 1874, sec. 3.

[2] Amended section substituted by Act of Congress, March 3, 1891, sec. 1.

[3] Amended section substituted by Act of Congress, March 3, 1891, sec. 2.

[4] Omission to deposit copies, description, or photographs within the prescribed time could have been rectified by deposit before March 1, 1893: Act of Congress, March 3, 1893.

at the office of the Librarian of Congress or deposit in the mail addressed to the Librarian of Congress at Washington, District of Columbia, two copies of such copyright book or other article, or in case of a painting, drawing, statue, statuary, model, or design for a work of the fine arts, a photograph of the same.[1]

Record of entry and attested copy.

SEC. 4957. The Librarian of Congress shall record the name of such copyright book or other article forthwith, in a book to be kept for that purpose, in the words following: "Library of Congress, to wit: Be it remembered that on the day of , A.B., of , hath deposited in this office the title of a book (map, chart, or otherwise as the case may be, or a description of the article), the title or description of which is in the following words, to wit: (here insert the title or description) the right whereof he claims as author (originator or proprietor as the case may be) in conformity with the laws of the United States respecting copyrights. C.D., Librarian of Congress." And he shall give a copy of the title or description, under the seal of the Librarian of Congress, to the proprietor whenever he shall require it.

Fees.

SEC. 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 any instrument of writing for the assignment of a copyright, fifteen cents for every one hundred words.[2]

All fees so received shall be paid into the Treasury of the United States.[3]

Copies of Copyright works to be furnished to Librarian of Congress.

SEC. 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, within ten days after its publication, two complete printed copies thereof, of the best edition issued, or description or photograph of such article as hereinbefore required, and a copy of every subsequent edition wherein any substantial changes shall be made.*[4]

Penalty for omission.

SEC. 4960. For every failure on the part of the proprietor of any copyright to deliver or deposit in the mail either of the published copies or description or photograph, required by sections 4956 and 4959, the proprietor of the copyright shall be liable to a penalty of twenty-five dollars, to be recovered by the Librarian of Congress, in the name of the United States, in an action in the nature of an action of debt in any district court of the United States, within the jurisdiction of which the delinquent may reside or be found.

Postmasters to give receipts.

SEC. 4961. The postmaster to whom such copyright book, title, or other article is delivered, shall, if requested, give a receipt therefor; and when so delivered he shall mail it to its destination.

Publication of notice of entry for Copyright prescribed.

SEC. 4962. No person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published, on the title-page or the page immediately following, if it be a book; or if a map, chart, musical

[1] Amended section substituted by Act of Congress, March 3, 1891, sec. 3.
[2] *Amended Act of Congress, June* 18, 1874, *sec.* 2.
[3] Amended section substituted by Act of Congress, March 3, 1891, sec. 4.
[4] Amended section substituted by Act of Congress, March 3, 1891, sec. 5.

composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design intended to be perfected and completed as a work of the fine arts, by inscribing *upon some portion of the face or front thereof, or on the face of the substance on which the same shall be mounted,*[1] the following words, "Entered according to Act of Congress, in the year , by A. B., in the office of the Librarian of Congress at Washington."[2]

Penalty for false publication of notice of entry.

SEC. 4963. *Every person who shall insert or impress such notice or words of the same purport, in or upon any book, map, chart, 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 by the person who shall sue for such penalty, and one-half to the use of the United States.*[3]

Damages for violation of Copyright of books.

SEC. 4964. *Every person who after the recording of the title of any book as provided by this chapter shall, 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, or import, or, knowing the same to be so printed, published, 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.*[4]

For violating Copyright of maps, charts, prints, &c.

SEC. 4965. *If any person after the recording of the title of any map, chart, 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 chapter shall, 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, engrave, etch, work, copy, print, publish, 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, or imported, shall sell or expose to sale any copy of such maps 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.*[5]

For violating Copyright of dramatic compositions.

SEC. 4966. *Any person publicly performing or representing any dramatic composition for which a copyright has been obtained without the consent of the proprietor thereof or his heirs or assigns, shall be liable for damages therefor, such damages in all cases to be assessed at such sum, not less than*

[1] Act of Congress, June 18, 1874, substitutes "upon some visible portion thereof, or of the substance upon which the same shall be mounted." Act of Congress, August 1, 1882, provides that in the case of designs for decorative articles the notice may be put on the back or bottom, &c.

[2] Act of Congress, June 18, 1874, provides an alternative form of notice.

[3] *Amended section substituted by Act of Congress, March* 3, 1891, *sec.* 6. Further amended section substituted by Act of Congress, March 3, 1897.

[4] Amended section substituted by Act of Congress, March 3, 1891, sec. 7.

[5] *Amended section substituted by Act of Congress, March* 3, 1891, *sec.* 8. Further amended section substituted by Act of Congress, March 2, 1895.

one hundred dollars for the first, and fifty dollars for every subsequent performance, as to the court shall appear to be just.[1]

Damages for printing or publishing any manuscript without consent of author, &c.

SEC. 4967. *Every person who shall print or publish any manuscript whatever without the consent of the author or proprietor first obtained, if such author or proprietor is a citizen of the United States, or resident therein, shall be liable to the author or proprietor for all damages occasioned by such injury.*[2]

Limitation of action in Copyright cases.

SEC. 4968. No action shall be maintained in any case of forfeiture or penalty under the copyright laws unless the same is commenced within two years after the cause of action has arisen.

Defences to action in Copyright cases.

SEC. 4969. In all actions arising under the laws respecting copyrights, the defendant may plead the general issue, and give the special matter in evidence.

Injunctions in Copyright cases.

SEC. 4970. The circuit courts, and district courts having the jurisdiction of circuit courts, shall have power upon bill in equity, filed by any party aggrieved, to grant injunctions to prevent the violation of any right secured by the laws respecting copyrights, according to the course and principles of courts of equity on such terms as the courts may deem reasonable.

Aliens and non-residents not privileged.

SEC. 4971. *Nothing in this chapter shall be construed to prohibit the printing, publishing, importation, or sale of any book, map, chart, dramatic or musical composition, print, cut, engraving or photograph, written, composed, or made by any person not a citizen of the United States nor resident therein.*[3]

Writs of error and appeals without reference to amount.

SEC. 699. A writ of error may be allowed to review any final judgment at law, and an appeal shall be allowed from any final decree in equity hereinafter mentioned without regard to the sum or value in dispute.

First. By final judgment at law or final decree in equity of any circuit court, or of any district court acting as a circuit court, or of the Supreme Court of the District of Columbia, or of any Territory, in any case touching patent rights or copyrights.

Exclusive jurisdiction of Courts of United States.

SEC. 711. The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States.

Fifth. Of all cases arising under the patent-right or copyright laws of the United States.

Full costs allowed.

SEC. 972. In all recoveries under the copyright laws either for damages, forfeitures, or penalties, full costs shall be allowed thereon.

Copyrights vest in Assignee in bankruptcy.

SEC. 5046. All . . . patent rights, and copyrights . . . shall in virtue of the adjudication of bankruptcy and the appointment of an assignee . . . be at once vested in such assignee.

Repeal of Acts.

SEC. 5596. All Acts of Congress passed prior to December 1, 1873, any portion of which is embraced in any section of the Revised Statutes, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof. . . .

Acts passed since 1st December 1873, not affected.

SEC. 5601. The enactment of the said Revision is not to affect or repeal any Act of Congress passed since December 1, 1873, and all Acts passed since that date are to have full effect as if passed after the enactment of this revision, and so far as such Acts vary from and conflict with

[1] Amended section substituted by Act of Congress, January 6, 1897.
[2] Amended section substituted by Act of Congress, March 3, 1891, sec. 9.
[3] Repealed by Act of Congress, March 3, 1891, sec. 10.

any provision contained in said revision, they are to have effect as subsequent statutes, and as repealing any portion of the revision inconsistent therewith.

ACT OF CONGRESS, JUNE 18, 1874.

No right of action for infringement unless notice of entry.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published, on the title-page or the page immediately following, if it be a book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some visible portion thereof, or of the substance on which the same shall be mounted, the following words, viz.:—"Entered according to Act of Congress in the year by A.B., in the office of the Librarian of Congress at Washington," or at his option the word "Copyright" together with the year the copyright was entered, and the name of the party by whom it was taken out; thus—"Copyright, 18—, by A.B."

Optional modes of entry.

Fees.

SEC. 2. *That for recording and certifying any instrument of writing for the assignment of a copyright, the Librarian of Congress shall receive, from the persons to whom the service is rendered, one dollar; and for every copy of an assignment, one dollar; said fee to cover in either case a certificate of the record, under seal of the Librarian of Congress; and all fees so received shall be paid into the Treasury of the United States.*[1]

"Engraving," "Cut" and "Print" not to extend to labels.

Commissioner of Patents charged with supervision of labels.

SEC. 3. That in the construction of this Act the words "engraving," "cut" and "print" shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the supervision and control of the entry or registry of such prints or labels, in conformity with the regulations provided by law as to copyright of prints except that there shall be paid for recording the title of any print or label not a trade mark, six dollars, which shall cover the expense of furnishing a copy of the record under the seal of the Commissioners of Patents, to the party entering the same.

SEC. 4. That all laws and parts of laws inconsistent with the foregoing provisions be, and the same are hereby repealed.

SEC. 5. That this Act shall take effect on August 1, 1874.

ACT OF CONGRESS, AUGUST 1, 1882.

R.S. 4962, amended notice of Copyright on decorative articles.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That manufacturers of designs for moulded decorative articles, tiles, plaques, or articles of pottery or metal subject to copyright may put the copyright mark prescribed by Section 4962 of the Revised Statutes, and Acts additional thereto, upon

[1] Superseded by Act of Congress, March 3, 1891, sec. 4.

the back or bottom of such articles, or in such other place upon them as it has heretofore been usual for manufacturers of such articles to employ for the placing of manufacturers, merchants, and trade marks thereon.

ACT OF CONGRESS, OCTOBER 1, 1890.

An Act to reduce the revenue and equalise duties on imports, and for other purposes.

SEC. 2. On and after October 6, 1890, unless otherwise specially provided for in this Act, the following articles when imported shall be exempt from duty :—

. . . . . .

512. Books, engravings, photographs, bound or unbound, etchings, maps and charts, which shall have been printed and bound or manufactured more than twenty years at the date of importation.

513. Books and pamphlets printed exclusively in languages other than English; also books and music in raised print used exclusively by the blind.

514. Books, engravings, photographs, etchings, bound or unbound, maps and charts imported by authority, or for the use of the United States, or for the use of the Library of Congress.

515. Books, maps, lithographic prints, and charts, specially imported, not more than two copies in any one invoice, in good faith for the use of any society incorporated or established for educational, philosophical, literary or religious purposes, or for the encouragement of the fine arts, or for the use or by order of any college, academy, school or seminary of learning in the United States, subject to such regulations as the secretary of the Treasury shall prescribe.

516. Books, or libraries, or parts of libraries, and other household effects of persons or families from foreign countries, if actually used abroad by them not less than one year, and not intended for any other person or persons, nor for sale.

ACT OF CONGRESS, MARCH 3, 1891.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section forty-nine hundred and fifty-two of the Revised Statutes be, and the same is hereby amended so as to read as follows:

Persons and publications entitled to Copyright.

"SEC. 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 the 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 case 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 dramatize and translate any of their works for which copyright shall have been obtained under the laws of the United States."

SEC. 2. That section forty-nine hundred and fifty-four of the Revised Statutes be, and the same is hereby amended so as to read as follows:

Further term of exclusive right.

"SEC. 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."

SEC. 3. That section forty-nine hundred and fifty-six of the Revised Statutes of the United States be, and the same is hereby amended so that it shall read as follows:

Deposit of title or description *before* publication.

"SEC. 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[1] 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 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 limits of 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

Two copies of work or photograph on day of publication.

To be made in the United States.

Importation of Foreign editions prohibited.

[1] Omission to deposit copies, description, or photographs within the prescribed time could have been rectified by deposit before March 1, 1893: Act of Congress, March 3, 1893.

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 516, inclusive in section 2 of the Act of Congress, 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 translations of the same, and the importation of the books in the original language shall be permitted."

Fees.

SEC. 4. That section forty-nine hundred and fifty-eight of the Revised Statutes be, and the same is hereby amended so that it will read as follows:

"SEC. 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 lists of copyrighted articles as hereinafter provided for.

List of copyrighted articles to be furnished Treasury.

"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."

Weekly Catalogues.

SEC. 5. That section forty-nine hundred and fifty-nine of the Revised Statutes be, and the same is hereby amended so as to read as follows:

Copy of subsequent editions.

"SEC. 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 changes 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."

SEC. 6. That section forty-nine hundred and sixty-three of the Revised Statutes be, and the same is hereby amended so as to read as follows:

Penalty for false notice of entry.

"SEC. 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.*" [1]

SEC. 7. That section forty-nine hundred and sixty-four of the Revised Statutes be, and the same is hereby amended so as to read as follows:

Violations of Copyright of books.

"SEC. 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, dramatize, translate, or import, or knowing the same to be so printed, published, dramatized, 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."

SEC. 8. That section forty-nine hundred and sixty-five of the Revised Statutes be, and the same is hereby so amended as to read as follows:

Violations of Copyright of maps, prints, &c.

"SEC. 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, dramatize, translate, or import, either in whole or in*

[1] Amended section substituted by Act of Congress, March 3, 1897.

part, or by varying the main design with intent to evade the law, or, knowing the same to be so printed, published, dramatized, translated, or imported, shall 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." [1]

SEC. 9. That section forty-nine hundred and sixty-seven of the Revised Statutes be, and the same is hereby amended so as to read as follows:

"SEC. 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." — Damages for printing manuscript.

SEC. 10. That section forty-nine hundred and seventy-one of the Revised Statutes be, and the same is hereby repealed. — Alien products.

SEC. 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. — Volumes separately copyrightable.

SEC. 12. That this Act shall go into effect on the first day of July, anno domini eighteen hundred and ninety-one.

SEC. 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. — Applicable to citizens of foreign countries permitting similar rights.

ACT OF CONGRESS. MARCH 3, 1893.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any author, inventor, designer, or proprietor of any book, or other article entitled to copyright, who has heretofore failed to deliver in the office of the Librarian of Congress, or in the mail addressed to the Librarian of Congress, two complete copies of such book, or description or photograph of such article within the time limited by Title 60, chapter 3, of the Revised Statutes relating to copyrights and the Acts in amendment — Extension of time for delivery of copies where such has been neglected.

[1] Amended section substituted by Act of Congress, March 2, 1895.

If delivered before 1st March 1893.

thereof, and has complied with all other provisions thereof, who has before March 1, 1893, delivered at the office of the Librarian of Congress or deposited in the mail addressed to the Librarian of Congress two complete printed copies of such book, or description or photograph of such article, shall be entitled to all the rights and privileges of said Title 60, chapter 3, of the Revised Statutes and Acts in amendment thereof.

ACT OF CONGRESS, MARCH 2, 1895.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4965 of the Revised Statutes be, and the same is hereby amended so as to read as follows:

Penalty for violations of Copyright of compositions, maps, prints, paintings, &c.

SEC. 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 first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish, dramatize, 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, dramatized, translated, or imported shall 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: Provided, however, That in case of any such infringement of the copyright of a photograph made from any object not a work of fine arts, the sum to be recovered in any action brought under the provisions of this section shall be not less than 100 dollars, nor more than 5000 dollars, and: Provided further, That in case of any such infringement of the copyright of a painting, drawing, statue, engraving, etching, print, or model or design for a work of the fine arts or of a photograph of a work of the fine arts, the sum to be recovered in any action brought through the provisions of this section shall not be less than 250 dollars, and not more than 10,000 dollars. One-half of all the foregoing penalties shall go to the proprietors of the copyright and the other half to the use of the United States.

ACT OF CONGRESS, JANUARY 6, 1897.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4966 of the Revised Statutes be, and the same is hereby amended so as to read as follows:

SEC. 4966. Any person publicly performing or representing any dramatic or musical composition for which a copyright has been obtained, without the consent of the proprietor of said dramatic or musical composition or his heirs or assigns, shall be liable for damages therefor, such damages in all cases to be assessed at such sum not less than 100 dollars for the first and 50 dollars for every subsequent performance, as to the court shall appear to be just. If the unlawful performance and representation be wilful and for profit, such person or persons shall be guilty of a misdemeanour, and, upon conviction, be imprisoned for a period not exceeding one year. Any injunction that may be granted upon hearing, after notice to the defendant by any circuit court of the United States, or by a judge thereof restraining and enjoining the performance or representation of any such dramatic or musical composition, may be served on the parties against whom such injunction may be granted anywhere in the United States, and shall be operative and may be enforced by proceedings to punish for contempt or otherwise by any other circuit court or judge in the United States; but the defendants in said action or any or either of them may make a motion in any other circuit in which he or they may be engaged in performing or representing said dramatic or musical composition, to dissolve or set aside the said injunction upon such reasonable notice to the plaintiff as the circuit court or the judge before whom said motion shall be made shall deem proper; service of said motion to be made on the plaintiff in person or on his attorneys in the action. The circuit courts or judges thereof shall have jurisdiction to enforce said injunction, and to hear and determine a motion to dissolve the same, as herein provided, as fully as if the action were pending or brought in the circuit in which said motion is made.

The clerk of the court or judge granting the injunction shall, when required so to do by the court hearing the application to dissolve or enforce said injunction, transmit without delay to said court a certified copy of all the papers on which the said injunction was granted that are on file in his office.

ACT OF CONGRESS, MARCH 3, 1897.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 4963 of the Revised Statutes be, and the same is hereby amended so as to read as follows:

SEC. 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, whether such article be subject to copyright or otherwise, for which he has not obtained a copyright in this country; or shall import any book, photograph, chromo, or lithograph or other article bearing such notice of copyright, or words of the same purport, which is not copyrighted in this country, shall be liable to a penalty of 100 dollars, recoverable one-half for the person who shall sue for such penalty, and one-half to the use of the United States; and the importation into the United States of any book, chromo, lithograph, or photograph, or other article bearing such notice of copyright, when there is no existing copyright thereon in the

United States, is prohibited: and the circuit courts of the United States sitting in equity are hereby authorised to enjoin the issuing, publishing, or selling of any article marked or imported in violation of the United States copyright laws, at the suit of any person complaining of such violation: Provided that this Act shall not apply to any importation of or sale of such goods or articles brought into the United States prior to the passage hereof.

SEC. 2. That all laws and parts of laws inconsistent with the foregoing provisions be and are hereby repealed.

ADDENDUM

MUSICAL (SUMMARY PROCEEDINGS) COPYRIGHT ACT, 1902.

2 EDW. VII. C. 15.

SINCE this work went to press the Musical Copyright Bill mentioned on page 231 has received the Royal Assent and become law. The Act will come into operation on October 1, 1902, and its application is limited to the United Kingdom. The Act gives the owner of copyright music power to seize pirated copies of his works from any person who may hawk, carry about, sell, or offer for sale the same. To exercise this power he may proceed in one of two ways. He may apply to a court of summary jurisdiction, and on *primâ facie* evidence the court will by order authorise a constable to seize the alleged pirated copies, or he may without applying to the court himself authorise a constable in writing to seize such copies. On the copies being seized by the constable they must be brought before the court, and on proof that they are pirated copies the court will order them to be destroyed or delivered to the owner of the copyright. If the owner authorises the seizure without an order from the court and fails to prove his case he might be liable in damages. If, therefore, the owner is not quite sure of his case he should first obtain the order of the court, which will relieve him from all responsibility, except costs, in the event of his failing. The Bill as originally brought into the House of Lords contained a clause empowering a court of summary jurisdiction to inflict a summary penalty on persons dealing with pirated music. It also proposed to give the court power to order a constable to search for pirated music on suspected premises. These remedies, however, were considered by the House of Commons to be too drastic and were omitted from the Act.

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