One of the Greatest Legal Works of the Day.

In about 15 vols., at 27/6 net per vol.

*** FULL PROSPECTUS ON APPLICATION.

ENCYCLOPÆDIA

OF

FORMS & PRECEDENTS

BY SOME OF

The most Eminent Conveyancing and Commercial Counsel.

UNDER THE GENERAL EDITORSHIP OF

ARTHUR UNDERHILL, M.A., LL.D.,

ONE OF THE CONVEYANCING COUNSEL TO THE COURT,

Author of "The Law of Trusts," and "A Treatise on the Settled Land Acts," etc.;
Editor of "Fisher on Mortgage."

ASSISTANT EDITORS:

HAROLD B. BOMPAS, of the Inner Temple, and
HUMPHREY H. KING, B.A., LL.B., of Lincoln's Inn,
Barristers-at-Law.

With the Assistance of the following CONSULTING EDITORS, who have consented to give their Advice on any Points of Difficulty that may arise.

W. D. RAWLINS, K.C.,
Author of "The Specific Performance of Contracts, 1899."

A. MACMORRAN, K.C.,
Editor of "Lumley's Public Health."

T. H. CARSON, K.C.,
Editor of "Tudor's Leading Cases on Conveyancing, etc."

J. SAVILL VAIZEY,
Of the Middle Temple, Barrister-at-Law,
Author of "The Law of Settlements."

S. P. BUTLER,
One of the Conveyancing Counsel to the Court.

W. M. FAWCETT,
Of Lincoln's Inn, Barrister-at-Law,
Author of "The Law of Landlord and Tenant."

J. BRADLEY DYNE,
One of the Conveyancing Counsel to the Court.

W. A. COPINGER, LL.D.,
Professor of Law in the Owens College;
Author of "An Index to Precedents in Conveyancing," etc.

P. S. GREGORY,
One of the Conveyancing Counsel to the Court.

THE purpose of this Work is to supply, in a convenient and easily accessible arrangement, a complete collection of all the Forms and Precedents which are necessary to the lawyer in the practice of his profession.

Unlike existing Collections of Forms, which are mostly the work of a single author, the Forms in this Work will be written by Specialists in their respective branches, but harmony and consistency will be secured by their passing under the eye of the General Editor.

In short, this Work will be a complete Library of all Forms and Precedents—other than litigious Forms—that a Lawyer can possibly require.

A DIGEST OF THE LAW OF COPYRIGHT.

BY THE SAME AUTHOR.

A TREATISE UPON

THE LAW OF COPYRIGHT

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 Minutes and Acts of Congress now in force.

Royal 8vo. Pages: xxxvi. and 403. Cloth, 25/- net.

Press Opinions.

"We have tested the Work on some nice points . . . and in every case we have found it sound and trustworthy."—THE LAW QUARTERLY REVIEW.

"Much praise is due to the Author for the ability as well as the courage with which he essays to supply answers to the problems which have been left unsolved either by statute or decision. His analyses of the effects of statutes are remarkably clear, and his definitions often excellent."
—THE LAW MAGAZINE.

"The arrangement is good, the statute law is clearly and correctly stated, and, as far as we have tested the Work, we have found the authorities adequately discussed."—THE LAW JOURNAL.

"Out of a mass of complicated material Mr. Macgillivray has produced something like a clear interpretation, arranging his subject under several distinct headings, so that it is possible at once for the searcher after information to find what he requires."—THE PUBLISHERS' CIRCULAR.

"Mr. Macgillivray's Work is an exceedingly valuable addition to the books dealing with Copyright Law."—THE AUTHOR.

"This volume is a lucid and comprehensive exposition of the existing state of Copyright."—ACADEMY AND LITERATURE.

"Mr. Macgillivray has certainly produced an eminently useful Work."
—SPECTATOR.

LONDON:
JOHN MURRAY, ALBEMARLE STREET.
1902.

A DIGEST

OF THE

LAW OF COPYRIGHT.

WITH

Appendix of Statutes.

BY

E. J. MACGILLIVRAY, LL.B. (CANTAB.),

OF THE INNER TEMPLE, BARRISTER-AT-LAW,

AND MEMBER OF THE FACULTY OF ADVOCATES IN SCOTLAND.

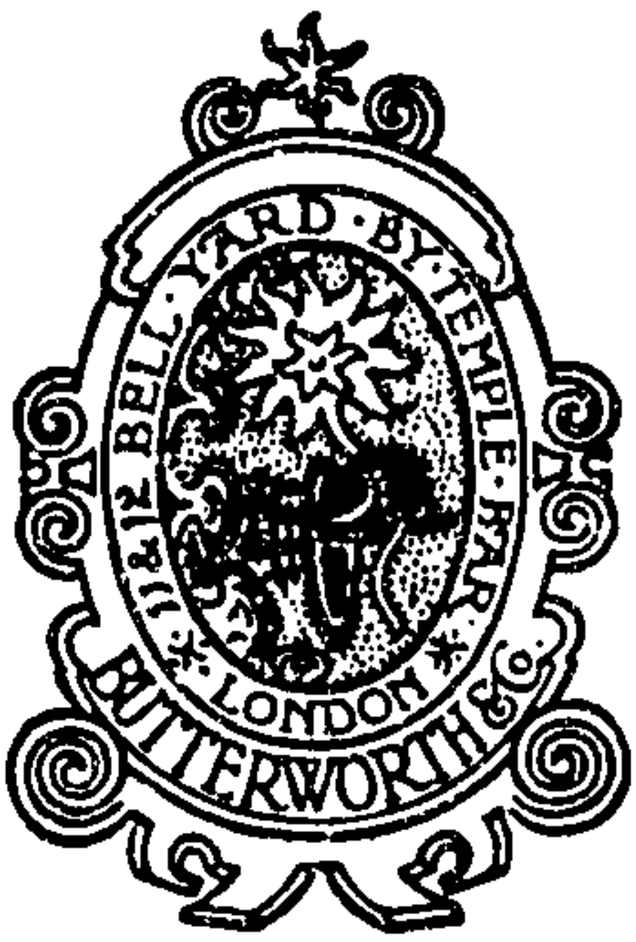
LONDON:

BUTTERWORTH & CO., 11 & 12, BELL YARD, TEMPLE BAR.

Law Publishers.

1906.

M 157d



First Edition, *June*, 1906.

OCT 17 1922

PREFACE.

THIS attempt to digest the Law of Copyright and present it in the form of a Code originated with a suggestion made by Mr. Edward Bell, the President of the Publishers' Association. I was asked whether it would be possible to make a clear, complete and accurate statement of the Law of Copyright within the compass of sixty-four octavo pages. I replied, that to be clear was difficult, that accuracy in dealing with Copyright can only be used in a relative sense, and that a complete statement of the law on any subject is always impossible. Subject, however, to that explanation, I was willing to undertake the task, and the following pages are the result of the attempt to perform it.

In several instances I am conscious of having stated propositions which will not meet with approval from every critic, and particularly with reference to the meaning of publication, and the treatment of performing right in dramatic and musical works. I do not think any one will be bold enough to deny that both of these subjects are fraught with more than

ordinary difficulty and doubt. I believe the most commonly accepted theory with regard to performing right is that no statutory right vests until first performance, and that the first performance of a dramatic or musical work is a publication of the work. I have been unable to adopt this view. Mr. Justice WILLS, in the recent case of *Hardacre* v. *Armstrong*, has clearly stated his opinion that the statutory performing right in a musical or dramatic work commences when the work is composed, and that the effect of s. 20 of the Copyright Act, 1842, is to add to, and not to limit, the rights given to dramatic authors by the Dramatic Copyright Act, 1833. Since the case of *Boucicault* v. *Chatterton*, in the Court of Appeal, there is no doubt that if a dramatic author performs his work outside the British Dominions before he performs it within the British Dominions, he loses all right to protection, except such as he may acquire under the International Copyright Acts. This is by reason of s. 19 of the International Copyright Act, 1844, which 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." The Court of Appeal decided that in the application of this section to performing right, "first published" must be construed as meaning "first performed." It is probably from this decision and from a misconception of s. 20 of the Copyright Act, 1842, that the idea has arisen that public performance of a musical or dramatic work is such a publication as to divest the author of all common law rights in his work. It would be most unfortunate if this were so, because it would necessarily entail the loss of copyright, unless the work had previously or simultaneously with first performance been printed and published as a book. It is impossible to contend that the effect of s. 20 of the Copyright Act, 1842, is to vest in the author copyright as well as performing right on first performance, and therefore if the common law right is divested, any one can print and sell the work with impunity. I think the only satisfactory solution is to hold that the common law right of printing and publishing subsists in every dramatic or musical work until it is first published as a book. The question as to whether a work is published by exhibition at a gallery, or other place to which the public

are admitted, is one which has given rise to considerable diversity of opinion, and it is interesting to note that the Circuit Court of Appeal in the United States has recently held that a picture is not published when it is exhibited at the Royal Academy Exhibition at Burlington House.

Although I have represented this Digest as a Codification, and have, for conciseness and convenience of reference, divided it into sections and sub-sections, I do not put it forward as a model for legislative purposes. If it is to be of any use to the legislator of the future he must use it as a warning of what to avoid, and not as a guide to follow. In my opinion, legislation on this subject, to be of permanent value, must be built on new foundations. The present law is full of so many artificial technicalities that a codification of it is a hopeless starting point for further legislation. Lord MONKSWELL's Copyright Bills were largely constructed upon the Digest compiled by Sir JAMES FITZJAMES STEPHEN, and appended to the Report of the Copyright Commission in 1878. I think these Bills derived their principal defects from that source, and the same may be said of an Act recently passed by the Commonwealth of Australia. It is deplorable in the twentieth century, and in the light of rational legislation in the United States of

America, Germany, Japan, and many other foreign countries, to find a British Legislature passing an Act which insists upon defining a book in the curious and ambiguous phraseology employed in the Copyright Act of 1842, and which adheres to the present ridiculous system of registration.

There is still no immediate prospect of any comprehensive copyright legislation in this country, but the authors and publishers of musical works are again claiming the attention of Parliament, and at the time of writing a Bill for an Act, to be entituled the Pirated Music Act, 1906, has passed the second reading in the House of Commons. The object of the Act is to provide more effective remedies against the vendor of pirated music. It is proposed to make the vending of pirated music a criminal offence, punishable on summary conviction, with the unusual proviso that the prisoner at the bar is to be presumed to be guilty until he proves that he acted innocently. Any constable is to have power to take into custody, without warrant, any person who sells, exposes, offers, or has in his possession for sale, any pirated music, and courts of summary jurisdiction are to have power to authorise any constable to make forceable entry into premises where pirated copies are believed to be stored.

The American Bill to amend and consolidate the Acts respecting Copyright in the United States will be of great importance to makers of books in this country if it passes into law. Hitherto, the English Author has been required to print and copyright in the United States before publication. It is now proposed to give the English Author time for consideration. Within thirty days from publication he may deposit an English copy of the Work at the Copyright Office in Washington, and apply for an *ad interim* copyright. This will be effective until the expiration of thirty days from the date of his application, and within that time he may secure a full copyright for life and fifty years by publication in America of an edition printed in America, and bearing the notice "Copyright" or "Copr." on the title page or page immediately following.

In the preparation of this little book I have received much valuable assistance from Mr. Edward Bell, Mr. John Murray, and Mr. Langridge, of the Middle Temple.

E. J. M.

3, TEMPLE GARDENS, E.C.
June, 1906.

TABLE OF CONTENTS.

PAGE

PREFACE v
TABLE OF STATUTES AND TREATIES xv
TABLE OF CASES xix

PART I.

UNPUBLISHED WORKS.

SECT.

1. Definition of literary work 1
2. Definition of artistic work 2
3. Proprietary right in unpublished work 2
4. Proprietor of the common law right 4
5. Transmission of, by assignment or operation of law ... 5
6. Duration of the common law right 6
7. Publication 6
8. Abandonment 8

PART II.

LITERARY COPYRIGHT.

9. Conditions precedent of copyright 9
10. Proprietor of copyright 11
11. Collective works 12
12. Assignment before publication 15
13. Assignment after publication 16
14. Infringement 17
15. Remedies for infringement 22
16. Meaning of copy 25
17. Conditions precedent to action 29
18. Registration 30
19. Limitation of action 33

PART III.

PERFORMING RIGHT.

SECT.		PAGE
20.	In what works	34
21.	Inception of right and proprietorship	34
22.	Duration of	34
23.	Assignment	37
24.	Infringement	37
25.	Meaning of public performance	38
26.	Remedies for infringement	38
27.	Notice of reservation on musical works	39
28.	Registration	40
29.	Limitation of action	41

PART IV.

PAINTINGS, DRAWINGS AND PHOTOGRAPHS.

30.	Conditions precedent of copyright	42
31.	Inception and proprietorship	42
32.	Duration of copyright	43
33.	Assignment	44
34.	Infringement	44
35.	Remedies	45
36.	Registration	47
37.	Limitation of action	48

PART V.

COPYRIGHT IN ENGRAVINGS.

38.	Conditions precedent of copyright	49
39.	Duration of copyright	50
40.	Proprietor of copyright	50
41.	Assignment	51
42.	Infringement	52
43.	Remedies	53
44.	Limitation of action	54

PART VI.

COPYRIGHT IN SCULPTURE.

SECT.		PAGE
45.	Conditions precedent of copyright	55
46.	Duration of copyright	56
47.	Proprietor of copyright	56
48.	Assignment	56
49.	Infringement	57
50.	Remedies	58
51.	Limitation of action	59

PART VII.

COPYRIGHT IN FOREIGN WORKS.

52.	Works produced in countries of the Copyright Union ...	61
53.	Formalities	63
54.	Title to sue in respect of	65
55.	Right to reprint from foreign newspapers	66
56.	Remedies	66

PART VIII.

COPYRIGHT IN THE BRITISH POSSESSIONS.

57.	Copyright Act, 1842	67
58.	Fine Arts Act, 1862	68
59.	International Copyright	68

PART IX.

COPYRIGHT IN FOREIGN COUNTRIES.

60.	In countries of the Copyright Union...	70
61.	In other countries	70
62.	In the United States	70
63.	Importation into the United States	72

TABLE OF STATUTES AND TREATIES.

		PAGE
4 Edw. 3, c. 7.	(Act to enable Executors to Sue in Trespass, 1330)	17
25 Edw. 3, c. 5.	(Act to enable Executors of Executors to Sue, 1351)	17
21 Jac. 1, c. 16.	(Act for Limitation of Actions, 1623)—	
	s. 3	...43, 54
8 Geo. 2, c. 13.	(Engraving Copyright Act, 1734)—	
	s. 1	49, 51, 52, 54
	s. 2	... 52
	s. 3	... 54
7 Geo. 3, c. 38.	(Engraving Copyright Act, 1766)—	
	s. 1	49. 51, 54
	s. 2	... 51
	s. 6	... 54
	s. 7	... 50
17 Geo. 3. c. 57.	(Prints Copyright Act, 1777) ...	... 49, 51—53
38 Geo. 3, c. 71.	(Sculpture Copyright Act, 1798) ...	... 56
54 Geo. 3, c. 56.	(Sculpture Copyright Act, 1814)—	
	s. 1	...55, 56
	s. 2	... 56
	s. 3	...57, 58
	s. 4	... 57
	s. 5	... 59
	s. 6	...56. 57
3 & 4 Will. 4, c. 15.	(Dramatic Copyright Act, 1833)—	
	s. 1	... 35
	s. 2	...38. 39
	s. 3	... 41
6 & 7 Will. 4, c. 59.	(Prints and Engravings Copyright Act, 1836)—	
	s. 1	...49. 53
	s. 2	... 51
5 & 6 Vict. c. 45.	(Copyright Act, 1842)—	
	s. 2	16. 19, 49
	s. 3	11. 12, 15
	s. 1	... 33

		PAGE
5 & 6 Vict. c. 45.	(Copyright Act, 1842)—*continued.*	
	s. 13	16, 30, 31, 37, 40
	s. 15	... 19. 20, 22
	s. 17	...10, 19, 20, 22
	s. 18	 13
	s. 19	 32
	s. 20	...35, 37, 40, 41
	s. 22	 37
	s. 23	19—21, 23, 25
	s. 24	 29
	s. 25	 16
	s. 26	 33
c. 97.	(Act relating to Double Costs, 1842)—	
	s. 2	... 39, 53, 58
7 & 8 Vict. c. 12.	(International Copyright Act, 1844)—	
	s. 1	 56
	s. 2	... 60, 61, 62
	s. 3	... 61, 63, 66
	s. 4	... ...61, 66
	s. 5	... 61, 62, 66
	s. 10	 66
	s. 19	... 9, 43, 50, 56
10 & 11 Vict. c. 95.	(Colonial Copyright Act, 1847) ...	 67
15 & 16 Vict. c. 12.	(International Copyright Act, 1852)—	
	ss. 7, 9	 66
	s. 11	 49
25 & 26 Vict. c. 68.	(Fine Arts Copyright Act, 1862)—	
	s. 1	... 42—44
	s. 3	 44
	s. 4	... ...47, 48
	s. 6	... ...44, 46
	s. 8	... ...46, 54
	ss. 9, 10...	 46
	s. 11	... 44—46
38 & 39 Vict. c. 53.	(Canada Copyright Act, 1875)... ...	 69
39 & 40 Vict. c. 36.	(Customs Laws Consolidation Act, 1876)—	
	s. 42	... ...20, 29
	s. 44	... ...29, 64
45 & 46 Vict. c. 40.	(Copyright Musical Composition Act, 1882)—	
	s. 2	 39
	s. 3	 40
49 & 50 Vict. c. 33.	(International Copyright Act, 1886)—	
	s. 2 (2)	 66
	(3)	... ...61, 64
	(5)	 61
	s. 3	... ... 9, 62
	s. 4	... ...62, 65
	s. 5	 61
	s. 7	 65

		PAGE
49 & 50 Vict. c. 33.	(International Copyright Act, 1886)—*cont.*	
	s. 8 (1)	9, 29, 49
	(2)	29
	(4)	67
	s. 9	...60, 68
	s. 11	...62, 65
51 & 52 Vict. c. 17.	(Copyright Musical Compositions Act, 1888)—	
	ss. 1, 2	39
	s. 3	...38, 39
	s. 4	38
52 & 53 Vict. c. 42.	(Revenue Act, 1889), s. 1	...64, 66
2 Edw. 7, c. 15.	(Musical (Summary Proceedings) Copyright Act, 1902)	...26, 27

COLONIAL STATUTES.

Canadian Copyright Act, 1875	69
Canadian Copyright Act, 1900	69
Australian Copyright Act, 1905..	69

AMERICAN STATUTES.

Revised Statutes of United States of America, 1874—1905 ...	...71, 72

INTERNATIONAL TREATIES.

Berne Convention, 1886—	
Art. II....	61, 62, 64
Art. III.	...60, 66
Art. IV.	60
Art. V.	61
Art. VII.	66
Art. IX.	64
Art. XI.	65
Art. XII.	64
Additional Act of Paris, 1896—	
Art. I. (1)	...61, 66
(2)	60
(3)	61
(4)	66
(5)	64
Art. III.	66

TABLE OF CASES.

PAGE

Albert, Prince, *v.* Strange (1849), 2 De G. & Sm. 652 ; 1 Mac. & G. 25 ; 1 H. & Tw. 1 ; 18 L. J. Ch. 120 ; 13 Jur. 45, 109... ... 4, 7
American Press *v.* Daily Story Publishing Co. (1902), 102 Fed. Rep. 776 ; Copyright Cases, 1901—1904, p. 28... 72
Avanzo *v.* Mudie (1854), 10 Ex. 203 64

Badische-Anilin *v.* Hickson, [1905] 2 Ch. 495 ; 74 L. J. Ch. 669 ; 93 L. T. 350 44
Baschet *v.* London Illustrated Standard, [1900] 1 Ch. 73 ; 69 L. J. Ch. 35 ; 81 L. T. 509 ; 48 W. R. 56 ... ... 10, 11, 66
Beal, *Ex parte* (1868), L. R. 3 Q. B. 387 ; 9 B. & S. 395 ; 37 L. J. Q. B. 161 ; 18 L. T. 285 ; 16 W. R. 852 47
Birel Co. *v.* Welsh (1904), 131 Fed. Rep. 564 ; Copyright Cases, 1905, p. 20 27
Black *v.* Imperial Book Co. (1904), 8 Ont. L. R. 9 ; Copyright Cases, 1901—1904, p. 82 ... ... 19—21, 25, 29, 33, 64
Blank *v.* Footman (1888), 39 Ch. D. 678 ; 57 L. J. Ch. 909 ; 59 L. T. 507 ; 36 W. R. 921 7
Bobbs-Merrill Co. *v.* Snellenburg (1904), 131 Fed. Rep. 530 ; Copyright Cases, 1905, p. 8 7
Boosey *v.* Whight, [1900] 1 Ch. 122 ; 69 L. J. Ch. 66 ; 81 L. T. 571 ; 48 W. R. 228 ; 16 T. L. R. 82 28
Boucas *v.* Cooke, [1903] 2 K. B. 227 ; Copyright Cases, 1901—1904, p. 55 ; 72 L. J. K. B. 741 ; 88 L. T. 760 ; 52 W. R. 99 ; 19 T. L. R. 475 42
Boucicault *v.* Chatterton (1876), 5 Ch. D. 267 ; 46 L. J. Ch. 395 ; 35 L. T. 745 ; 25 W. R. 287 35
——————*v.* Wood (1867), 2 Biss. 34 5
Brewer *v.* Dew (1843), 11 M. & W. 625 ; 1 D. & L. 383 ; 12 L. J. Ex. 448 ; 7 Jur. 953 17
Britain *v.* Hanks (1902), 86 L. T. 765 ; Copyright Cases, 1901—1904, p. 21 ; 18 T. L. R. 525 56
——— *v.* Kennedy (1902), 19 T. L. R. 122 ; Copyright Cases, 1901—1904, p. 35 58

Cable *v.* Marks (1882), 47 L. T. 432 ; 52 L. J. Ch. 107 ; 31 W. R. 227 2
Caird *v.* Sime (1887), 12 App. Cas. 326 ; 57 L. J. P. C. 2 ; 57 L. T. 634 ; 36 W. R. 199 ; 3 T. L. R. 681 ... ... 2, 4, 5—8
Campbell *v.* Scott (1842), 11 Sim. 31 28
Caproni *v.* Alberti (1892), 40 W. R. 235 ; 68 L. T. 785 ; 8 T. L. R. 146: 55
Chappell *v.* Boosey (1882), 21 Ch. D. 232 ; 51 L. J. Ch. 625 ; 46 L. T. 854 ; 30 W. R. 733 36

PAGE

Chatterton v. Cave (1875), L. R. 10 C. P. D. 572; (1878), 3 App. Cas. 483; 47 L. J. C. P. 545; 38 L. T. 397; 26 W. R. 498 ...25, 37
Cocks v. Purday (1848), 5 C. B. 860; 17 L. J. C. P. 273; 12 Jur. 677 8
Collis v. Cator (1898), 78 L. T. 613 2
Constable v. Martin (1902), Copyright Cases, 1901—1904, p. 34 ... 28
Cooper v. Whittingham (1880), 15 Ch. D. 501; 49 L. J. Ch. 752; 43 L. T. 16; 28 W. R. 720 20
Cowan v. Milbourn (1867), L. R. 2 Ex. 230; 36 L. J. Ex. 124; 16 L. T. 290; 15 W. R. 750 10

D'Almaine v. Boosey (1835), 1 Y. & C. 283; 4 L. J. Ex. Eq. 21 ... 8, 27
Davis v. Comitti (1885), 52 L. T. 539; 54 L. J. Ch. 419; 1 T. L. R. 216 2
Dawson v. Great Northern and City Railway, [1904] 1 K. B. 277; [1905] 1 K. B. 260: 69 J. P. 29; 74 L. J. K. B. 190; 92 L. T. 137 17
Delfe v. Delamotte (1857), 3 Kay & J. 581; 3 Jur. (N.S.) 933 ... 25
Duck v. Bates (1884), 13 Q. B. D. 843; 53 L. J. Q. B. 338; 50 L. T. 778; 32 W. R. 813 38

Edward Thompson & Co. v. American Law Book Co. (1903), 122 Fed. Rep. 922; Copyright Cases, 1905. p. 16 ... ... 11, 28
Exchange Telegraph Co. v. Gregory, [1896] 1 Q. B. 147; 65 L. J. Q. B. 262; 74 L. T. 83; 12 T. L. R. 19 ... ...4, 5, 7
Fishburn v. Hollingshead [1891] 2 Ch. 371; 60 L. J. Ch. 768; 64 L. T. 647; 7 T. L. R. 263 64
Francis, *Ex parte* (1), [1903] 1 K. B. 275; Copyright Cases, 1901—1904, p. 38; 72 L. J. K. B. 120; 88 L. T. 176; 51 W. R. 267; 19 T. L. R. 50 25
——— ——— (2), (1903), 88 L. T. 806; Copyright Cases, 1901—1904, p. 67; 51 W. R. 698; 19 T. L. R. 146 64

Gibbon v. Pease, [1905] 1 K. B. 810; 74 L. J. K. B. 502; 92 L. T. 433; 53 W. R. 417 43
Graves v. Gorrie, [1903] A. C. 496; Copyright Cases, 1901—1904, p. 60; 72 L. J. P. C. 95; 89 L. T. 111; 52 W. R. 113 ... 68
Grossman v. Canada Cycle Co. (1902), 5 Ont. L. R. 55; Copyright Cases, 1901—1904, p. 36 9

Hanfstaengl v. American Tobacco Co., [1895] 1 Q. B. 347; 64 L. J. Q. B. 277; 71 L. T. 864; 43 W. R. 261; 11 T. L. R. 97 ... ...62, 63
——— v. Baines, [1895] A. C. 20; 64 L. J. Ch. 81; 72 L. T. 1; 11 T. L. R. 131 45
——— v. Empire Palace, [1894] 2 Ch. 1; 63 L. J. Ch. 417; 70 L. T. 459; 42 W. R. 454; 10 T. L. R. 530 ... 45
——— v. Smith, [1905] 1 Ch. 519; Copyright Cases, 1905, p. 8; 74 L. J. Ch. 304; 92 L. T. 351; 21 T. L. R. 291 45

PAGE

Hardacre *v.* Armstrong (1905), 21 T. L. R. 189; Copyright Cases, 1905, p. 3 ... ... 36, 37, 41
Hereford *v.* Griffin (1848), 16 Sim. 190; 17 L. J. Ch. 210; 12 Jur. 255 15
Hildesheimer *v.* Dunn (1891), 64 L. T. 452 15
——— *v.* Faulkner, [1901] 2 Ch. 552; 83 L. T. 144; 48 W. R. 682; 17 T. L. R. 737 47
Hime *v.* Dale (1803), 2 Camp. 27 n. 10
Hodgson *v.* Sidney (1866), L. R. 1 Ex. 313; 4 H. & C. 492; 35 L. J. Ex. 182; 12 Jur. (N.S.) 694; 14 L. T. 624; 14 W. R. 923 17
Hole *v.* Bradbury (1879), 12 Ch. D. 886; 48 L. J. Ch. 673; 41 L. T. 153, 250; 28 W. R. 39 ... ...21, 25
Hollinrake *v.* Truswell, [1894] 3 Ch. 420; 63 L. J. Ch. 719; 71 L. T. 419; 10 T. L. R. 663 2
Holmes *v.* Langfier (1903), Copyright Cases, 1901—1904, p. 71 ... 47

Isaacs *v.* Tiddemann (1880), 49 L. J. Ch. 412; 42 L. T. 395 ... 21

Jarrold *v.* Houlston (1857), 3 Kay & J. 708; 3 Jur. (N.S.) 1051 ...27, 28
Jewellers *v.* Jewellers (1895), 84 Hun. 12 7
Johnson *v.* Newnes, [1894] 3 Ch. 663; 63 L. J. Ch. 786; 71 L. T. 230; 10 T. L. R. 561 32

Kelly's Directories *v.* Gavin and Lloyds, [1902] 1 Ch. 631; 71 L. J. Ch. 405; 86 L. T. 393; 50 W. R. 385; 18 T. L. R. 346: 19, 21
Kenrick *v.* Danube Collieries (1891), 39 W. R. 473 7
King *v.* Victoria Insurance, [1896] A. C. 250; 65 L. J. P. C. 38; 74 L. T. 206; 44 W. R. 592 17

Lamb *v.* Evans, [1893] 1 Ch. 218; 62 L. J. Ch. 404; 68 L. T. 131; 41 W. R. 405; 9 T. L. R. 87 2
Lauri *v.* Renad, [1892] 3 Ch. 402; 61 L. J. Ch. 580; 67 L. T. 275; 40 W. R. 679; 8 T. L. R. 637 36
Lawrence and Bullen *v.* Aflalo, [1904] A. C. 17; Copyright Cases, 1901—1904, p. 74; 73 L. J. Ch. 85; 89 L. T. 569; 52 W. R. 369; 20 T. L. R. 42 13
Leslie *v.* Young, [1894] A. C. 335 2
Lewin *v.* Birch (1903), Copyright Cases, 1901—1904, p. 54 ... 2
Leyland *v.* Stewart (1876), 4 Ch. D. 419; 46 L. J. Ch. 103; 25 W. R. 225 16

McCosh *v.* Crow (1903), 40 Sc. L. R. 514; 5 F. 670 43
McGruther *v.* Pitcher, [1904] 2 Ch. 306; 73 L. J. Ch. 653; 91 L. T. 678; 53 W. R. 138 7
Macklin *v.* Richardson (1770), Amb. 694 8
Macmillan *v.* Dent, [1906] 1 Ch. 101; 22 T. L. R. 117 ... 1, 5, 12
Maple *v.* Junior Army and Navy Stores (1882), 21 Ch. D. 369; 52 L. J. Ch. 67; 47 L. T. 589; 31 W. R. 70 ... ... 1, 10
Marsh *v.* Conquest (1864), 17 C. B. (N.S.) 418; 33 L. J. C. P. 319; 10 Jur. (N.S.) 989; 10 L. T. 717; 12 W. R. 1006 37
Mawman *v.* Tegg (1826), 2 Russ. 385 28

PAGE

May *v.* Lane (1894), 64 L. J. Q. B. 236; 71 L. T. 869; 43 W. R. 193 17
Mayhew *v.* Maxwell (1860), 1 John. & H. 312; 3 L. T. 466, 847; 9 W. R. 118 14
Merriam & Co. *v.* United Dictionary Co. (1906), Circuit Court of Appeals, U.S.A., April 10th, 1906 71
Moffat and Page *v.* Gill (1902), 86 L. T. 465; Copyright Cases, 1901—1904, p. 25; 50 W. R. 528; 18 T. L. R. 547 26
Morang *v.* Publishers' Syndicate (1900), 32 Ont. L. R. 393 67
Morocco Bound Syndicate *v.* Harris, [1895] 1 Ch. 534; 11 T. L. R. 254 70
Morris *v.* Wright (1870), L. R. 5 Ch. 279; 22 L. T. 78; 18 W. R. 327 ... ... 27, 28
Moul *v.* Coronet (1903), Copyright Cases, 1901—1904, p. 42 ... 38
Muddock *v.* Blackwood, [1898] 1 Ch. 58; 67 L. J. Ch. 6; 77 L. T. 493; 14 T. L. R. 43 ... ... 21, 33
Murray *v.* Elliston (1822), 5 B. & Ald. 657; 1 D. & R. 299 36
——— *v.* Heath (1831), 1 B. & Ad. 804; 9 L. J. (o.s.) K. B. 111 53

Nethersole *v.* Bell (1903), Copyright Cases, 1901—1904, p. 64 ... 37
Nicols *v.* Pitman (1884), 26 Ch. D. 374; 48 J. P. 549; 53 L. J. Ch. 552; 50 L. T. 254; 32 W. R. 631 .. .. 8, 26
Nottage *v.* Jackson (1883), 11 Q. B. D. 627; 52 L. J. Q. B. 760; 49 L. T. 339; 32 W. R. 106 ... ... 2, 42
Novello *v.* Sudlow (1852), 12 C. B. 177; 21 L. J. C. P. 169; 16 Jur. 689 19

Page *v.* Townsend (1832), 5 Sim. 395 49
——— *v.* Wisden (1869), 20 L. T. 435; 17 W. R. 483 2
Palmer *v.* De Witt (1872), 47 New York Reports, 532 5
Parry *v.* Moring and Gollanz (1903), Copyright Cases, 1901—1904, p. 49 26
Phillips *v.* Homfray (1883), 24 Ch. D. 439; 52 L. J. Ch. 833; 49 L. T. 5; 32 W. R. 6 17
Pike *v.* Nicholas (1869), L. R. 5 Ch. 251; 39 L. J. Ch. 435; 18 W. R. 321 27
Pitt-Pitts *v.* George, [1896] 2 Ch. 866; 66 L. J. Ch. 1; 75 L. T. 320; 45 W. R. 164; 13 T. L. R. 20 ... ... 19, 20, 22, 66
Pollard *v.* Photographic Co. (1888), 40 Ch. D. 345; 58 L. J. Ch. 251; 60 L. T. 418; 37 W. R. 266 ... ... 6, 43
Pope *v.* Curl (1741), 2 Atk. 342 ... ... 1, 6
Prince Albert *v.* Strange (1849), 2 De G. & Sm. 652; 1 Mac. & G. 25; 1 H. & Tw. 1; 18 L. J. Ch. 120; 13 Jur. 45, 109 ... ... 4, 7

Reade *v.* Conquest (1862), 11 C. B. (N.S.) 479; 31 L. J. C. P. 153; 8 Jur. (N.S.) 764; 5 L. T. 677; 10 W. R. 271 ... ... 9, 10
Reichardt *v.* Sapte, [1893] 2 Q. B. 308; 9 T. L. R. 604 36
Rex *v.* Willett (1906), Times, January 19th, 1906 23
Rock *v.* Lazarus (1872), L. R. 15 Eq. 104; 42 L. J. Ch. 105; 27 L. T. 744; 21 W. R. 215 50
Rooney *v.* Kelly (1861), 14 Ir. C. L. R. 158 21
Rotary Photographic Co. *v.* Taber Bas Relief (1903), British Journal of Photography, Vol. 50, p. 250 43
Routledge *v.* Low (1868), L. R. 3 H. L. 100 ... ... 9, 10

PAGE

Saccharin Corporation *v.* Reitmeyer, [1900] 2 Ch. 659; 69 L. J. Ch. 761; 83 L. T. 397 44
Shepherd *v.* Conquest (1856), 17 C. B. 427; 25 L. J. C. P. 127; 2 Jur. (N.S.) 236; 4 W. R. 283 37
Slingsby *v.* Bradford Patent Trolly Co., [1905] W. N. 122... ... 11
Smiles *v.* Belford (1876), 1 Tupp. App. R. 436 68
Smith *v.* Chatto (1874), 31 L. T. 775; 23 W. R. 290 28
——— *v.* Johnson (1863), 4 Giff. 632; 33 L. J. Ch. 137; 9 Jur. (N.S.) 1223; 9 L. T. 437; 12 W. R. 122 14
Southey *v.* Sherwood (1817), 2 Mer. 435 8
Springfield *v.* Thame (1903), 89 L. T. 242; Copyright Cases, 1901—1904, p. 15; 19 T. L. R. 650 27
Stockdale *v.* Onwhyn (1826), 5 B. & Cr. 173 10

Thomas *v.* Turner (1886), 33 Ch. D. 292; 56 L. J. Ch. 56: 55 L. T. 534; 35 W. R. 177; 2 T. L. R. 724 32
Thompson *v.* Stanhope (1774), Amb. 737 1
Tinsley *v.* Lacy (1863), 1 Hem. & M. 747; 32 L. J. Ch. 535; 11 W. R. 876 26
Trade Auxiliary *v.* Middlesborough (1889), 40 Ch. D. 425; 58 L. J. Ch. 293; 60 L. T. 681; 37 W. R. 337; 5 T. L. R. 254 ... 13, 14
Tuck *v.* Priester (1887), 19 Q. B. D. 629; 56 L. J. Q. B. 553; 36 W. R. 93 47

Walker, *Ex parte* (1869), 10 B. & S. 680 48
Walter *v.* Lane, [1900] A. C. 539; 69 L. J. Ch. 699; 83 L. T. 289; 49 W. R. 95; 16 T. L. R. 551 ... ... 1, 8, 15, 27
Warne *v.* Seebohm (1885), 39 Ch. D. 73; 57 L. J. Ch. 689; 58 L. T. 928; 36 W. R. 686; 4 T. L. R. 535 25
Werckmeister *v.* American Lithograph Co. (1904), 134 Fed. Rep. 321; Copyright Cases, 1901—1904, p. 85 8
Wilson *v.* Lake (1875), 1 Viet. L. R. Eq. 127 27
Wolff *v.* Wood (1903), Copyright Cases, 1901—1904, p. 69... ... 44
Wood *v.* Chart (1870), L. R. 10 Eq. 193; 39 L. J. Ch. 641; 22 L. T. 432; 18 W. R. 822 61
Wright *v.* Tallis (1845), 1 C. B. 893; 14 L. J. C. P. 283; 9 Jur. 946 11

A DIGEST

OF

THE LAW OF COPYRIGHT.

PART I.

UNPUBLISHED WORKS.

1. (1) A literary work means any combination of words figures or other symbols graphically produced so as to convey ideas or information to the mind of a reader. Definition of literary work.

(2) A literary work is composed within the meaning of this Digest when it is first graphically produced. Composed.

(3) The author of a literary work is the person who first graphically produces it (*a*). Author.

No literary merit or intellectual labour need be shown by an author claiming common law right or copyright (*a*). Private letters (*b*), advertisements (*c*), catalogues of No literary merit.

(*a*) *Walter* v. *Lane*, [1900] A. C. 539 (Shorthand notes from Lord Rosebery's speeches).

(*b*) *Pope* v. *Curl* (1741), 2 Atk. 342; *Thompson* v. *Stanhope* (1774), Amb. 737 (Lord Chesterfield's letters); *Macmillan* v. *Dent* [1906] 1 Ch. 101 (Lamb's letters).

(*c*) *Maple* v. *Junior Army and Navy Stores* (1882), 21 Ch. D. 369 (Illustrated catalogues of furniture).

SECT. 1.

NOTE.

Mechanical devices.

tradesmen's wares (*d*), directories (*e*), and time tables (*f*), are all literary works. On the other hand, mechanical devices and articles made for mechanical use and not for the purpose of conveying information are not literary works, and cannot acquire copyright (*g*).

Definition of artistic work.

2. (1) An artistic work means any painting drawing photograph engraving or work of sculpture as hereinafter defined (*h*).

Author.

(2) The author of an artistic work is the person who invents and by his own hands or the hands of others produces the artistic creation (*i*).

Author's rights in unpublished work.

3. (1) A proprietary right at common law hereinafter called the common law right subsists in every literary or artistic work until such right has been abandoned or the work published as specified in section 6 of this Digest (*k*).

(2) The proprietor of the common law right has an exclusive right to the enjoyment of the work and may prevent any other person from making any use of it whatsoever without his

(*d*) *Collis* v. *Cator* (1898), 78 L. T. 613 (Alphabetical list of mechanical articles kept in stock).

(*e*) *Lamb* v. *Evans*, [1893] 1 Ch. 218 (Trade directory).

(*f*) *Leslie* v. *Young*, [1894] A. C. 335 (Perth time tables).

(*g*) *Hollinrake* v. *Truscell*, [1894] 3 Ch. 420 (Sleeve chart for dressmaking); *Davis* v. *Comitti* (1885), 52 L. T. 539 (Face of barometer); *Cable* v. *Marks* (1882), 47 L. T. 432 (The Christian's puzzle); *Page* v. *Wisden* (1869), 20 L. T. 435 (Cricket scoring card); *Lewin* v. *Birch* (1903), Copyright Cases, 1901—1904, p. 54, Times, April 4th, 1903 (Cash index and register).

(*h*) See *infra*, ss. 30, 38 (2), 45 (2).

(*i*) *Nottage* v. *Jackson* (1883), 11 Q. B. D. 627 (Author of a photograph).

(*k*) *Caird* v. *Sime* (1887), 12 App. Cas. 326 (University lectures).

consent (*l*) and in particular may restrain any unauthorised publication or communication of the work or of any substantial part thereof (or of any ideas or information obtained therefrom) in any of the following ways:— SECT. 3.

(a) By selling giving lending or otherwise parting with the possession of the original or any copy thereof;

(b) By exhibiting the original or any copy thereof;

(c) By criticism or description orally or in writing;

(d) By reading recitation or performance.

(3) A copy of an artistic or literary work within the meaning of this section includes all things which are hereinafter defined as being copies of literary works paintings drawings photographs engravings and works of sculpture respectively and in addition includes every material thing whatsoever whereby any of the essential characteristics of an unpublished literary or artistic work or of the ideas or information contained therein may be in any manner communicated. Definition of copy in the case of unpublished works.

An author's claim to restrain the publication of his unpublished work is frequently based on the ground of breach of confidence, and no doubt that is sufficient for the plaintiff in proceedings against the particular person who has broken faith or against anyone who has knowingly Nature of common law right.

(*l*) This consent may be express or implied. Thus the writer of a letter may, according to the nature of the letter, give the addressee an implied consent to show it to relatives, friends, or other persons interested in the subject matter.

SECT. 3. NOTE.

derived their material from such person. There are cases, however, where the author may desire to prevent publication by some innocent person who has acquired the material in good faith and without notice of its source, and to do this the author's claim must be founded on something in the nature of an abstract right of property. The courts have frequently recognised that there is such a right in unpublished works (*m*).

Copy.

The definition of the word "copy" is necessarily much wider with reference to unpublished works than it is in dealing with statutory copyright. The proprietor of a copyright in a published work has only the limited protection given to him by statute, whereas the author of an unpublished work is entitled to prevent any person from interfering in any way with his work without his consent. Thus, in the case of music, a pianola scroll or gramophone record is not a copy of the music within the meaning of the Copyright Act, 1842 (*n*); but if the music were unpublished the sale of such a scroll or record would be an infringement of the author's common law right.

Proprietor of the common law right.

4. The author of a literary or artistic work is the first proprietor of the common law right except when the author has been employed to create the work as the servant or agent of his employer in which case the employer is the first proprietor of the common law right.

Transmission of, by assignment or operation of law.

5. (1) The common law right is personal property and passes as such on the death of the proprietor.

(*m*) *Caird* v. *Sime* (1887), 12 App. Cas. 326, 337 (University lectures); *Prince Albert* v. *Strange* (1849), 2 De G. & Sm. 652 (Private drawings by Queen Victoria and Prince Albert); *Exchange Telegraph Co.* v. *Gregory*, [1896] 1 Q. B. 147 (Stock Exchange information).

(*n*) See *infra*, s. 16 (h).

(2) The proprietor may assign the common law right orally or by writing (*o*). SECT. 5.

As the common law right is independent of the various statutes which deal with copyright, it would seem that the proprietorship ought to be determined without reference to the provisions of the Copyright Statutes, which deal only with copyright. The ordinary principles of the law of property would vest it firstly in the person who created the work or caused another to create it for him as his servant or agent; and, secondly, in such person's representatives or assignees. Sometimes the provisions of the copyright statute applicable to the particular class of work operate to vest the copyright in some person other than the proprietor at common law. Where, as in the case of books, engravings, and sculpture, the statute only applies to published works, the result would seem to be that the proprietor of the common law right can restrain the publication of the work even as against the person who would be entitled to copyright on publication, and that publication does not divest the proprietor of his common law right unless he has consented or acquiesced (*p*). Conflict of common law right and copyright.

A case in point is that of letters published after the author's death. The personal representatives are entitled to restrain publication; but if the letters are published with their consent or without remonstrance on their part the addressee of the letters and his representatives and assignees would as "the proprietors of the author's manuscript" be entitled to the copyright (*q*). Perhaps a more difficult question arises in the case of paintings, drawings, and photographs, where the statutory copyright vests at the time of making. It may be that the operation of the statute in this case is to deprive the author of any common law proprietary right and to leave him with such Letters, posthumous publication of.

Paintings, drawings, photographs, and sculpture.

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

(*p*) *Caird* v. *Sime* (1887), 12 App. Cas. 326; *Palmer* v. *De Witt* (1872), 47 New York Reports, 532; *Boucicault* v. *Wood* (1867), 2 Biss. 34.

(*q*) *Macmillan* v. *Dent*, [1906] 1 Ch. 101; *infra*, s. 10 (2).

SECT. 5. NOTE.

copyright as the statute may give him, and with the right to proceed in respect of breach of contract or breach of confidence (*r*).

Duration of the common law right.

6. (1) The common law right subsists in perpetuity or until—

(a) it is expressly or impliedly abandoned by the proprietor (*s*); or

(b) the work is published by or with the consent of the proprietor (*t*).

(2) If the work is a dramatic or musical work the first public performance thereof divests the proprietor of the common law right in so far as any exclusive right of performance is concerned but not otherwise.

Definition of "publication."

7. (1) Publication of a literary or artistic work means the delivery or exhibition of the work or of any copy or copies of the work to any person or persons without any express or implied limitation imposed by the proprietor on the use which such person or persons may make of the literary or artistic matter contained in the work (*t*).

What is not publication.

(2) A literary or artistic work is not deemed to be published by reason only of the following circumstances :—

(a) Private or business letters sent to a correspondent or shown to friends or other interested persons (*u*).

(*r*) *Pollard* v. *Photographic Co.* (1888), 4 Ch. D. 345.
(*s*) See s. 8, *infra*.
(*t*) *Caird* v. *Sime* (1887), 12 App. Cas. 326.
(*u*) *Pope* v. *Curl* (1741), 2 Atk. 342.

SECT. 7.

(b) A manuscript or artistic work delivered or exhibited to a friend for his personal perusal or view or to a publisher or other person or persons with a view to obtaining his or their opinion or arranging for the publication or sale of the work (*t*).

(c) A book or artistic work printed or otherwise multiplied and distributed among a limited class such as friends of the author or members of a society (*w*).

After publication reservation is inoperative.

(3) When a literary or artistic work has been published the proprietor cannot by any notice on the work or otherwise reserve to himself as against any but those with whom he is in contractual relationship any rights which he does not obtain under the copyright statutes (*x*).

Publication.

A work may be published by exhibition without being distributed or offered for sale. It has been decided in the United States that the deposit of two copies of a book for the use of the public library at Washington constituted publication (*y*). On the other hand, it was held also in the United States that the exhibition of a picture at the Academy Exhibition at Burlington House was not a publication since the public were only admitted on payment

(*t*) *Caird* v. *Sime* (1887), 12 App. Cas. 326. See, however, *Blank* v. *Footman* (1888), 39 Ch. D. 678.

(*w*) *Prince Albert* v. *Strange* (1849), 2 De & Sm. 652; *Kenrick* v. *Danube Collieries* (1891), 39 W. R. 473; *Exchange Telegraph* v. *Central News*, [1897] 2 Ch. 48.

(*x*) *Bobbs-Merrill Co.* v. *Snellenburg* (1904), 131 Fed. Rep. 530; Copyright Cases, 1905, p. 18 (Attempt to control retail price): *cf. McGruther* v. *Pitcher*, [1904] 2 Ch. 306.

(*y*) *Jewellers* v. *Jewellers* (1895), 84 Hun. 12.

SECT. 7. NOTE.

of a fee and subject to certain rules, among which was the rule that no sketches or copies of the pictures might be made (*z*).

Abandonment of common law right.

8. (1) The proprietor may abandon the common law right in a literary or artistic work by any act or omission with reference thereto indicative of such an intention (*a*).

Public performance.

(2) In particular the proprietor may by reading reciting performing or otherwise orally delivering or causing or permitting the reading recital performance or other oral delivery of a literary work before an audience abandon the common law right therein.

Question of fact.

(3) Whether in the case of a reading recitation or performance the proprietor abandons the common law right or not is a question of fact to be determined by the particular relationship between the proprietor and the audience (*b*) but subject to the limitation specified in section 6 (2) of this Digest the proprietor is presumed to retain the common law right when a charge is made for admission (*c*) or where the audience is restricted to some limited section of the public (*d*).

(*z*) *Werckmeister* v. *American Lithograph Co.* (1904), 134 Fed. Rep. 321.

(*a*) *Southey* v. *Sherwood* (1817), 2 Mer. 435.

(*b*) *Walter* v. *Lane*, [1900] A. C. 539.

(*c*) *Macklin* v. *Richardson* (1770), Amb. 694; *D'Almaine* v. *Boosey* (1835), 1 Y. & C. 288.

(*d*) *Caird* v. *Sime* (1887), 12 App. Cas. 326 (University lectures); *Nicols* v. *Pitman* (1884), 26 Ch. D. 374.

PART II.

LITERARY COPYRIGHT.

9. (1) Copyright under the Copyright Act, 1842, subsists throughout the British Dominions in every literary work which is first published as a book or as part of a book (*a*) in any part of the British Dominions (*b*) before or simultaneously (*c*) with its first publication elsewhere. First publication within the British dominions.

(2) If a literary work is first published outside the British Dominions it does not acquire copyright in any part of the British Dominions except in so far as the work may be protected under the provisions of the International Copyright Acts (*d*) as specified in Part VII. of this Digest. First publication outside the British dominions.

(3) A book means any volume part or division of a volume pamphlet sheet of letterpress sheet of music map chart or plan separately published.

(4) If an engraving, drawing or photograph is first published as part of a book or volume Illustrations protected as part of book.

(*a*) As to what is publication, see s. 7, *supra*.

(*b*) *Routledge* v. *Low* (1868), L. R. 3 H. L. 100; International Copyright Act, 1886, s. 8 (1).

(*c*) *Cocks* v. *Purday* (1848), 5 C. B. 860. Posting copies to English subscribers on the day of publication in America held not to constitute simultaneous publication in England (*Grossman* v. *Canada Cycle Co.* (1902), 5 Ontario L. R. 55, Copyright Cases, 1901—1904, p. 36). If the work is published simultaneously in the British Dominions and another country of the Copyright Union it will be deemed to be first published in that other country if the term of copyright there is shorter than the term of copyright in the British Dominions (International Copyright Act, 1886, s. 3; Order in Council, November 28th, 1887, s. 5).

(*d*) International Copyright Act, 1844, s. 19.

SECT. 9.

it becomes the subject of copyright as if it were a literary work (*e*) but without prejudice to the protection afforded by the Engravings Acts or the Fine Arts Copyright Act.

Printing and selling not essential.

Publication as defined in Part I., s. 7, of this Digest, is probably all that is necessary in order to secure copyright. Although there is no decision on the point, the better opinion appears to be that a literary work can obtain copyright although not printed or offered for sale (*f*). Public exhibition would be sufficient. If printed, the printing does not require to be done within the British Dominions nor from type set in the British Dominions (*g*).

Foreign authors.

A foreign author, equally with a British author, can acquire copyright if resident within the British Dominions at the time the work is published (*h*). Whether he can acquire copyright if not so resident must still be considered doubtful. The House of Lords was equally divided on this question in *Routledge* v. *Low* (*h*), and although the law officers of the Crown in 1891, when considering the position of an American author in this country, advised that a foreigner could acquire copyright here without residence, there is no judicial authority (*i*). In this Digest the opinion of the law officers is adopted.

Immoral works.

Profane (*k*), indecent (*l*), seditious (*m*), and libellous (*m*) work will not be protected, nor will a work which is

(*e*) *Maple* v. *Junior Army and Navy Stores* (1882), 21 Ch. D. 369 (Illustrated catalogue of furniture).

(*f*) See MacGillivray's Law of Copyright, pp. 38, 39.

(*g*) Except in the case of a claim in respect of unlawful importation contrary to the provisions of s. 17 of the Copyright Act, 1842. See MacGillivray's Law of Copyright, p. 41.

(*h*) *Routledge* v. *Low* (1868), L. R. 3 H. L. 100.

(*i*) See this point fully discussed MacGillivray's Law of Copyright, pp. 42—45.

(*k*) *Coran* v. *Milbourn* (1867), L. R. 2 Ex. 230.

(*l*) *Stockdale* v. *Onrhyn* (1826), 5 B. & Cr. 173; *Bauchet* v. *London Illustrated Standard*, [1900] 1 Ch. 73.

(*m*) *Hime* v. *Dale* (1803), 2 Camp. 27 n.

SECT. 9.

NOTE.

designed to deceive the public (*n*). There is some doubt as to how far a work, itself an infringement of another copyright, will be protected (*o*). Probably the proprietor of such a work would be entitled to legal, but not to equitable remedies (*p*). Where an immoral work comes before the court and the parties are *in pari delicto* as regards the immorality, the practice of the court is to dismiss the action without costs (*q*). The above applies not only to literary, but also to all artistic works.

Proprietor of copyright.

10. Subject to the limitations specified in sections 11 and 12 of this Digest copyright in a literary work vests and endures as follows:—

The author.

(1) If the work is first published during the lifetime of the author the copyright vests in the author (*r*).

Posthumous publications.

(2) If the work is first published after the death of the author the copyright vests in the person who at the time of such publication is the proprietor of the author's manuscript from which such work is first published (*r*).

Duration of copyright.

(3) The copyright endures for the author's life and seven years or for forty-two

(*n*) *Wright* v. *Tallis* (1845), 1 C. B. 893; *Slingsby* v. *Bradford Patent Truck Co.* (1905). W. N. 122; Copyright Cases, 1905, p. 15.

(*o*) *Reade* v. *Conquest* (1862), 11 C. B. (N.S.) 479, 492.

(*p*) *Edward Thompson & Co.* v. *American Law Book Co.* (1903), 122 Fed. Rep. 922; Copyright Cases, 1905, p. 16.

(*q*) *Baschet* v. *London Illustrated Standard*, [1900] 1 Ch. 73.

(*r*) Copyright Act, 1842, s. 3.

SECT. 10.

years from the day of first publication whichever period shall prove the longer (*s*).

Proprietor of the author's manuscript.

The object of the provision in s. 3 of the Copyright Act, 1842, as to the proprietorship of copyright in the event of first publication after the author's death, is no doubt to obviate the necessity of tracing a title from the author when publication takes place many years after his death. The Act sets up an irrebutable presumption that the author's rights, in so far as copyright is concerned, have passed with the property in the material substance of the manuscript. The draftsman of the Act did not apparently contemplate the difficulties that might arise in particular cases of determining who the proprietor of the author's manuscript is. In *Macmillan* v. *Dent* (*t*) KEKEWICH, J., decided that the proprietor of the author's manuscript does not mean the proprietor of the common law right to prevent publication, but the proprietor of the material substance of the manuscript, and that in the case of letters the addressee was the original proprietor, and the law would presume that any person in whose possession they were found had obtained a good title from the addressee. More difficult questions may arise where the author has made, or authorised the making, of more than one copy of the manuscript, if, for instance, an author has kept press copies of his letters or has written more than one copy of a poem, or if he has caused his work to be privately printed and has destroyed the manuscript.

Copyright in periodicals, encyclopædias, and other collective works.

11. (1) If a literary work is first published in an encyclopædia or periodical or any other book to which two or more persons have been employed to contribute the copyright vests in

(*s*) Copyright Act, 1842, s. 3.
(*t*) [1906] 1 Ch. 101.

SECT. 11.

the proprietor of such encyclopædia periodical or other book (*u*) provided that—

(a) the proprietor employed the author to compose (*x*) the work on the express or implied terms that the copyright should belong to the proprietor; and

(b) the proprietor has paid the author for his work (*y*).

Presumption that copyright shall belong to proprietor.

(2) If the proprietor has employed and paid the author there is a *primâ facie* presumption that the employment was on the terms that the copyright should belong to the proprietor (*z*).

Publication before payment of author.

(3) If the work is published before the author has been paid the copyright vests in the author but passes by operation of law to the proprietor on payment being made (*a*).

Joint employment of an author.

(4) If two or more proprietors of several publications have jointly employed an author to compose a work which is published in their

(*u*) This section is s. 18 of the Copyright Act, 1842, reconstructed with additions to give effect to cases decided thereon.

(*x*) Employment to compose appears to be a *sine qua non*. The contribution of a work previously written would probably not come within s. 18 of the Copyright Act.

(*y*) Actual payment must be proved (*Trade Auxiliary* v. *Middlesborough* (1889), 40 Ch. D. 425).

(*z*) *Laurence and Bullen* v. *Aflalo*, [1904] A. C. 17; Copyright Cases, 1901—1904, p. 74.

(*a*) This appears to be the effect of the provision for payment. See opinion of CHITTY, J., in *Trade Auxiliary* v. *Middlesborough* (1889), 40 Ch. D. 425, to the effect that the proprietor must prove payment before the issue of the writ, but need not prove payment before publication.

SECT. 11.

several publications the proprietor of each publication has subject to the rights of the other proprietors a separate copyright as if he alone had employed the author (*b*).

Duration of proprietor's copyright.

(5) The proprietor's copyright under this section endures for his own life and seven years or for forty-two years from the day of first publication whichever period shall prove the longer (*c*).

Periodicals, proprietor may not publish separately.

(6) In the case of contributions to periodical works the proprietor cannot without the consent of the author publish or permit the publication of the author's contribution separately or otherwise than as part of the periodical as first published (*d*). If he does so publish without the consent of the author the author may without making any entry in the Book of Registry at Stationer's Hall proceed against him for breach of contract (*e*).

Author's right of separate publication after twenty-eight years.

(7) After the lapse of twenty-eight years from the day of first publication the author of a contribution to a periodical work or his assignee or personal representative acquires a separate copyright in his contribution which copyright is concurrent with the proprietor's copyright and

(*b*) *Trade Auxiliary* v. *Middlesborough* (1889), 40 Ch. D. 425.

(*c*) If the proprietor is a partnership firm, the copyright is probably measured by the life of the survivor of those who were partners at the time of first publication. If the proprietor is a corporation or company, the term if any is probably forty-two years without any alternative.

(*d*) *Mayhew* v. *Maxwell* (1860), 1 John. & H. 312; *Smith* v. *Johnson* (1863), 4 Giff. 632.

(*e*) *Mayhew* v. *Maxwell* (1860), 1 John. & H. 312.

he can then publish his contribution without the proprietor's consent. SECT. 11.

(8) The author of a contribution to a periodical work may contract expressly or impliedly with the proprietor for the right to publish his contribution separately before the expiration of the term of twenty-eight years and on so publishing his work he at once acquires a concurrent copyright. Reservation by author of right to publish earlier.

(9) The author's concurrent copyright under this section endures for the author's life and seven years or for forty-two years from the day of first publication in the periodical whichever period shall prove the longer. Duration of author's copyright.

12. If a literary work (whether published separately or in an encyclopædia or periodical or in any other manner whatsoever) was composed by the author as the servant or agent of his employer (*f*) or if the author has before publication assigned to another his whole prospective copyright in the work (*g*) then the copyright vests in such employer or assignee and the author acquires no rights either on or after publication. Work composed by servant in the course of his employment. Assignment before publication.

The Copyright Act vests the copyright in "the author and his assigns" (*h*), and defines "assigns" as meaning Question whether assignment

(*f*) *Hildesheimer* v. *Dunn* (1891), 64 L. T. 452; *Walter* v. *Lane*, [1900] A. C. 539.

(*g*) *Hereford* v. *Griffin* (1848), 16 Sim. 190; *Walter* v. *Lane*, [1900] A. C. 539, 548, 558.

(*h*) Copyright Act, 1842, s. 3.

SECT. 12.

NOTE. before publication must be in writing.

"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" (*i*). Copyright after publication can only be assigned in writing; but before publication the author may probably assign his rights without writing, so that on publication the legal copyright will vest in the assignee. There is no direct authority for this last suggestion, and there are some cases which support the contrary view, viz., that an author can before publication only divest himself of his prospective copyright in one of these three ways, viz.: (i) by composing it as the servant or agent of another; (ii) by composing it as a contribution to a collective work under s. 18 of the Copyright Act; (iii) by assignment in writing (*k*).

Transmission of copyright. By operation of law.

13. (1) Copyright in a literary work is personal property and passes as such on the death (*l*) or bankruptcy of the proprietor.

By assignment.

(2) The copyright may be assigned by an instrument in writing (*m*) or if the work has been previously registered in the name of the assignor in the Book of Registry at Stationers' Hall by an entry of assignment therein as specified in section 18 (3) of this Digest (*n*).

(*i*) Copyright Act, 1842, s. 2.

(*k*) See this question fully discussed, MacGillivray's Law of Copyright, pp. 74—77.

(*l*) Copyright Act, 1842, s. 25.

(*m*) There can be no oral assignment of the legal right (*Leyland* v. *Stewart* (1876), 4 Ch. D. 419). As to what is sufficient to constitute an assignment, see MacGillivray's Law of Copyright, pp. 78—81.

(*n*) Copyright Act, 1842, s. 13.

SECT. 13.

(3) The proprietor can in his own name sue only in respect of copies made or imported at a time when he was legal proprietor.

Infringements committed before transmission.

The assignee of a copyright cannot as such sue in respect of infringements committed before the property vested in him. If the assignor assigned with the copyright his rights of action against infringers the assignee might be entitled to sue. This depends on the still disputed point whether a bare right of action in tort can be assigned (*o*). A right of action in respect of an infringement would pass to the proprietor's personal representatives on his death (*p*) and probably to his trustee in bankruptcy (*q*).

Assignment of right of action.

14. It is an infringement of the copyright in a literary work to do or cause to be done any of the following acts:—

Infringement of copyright.

(a) Without the consent of the proprietor to make any copy of the work by means of printing writing photography lithography or other similar process;

Multiplying copies.

(b) Without the written consent of the proprietor to print within the British Dominions for sale or exportation any copy of the work;

Printing for sale or exportation

(c) Without the written consent of the proprietor to import for sale or hire from

Importing pirated copies.

(*o*) *May* v. *Lane* (1894), 64 L. J. Q. B. 237; *King* v. *Victoria Insurance*, [1896] A. C. 250; *Dawson* v. *Great Northern and City Railway*, [1904] 1 K. B. 277; [1905] 1 K. B. 260.

(*p*) 4 Edw. 3, c. 7; 25 Edw. 3, c. 5; *Phillips* v. *Homfray* (1883), 24 Ch. D. 484.

(*q*) *Brewer* v. *Dew* (1843), 11 M. & W. 625; *Hodgson* v. *Sidney* (1866), L. R. 1 Ex. 313.

SECT. 14.

beyond the sea from any one part of the British Dominions to any other part thereof or from any foreign country any copy unlawfully printed in the British Dominions contrary to the provisions of the last sub-section;

Selling, publishing, or hiring pirated copies.

(d) Without the written consent of the proprietor to sell publish or expose for sale or hire or to possess for sale or hire any copy unlawfully printed or imported contrary to the provisions of either of the last two sub-sections knowing the same to have been so unlawfully printed or imported;

Importing foreign copies.

(e) Without the authority of the proprietor to import into any part of the British Dominions [for sale or hire] any copy of the work reprinted in any country or place outside the British Dominions (whether so reprinted with or without the consent of the proprietor);

Selling, publishing, or hiring foreign copies.

(f) Without the authority of the proprietor to sell publish or expose for sale or hire or to possess for sale or hire any copy unlawfully imported contrary to the provisions of the last sub-section knowing the same to have been so unlawfully imported;

Possessing pirated copies.

(g) Without the consent of the proprietor to retain possession of or convert any copy

of the work unlawfully printed or imported and in respect of which the proprietor has made a written demand upon the person in possession thereof that it should be delivered up. SECT. 14.

Infringements.

It will be observed that the offences specified in this section overlap to a considerable extent. This is due to the various provisions in the Copyright Act (*r*), which overlap in a similar manner, and it is most convenient to preserve the same classification in this Digest.

Sub-section (a) is based on s. 2 of the Copyright Act, 1842. Copyright is there defined as "the sole and exclusive liberty of multiplying copies," and it has been held that if that right is infringed by the making of a copy in any manner whatsoever an action for damages will lie although the offence is not one of those particularly specified in the subsequent section (*s*).

Sub-sections (b), (c), and (d), are based on s. 15 of the Copyright Act, 1842 (*t*). The prohibition is here confined to making or dealing with printed copies. The prohibition against importation, if read literally, is confined to the importation of copies unlawfully printed within the British Dominions. LINDLEY, L.J., in *Pitt-Pitts* v. *George* (*u*), thought this was the correct construction, and held that the importation of copies unlawfully printed in a foreign country were not within the prohibition of s. 15, and were prohibited only by s. 17. RIGBY, L.J., on the other hand, preferred a wider interpretation, holding that both ss. 15 and 17 prohibited the importation of foreign

(*r*) Copyright Act, 1842, ss. 2, 15, 17, 23.

(*s*) *Novello* v. *Sudlow* (1852), 12 C. B. 177. For further cases, see MacGillivray's Law of Copyright, p. 97.

(*t*) For the meaning of "cause to be printed," see *Kelly's Directories* v. *Garin and Lloyds*, [1902] 1 Ch. 631; Copyright Cases, 1901—1904, p. 19.

(*u*) [1896] 2 Ch. 866; and see *Black* v. *Imperial Book Co.* (1904), 8 Ontario L. R. 9.

SECT. 14. NOTE.

copies, the former giving a remedy by way of damages and the latter a remedy by way of penalties.

Sub-sections (e) and (f) are based on s. 17 of the Copyright Act, 1842. One peculiarity of this section is that the protection afforded thereby is confined to copyright books which have been printed and which have been first composed or written or printed and published in the British Dominions. The only remedy provided by this section is that of seizure and penalties, the latter to be recovered on conviction before two justices of the peace. The High Court, however, will grant an injunction to restrain further infringement and probably the further equitable remedies of an account of profits and delivery up of copies for destruction (*x*). This section is overlapped by the provisions of the Customs Act, 1876 (*y*), which prohibits importation provided notice has been given to the Commissioners of Customs. It has been held in Canada that such notice is a condition precedent to any proceedings in respect of importation from abroad whether such proceedings are based on the Customs Act or the Copyright Act (*z*). A discrepancy between the two Acts is indicated in sub-s. (e) by square brackets. The Copyright Act prohibits the importation of copies for sale or hire; the Customs Act prohibits importation generally.

Sub-section (g) is based on s. 23 of the Copyright Act, 1842. The previous sections (15 and 17) do not treat the mere possession of unlawful copies as an offence unless the possession is for sale or hire and with knowledge of the unlawful character of the copies. By this section the bare possession of a copy, however innocent and for whatever purpose, subjects the possessor to an action in detinue or trover. The section apparently makes a demand in writing a condition precedent to any proceedings there-

(*x*) *Pitt-Pitts* v. *George*, [1896] 2 Ch. 866; *Cooper* v. *Whittingham* (1880), 15 Ch. D. 501.

(*y*) Section 42.

(*z*) *Black* v. *Imperial Book Co.* (1904), 8 Ont. L. R. 9; Copyright Cases, 1901—1904, p. 82.

under, and probably no claim ought to be sustained in respect of anything done before such demand has been made. KEKEWICH, J., however, has held that after demand has been made the proprietor may under this section recover as damages for conversion the whole proceeds of previous sales and delivery up of all copies (*a*). The section applies equally to those who have and those who have not otherwise infringed the proprietor's copyright (*b*). It is doubtful whether proceedings under the section should not be confined to unlawful copies made or imported after registration (*c*), and it has also been doubted whether the section is applicable to infringements other than those which are substantially reprints of the proprietor's book (*d*). In *Black* v. *Imperial Book Co.* the Court of Appeals for Ontario held that under s. 23 an action lay for the conversion of copies which had been sold by the defendant prior to the commencement of the action, even although no demand in writing had been made, and that the demand in writing was only a condition precedent to a claim for delivery up of copies which were in the possession of the defendant when the writ was issued. They further held that, apart from s. 23, the plaintiff was entitled to delivery up for his use as an equitable remedy.

SECT. 14. NOTE.

It will be noticed that it is only in the case of (d) and (f) in the case of selling, etc., that knowledge on the part of the infringer is a condition precedent to a right of action against him. In actions for copying or importing it is no defence to plead that the Act was done in ignorance of the plaintiff's right or as the innocent agent of another (*e*).

Innocence no defence.

(*a*) *Muddock* v. *Blackwood*, [1898] 1 Ch. 58; and see *Black* v. *Imperial Book Co.* (1904), 8 Ontario L. R. 9.

(*b*) *Muddock* v. *Blackwood*, [1898] 1 Ch. 58: *Black* v. *Imperial Book Co.* (1904), 8 Ontario L. R. 9.

(*c*) *Hole* v. *Bradbury* (1879), 12 Ch. D. 886; *Isaacs* v. *Tiddeman* (1880), 49 L. J. Ch. 412. See MacGillivray's Law of Copyright, p. 90.

(*d*) *Rooney* v. *Kelly* (1861), 14 Ir. C. L. R. 158, 171.

(*e*) *Kelly* v. *Gavin and Lloyds*, [1902] 1 Ch. 631.

SECT. 15.

Remedies for infringement.

15. (1) The proprietor of the copyright in a literary work is entitled to the following remedies in respect of infringement:—

Injunction, profits, and destruction.

(a) In the case of any offence specified in section 14—

(i) profits made by the offender from the sale or hire of matter unlawfully copied or imported (*f*);

(ii) delivery up of copies plates and stereotype in the possession of the infringer for destruction or for cancellation of matter unlawfully copied (*f*);

(iii) an injunction (*f*).

(b) In the case of any offence specified in section 14 (a) (b) (c) and (d)—

Damages.

(iv) damages suffered by the proprietor either as an alternative or as supplementary to profits where the damage is greater than the profits (*g*).

Seizure by Customs.

(c) In the case of any offence specified in section 14 (e) and (f) (*i*)—

(v) seizure and destruction by any officer of Customs;

(*f*) Equitable jurisdiction of the court (*Pitt-Pitts* v. *George*, [1896] 2 Ch. 866; *Warne* v. *Seebohm* (1888), 39 Ch. D. 73).

(*g*) In the case of s. 14 (a) damages are given by the common law since the statute provides no remedy. In the case of s. 14 (b) (c) and (d), an action for damages is specified as the remedy by Copyright Act, 1842, s. 15.

(*i*) Copyright Act, 1842, s. 17. See s. 14 (e) and (f) and note, *supra*, p. 20.

(vi) on conviction of the offender before two justices of the peace a penalty of £10 for each offence and double the value of every copy unlawfully dealt with £5 of the total sum recovered to be appropriated to the use of the officer of Customs and the remainder to the use of the proprietor.

Detinue and trover.

(d) In the case of any offence specified in section 14 (g)—

(vii) delivery up to the use of the proprietor of any copy unlawfully detained or damages for the detention or conversion of the same (*k*).

Conviction for conspiracy.

(2) In the case of two or more persons conspiring together to infringe any copyright the offenders may be convicted upon an indictment for conspiracy (*l*).

Seizure of pirated music.

(3) In the case of musical works (*m*) reproduced without the consent lawfully given of the owner of the copyright in such musical work—

(a) A court of summary jurisdiction upon the application of the owner of the

(*k*) Copyright Act, 1842, s. 23. See s. 14 (g) and note, *supra*, p. 20.

(*l*) *Rex* v. *Willetts* (1906), Times, January 19th. This would be equally applicable to infringement of artistic copyright.

(*m*) Musical (Summary Proceedings) Copyright Act, 1902.

SECT. 15.

copyright in any musical work may act as follows:

If satisfied by evidence that there is reasonable ground for believing that pirated copies of such musical work are being hawked, carried about, sold or offered for sale, may by order authorise a constable (*n*) to seize such copies without warrant and to bring them before the court, and the court on proof that the copies are pirated, may order them to be destroyed or to be delivered up to the owner of the copyright if he makes application for that delivery.

(b) If any person shall hawk carry about sell or offer for sale any pirated copy of any musical work every such pirated copy may be seized by any constable without warrant on the request in writing of the apparent owner of the copyright in such work, or of his agent thereto authorised in writing, and at the risk of such owner. On seizure of any such copies, they shall be conveyed by such constable before a court of summary jurisdiction, and, on proof that they are infringements of

(*n*) The court may make an order in respect of copies believed to be in a house or other private premises, but such order gives the constable no right of search or forcible entry (*Ex parte Francis* (2) (1903), 88 L. T. 806; Copyright Cases, 1901—1904, p. 57).

copyright, shall be forfeited or destroyed, or otherwise dealt with as the court may think fit (*o*). SECT. 15.

The profits recoverable in an action for infringement are the net profits (*p*). The gross proceeds of the defendant's sales can only be claimed as damages for conversion after a demand in writing under s. 23 (*q*). A claim for delivery up of copies for the use of the plaintiff is also conditional on a demand in writing having been made. Failing such demand the remedy is confined to delivery up for destruction or cancellation (*r*). Profits.

16. (1) A copy of a literary work means a graphic reproduction of the whole of such work or of any substantial part (*s*) thereof even although the matter reproduced has been corrected improved altered or added to by the copyist (*t*). Meaning of copy.

(2) The following are deemed to be copies of the works from which they are derived and are accordingly infringements of the copyright

(*o*) The court will not make any order unless the person from whom the copies have been seized is summoned to appear (*Ex parte Francis* (1), [1903] 1 K. B. 275; Copyright Cases, 1901—1904, p. 38).

(*p*) *Delfe* v. *Delamotte* (1857), 3 K. & J. 581.

(*q*) See s. 13 (g) and note, *supra*. See, however, *Black* v. *Imperial Book Co.* (1904), 8 Ontario L. R. 9.

(*r*) *Hole* v. *Bradbury* (1879), 12 Ch. D. 886; *Warne* v. *Seebohm* (1888), 39 Ch. D. 73, 98; but see *Black* v. *Imperial Book Co.* (1904), 8 Ontario L. R. 9.

(*s*) *Chatterton* v. *Cave* (1875), L. R. 10 C. P. D. 572, 575; 3 A. C. 483. For a complete list and full discussion of the authorities on the question of piracy, see MacGillivray's Law of Copyright, pp. 96—118.

(*t*) *Warne* v. *Seebohm* (1888), 39 Ch. D. 73.

SECT. 16. therein if made or dealt with contrary to the provisions of section 14 :—

Dramatisation. (a) A dramatic version of a non-dramatic work (*u*) ;

(b) A non-dramatic version of a dramatic work (*u*) ;

Abridgment. (c) An abridgment of a work (*y*) ;

Translation. (d) A translation of a work into another language or dialect (*y*) ;

Plot. (e) A novel or other work of fiction which reproduces the plot of a copyright work of fiction (*y*) ;

Arrangement and selection. (f) A scientific legal educational or historical work or the like which reproduces the arrangement or selection of material from a similar work (*y*) ;

Shorthand. (g) A reproduction of a copyright work in shorthand or other similar characters (*z*) ;

(h) A reproduction of a copyright work in Brailetype or other characters adapted for reading by the blind (*z*) ;

(*u*) *Tinsley* v. *Lacy* (1863), 1 Hem. & M. 747.

(*y*) *Moffat and Paige* v. *Gill* (1902), 86 L. T. 465 ; Copyright Cases, 1901—1904, p. 25 (Notes to School Shakespeare), and cases there cited ; *Parry* v. *Moring and Gollanz* (1903), Copyright Cases, 1901—1904, p. 49 (Dorothy Osborne, Letters ; infringement to take the text of another editor).

(*z*) *Nicols* v. *Pitman* (1884), 26 Ch. D. 374.

(i) In the case of a musical work any new adaptation, arrangement or setting of such musical work or of the melody thereof in any notation (*a*). SECT. 16. Adaptations of music.

(3) The following are not deemed to be infringements of copyright:—

(a) A work on the same subject and similar or even identical with a copyright work if produced entirely from other sources (*b*); No monopoly.

(b) A work where the writer has merely adopted the general idea or method of arrangement from a copyright work and has applied it independently to his own material or selection of material (*c*); General idea.

(c) A work containing statements of fact or opinion or the narration of events taken from a copyright work provided the writer has restated them in his own words and has not taken the author's selection or arrangement of material (*d*); Facts and opinions.

(d) A bona fide work of criticism in which various extracts and passages are Criticism.

(*a*) *D'Almaine* v. *Boosey* (1835), 1 Y. & C. 288; Musical (Summary Proceedings) Copyright Act, 1902.

(*b*) *Walter* v. *Lane*, [1900] A. C. 539; *Morris* v. *Wright* (1870), L. R. 5 Ch. 279; *Birel Co.* v. *Welsh* (1904), 131 Fed. Rep. 564; Copyright Cases, 1905, p. 20.

(*c*) *Jarrold* v. *Houlston* (1857), 3 Kay & J. 708; *Pike* v. *Nicholas* (1869), L. R. 5 Ch. App. 251.

(*d*) *Wilson* v. *Lake* (1875), 1 Vict. L. R. Eq. 127; *Springfield* v. *Thame* (1903), 89 L. T. 242; Copyright Cases, 1901—1904, p. 62.

SECT. 16.

reproduced from a copyright work under review (*e*);

Extracts.

(e) A work containing extracts from a copyright work provided the extracts are merely illustrative of the writer's theories opinions or arguments (*f*);

Guide to authorities.

(f) A work where the writer has used a copyright work as a guide to available authorities on any subject without appropriating the author's particular selection of authorities or of matter extracted from those authorities (*g*);

Checking accuracy.

(g) A work where the writer has used a copyright work as a means of checking the accuracy or completeness of his own independent compilation from other sources (*h*);

Mechanical instruments.

(h) A reproduction of a work as part of a mechanical instrument for instance in the case of music on a pianola scroll or gramaphone record (*i*).

Translations and abridgments.

Translations and abridgments have been included as infringements. There is no recent English authority as regards either. Translations have been held in India

(*e*) *Marman* v. *Tegg* (1826), 2 Russ. 385, 393; *Smith* v. *Chatto* (1874), 31 L. T. 775, and cases there cited; *Constable* v. *Martin* (1902), Copyright Cases, 1901—1904, p. 34, Times, December 10th, 1902 (Portrait of De Wet from Three Years' War).

(*f*) *Campbell* v. *Scott* (1842), 11 Sim. 31.

(*g*) *Morris* v. *Wright* (1870), L. R. 5 Ch. App. 279, and cases there cited; *Edward Thompson* v. *American Law Book Co.* (1903), 122 Fed. Rep. 922; Copyright Cases, 1905, p. 16.

(*h*) *Jarrold* v. *Houlston* (1857), 3 Kay & J. 708, 715.

(*i*) *Boosey* v. *Whight*, [1900] 1 Ch. 122.

not to be infringements, and some old English cases are to the effect that a "fair abridgment" will not be considered to be a piracy. These authorities, however, do not appear to be reconcileable with modern decisions on the question of infringement, and, therefore, a contrary opinion has been here adopted (*k*). SECT. 16. NOTE.

17. (1) No action or proceeding in respect of any infringement of copyright in a literary work can be maintained unless the proprietor of the copyright in whose name such action or proceeding is taken is accurately registered in the Book of Registry at Stationers' Hall (*l*) as the proprietor of such copyright. Registration need not be made before the infringement complained of. It is sufficient if made at any time before the initial step in the action or proceeding is taken (*m*). Conditions precedent to action. Registration.

(2) No action or proceeding in respect of copies printed in and imported from a foreign country can be maintained unless before the importation thereof the proprietor has given notice to the Commissioners of Customs as required by the Customs Consolidation Act, 1876 (*n*). Notice to Commissioners of Customs.

(*k*) See this subject fully discussed, MacGillivray's Law of Copyright, pp. 114—118.

(*l*) In the case of works first produced in a British possession, each such possession has power to substitute a local registry to take the place of the registry at Stationer's Hall, and where this has been done, a certificate from such local registry must be obtained (International Copyright Act, 1886, s. 8 (1) (2)).

(*m*) Copyright Act, 1842, s. 24. For registration forms, see Encyclopædia of Forms, Copyright.

(*n*) Sections 42, 44. For forms of notice, see Encyclopædia of Forms, Copyright: *Black* v. *Imperial Book Co.* (1904), 8 Ont. L. R. 9: Copyright Cases, 1901—1904, p. 82.

SECT. 18.

Registration. Original entry.

18. (1) An original entry in the Book of Registry at Stationers' Hall must contain an accurate record of the following particulars (*o*) :—

(a) Date of entry ;

(b) Complete title without addition or alteration under which the work was first published or if published without a title a description with sufficient detail to enable the work to be identified ;

(c) Day on which the work was first published ;

(d) Name and place of abode or business address of the first publisher of the work provided that when the work is first published by a firm it will be sufficient to enter the firm name and business address (*p*) ;

(e) Name and place of abode of the proprietor of the copyright.

May be made by original proprietor or assignee.

(2) When the proprietor claims either as original proprietor or as having acquired a title by operation of law or by assignment in writing other than an entry in the Book of Registry the entry must be an original entry as above provided and in the case of such assignee no

(*o*) Copyright Act, 1842, s. 13. For authorities as to registration, see MacGillivray's Law of Copyright, pp. 46—55.

(*p*) In the text of the Act the requirement is that the name and place of abode of the publisher be inserted, but the form in the schedule contains a space for the name of publisher and place of publication.

reference to the assignment or to any previous proprietor is necessary even although such previous proprietor may originally have been entered.

Assigument effected by entry.

(3) An entry of assignment in the Book of Registry must contain an accurate record of the following particulars (*q*):

(a) Date of entry;

(b) Title of the work as already entered with a reference to the page of the Book of Registry where such entry is recorded;

(c) Name of the assignor;

(d) Name and place of abode of the assignee.

No further registration.

(4) When the proprietor claims as assignee under an entry in the Book of Registry from a previously registered proprietor no further entry is necessary.

Entry by proprietor of collective work.

(5) When the proprietor of an encyclopædia review magazine periodical or other work published in a series of books or parts desires to take proceedings in respect of an infringement of his copyright therein he must enter in the Book of Registry the same particulars as in the case of a separate work save that the title of the entire publication must be recorded as the title and the time of the first publication of

(*q*) Copyright Act, 1842, s. 13, and Sched. No. 5.

SECT. 18.

the first part thereof must be recorded as the time of first publication (*r*).

Entry by contributor to collective work.

(6) If the proprietor of the author's copyright in a contribution first published in an encyclopædia review or magazine desires to take proceedings in respect of an infringement he must make a separate entry in his own name of his particular contribution and he must enter as the time of first publication the time of the first publication of that part in which his contribution is published or where his contribution is published in two or more parts the time of the first publication of that part in which the first part of his contribution is published (*s*).

Entry of successive editions.

(7) Where two or more editions of a work have been published it is necessary for the purpose of taking proceedings in respect of matter contained in the first edition that the first edition should be registered (*t*): it is not necessary to enter any subsequent edition for that purpose: but when a second or subsequent edition contains corrections or additional matter it is necessary for the purpose of taking proceedings in respect of such new matter that the edition in which such new matter is first published should be separately registered with the date of the first publication thereof.

(*r*) Copyright Act, 1842, s. 19.
(*s*) *Johnson* v. *Nevnes*, [1894] 3 Ch. 663.
(*t*) *Thomas* v. *Turner* (1886), 33 Ch. D. 292.

(8) A certified copy of an accurate entry in the Book of Registry is *prima facie* proof of the proprietorship of the copyright as therein recorded (*u*). SECT. 18. Certified copy *prima facie* evidence.

19. No action or proceeding can be maintained in respect of any infringement of copyright in a literary work unless commenced before the expiration of twelve calendar months from the time when the offence complained of was committed (*x*). Limitation of action.

(*u*) Copyright Act, 1842, s. 11; *Black* v. *Imperial Book Co.* (1904), 8 Ont. L. R. 9; Copyright Cases, 1901—1904, p. 82.

(*x*) Copyright Act, 1842, s. 26. But see *Muddock* v. *Blackwood*, [1898] 1 Ch. 58; *Black* v. *Imperial Book Co.* (1904), 8 Ont. L. R. 9. The sale or importation of each unlawful copy is a distinct act of infringement giving rise to a separate cause of action, and the period of limitation begins to run from each unlawful act. Apart from the statutory limitation delay in commencing an action does not disentitle the proprietor of the copyright from obtaining an ultimate remedy, although delay after knowledge of an infringement may disentitle the proprietor from obtaining an interim injunction.

PART III.

PERFORMING RIGHT.

Performing right in dramatic and musical works.

20. A statutory performing right as hereinafter specified subsists throughout the British Dominions in all literary works which are specially adapted for dramatic representation hereinafter called dramatic works and in all musical compositions hereinafter called musical works.

Inception of right and proprietorship.

21. Performing right vests immediately the dramatic or musical work is composed and is the property of the author or if the author has composed such work as the servant or agent of his employer then of such employer.

Duration of performing right.

Unpublished and unperformed.

Published but unperformed.

22. (1) So long as the dramatic or musical work remains unpublished and unperformed in public the performing right endures in perpetuity.

(2) If the work is published but not publicly performed the performing right endures for the term of twenty-eight years from the day of first publication or for the life of the author whichever period shall prove the longer.

Performed.

(3) If the work is publicly performed either (a) before publication or (b) after publication and before the term provided in the last sub-section has expired the performing right endures for the

term of forty-two years from the day of first public performance or for the life of the author and seven years whichever period shall prove the longer. SECT. 22.

(4) If the work is first publicly performed outside the British Dominions the performing right ceases except in so far as the work may be protected under the International Copyright Acts as specified in Part VII. of this Digest (*a*). First performed abroad.

(5) If the work is first published outside the British Dominions but first performed within the British Dominions the performing right is not extinguished but subsists as specified in this section (*b*). First published abroad.

The provisions as to the commencement and duration of dramatic copyright are very perplexing. The dramatic Copyright Act, 1833 (*c*), gives the author of a dramatic piece a perpetual copyright if the piece has not been printed and published, and if the piece has been printed and published a term of twenty-eight years from the date of first publication or the author's life. The Copyright Act, 1842 (*d*), enacts that the provisions of the Dramatic Copyright Act and of the Copyright Act shall apply to the performing right in dramatic and musical work, and that the performing right shall endure for the term provided in the Copyright Act for the duration of copyright in books, save and except that the first public representation of a dramatic piece shall be deemed equivalent in the construction of that Act to the first publication of any book. Confusion between the Copyright Act and Dramatic Copyright Act.

(*a*) *Boucicault* v. *Chatterton* (1876), 5 Ch. D. 267.

(*b*) This is doubtful. It is not covered by any decided case: see MacGillivray's Law of Copyright, p. 129.

(*c*) Section 1. (*d*) Section 20.

SECT. 22. NOTE.

In the case of *Hardacre* v. *Armstrong* (*e*), WILLS, J., decided that the provisions of the later Act as to the duration of the statutory term of performing rights do not in any case cut down the term given by the Dramatic Copyright Act, but merely operate to extend the term in certain cases. This certainly seems a much more satisfactory construction than that adopted by Mr. Scrutton in his Law of Copyright (*f*), where he suggests that no statutory right vests until first performance, and that after first performance the right can in no case endure longer than the term provided by the Copyright Act, 1842. As Mr. Scrutton construes the Acts he has to give the author a common law right of performance if he has published his work before performing it. There is no authority for the proposition that there can be a common law right of any kind after publication in print, and (except for the fact that the decision may have turned partly on the ground that the alleged piracy was an abridgment) the case of *Murray* v. *Elliston* (*g*) is an authority to the contrary. Section 22, sub-sections (2) and (3), in this Digest are based upon the decision of WILLS, J., in *Hardacre* v. *Armstrong* (*h*), a decision which receives some support from the observations of Lord Brampton (HAWKINS, J.), in *Reichardt* v. *Sapte* (*i*). Sub-section (3) involves the proposition that if a dramatic or musical piece is printed and published, and not performed until the term given by the Dramatic Copyright Act to published works has expired, first performance will not revive the right. This view may be contrary to the decision of NORTH, J., in *Chappell* v. *Boosey* (*k*), but it is difficult to avoid the conclusion that the Copyright Act only operates to extend the term given by the Dramatic Copyright Act, and does not revive it when it has expired (*l*).

(*e*) (1905), 21 T. L. R. 189; Copyright Cases, 1905, p. 3.
(*f*) Fourth edition, p. 76.
(*g*) (1822), 5 B. & Ald. 657.
(*h*) (1905), 21 T. L. R. 189; Copyright Cases, 1905, p. 3.
(*i*) [1893] 2 Q. B. 308.
(*k*) (1882), 21 Ch. D. 232.
(*l*) See *Lauri* v. *Renad*, [1892] 3 Ch. 402.

SECT. 23.

23. (1) Performing right in a dramatic or musical work is personal property and passes as such on the death or bankruptcy of the proprietor.

Transmission of performing right by operation of law.

(2) Performing right may be assigned by an instrument in writing (*m*) or if the performing right has been previously registered in the name of the assignor it may be assigned by an entry of assignment in the Book of Registry at Stationers' Hall (*n*) in the same manner as is provided for assignment of copyright.

By assignment.

In writing.

By registration.

(3) The performing right in a dramatic or musical work does not pass with an assignment of the copyright in the work unless such performing right is expressly conveyed or such words are used as to show the intention of the parties that the performing right in the work should be conveyed (*o*).

Does not pass with copyright.

(4) The proprietor can in his own name sue only in respect of infringements committed at a time when he was legal proprietor.

24. It is an infringement of the performing right in a dramatic or musical work to publicly perform or cause to be publicly performed the work or a substantial part thereof (*p*) without

Infringement

(*m*) *Shepherd* v. *Conquest* (1856), 17 C. B. 427; *Hardacre* v. *Armstrong* (1905), 21 T. L. R. 189; Copyright Cases, 1905, p. 3.

(*n*) Copyright Act, 1842, ss. 13, 20, 22; *Hardacre* v. *Armstrong* (1905), 21 T. L. R. 189; Copyright Cases, 1905, p. 3.

(*o*) Copyright Act, 1842, s. 22; *Marsh* v. *Conquest* (1864), 17 C. B. (N. S.) 418; *Ex parte Hutchins* (1879), 4 Q. B. D. 483.

(*p*) See *Chatterton* v. *Cave* (1875), 3 App. Cas. 483; *Nethersole* v. *Bell* (1903), Copyright Cases, 1901—1904, p. 64; Times, July 4th and 31st, 1903.

SECT. 24.

the consent in writing of the proprietor of the performing right (*q*) save that in the case of a musical work (not being part of an opera or stage play performed in a duly licensed theatre) the proprietor tenant or occupier of any place where such unauthorised performance takes place is not liable unless he wilfully causes or permits the performance knowing it to be unauthorised (*r*).

Liability of proprietor or tenant of place of entertainment.

Meaning of publicly performed.

25. (1) A dramatic or musical work is deemed to be publicly performed when it is represented in a place to which the general public are invited and admitted (*s*).

Musical work.

(2) The representation of a musical work means the audible rendering of it or of the air or melody thereof by any voice or instrument.

Dramatic work.

(3) The representation of a dramatic work means the rendering of it by acting.

Recitation.

(4) The mere recitation of a dramatic work without the aid of acting or scenic effect is not a representation thereof.

Remedies for infringement:

26. The proprietor of the performing right in a literary work is entitled to the following remedies in respect of infringement:—

Dramatic work.

(a) In the case of a dramatic work—

(*q*) Dramatic Copyright Act, 1833, s. 2.

(*r*) Copyright (Musical Compositions) Act, 1888, ss. 3, 4; *Moul* v. *Coronet* (1903), Times, February 4th; Copyright Cases, 1901—1904, p. 42.

(*s*) *Duck* v. *Bates* (1884), 13 Q. B. D. 853.

(i) a penalty of 40s. for each unauthorised performance or the infringer's profits or the actual damage sustained by the proprietor whichever be the greater sum (*t*);

(ii) an injunction (*u*);

(iii) a full and reasonable indemnity as to costs (*w*).

Musical work.

(b) In the case of a musical work (not being part of an opera or stage play)—

(i) such penalty or damages as may to the court or judge seem reasonable in the circumstances (*x*);

(ii) an injunction (*y*);

(iii) costs in the discretion of the court (*z*).

Notice of reservation on musical works condition precedent.

27. (1) In the case of musical works which have been published if the copyright and performing right are vested in the same proprietor the performing right is conditional on a notice being printed on the title page of every lawfully published copy to the effect that the right of public representation or performance is reserved (*a*).

Where copyright and performing right are separated.

(2) If the copyright and performing right are vested in different proprietors the performing

(*t*) Dramatic Copyright Act, 1833, s. 2.

(*u*) Equitable jurisdiction of the Court.

(*w*) Dramatic Copyright Act, 1833, s. 2, amended by 5 & 6 Vict. c. 97, s. 2.

(*x*) Copyright (Musical Compositions) Act, 1888, ss. 1, 4.

(*y*) Equitable jurisdiction of the Court.

(*z*) Copyright (Musical Compositions) Act, 1888, s. 2.

(*a*) Copyright (Musical Compositions) Act, 1882, s. 2.

SECT. 27.

right is conditional on the proprietor of the performing right giving to the proprietor of the copyright notice in writing requiring him to print a notice of reservation and if the latter after receiving such notice fails to do so he forfeits the sum of £20 to the proprietor of the performing right (*b*).

Registration in respect of performing rights.

28. (1) A literary work may after first performance thereof in public be registered at Stationers' Hall in respect of performing rights (*c*).

Particulars of entry.

(2) The registration must contain an accurate record of the following particulars (*c*) :—

(a) Date of entry ;

(b) Complete title without addition or alteration under which the work was first performed ;

(c) Name and place of abode of the author ;

(d) Name and place of abode of the proprietor of the performing right ;

(e) Day and place of first public performance ;

(f) Name and place of abode of the person who first performed the work (*d*) ;

(g) If published as a book day of first publication and name and place of abode of the first publisher as required in the registration of copyright.

(*b*) Copyright (Musical Compositions) Act, 1882, s. 3.

(*c*) Copyright Act, 1842, ss. 13, 20.

(*d*) This would be the person who employed and paid the actors and thus was the effective cause of the performance.

SECT. 28.

(3) It is not necessary that the work should be registered in order to entitle the proprietor of the performing right to sue in respect of an infringement thereof but a certified copy of an accurate entry in the Book of Registry is *primâ facie* proof of the proprietorship of the performing right as therein recorded (*e*).

Not a condition precedent to action but *primâ facie* evidence of title.

The forms used at Stationers' Hall are not adapted for the entry of particulars (f) and (g), and the officials there do not consider such entry necessary. In the case of a work not printed and published as a book they are clearly not necessary, but in the case of a dramatic or musical work published as a book the provision for registration is very perplexing, and the entry of these additional particulars is advisable.

Stationers' Hall forms.

29. No action for infringement of performing right can be maintained unless commenced before the expiration of twelve calendar months from the time that the offence complained of was committed (*f*).

Limitation.

(*e*) Copyright Act, 1842, s. 20; *Hardacre* v. *Armstrong* (1905), 21 T. L. R. 189; Copyright Cases, 1905, p. 3.

(*f*) Dramatic Copyright Act, 1842, s. 3. See note (*x*), p. 33, *supra*.

PART IV.

PAINTINGS, DRAWINGS AND PHOTOGRAPHS.

Condition of copyright.

30. Subject to the provisions of this Digest copyright under the Fine Arts Copyright Act, 1862 (*a*), subsists throughout the United Kingdom of Great Britain and Ireland in every original painting drawing or photograph the author of which is a British subject or is resident within the British Dominions at the time the work is made.

Inception and proprietorship.

31. Copyright vests immediately the painting drawing or photograph is made and is the property of the author except when the work is executed for or on behalf of another person for a good or valuable consideration in which case the copyright is the property of the person for or on whose behalf it is so executed unless it is reserved to the author by an instrument in writing signed by such person (*b*).

Photographs.

The ordinary transaction between a professional photographer and his customer results in the copyright vesting in the customer, notwithstanding that by the terms of the contract the property in the negative may vest in the photographer (*c*). Whether the property in the negative

(*a*) Section 1.

(*b*) Fine Arts Copyright Act, 1862, s. 1. When a photograph is taken by an employee who selects or arranges the details of the subject-matter, such person is the author of the photograph, and although his employer may be the proprietor of the copyright he is not the author, and it would be wrong to register him as such (*Nottage* v. *Jackson* (1883), 11 Q. B. D. 627).

(*c*) *Boucas* v. *Cooke*, [1903] 2 K. B. 227; Copyright Cases, 1901—1904, p. 55.

vests in the photographer or not depends on the contract between the parties. The photographers contend that by a custom of the trade the property in the negative vests in the photographer unless there is an express term in the contract to the contrary (*d*). SECT. 31. NOTE.

Even although the property in the negative does vest in the photographer there is an implied term in the contract that he shall not use it in order to multiply copies for his own use or for sale, hire, or exhibition, or otherwise than to the order of his customer (*e*). A customer may proceed against the photographer for breach of this implied term notwithstanding that for want of registration he cannot sue for infringement of his copyright (*e*).

32. (1) Subject to the provisions of this section the copyright in a painting drawing or photograph subsists for the life of the author and seven years after his death (*f*). Duration of copyright: life and seven years;

(2) If the work is first published outside the British Dominions the copyright ceases except in so far as the work may be protected under the provisions of the International Copyright Acts as specified in Part VII. of this Digest (*g*). First publication abroad.

(3) If a painting or drawing or the negative of a photograph is sold or disposed of by the original proprietor thereof the copyright therein ceases unless at the time of such sale or disposition it is expressly reserved to the vendor by an instrument in writing signed by the vendee Sale of picture or negative without writing.

(*d*) As to this difficult question, see *Rotary Photographic Co.* v. *Taber Bas Relief* (1903), British Journal of Photography, Vol. 50, p. 250; *McCosh* v. *Crow* (1903), 40 Sc. L. R. 514; *Gibbon* v. *Pease*, [1905] 1 K. B. 810.

(*e*) *Pollard* v. *Photographic Co.* (1888), 40 Ch. D. 345.

(*f*) Fine Arts Copyright Act, 1862, s. 1.

(*g*) International Copyright Act, 1844, s. 19.

SECT. 32.

or his agent or is expressly assigned to the vendee by an instrument in writing signed by the vendor or his agent (*h*).

Transmission of copyright. By operation of law.

33. (1) Copyright in a painting drawing or photograph is personal property and passes as such by operation of law on the death or bankruptcy of the proprietor (*i*).

By assignment.

(2) The copyright may be assigned by a note or memorandum in writing signed by the proprietor of the copyright or by his agent appointed for that purpose in writing (*k*).

Infringement before transmission.

(3) The proprietor can in his own name sue only in respect of copies made or imported at a time when he was legal proprietor.

Infringement.

34. (1) It is an infringement of the copyright in a painting drawing or photograph to do or cause or procure to be done any of the following acts without the consent of the proprietor (*l*) :—

Copying.

(a) To make any copy of the work for sale hire or distribution ;

Importing or selling.

(b) To import (*m*) into the United Kingdom or sell publish let to hire exhibit or distribute or offer for sale (*n*) hire exhibition

(*h*) Fine Arts Copyright Act, 1862, s. 1.

(*i*) Fine Arts Copyright Act, 1862, s. 3.

(*k*) Fine Arts Copyright Act, 1862, s. 3.

(*l*) Fine Arts Copyright Act, 1862, ss. 6, 11.

(*m*) See, as to what constitutes importation, *Badische Anilin* v. *Hickson*, [1905] 2 Ch. 495 ; *Sacharin Corporation* v. *Reitmeyer*, [1900] 2 Ch. 659.

(*n*) As to meaning of "offer for sale," see *Wolff* v. *Wood* (1903), Copyright Cases, 1901—1904, p. 69 ; Times, October 31st, 1903.

or distribution any copy of the work made without the consent of the proprietor.

(2) A copy of a painting drawing or photograph means a graphic reproduction of the whole or of any substantial part of the work or of the design thereof (*o*).

(3) The following are deemed not to be copies of a painting drawing or photograph :—

Living pictures.

(a) A representation of the work by means of *tableaux vivants* (*p*).

Ideas only.

(b) An artistic work where the mere idea of the subject-matter is taken from the copyright work and the author's peculiar design is not copied (*q*).

Remedies.

35. (1) The proprietor of the copyright in a painting drawing or photograph is entitled to the following remedies in respect of infringement :—

Action for damages.

(a) In the case of any offence specified in section 34—

(i) damages suffered by the proprietor either as an alternative or as supplementary to profits where the damage is greater than the profits (*r*) ;

(ii) profits made by the offender from the sale or hire of works unlawfully copied or imported (*s*) ;

(*o*) As to what is a copy of a picture, see *Hanfstaengl* v. *Smith*, [1905] 1 Ch. 519 ; Copyright Cases, 1905, p. 8.

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

(*q*) *Hanfstaengl* v. *Baines*, [1895] A. C. 20.

(*r*) Fine Arts Copyright Act, 1862, s. 11.

(*s*) Equitable jurisdiction of the Court.

SECT. 35.

(iii) delivery up to the use of the proprietor of all unlawful copies and negatives of photographs or damages for the detention or conversion thereof (*t*);

(iv) delivery up of plates and stereotype for destruction (*u*);

(v) an injunction (*v*).

Penalties.

(b) In the case of any offence (i) specified in s. 34 (1) (a) or (ii) specified in s. 34 (1) (b) if the offence has been committed with knowledge that the copy dealt with was unlawfully made—

(vi) a penalty not exceeding £10 for each copy made or dealt with (*w*).

Detention by Customs.

(c) In the case of unlawful importation—

(vii) detention by an officer of his Majesty's Customs (*x*).

(2) All penalties and copies and negatives forfeited to the use of the proprietor may be recovered either by action or by summary proceeding before two justices having jurisdiction where the party offending resides (*y*).

Penalties *scienter*.

No penalties can be recovered in the case of importing, selling, or exhibiting, unless it be proved that the offender knew that the copies were unlawfully made. It has been held that a copy is not unlawfully made within the meaning of this provision if it was made in a foreign country

(*t*) Fine Arts Copyright Act, 1862, s. 11.

(*u*) Equitable jurisdiction of the Court.

(*v*) Fine Arts Copyright Act, 1862, s. 9. This section expressly provides that the plaintiff shall be entitled to an injunction and to an inspection and account.

(*w*) Fine Arts Copyright Act, 1862, s. 6.

(*x*) Fine Arts Copyright Act, 1862, s. 10.

(*y*) Fine Arts Copyright Act, 1862, s. 8.

which does not recognise the proprietor's copyright, or in this country before the proprietor was registered. Importing, selling, or exhibiting such copies is good ground for an action for damages but not for penalties (*z*). Where a number of copies are dealt with in the same transaction, the importation, sale, or exhibition of each copy is a separate offence, but the court may award a lump sum in respect of penalties, and it is no objection to such award that the penalty works out at less than a farthing per copy (*a*).

NOTE.

Amount.

36. (1) No action or proceeding in respect of any infringement of copyright in a drawing painting or photograph can be maintained unless the proprietor in whose name such action or proceeding is taken is accurately registered in the Book of Registry at Stationers' Hall as the proprietor of such copyright nor can any action or proceeding be maintained by such proprietor in respect of any infringement committed before he was so registered (*b*).

Registration a condition precedent.

(2) When a work is first registered the following particulars must be accurately recorded (*c*) :—

Original entry.

(a) Date of entry ;

(b) Name and place of abode of the author ;

(c) Name and place of abode of the proprietor ;

(d) A short description of the nature and subject of the work sufficient to identify the same (*d*) ;

(*z*) *Tuck* v. *Priester* (1887), 14 Q. B. D. 629.

(*a*) *Hildesheimer* v. *Faulkner*, [1901] 2 Ch. 552.

(*b*) Fine Arts Copyright Act, 1862, s. 4 ; *Holmes* v. *Langfier* (1903). Copyright Cases, 1901—1904, p. 71 ; Times, November 9th, 1903.

(*c*) Fine Arts Copyright Act, 1862, s. 4.

(*d*) As to what is a sufficient description, see *Ex parte Beal* (1868), L. R. 3 Q. B. 387.

SECT. 36.

(e) If desired by the proprietor of the copyright a sketch outline or photograph of the work.

Original entry by assignee.

(3) When a work is registered for the first time it is not necessary to insert the name of any previous proprietor nor to record any previous assignments but once the work has been entered in the Book of Registry all subsequent assignments must be entered (*e*).

Entry of assignment by assignee.

(4) When a work is registered by an assignee under an assignment made subsequent to first registration the following particulars must be accurately recorded (*f*):—

(a) Date of entry;

(b) Date of assignment;

(c) Names of parties to the assignment;

(d) Name and place of abode of the assignee;

(e) Name and place of abode of the author;

(f) Short description of the nature and subject of the work;

(g) If desired by the assignee a sketch outline or photograph of the work.

37. No action for infringement of copyright in a painting drawing or photograph can be maintained unless commenced before the expiration of six years from the time wh[illegible] offence complained of was committed (*g*).

(*e*) *Ex parte Walker* (1869), 10 B. & S. 680.

(*f*) Fine Arts Copyright Act, 1862, s. 4.

(*g*) 16 Jac. 1, c. 16, s. 3; there is no special limitation provided in the Fine Arts Copyright Act, 1862, as in most of the other Copyright Acts. See note (*r*), p. 33, *supra*.

PART V.

COPYRIGHT IN ENGRAVINGS.

Condition of copyright.

38. (1) Subject to the provisions hereinafter specified copyright under the Engravings Copyright Acts (*a*) subsists throughout the United Kingdom of Great Britain and Ireland in every engraving which is first published (*b*) in any part of the British Dominions (*c*) before or simultaneously with its publication elsewhere.

Definition of engraving.

(2) The term "engraving" includes all pictorial representations designs maps charts and plans (*d*) produced by means of engraving etching mezzotint lithography photogravure or other similar process (*e*).

Name and date.

(3) No engraving can be the subject of copyright unless there be engraved on each plate and on every print (*f*)—

(a) the name of the proprietor of the copyright at the time of first publication; and

(*a*) Prints and Engravings Acts, 1734, 1766, 1777, 1836; International Copyright Act, 1852, s. 14.

(*b*) As to meaning of "published," see section 6 of this Digest.

(*c*) Engraving Copyright Act, 1734; Prints and Engravings Copyright Act, 1836; International Copyright Act, 1886, s. 8 (1). It is doubtful whether an engraving must not also be designed and executed within the British Dominions, or by a British subject, in order to acquire copyright (*Page* v. *Townsend* (1832), 5 Sim. 395). See MacGillivray's Law of Copyright, p. 150.

(*d*) These are also protected as literary works (Copyright Act, 1842, s. 2). See MacGillivray's Law of Copyright, pp. 148—150.

(*e*) Engraving Copyright Act, 1734, s. 1; Engraving Copyright Act, 1766, s. 1; International Copyright Act, 1852, s. 14.

(*f*) Engraving Copyright Act, 1734, s. 1.

SECT. 38.

(b) the day on which the engraving was first published.

First published outside the British Dominions.

(4) If an engraving is first published outside the British Dominions it does not acquire copyright in any part of the British Dominions except in so far as the work may be protected under the provisions of the International Copyright Acts as specified in Part VII. of this Digest (*g*).

Name of proprietor and date of publication.

The inscription of name and date is a condition precedent to the acquisition of copyright, and not like registration in the case of books and pictures—merely a condition precedent to action (*h*). If the copyright has been assigned after publication it is doubtful whether the assignee should affix his own name or that of the first proprietor. Probably the first proprietor is correct (*i*). The firm name has been held to be sufficient where the copyright was the property of a partnership (*k*).

Duration of copyright.

39. Copyright in an engraving subsists for twenty-eight years from the day of first publication (*l*).

Original proprietor.

Engraver.

40. The actual engraver is the first proprietor of the copyright in an engraving unless he has been employed to execute the engraving from the design of his employer or from some picture

(*g*) International Copyright Act, 1844, s. 19.

(*h*) See MacGillivray's Law of Copyright, p. 151, and cases there cited.

(*i*) See MacGillivray's Law of Copyright, p. 151.

(*k*) *Rock* v. *Lazarus* (1872), L. R. 15 Eq. 104.

(*l*) Engraving Copyright Act, 1766, s. 7.

drawing model or sculpture already in existence in which case the employer is the first proprietor (*m*). SECT. 40. Employer.

There is no provision in the Engraving Copyright Acts as there is in the Literary Copyright Act for assignment of the authors' rights before publication. The Acts vest the copyright in the engraver or, in certain circumstances as specified in the above section, in the employer of the engraver. The result seems to be that, even although the engraver has executed the work as the servant or agent of another or has assigned all his interest in the work before publication, he will on publication become the legal owner, and his employer or assignee, as the equitable owner, will be entitled to sue in the engraver's name or to demand an assignment in writing. Assignment before publication.

41. (1) Copyright in an engraving is personal property and passes as such by operation of law on the death or bankruptcy of the proprietor. Transmission of copyright by operation of law.

(2) The copyright may be assigned by an instrument in writing signed by the proprietor with his own hand in the presence of and attested by two or more credible witnesses (*n*) or by a transfer of a plate or block with an express assignment either in writing or by word of mouth (*o*). By assignment.

(3) The proprietor can in his own name sue only in respect of copies made or imported at a time when he was legal proprietor. Infringement before transmission.

(*m*) Engraving Copyright Act, 1734, s. 1 ; Engraving Copyright Act, 1766, ss. 1, 2.

(*n*) Engraving Copyright Act, 1734, s. 1 ; Prints Copyright Act, 1777 ; Prints and Engravings Copyright Act, 1836, s. 2.

(*o*) Engraving Copyright Act, 1734, s. 2.

SECT. 42.

Infringement.

42. (1) It is an infringement of the copyright in an engraving to do or cause or procure to be done any of the following acts without either (i) the express consent of the proprietor first had and obtained in writing signed by him with his own hand in the presence of and attested by two or more credible witnesses or (ii) having purchased a plate from the proprietor for the purpose of printing copies with his consent (*p*) :—

Copying. (a) To make any copy of the work ;

Importing. (b) To import any copy of the work for sale ;

Selling. (c) To publish sell or expose for sale or in any other manner dispose of any copy unlawfully made contrary to the provision of sub-section (a) of this section.

Definition of copy. (2) A copy of an engraving is any engraving drawing painting photograph or other graphic production in which the effect of the original design or workmanship of the engraver or his employer or any substantial part thereof is reproduced (*q*).

Unauthorised print from lawful plate. (3) A copy of an engraving if struck from a lawfully made plate is not deemed to be an infringement of the proprietor's copyright: but the proprietor may proceed against any person

(*p*) Engraving Copyright Act, 1734, ss. 1, 2 ; Prints Copyright Act, 1777.

(*q*) Engraving Copyright Act, 1734, s. 1 ; Prints Copyright Act, 1777. See MacGillivray's Law of Copyright, pp. 157—159, and cases there cited.

who has made copies from the plate without his consent for breach of contract or confidence (*r*). SECT. 42.

43. (1) The proprietor of the copyright in an engraving has the following remedies in respect of infringement :— Remedies.

(a) In the case of any offence specified in section 42 an action for (*s*)— Action for damages.

(i) damages suffered by the proprietor either as an alternative or as supplementary to profits where the damage is greater than the profits (*s*) ;

(ii) profits made by the offender from the sale or hire of matter unlawfully copied or imported (*t*) ;

(iii) delivery up of copies and plates in the possession of the infringer for destruction or cancellation (*t*) ;

(iv) an injunction (*t*) ;

(v) a full and reasonable indemnity in respect of costs (*u*).

(b) In the case of (i) copying for sale ; (ii) importing for sale ; (iii) publishing selling Penalties.

(*r*) *Murray* v. *Heath* (1831), 1 B. & Ad. 804.

(*s*) Prints Copyright Act, 1777 ; Prints and Engravings Copyright Act, 1836.

(*t*) Equitable jurisdiction of the court.

(*u*) Prints Copyright Act, 1777 ; Prints and Engravings Copyright Act, 1836, amended by 5 & 6 Vict. c. 97, s. 2.

SECT. 43. or imposing for sale with knowledge that the copies were unlawfully made—

(vi) a penalty of five shillings for every print which shall be found in the possession of the offender (*w*).

(2) In all cases where the offender is liable to penalties these and the delivery up of copies and plates for destruction may be recovered either by action or by summary procedure before two justices having jurisdiction where the party offending resides (*x*).

Limitation. **44.** (1) No action or proceeding for penalties in respect of any infringement of copyright in an engraving can be maintained unless commenced before the expiration of three months from the discovery of the offence complained of and before the expiration of six months from the time when it was committed (*y*).

(2) No action or proceeding in respect of any infringement of copyright in an engraving can be maintained unless commenced before the expiration of six years from the time when the offence complained of was committed (*z*).

(*w*) Engraving Copyright Act, 1734; Engraving Copyright Act, 1766.

(*x*) Fine Arts Copyright Act, 1862, s. 8.

(*y*) Engraving Copyright Act, 1734, s. 3; Engraving Copyright Act, 1766, s. 6.

(*z*) 16 Jac. 1, c. 16, s. 3; except in respect of penalties no special limitation is provided in the Engravings Acts. See note (*x*), p. 33, *supra*.

PART VI.

COPYRIGHT IN SCULPTURE.

Condition of copyright.

45. (1) Subject to the provisions hereinafter specified copyright under the Sculpture Copyright Act, 1814 (*a*), subsists throughout the United Kingdom of Great Britain and Ireland in every sculpture published (*b*) within the British Dominions before or simultaneously with its publication elsewhere.

Definition of sculpture.

(2) Sculpture includes any model or cast or any *alto* or *basso relievo* of any subject being matter of invention in sculpture (*c*).

Name and date.

(3) No sculpture can be the subject of copyright unless there be inscribed on every published copy thereof—

(a) the name of the proprietor of the copyright at the time of first publication; and

(b) the day on which the sculpture was first published (*d*).

First published outside British Dominions.

(4) If a sculpture is first published outside the British Dominions it does not acquire copyright

(*a*) Sculpture Copyright Act, 1814.

(*b*) As with engravings, it is doubtful whether the Act extends to sculpture unless it is modelled and executed within the British Dominions or by a British subject.

(*c*) Casts of fruits and leaves for instruction in drawing (*Caproni* v. *Alberti* (1892), 40 W. R. 235), and models for toy soldiers (*Britain* v. *Hanks* (1902), 86 L. T. 765; Copyright Cases, 1901—1904, p. 21) have been protected.

(*d*) Sculpture Copyright Act, 1814, s. 1.

SECT. 45.

in any part of the British Dominions except in so far as the work may be protected under the provisions of the International Copyright Acts as specified in Part VII. of this Digest (*e*).

Date on sculpture.

The Act merely provides that "the date" shall be put on. Probably this means the date of publication (*f*), as it is from first publication that the term of copyright is to be measured. WRIGHT, J., held that where the date put on was a few days before publication it was sufficient as the only effect would be to shorten the proprietor's term of copyright (*g*).

Duration of copyright.

46. Copyright in sculpture subsists for fourteen years from the date of first publication with a further period of fourteen years if at the expiration of the first term the person who originally made or caused the work to be made is alive and has not parted with the copyright (*h*).

Original proprietor.
Sculptor.
Employer.

47. The sculptor is the first proprietor of the copyright in sculpture unless he has been employed to execute the sculpture in which case the employer is the first proprietor (*i*).

Transmission of copyright by operation of law.

48. (1) Copyright in sculpture is personal property and passes as such by operation of law on the death or bankruptcy of the proprietor.

(*e*) International Copyright Act, 1844, s. 19.

(*f*) Sculpture Copyright Act, 1798. See International Copyright Act, 1844, s. 1.

(*g*) *Britain* v. *Hanks* (1902), 86 L. T. 765; Copyright Cases, 1901—1904, p. 21.

(*h*) Sculpture Copyright Act, 1814, ss. 2, 6.

(*i*) Sculpture Copyright Act, 1814, s. 1. There is no provision for a legal assignment of the sculptor's rights before publication.

(2) The copyright may be assigned by deed signed and sealed by the proprietor in the presence of and attested by two or more credible witnesses (*k*). SECT. 48. By assignment.

(3) The proprietor can in his own name sue only in respect of copies made or imported at a time when he was legal proprietor. Infringement before transmission.

If the original proprietor of the copyright has assigned his right during the first term of fourteen years this assignment will probably convey the right for the first term only, and for the second term of fourteen years the copyright will probably revest in the original proprietor if he is alive at the commencement thereof. This appears to be the true construction of the statute (*l*). The proprietor, however, may no doubt expressly or impliedly convey his prospective right to the second term, and if he does so his assignee will be the equitable proprietor entitled to a legal assignment when the second term vests. Effect of assignment.

49. (1) It is an infringement of the copyright in sculpture to do or cause or procure to be done any of the following acts without the consent of the proprietor (*m*): Infringement.

(a) To make any copy of the work; Copying.

(b) To import any copy of the work which has been unlawfully made; Importing.

(*k*) Sculpture Copyright Act, 1814, s. 4.

(*l*) Sculpture Copyright Act, 1814, ss. 4, 6.

(*m*) Sculpture Copyright Act, 1814, s. 3.

SECT. 49.

Selling.

(c) To expose for sale (*n*) or otherwise dispose of any copy of the work which has been unlawfully made.

Meaning of copy.

(2) A copy of sculpture means any other sculpture whereby the matter of invention in the original work is reproduced or imitated in any way (*o*).

Remedies.

50. The proprietor of the copyright in sculpture is entitled to the following remedies in respect of any infringement :—

(i) damages suffered by the proprietor either as an alternative or as supplementary to profits where the damage is greater than the profits (*o*) ;

(ii) profits made by the infringer from the sale or hire of matter unlawfully copied or imported (*p*) ;

(iii) delivery up of copies and casts in the possession of the infringer for destruction (*p*) ;

(iv) an injunction (*p*) ;

(v) a full and reasonable indemnity as to costs (*q*).

(*n*) For meaning of "expose for sale," see *Britain* v. *Kennedy* (1902), 19 T. L. R. 122 ; Copyright Cases, 1901—1904, p. 35.

(*o*) Sculpture Copyright Act, 1814, s. 3.

(*p*) Equitable jurisdiction of the court.

(*q*) Sculpture Copyright Act, 1814, s. 3, amended by 5 & 6 Vict. c. 97, s. 2.

SECT. 51.

Limitation.

51. No action or proceeding in respect of any infringement of copyright in sculpture can be maintained unless commenced before the expiration of six months from the discovery of the offence complained of and before the expiration of six years from the time when it was committed (*r*).

(*r*) Sculpture Copyright Act, 1814, s. 5; 16 Jac. 1, c. 16, s. 3.

PART VII.

COPYRIGHT IN FOREIGN WORKS.

Works produced in countries of the Copyright Union.

52. (1) Subject to the limitations specified in the present Part of this Digest copyright or performing right under the International Copyright Acts subsists throughout the British Dominions (*a*) in every literary or artistic work (*b*) first produced in any of the following countries (*c*) viz. : Germany, Belgium, Spain, France, Haiti, Italy, Switzerland, Tunis, Monaco, Luxembourg, Japan, Norway, Sweden, Denmark and the Faroe Isles (which together with the British Dominions are hereinafter called the countries of the Copyright Union (*d*)), and Austria-Hungary (*e*).

(*a*) International Copyright Act, 1886, s. 9. Works first produced in Austria-Hungary are not protected in India, Canada, Cape Colony, or New South Wales (Orders in Council, April 30th, 1894 ; February 2nd, 1895).

(*b*) International Copyright Act, 1844, s. 2 ; Berne, Art. IV.

(*c*) The author may be a native of, and resident in, a foreign country outside the Union (Berne, Art. III. ; Paris, Art. I. (2)).

(*d*) These are the present signatories of the Berne Convention, 1886. All but Norway and Sweden are also signatories of the amending Convention known as the Additional Act of Paris, 1896. For the full text of these Conventions, as well as for the text of the International Copyright Acts, see MacGillivray's Law of Copyright, Appendix.

(*e*) Austria-Hungary is not a signatory of the Berne Convention, but there is between Great Britain and that country a separate Convention under which similar rights are enjoyed (Orders in Council, April 30th, 1894 ; February 2nd, 1895).

SECT. 52.

(2) The proprietor of copyright or performing right under the International Copyright Acts acquires the same rights and for the same term as he would have acquired in the United Kingdom if the work had been first produced there: but subject to the limitation that he cannot (except in the case of translating rights) acquire any greater right or longer term of protection than he enjoys in the country where the work was first produced (*f*).

Acquire no greater right than in country of origin.

(3) The proprietor of copyright or performing right in a literary work under the International Copyright Acts acquires as incidental to his copyright or performing right and for the full term thereof the exclusive right of publishing or performing English translations of the work (notwithstanding that he may not have the same or any exclusive right of translating the work by the law of the country where it was first produced) provided however that if he does not publish or perform an English translation within ten years from the end of the year in which the work was first produced his right to prevent the production in or importation into the British Dominions of an unauthorised English translation shall cease (*g*).

Translating right.

(*f*) International Copyright Act, 1844, ss. 2—5; International Copyright Act, 1886, s. 2 (3); Order, November 28th, 1887, s. 3; Berne, Art. II.; Paris, Art. I. (1).

(*g*) International Copyright Act, 1886, s. 5; this section is not limited by the provisions of s. 2 (5) of the same Act; Berne, Art. V.; Paris, Art. I. (3). The translation must be full and substantial (*Wood* v. *Chart* (1870), L. R. 10 Eq. 193).

SECT. 52.

Meaning of produced.

(4) "Produced" means "published" in the case of copyright in literary or artistic works and means "performed" in the case of performing right in dramatic or musical works (*h*).

Simultaneous publication.

(5) If a work is produced simultaneously in two or more countries of the Copyright Union it is deemed to have been first produced in that one of those countries in which the term of protection is shortest (*i*).

The law relating to the protection of foreign works throughout the British Dominions is contained in the International Copyright Acts, 1844, 1852, 1875, and 1886, and in the Orders in Council made in pursuance of these Acts. By these Orders in Council the privilege of protection throughout the British Dominions is extended to works first produced in those foreign countries which are signatories of the International Agreement called the Berne Convention, 1886 (amended by the Additional Act of Paris, 1896), and which grant reciprocal rights to the works of British subjects in their country (*k*). The Berne Convention is not to be read as if it were an Act of Parliament of the United Kingdom, and it can only have the force of law in this country in so far as it is directly or indirectly reproduced or incorporated into the International Copyright Acts. The Order in Council, November 28th, 1887, orders that "The Convention . . . shall from the commencement of this Order have full effect throughout her Majesty's dominions, and all persons are enjoined to observe the same"; but, in so far as this

(*h*) International Copyright Act, 1844, ss. 2, 5; International Copyright Act, 1886, s. 11; *Hanfstaengl* v. *American Tobacco Co.*, [1895] 1 Q. B. 347.

(*i*) International Copyright Act, 1886, s. 3 (1); Berne, Art. II.; Order, November 28th, 1887, s. 5.

(*k*) For the full text of all these Acts, Conventions and Orders, see MacGillivray's Law of Copyright, Appendix.

SECT. 52.

NOTE.

purports to set up the Convention as the law of the realm, it is clearly *ultra vires* of the authority given by the International Copyright Acts. The clause quoted above was probably never intended to be of any legal value, but was merely introduced for the purpose of incorporating the text of the Convention, and making known throughout the Empire the rights which we had by treaty promised to grant to foreign works. The Acts of Parliament and the Orders in Council, in so far as they do not exceed the authority of the legislature with respect to foreign works, are the only provisions which have the force of law; but, at the same time, it is not to be forgotten in construing the International Copyright Act, 1886, that that Act was passed in view of the Convention, and with the draft of the Convention in the hands of the parliamentary draftsman, and, therefore, the Act of Parliament will always be construed as far as possible so as to give effect to our treaty obligations (*l*).

No registration or delivery of copies in United Kingdom.

53. (1) The provisions contained in the Copyright Act, 1842, and the Fine Arts Copyright Act, 1862, as to the registration and delivery of copies to the British Museum and other libraries do not apply to works protected under the International Copyright Acts and no registration or delivery of copies within the British Dominions is necessary in order to entitle the proprietor of the copyright to sue in respect of infringement (*m*).

Name and date on engraving and sculpture.

(2) Copyright in engravings and sculpture under the International Copyright Acts is conditional upon there being inscribed on every published copy thereof (whether published in the

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

(*m*) International Copyright Act, 1844, s. 3; International Copyright Act, 1886, s. 4; *Hanfstaengl* v. *American Tobacco Co.*, [1895] 1 Q. B. 347.

SECT. 53.

British Dominions or elsewhere) the name of the proprietor and the date of first publication as specified in Parts V. and VI. of this Digest (*n*).

Notice of reservation in musical works.

(3) Performing right in musical works under the International Copyright Acts is conditional upon a notice of reservation of performing right being printed on every published copy (whether published in the British Dominions or elsewhere) as specified in Part III. of this Digest (*o*).

Notice to Commissioners of Customs.

(4) No action or proceeding in respect of the importation or sale of unlawfully imported copies of literary works protected under the International Copyright Acts can be maintained unless before the importation thereof the proprietor has given notice to the Commissioners of Customs as required by the Revenue Act, 1889, and the Customs Consolidation Act, 1876 (*p*).

Formalities in country of origin must be observed.

(5) In order to entitle any work to protection under the International Copyright Acts it must be shown to have complied with any formalities such as registration delivery of copies or notice of reservation which are conditions precedent to the enjoyment of copyright or performing right in the country where it was first produced (*q*).

(*n*) *Aranzo* v. *Mudie* (1854), 10 Ex. 203 ; *Fishburn* v. *Hollingshead*, [1891] 2 Ch. 371.

(*o*) Berne, Art. IX.

(*p*) Revenue Act, 1889, s. 1 ; Customs Consolidation Act, 1876, s. 44 ; Berne, Art. XII. ; Paris, Art. I. (5) ; *Black* v. *Imperial Book Co.* (1904), 8 Ontario L. R. 9 ; Copyright Cases, 1901—1904, p. 82 ; Encyclopædia of Forms, Copyright.

(*q*) International Copyright Act, 1886, s. 2 (3) ; Berne, Art. II.

54. For the purpose of protection within the British Dominions the following are deemed to be the proprietors of the copyright or performing right (*r*) :— Title to sue.

(a) In the case of works first produced in the author's lifetime the author or any person claiming from him by assignment or operation of law whether his title is derived before or after first production ; Author or assignee.

(b) In the case of works first produced after the death of the author the proprietor of the author's manuscript at the time of first production or any person claiming from such proprietor by assignment or operation of law ; Posthumous works.

(c) In the case of encyclopædias reviews magazines periodical works or works published in a series of books or parts the proprietor publisher or conductor thereof ; Collective works.

(d) In the case of anonymous or pseudonymous works the publisher whose name is indicated on the work (*s*) ; Anonymous works.

(e) In the case of works first produced in Norway or Sweden by an author who is not a subject or citizen of any of the Norway and Sweden.

(*r*) International Copyright Act, 1886, s. 11. The title of the proprietor may be proved by an extract from a foreign register, duly authenticated, as provided by International Copyright Act, 1886, s. 7 ; Berne, Art. XI.

(*s*) Berne. Art. XI. There is no provision in the International Acts for the anonymous or pseudonymous author, but probably the publisher would have a good title to sue as a person "claiming through the author" (International Copyright Act, 1886, s. 11).

SECT. 54.

countries of the Copyright Union the publisher alone is entitled to take proceedings in the British Dominions for the protection of the copyright or performing right therein (*t*).

Right to reprint from foreign newspapers

55. If the source be acknowledged the following may be reprinted from foreign newspapers or magazines without infringing the copyright under the International Copyright Acts (*u*):

(a) Articles of political discussion;

(b) Other articles unless there is a notice printed in the newspaper or periodical reserving the copyright or translating right.

Remedies.

56. The proprietor of the copyright or performing right in a work protected under the International Copyright Acts enjoys the same remedies (*x*) in respect of infringement within the British Dominions as he would have enjoyed in the United Kingdom if the work had been first produced there notwithstanding that he may not be entitled to similar remedies for infringement in the country where the work was first produced (*y*).

(*t*) International Copyright Act, 1886, s. 2 (2); Orders, November 28th, 1887, s. 4; March 7th, 1898; Berne, Art. III.; Paris, Arts. I., III.

(*u*) International Copyright Act, 1852, s. 7; Berne, Art. VII.; Paris, I. (4).

(*x*) International Copyright Act, 1844, ss. 3—5. See, as to unlawful importation, International Copyright Acts, 1844, s. 10; 1852, s. 9; Revenue Act, 1889, s. 1; and *Pitt Pitts* v. *George*, [1896] 2 Ch. 866.

(*y*) *Baschet* v. *Illustrated Standard*, [1900] 1 Ch. 73.

PART VIII.

COPYRIGHT IN THE BRITISH POSSESSIONS.

Copyright Act 1842, in force throughout the Empire.

57. (1) In the case of copyright in literary works and performing right in dramatic and musical works the English Copyright Act, 1842, extends the protection specified in Parts II. and III. of this Digest to every British possession (*a*).

Power of local legislatures.

(2) The legislature of each British possession has power to legislate respecting the copyright and performing right within the limits of such possession of works first produced in that possession and to that extent may repeal the provisions of the English Copyright Act, 1842 (*b*): but no British possession has power to affect prejudicially the rights enjoyed in such possession under the English Copyright Act, 1842, by a proprietor of copyright or performing right in respect of a work first produced in the United Kingdom or in some other British possession and such proprietor can accordingly sue for infringement of

(*a*) In some of the smaller British possessions foreign reprints may be imported without the consent of the copyright proprietor, and subject only to a nominal collection of import duties for his benefit. This does not now apply to Canada, Australia, or Cape Colony. See Colonial Copyright Act, 1847; MacGillivray's Law of Copyright, pp. 186, 187; and *Morang* v. *Publishers' Syndicate* (1900), 32 Ontario Rep. 393.

(*b*) International Copyright Act, 1886, s. 8 (4).

SECT. 57. his copyright although he has not complied with the conditions of some local Act or Ordinance (*c*).

Fine Arts Act, 1862, not in force throughout the Empire.

58. In the case of copyright in artistic works the English Copyright Acts do not extend their protection beyond the United Kingdom and therefore a proprietor of copyright in an artistic work first produced in the United Kingdom or in any British possession can only acquire copyright in a British Possession by reason of some local Act or Ordinance (*d*).

59. In the case of copyright or performing right under the International Copyright Acts copyright subsists throughout the British possessions in the same manner as if each British possession were part of the United Kingdom (*e*).

In the International Copyright Act, 1886, the legislature apparently overlooked the fact that whereas a book first published in the United Kingdom obtained copyright throughout the Empire an artistic work so published was not in the same fortunate position, and no attempt was made to remedy this defect. The result is that an artistic work first published in some foreign country of the Copyright Union obtains protection in every British possession, whereas an artistic work first published in the United Kingdom can only be protected in a British possession by virtue of some local Act.

(*c*) *Smiles* v. *Belford* (1876), 1 Tupp. App. Rep. 436.

(*d*) *Graves* v. *Gorrie*. [1903] A. C. 496; Copyright Cases, 1901—1904, p. 60.

(*e*) International Copyright Act, 1886, s. 9.

SECT. 59.

NOTE.

No attempt is made to deal with Colonial legislation in this Digest, but it may be mentioned that Canada extends the protection of her local legislation to the works of persons domiciled in any part of the British Dominions or in any country of the Copyright Union on condition that such works are produced or reproduced in Canada and that certain provisions as to registration, deposit of copies and copyright notice are complied with. In 1900 the Canadians passed an Act whereby in the case of any book published in some part of the British Dominions other than Canada and copyrighted in Canada, and in respect of which the owner of the copyright has granted a license for a Canadian edition, the licensee may obtain an order prohibiting the importation of copies printed outside Canada. The Commonwealth of Australia passed an Act in December, 1905, the provisions of which are extended to all works now protected in Australia under Imperial legislation provided that such works are registered in Australia.

PART IX.

COPYRIGHT IN FOREIGN COUNTRIES.

In countries of the Copyright Union.

60. The proprietor of the copyright or performing right in a literary or artistic work first produced within the British Dominions acquires copyright or performing right in all the countries of the Copyright Union (*a*) and in Austria-Hungary provided the work has complied with all the formalities and conditions precedent to protection required by the law of this country (*b*).

In other countries.

61. In other countries copyright can only be acquired by complying with the conditions required by the law of each particular country (*c*).

In the United States of America.

62. Copyright in the United States of America (*d*) may be acquired if the following conditions are complied with:

Manufacturing clause.

(1) In the case of books (not being musical or dramatic works) chromo-lithographs lithographs and photographs the work must be printed from type set within the limits of the

(*a*) See p. 60, *supra*.

(*b*) No remedy can be obtained in the courts of this country in respect of an infringement in a foreign country, even although perpetrated by a British subject resident in England (*Morocco Bound Syndicate* v. *Harris*, [1895] 1 Ch. 534).

(*c*) Although Egypt is not a party to any copyright convention the mixed tribunals of that country protect all literary or artistic works which are protected in their country of origin, and no publication, registration, or other formality in Egypt is required. See The Author, Vol. XVI., p. 136.

(*d*) See the full text of the United States Copyright Acts reprinted in MacGillivray's Law of Copyright, Appendix. The term of copyright is twenty-eight years, with a right of renewal for fourteen years if the author, his widow or children, be then alive (Revised Statutes, U.S.A., ss. 4953, 4954).

United States or from plates made therefrom or from negatives or drawings on stone made within the United States or from transfers made therefrom (*e*). SECT. 62.

(2) In the case of any literary or artistic work the proprietor must on or before the day of first publication in the United States or elsewhere 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 (*e*) :— Registration.

(a) 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 model or design for a work of the fine arts for which he desires a copyright (*f*) ; Deposit of title.

(b) Two copies of such copyright book map chart dramatic or musical composition engraving chromo cut print or photograph or in the case of a painting drawing statue statuary or model or design for a work of the fine arts a photograph of same (*e*). Deposit of two copies or photograph.

(3) In the case of any literary or artistic work every published copy of the work must bear one or other of the following notices (*f*) Copyright notice.

"Copyright 19 , by A.B." ; or

(*e*) Revised Statutes, U.S.A., s. 4956.

(*f*) Revised Statutes, U.S.A., s. 4957 ; Act of Congress, June 18th, 1874 ; *Merriam Co.* v. *United Dictionary Co.* (1906), Circuit Court of Appeals, April 10, 1906 (Decision that copies printed in England from stereotype made in the United States

SECT. 62.

"Entered according to Act of Congress in the year 19 , by A.B. in the office of the Librarian of Congress at Washington."

Position of notice.

The notice must be placed as follows:—

In the case of books on the title page or page immediately following;

In the case of 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 is usual for the placing of manufacturers' merchants' and trade marks thereon;

In the case of other works including musical compositions photographs pictures and engravings upon some visible portion thereof, or of the substance upon which the same shall be mounted.

Prohibition against importation.

63. Where a book (not being a musical or dramatic work) has been copyrighted in the United States all copies of the book except such as have been printed from type set in the United States are absolutely prohibited from being imported into the United States whether with or without the consent of the proprietor of the copyright (*g*).

need not have the copyright notice): *American Press* v. *Daily Story Publishing Co.* (1902), 120 Fed. Rep. 776: Copyright Cases, 1901—1904, p. 28 (Accidental omission by licensee).

(*g*) Revised Statutes, U.S.A., s. 4956. There are a few exceptions, such as copies for private use. See MacGillivray's Law of Copyright, p. 294.

APPENDIX.

COPYRIGHT ACT, 1842.

(5 & 6 Vict. c. 45.)

AN ACT to amend the Law of Copyright [1st July 1842.]

WHEREAS it is expedient to amend the law relating to copyright, and to afford greater encouragement to the production of literary works of lasting benefit to the world: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from the passing of this Act an Act passed in the eighth year of the reign of her Majesty Queen Anne, Repeal of former Acts; *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.*

8 Anne, c. 19.

41 Geo. 3, c. 107.

54 Geo. 3, c. 156.

2. *And be it enacted, that* in the construction of this Act the word "book" shall be construed to mean and include every volume, part or division of a volume, pamphlet, sheet of letter press, sheet of Interpretation of Act.

APPENDIX.

music, map, chart, or plan separately published; *that* the words "dramatic piece" shall be construed to mean and include every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment; *that* the word "copyright" shall be construed to mean the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied; *that* the words "personal representative" shall be construed to mean and include every executor, administrator, and next of kin entitled to administration; *that* the word "assigns" shall be construed to mean and include every person in whom the interest of an author in copyright shall be vested, whether derived from such author before or after the publication of any book, and whether acquired by sale, gift, bequest, or by operation of law, or otherwise; *that* the words "British dominions" shall be construed to mean and include all parts of the United Kingdom of Great Britain and Ireland, the islands of Jersey and Guernsey, all parts of the East and West Indies, and all the colonies, settlements, and possessions of the Crown which now are or hereafter may be acquired; and *that* whenever in this Act, in describing any person, matter, or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and to be applied to several persons as well as one person, and females as well as males, and several matters or things as well as one matter or thing, respectively, unless there shall be something in the subject or context repugnant to such construction.

Endurance of term of copyright in any book hereafter to be published in the lifetime of the author; if published after the author's death.

3. *And be it enacted, that* the copyright in every book which shall after the passing of this Act be published in the lifetime of its author shall endure for the natural life of such author, and for the further term of seven years, commencing at the time of his death, and shall be the property of such author and his assigns: Provided always, that if the said term of seven years shall expire before the end of forty-two years from the first publication of such book, the copyright shall in that case endure for such period of forty-two years; and that the copyright in every book which shall be published after the death of its author shall endure for the term of forty-two years from the first publication thereof, and shall be the property of the proprietor of the author's manuscript from which such book shall be first published, and his assigns.

4. [*Deals with books first published before* 1842.]

5. *And whereas it is expedient to provide against the suppression of books] of importance to the public; be it enacted, that* it shall be lawful for the Judicial Committee of Her Majesty's Privy Council, on complaint made to them that the proprietor of the copyright in any book after the death of its author has refused to republish or to allow the republication of the same, and that by reason of such refusal such book may be withheld from the public, to grant a licence to such complainant to publish such book, in such manner and subject to such conditions as they may think fit; and *that* it shall be lawful for such complainant to publish such book according to such licence.

Judicial Committee of the Privy Council may licence the republication of books which the proprietor refuses to republish after death of the author.

6. *And be it enacted, that* a printed copy of the whole of every book which shall be published after the passing of this Act, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same shall be published, and also of any second or subsequent edition which shall be so published with any additions or alterations, whether the same shall be in letter press, or in 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.

Copies of books published after the passing of this Act, and of all subsequent editions, to be delivered within certain times at the British Museum.

7. *And be it enacted, that* every copy of any book which under the provisions of this Act ought to be delivered as aforesaid shall be delivered at the British Museum between the hours of ten in the forenoon and four in the afternoon 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

Mode of delivering at the British Museum.

APPENDIX.

person receiving such copy is hereby required to give a receipt in writing for the same; and such delivery shall to all intents and purposes be deemed to be good and sufficient delivery under the provisions of this Act.

A copy of every book to be delivered within a month after demand to the officer of the Stationers Company, for the following libraries: the Bodleian at Oxford, the Public Library at Cambridge, the Faculty of Advocates at Edinburgh, and that of Trinity College, Dublin.

8. *And be it enacted, that* a copy of the whole of every book, and of any second or subsequent edition of every book containing additions and alterations, together with all maps and prints belonging thereto, which after the passing of this Act shall be published, shall, on demand thereof in writing, left at the place of abode of the publisher thereof at any time within twelve months next after the publication thereof, under the hand of the officer of the Company of Stationers who shall from time to time be appointed by the said company for the purposes of this Act, or under the hand of any other person thereto authorised by the persons or bodies politic and corporate, proprietors and managers of the libraries following, (videlicet), the Bodleian library at Oxford, the public library at Cambridge, the library of the Faculty of Advocates at Edinburgh, the library of the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, be delivered, upon the paper 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.

Publishers may deliver the copies to the libraries, instead of at the Stationers Company.

9. Provided also, *and be it enacted*, that if any publisher shall be desirous of delivering the copy of such book as shall be demanded on behalf of any of the said libraries at such library, it shall be lawful for him to deliver the same at such library, free of expence, 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.

10. *And be it enacted, that* if any publisher of any such book, or of any second or subsequent edition of any such book, shall neglect to deliver the same pursuant to this Act, he shall for every such default forfeit, besides the value of such copy of such book or edition which he ought to have delivered, a sum not exceeding five pounds, to be recovered by the librarian or other officer (properly authorised) of the library for the use whereof such copy should have been delivered, in a summary way, on conviction before two justices of the peace for the county or place where the publisher making default shall reside, or by action of debt or other proceeding of the like nature, at the suit of such librarian or other officer, in any court of record in the United Kingdom; in which action, if the plaintiff shall obtain a verdict, he shall recover his costs reasonably incurred, to be taxed as between attorney and client.

Book of registry to be kept at Stationers Hall.

11. *And be it enacted, that* a book of registry, wherein may be registered, as 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 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 misdemeanor.

12. *And be it enacted, that* if any person shall wilfully make or cause to be made any false entry in the registry book of the Stationers Company, or shall wilfully produce or cause to be endered in evidence any paper falsely purporting to be a copy of

APPENDIX.

any entry in the said book, he shall be guilty of an indictable misdemeanor, and shall be punished accordingly.

Entries of copyright may be made in the book of registry.

18. *And be it enacted, that after the passing of this Act* it shall be lawful for the proprietor of copyright in any book heretofore published, or in any book hereafter to be published, to make entry in the registry book of the Stationers Company of the title of such book, the time of the first publication thereof, the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright, in the form in that behalf given in the schedule to this Act annexed, upon payment of the sum of five shillings to the officer of the said company; and *that* it shall be lawful for every such registered proprietor to assign his interest, or any portion of his interest therein, by making entry in the said book of registry of such assignment, and of the name and place of abode of the assignee thereof, in the form given in that behalf in the said schedule, on payment of the like sum; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, without being subject to any stamp or duty, and shall be of the same force and effect as if such assignment had been made by deed.

Persons aggrieved by any entry in the book of registry may apply to a court of law in term, or judge in vacation, who may order such entry to be varied or expunged.

14. *And be it enacted, that* if any person shall deem himself aggrieved by any entry made under colour of this Act in the said book of registry, it shall be lawful for such person to apply by motion to the Court of Queen's Bench, *Court of Common Pleas, or Court of Exchequer, in term time, or to apply by summons to any judge of either of such courts in vacation*, for an order that such entry may be expunged or varied; and *that* upon any such application *by motion or summons to either of the said courts, or to a judge as aforesaid*, such court *or judge* shall make such order for expunging, varying, or confirming such entry, either with or without costs, as to such court *or judge* shall seem just; and the officer appointed by the Stationers Company for the purposes of this Act shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same according to the requisitions of such order.

Remedy for the piracy of books by action on the case.

15. *And be it enacted, that* if any person shall, in any part of the British dominions, *after the passing of this Act*, print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing

of the proprietor thereof, or shall import for sale or hire any such book so having been unlawfully printed from parts beyond the sea, or, knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose to sale or hire, or cause to be sold, published, or exposed to sale or hire, or shall have in his possession, for sale or hire, any such book so unlawfully printed or imported, without such consent as aforesaid, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright, to be brought in any court of record in that part of the British dominions in which the offence shall be committed: Provided always, that in Scotland such offender shall be liable to an action in the court of session in Scotland, which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there.

In actions for piracy the defendant to give notice of the objections to the plaintiff's title on which he means to rely.

16. *And be it enacted, that after the passing of this Act*, in any action brought within the British dominions against any person for printing any such book for sale, hire, or exportation, or for importing, selling, publishing, or exposing to sale or hire, or causing to be imported, sold, published, or exposed to sale or hire, any such book, the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action; and if the nature of his defence be, that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when and the place where such book was first published, otherwise the defendant in such action shall not at the trial or hearing of such action be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright therein; and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of

APPENDIX.

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, etc., shall import into the British dominions for sale or hire any book first composed, etc., within the United Kingdom, and reprinted elsewhere, under penalty of forfeiture thereof, and also of £10 and double the value.

17. *And be it enacted, that after the passing of this Act* it shall not be lawful for any person, not being the proprietor of the copyright, or some person authorised by him, to import into any part of the United Kingdom, or into any other part of the British dominions, for sale or hire, any printed book first composed or written or printed and published in any part of the said United Kingdom, wherein there shall be copyright, and 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 forfeit the sum of ten pounds, and double the value of every copy of such book which he shall so import or cause to be imported into any part of the British dominions, or shall knowingly sell, publish, or expose to sale or let to hire, or shall cause to be sold, published, or exposed to sale or let to hire, or shall have in his possession for sale or hire, contrary to the true intent and meaning of this Act, five pounds to the use of such officer of customs or excise, and the remainder of the penalty to the use of the proprietor of the copyright in such book.

Books may be seized by officers of customs or excise.

As to the copyright in encyclopædias, periodicals, and works published in a series, reviews, or magazines.

18. *And be it enacted, that* when any publisher or other person shall, before or at the time of the passing of this Act, have projected, conducted, and carried on, or shall hereafter project, conduct, and carry on, or be the proprietor of any encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any volumes, parts, essays, articles, or portions thereof, for publication in or as part of

the same, and such work, volumes, parts, essays, articles, or portions shall have been or shall hereafter be composed under such employment, on the terms that the copyright therein shall belong to such proprietor, projector, publisher, or conductor, and paid for by such proprietor, projector, publisher, or conductor, the copyright in every such encyclopædia, review, magazine, periodical work, and work published in a series of books or parts, and in every volume, part, essay, article, and portion so composed and paid for, shall be the property of such proprietor, projector, publisher, or other conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by this Act; except only that in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature, after the term of twenty-eight years from the first publication thereof respectively the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act: Provided always, that during the term of twenty-eight years the said proprietor, projector, publisher, or conductor shall not publish any such essay, article or portion separately or singly without the consent previously obtained of the author thereof, or his assigns: 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 thereon have the benefit of the registration of the whole.

19. *And be it enacted, that* the proprietor of the copyright in any encyclopædia, review, magazine, periodical work, or other work published in a series of books or parts, shall be entitled to all the benefits of the registration at Stationers Hall under this Act, on entering in the said book of registry the title of such encyclopædia, review, periodical work, or other work published in a series of books or parts, the time of the first publication of the first volume, number, or part thereof, or of the first number or volume first published after the passing of this Act in any such work which shall have been

APPENDIX.

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.

The provisions of 3 & 4 Will. 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.

20. *And whereas an Act was passed in the third year of the reign of his late Majesty, to amend the law relating to dramatic literary property, and it is expedient to extend the term of the sole liberty of representing dramatic pieces given by that Act to the full 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; be it therefore enacted, that* the provisions of the said Act of his late Majesty, and of this Act, shall apply to musical compositions; and *that* the sole liberty of representing or performing, or causing or permitting to be represented or performed, any dramatic piece or musical composition, shall endure and be the property of the author thereof, and his assigns, for the term in this Act provided for the duration of copyright in books; and the provisions hereinbefore enacted in respect of the property of such copyright, and of registering the same, shall apply to the liberty of representing or performing any dramatic piece or musical composition, as if the same were herein expressly re-enacted and applied thereto, save and except that the first public representation or performance of any dramatic piece or musical composition shall be deemed equivalent, in the construction of this Act, to the first publication of any book: Provided always, that in case of any dramatic piece or musical composition in manuscript, it shall be sufficient for the 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.

Proprietors of right of dramatic representations shall have all the remedies given by 3 & 4 Will. 4, c. 15.

21. *And be it enacted, that* the person who shall at any time have the sole liberty of representing such dramatic piece or musical composition shall have and enjoy the remedies given and provided in the said Act of the third and fourth years of the reign of his late Majesty King William the Fourth, passed to amend the laws relating to dramatic literary property, during the whole of his interest therein, as fully as if the same were re-enacted in this Act.

Assignment of copyright of a dramatic piece not to convey the right of representation.

22. *And be it enacted, that* no assignment of the copyright of any book consisting of or containing a dramatic piece or musical composition shall be holden to convey to the assignee the right of representing or performing such dramatic piece or musical composition, unless an entry in the said registry book shall be made of such assignment, wherein shall be expressed the intention of the parties that such right should pass by such assignment.

Books pirated shall become the property of the proprietor of the copyright, and may be recovered by action.

23. *And be it enacted, that* all copies of any book wherein there shall be copyright, and of which entry shall have been made in the said registry book, and which shall have been unlawfully printed or imported without the consent of the registered proprietor of such copyright in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright, and who shall be registered as such; and such registered proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same, or damages for the detention thereof, in an action of detinue, from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of trover.

No proprietor of copyright commencing after this Act shall sue or proceed for any infringement before making entry in the book of registry.

Proviso for dramatic pieces.

24. *And be it enacted, that* no proprietor of copyright in any book which shall be first published after the passing of this Act shall maintain any action or suit, at law or in equity, or any summary proceeding, in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made, in the book of registry of the Stationers Company, of such book, pursuant to this Act: Provided always that the omission to make such entry shall not affect the copyright in any book, but only the right to sue or proceed in respect of the infringement thereof as aforesaid: Provided also, that nothing herein contained shall prejudice the remedies which the proprietor of the sole liberty of representing any dramatic piece shall have by virtue of the Act passed in the third year of the reign of his late Majesty King William the Fourth, to amend the laws relating to dramatic literary property, or of this Act, although no entry shall be made in the book of registry aforesaid.

Copyright shall be personal property.

25. *And be it enacted, that* all copyright shall be deemed personal property, and shall be transmissible by bequest, or in case of intestacy, shall be subject to the same law of distribution as other

APPENDIX.

personal property, and in Scotland shall be deemed to be personal and moveable estate.

General issue.

26. (a) *And be it enacted, that if any action or suit shall be commenced or brought against any person or persons whomsoever for doing or causing to be done anything in pursuance of this Act, the defendant or defendants in such 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 non-suited, 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;* and *that* all actions, suits, bills, indictments, or informations for any offence that shall be committed against this Act, shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of none effect; 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, etc., in respect of the delivery of books.

Saving the rights of the universities, and the colleges of Eton, Westminster, and Winchester.

27. Provided always, *and be it enacted*, that nothing in this Act contained shall affect or alter the rights of the two universities of Oxford and Cambridge, the colleges or houses of learning within the same, the four universities in Scotland, the college of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, and the several colleges of Eton, Westminster, and Winchester, in any copyrights heretofore and now vested or hereafter to be vested in such universities and colleges respectively, anything to the contrary herein contained notwithstanding.

Saving all subsisting rights, contracts, and engagements.

28. Provided also, *and be it enacted*, that nothing in this Act contained shall affect, alter, or vary any right subsisting at the time of passing of this Act, except as herein expressly enacted; and all contracts, agreements, and obligations made and entered into before the passing of this Act, and all remedies relating thereto, shall remain in full force, anything herein contained to the contrary notwithstanding.

(a) See Public Authorities Protection Act, 1893; *Muddock* v. *Blackwood*, [1898] 1 Ch. 58.

29. *And be it enacted, that* this Act shall extend to the United Kingdom of Great Britain and Ireland, and to every part of the British dominions. APPENDIX. Extent of the Act.

[*S.* 30 *rep.* 37 *&* 38 *Vict. c.* 96 (*S.L.R.*).]

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 de lare that such extendol 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 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 .

(Signed) *A.B.*

Witness, *C.D.*

APPENDIX.

Schedule.

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.*

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. [26th 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: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:*]

Copyright in works hereafter made or sold to vest in the author for his life and for seven years after his death.

1. The author, being a British subject or resident within the dominions of the Crown, of every original painting, drawing, and photograph which shall be or shall have been made either in the British dominions or elsewhere, and which shall not have been sold or disposed of before the commencement of this Act, and his assigns, shall have the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing, and the design thereof, or such photograph, and the negative thereof, by any means and of any size, for the term of the natural life of such author, and seven years after his death; provided, that when any painting or drawing, or the negative of any photograph, shall for the first time after the passing of this Act be sold or disposed of, or shall be made or executed for or on behalf of any other person for a good or a valuable consideration, the person so selling or disposing of or making or executing the same shall not retain the copyright thereof, unless it be expressly reserved to him by agreement in writing, signed, at or before the time of such sale or disposition, by the vendee or assignee of such painting or drawing, or of such negative of a photograph, or by the person for or on whose behalf the same shall be so made or executed, but the copyright shall belong to the vendee or assignee of such painting or drawing, or of such negative of a photograph, or to the person for or on whose behalf the same shall have been made or executed; nor shall the vendee or assignee thereof be entitled to any such copyright, unless, at or before the time of such sale or disposition, an agreement in writing, signed by the person so selling or disposing of the same, or by his agent duly authorised, shall have been made to that effect.

APPENDIX.

2. Nothing herein contained shall prejudice the right of any person to copy or use any work in which there shall be no copyright, or to represent any scene or object, notwithstanding that there may be copyright in some representation of such scene or object.

Copyright not to prevent the representation of the same subjects in other works.

3. All copyright under this Act shall be deemed personal or moveable estate, and shall be assignable at law; and every assignment thereof, and every 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.

Assignments, licences, etc., to be in writing.

4. There shall be kept at the hall of the Stationers Company, by the officer appointed by the said Company for the purposes of the Act passed in the sixth year of her present Majesty, intituled "An Act to amend the Law of Copyright," a book or books, entitled "The Register of Proprietors of Copyright in Paintings, Drawings, and Photographs," wherein shall be entered a memorandum of every copyright to which any person shall be entitled under this Act, and also of every subsequent assignment of any such copyright; and such memorandum shall contain a statement of the date of such agreement or assignment, and of the names of the parties thereto, and of the name and place of abode of the person in whom such copyright shall be vested by virtue thereof, and of the name and place of abode of the author of the work in which there shall be such copyright, together with a short description of the nature and subject of such work, and in addition thereto, if the person registering shall so desire, a sketch, outline, or photograph of the said work; and no proprietor of any such copyright shall be entitled to the benefit of this Act until such registration; and no action shall be sustainable nor any penalty be recoverable in respect of anything done before registration.

Register of proprietors of copyright in paintings, drawings, and photographs to be kept at Stationers Hall as in 5 & 6 Vict. c. 45.

5. The several enactments in the said Act of the sixth year of her present Majesty contained, with relation to keeping the register book thereby required, and the inspection thereof, the searches therein, and the delivery of certified and stamped copies thereof, the reception of such copies in evidence, the making of false entries in the said book, and the production in evidence of papers falsely purporting to be copies of entries in the said book, the application to the courts and judges by persons aggrieved by entries in the said book, and the expunging and varying such entries, shall apply to the book or books to be kept by virtue of this Act, and to the

Certain enactments of 5 & 6 Vict. c. 45, to apply to the books to be kept under this Act.

entries and assignments of copyright and proprietorship therein under this Act, in such and the same manner as if such enactments were here expressly enacted in relation thereto; save and except that the forms of entry prescribed by the said Act of the sixth year of her present Majesty may be varied to meet the circumstances of the case, and that the sum to be demanded by the officer of the said company of stationers for making any entry required by this Act shall be one shilling only.

Penalties on infringement of copyright.

6. If the author of any painting, drawing, or photograph in which there shall be subsisting copyright, after having sold or disposed of such copyright, or if any other person, not being the proprietor for the time being of copyright in any painting, drawing, or photograph, shall, without the consent of such proprietor, repeat, copy, colourably imitate, or otherwise multiply for sale, hire, exhibition, distribution, or cause or procure to be repeated, copied, colourably imitated, or otherwise multiplied for sale, hire, exhibition, or distribution, any such work or the design thereof, or, knowing that any such repetition, copy, or other imitation has been unlawfully made, shall import into any part of the United Kingdom, or sell, publish, let to hire, exhibit, or distribute, or offer for sale, hire, exhibition, or distribution, or cause or procure to be imported, sold, published, let to hire, distributed, or offered for sale, hire, exhibition, or distribution, any repetition, copy, or imitation of the said work, or of the design thereof, made without such consent as aforesaid, such person for every such offence shall forfeit to the proprietor of the copyright for the time being a sum not exceeding ten pounds; and all such repetitions, copies, and imitations made without such consent as aforesaid, and all negatives of photographs made for the purpose of obtaining such copies, shall be forfeited to the proprietor of the copyright.

Penalties on fraudulent productions and sales.

7. No person shall do or cause to be done any or either of the following acts; that is to say,

First, no person shall fraudulently sign or otherwise affix, or fraudulently cause to be signed or otherwise affixed, to or upon any painting, drawing, or photograph, or the negative thereof, any name, initials, or monogram:

Secondly, no person shall fraudulently sell, publish, exhibit, or dispose of, or offer for sale, exhibition, or distribution, any painting, drawing, or photograph, or negative of a photograph, having thereon the name, initials, or monogram of a person who did not execute or make such work:

APPENDIX.

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 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.

8. All pecuniary penalties which shall be incurred, and all such unlawful copies, imitations, and all other effects and things as shall have been forfeited by offenders, pursuant to this Act, and pursuant to any Act for the protection of copyright engravings, may be recovered by the person herein-before and in any such Act as aforesaid empowered to recover the same respectively, and hereinafter called the complainant or the complainer, as follows :

In England and Ireland, either by action against the party offending, or by summary proceeding before any two justices having jurisdiction where the party offending resides : In England and Ireland.

In Scotland by action before the Court of Session in ordinary form, or by summary action before the sheriff of the county where the offence may be committed or the offender resides, *who, upon proof of the offence or offences, either by confession of the party offending, or by the oath or affirmation of one or more credible witnesses, shall convict the offender, and find him liable to the penalty or penalties aforesaid, as also in expenses, and it shall be lawful for the sheriff in pronouncing such judgment for the penalty or penalties and costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding: Provided always, that it shall be lawful to the sheriff, in the event of his dismissing the action and assoilzieing the defender, to find the complainer liable in expenses,* and any judgments so to be pronounced by the sheriff in such summary application shall be final and conclusive, and not subject to review by *advocation*, suspension, reduction, or otherwise. In Scotland.

Superior courts of record in which any action is pending may make an order for an injunction, inspection, or account.

9. In any action in any of her Majesty's Superior Courts of Record at Westminster and in Dublin, for the infringement of any such copyright as aforesaid, it shall be lawful for the court in which such action is pending, if the court be then sitting, or, if the court be not sitting, then for a judge of such court, on the application of the plaintiff or defendant respectively, to make such order for an injunction, inspection, or account, and to give such direction respecting such action, injunction, inspection, and account, and the proceedings therein respectively, as to such court or judge may seem fit.

Importation of pirated works prohibited.

10. All repetitions, copies, or imitations of paintings, drawings, or photographs, wherein or in the design whereof there shall be subsisting copyright under this Act, and all repetitions, copies, and imitations of the design of any such painting or drawing, or of the negative of any such photograph, which, contrary to the provisions of this Act, shall have been made in any foreign state, or in any part of the British dominions, are hereby absolutely prohibited to be imported into any part of the United Kingdom, except by or with the consent of the proprietor of the copyright thereof, or his agent authorised in writing; and if the proprietor of any such

APPENDIX.

Application in such cases of Customs Acts.

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.

Saving of right to bring action for damages.

11. If the author of any painting, drawing, or photograph, in which there shall be subsisting copyright, after having sold or otherwise disposed of such copyright, or if any other person, not being the proprietor for the time being of such copyright, shall, without the consent of such proprietor, repeat, copy, colourably imitate, or otherwise multiply, or cause or procure to be repeated, copied, colourably imitated, or otherwise multiplied, for sale, hire, exhibition, or distribution, any such work or the design thereof, or the negative of any such photograph, or shall import or cause to be imported into any part of the United Kingdom, or sell, publish, let to hire, exhibit, or distribute, or offer for sale, hire, exhibition, or distribution, or cause or procure to be sold, published, let to hire, exhibited, or distributed, or offered for sale, hire, exhibition, or distribution, any repetition, copy, or imitation of such work, or the design thereof or the negative of any such photograph, made without such consent as aforesaid, then every such proprietor, in addition to the remedies hereby given for the recovery of any such penalties, and forfeiture of any such things as aforesaid, may recover damages by and in a special action on the case, to be brought against the person so offending, and may in such action recover and enforce the delivery to him of all unlawful repetitions, copies, and imitations, and negatives of photographs, or may recover damages for the retention or conversion thereof: *Provided*, that nothing herein contained, nor any proceeding, conviction, or judgment, for any act hereby forbidden, shall affect any remedy which any person aggrieved by such act may be entitled to either at law or in equity.

Provisions of 7 & 8 Vict. c. 12, to be considered as included in this Act.

12. *This Act shall be considered as including the provisions of* the Act passed in the session of Parliament held in the seventh and eighth years of her present Majesty, intituled An Act to amend the Law relating to International Copyright, in the same manner as if such provisions were part of this Act.

INDEX.

A.

ABANDONMENT
of common law right, 6, 8.

ABRIDGMENT
an infringement, 26.

ADVERTISEMENTS, 2.

ARRANGEMENT AND SELECTION,
taking is an infringement, 26.

ARTISTIC WORK,
author of, 2.
definition of, 2.
See PAINTINGS ; ENGRAVINGS ; SCULPTURE.

ASSIGNMENT
of common law right, 5.
copyright in—
engravings—
after publication, 41.
before publication, 51.
literary work—
after publication, 16.
assignee's right to sue, 17.
before publication, 15.
by entry in the book of registry, 31.
paintings, drawings, and photographs, 44.
sculpture—
after publication, 57.
before publication, 56.
performing rights, 23.

AUSTRIA-HUNGARY,
copyright in, 70.
works produced in, 60.

AUTHOR,
rights of, in contribution to periodicals, encyclopædias, etc., 14.
when entitled to copyright. *See* PROPRIETOR OF COPYRIGHT.
who is—
of artistic works, 2.
literary works, 1.
photograph, 42.

AUTHORITIES,
use of work as guide to, 28.

B.

BANKRUPTCY,
copyright passes to trustee, 16, 37, 44, 51, 56.

BELGIUM,
copyright in, 70.
works produced in, 60.

BERNE CONVENTION, 62.

BLASPHEMOUS WORKS
are not protected, 10.

BLIND,
books for, an infringement, 26.

BOOK. *See* LITERARY WORK.

BRITISH MUSEUM,
delivery of copies to, 75.

C.

CATALOGUES,
copyright in, 2.

CERTIFICATE OF REGISTRATION, 33, 41, 48.

CHECKING ACCURACY,
use of copyright work for, 28.

COLLECTIVE WORKS,
author's copyright in, 14.
right of separate publication, 14.

COLLECTIVE WORKS—*continued*.
proprietor's copyright in, 12.
right of separate publication, 14.
registration, 31.

COLONIAL COPYRIGHT,
Copyright Act, 1842, in force throughout Empire, 67.
Fine Arts Copyright Act, 1862, not in force in the colonies, 68.
international copyright in the colonies, 68.
local legislature cannot override Imperial legislation, 67.

COMMENCEMENT OF STATUTORY RIGHTS,
copyright in—
engravings, 49.
literary work, 9.
paintings, drawings, and photographs, 42.
sculpture, 55.
performing right, 34.

COMMON LAW RIGHT. *See* UNPUBLISHED WORKS.

CONDITIONS PRECEDENT TO COPYRIGHT,
engravings—
first publication within the British dominions, 49.
name and date, 49.
literary works—
first publication within the British dominions, 9.
nationality or residence of author, 10.
printing, within the British dominions, 10.
paintings, drawings, and photographs—
first publication outside British dominions destroys, 43.
nationality or residence of author must be British, 42.
sale of picture or negative without writing destroys, 43.
sculpture—
first publication within the British dominions, 55.
name and date, 55.
See REGISTRATION.

CONDITIONS PRECEDENT TO PERFORMING RIGHT,
first performance outside the British dominions destroys, 35.
notice of reservation on musical work, 39.

CONSPIRACY TO INFRINGE,
an indictable offence, 23.

COPY,
what is a, 3, 25, 52, 53.

COPYRIGHT. *See* CONDITIONS PRECEDENT; PROPRIETOR; DURATION; COMMENCEMENT.

CRITICISM,
extracts for purpose of, 27.

CUSTOMS,
notice to, condition precedent to protection against unlawful importation, 29, 64.
seizure by, 22, 46.

D.

DAMAGES, 22, 39, 45, 53, 58.

DEATH,
copyright passes as personal property, 16, 37, 44, 51, 56.

DELIVERY UP OF UNLAWFUL COPIES,
demand in writing for, 19—21, 25.

DELIVERY TO LIBRARIES, 76.

DENMARK,
copyright in, 70.
works produced in, 60.

DIRECTORIES,
copyright in, 2.

DRAMATIC PIECE. *See* PERFORMING RIGHTS.

DRAMATIZATION,
infringement by, 26.

DRAWINGS. *See* PAINTINGS, DRAWINGS AND PHOTOGRAPHS.

DURATION OF COPYRIGHT,
engravings, 50.
literary works, 11, 14, 15.
paintings, drawings and photographs, 43.
periodicals and other collective works—
author's copyright, 15.
proprietor's copyright, 14.
sculpture, 56.

DURATION OF PERFORMING RIGHT, 34.

E.

EDITIONS. *See* NEW EDITIONS.

EGYPT,
copyright, 70.

EMPLOYER, RIGHTS OF,
collective work, 12—15.
engravings, 50.
literary copyright, 12—15.
paintings, drawings and photographs, 42.
performing rights, 34.
sculpture, 56.
unpublished works, 4.

ENCYCLOPÆDIAS. *See* COLLECTIVE WORKS.

ENGRAVINGS,
assignment, 51.
copyright in, 49.
duration of protection, 50.
engravings in a book, 9.
infringement of copyright in, 52.
maps, charts and plans, 49.
owner of copyright in, 50.
what are protected as, 49.

EXTRACTS,
right to take, 28.

F.

FALSE ENTRIES,
on register, 77.

FALSE NAME,
on picture, 89.

FOREIGN WORKS. *See* INTERNATIONAL COPYRIGHT.

FRAUDULENT WORK,
designed to deceive the public, 10.

G.

GERMANY,
copyright in, 70.
works produced in, 60.

GUIDE TO AUTHORITIES,
use of work as, 27.

H.

HAITI,
copyright in, 70.
works produced in, 60.

I.

IGNORANCE
no excuse, 21.

ILLUSTRATION,
copyright in, when first published as part of a book, 9.

IMMORAL WORKS, 10.

IMPORTATION,
Customs, 22, 29, 46, 64.
United States, law as to, 72.
See INFRINGEMENT.

INDECENT WORKS, 10.

INFRINGEMENT OF COPYRIGHT,
engravings, 52.
copying, 52.
importing, 52.
selling, 52.
what is a copy, 52.
literary works, 17.
importing, 17—20.
multiplying copies, 17, 19.
possession of pirated copies, 18, 20.
printing for sale or exportation, 17, 19.
selling, publishing or hiring pirated copies, 18, 19.
what is copying, 25—28.

INFRINGEMENT OF COPYRIGHT—*continued.*
paintings, drawings and photographs, 44, 45.
copying, 44.
importing or selling, 44, 45.
what is a copy, 45.
sculpture, 57.
copying, 57.
importing, 57.
selling, 58.
what is a copy, 58.
See REMEDIES.

INFRINGEMENT OF PERFORMING RIGHTS, 37, 38.
liability of proprietor of place of entertainment, 38.
notice of reservation on musical works, 39.
what is a representation, 38.

INJUNCTION. *See* REMEDIES.

INNOCENCE
not an excuse, 21.

INTERNATIONAL COPYRIGHT,
copyright in—
foreign states, 70—72.
works first produced in foreign states, 60—66.
extent of protection, 60, 61.
formalities required by country of origin, 64.
meaning of first produced, 62.
name and date on engravings and sculpture, 64.
no registration, 63.
notice of reservation in musical works, 64.
to Commissioners of Customs, 64.
persons entitled to sue in respect of foreign works, 65.
remedies, 66.
right to reprint articles from foreign newspapers, 66.
signatories of the Berne Convention, 60.
translating right, 61.

ITALY,
copyright in, 70.
works produced in, 60.

J.

JAPAN,
copyright in, 70.
works produced in, 60.

L.

LECTURES. *See* UNPUBLISHED WORK.

LETTERS,
common law right in, 5.
copyright in, 2, 5.

LIBELLOUS WORKS
not protected, 10.

LIBRARIES,
delivery of copies to, 76.

LICENCE
must be in writing, 17, 18, 44, 45, 52, 57, 58

LIMITATION OF ACTION,
engravings, 54.
literary works, 33.
paintings, drawings, and photographs 48.
performing rights, 41.
sculpture, 59.

LITERARY WORK,
assignment, 16.
author of, 1.
conditions of protection, 9, 29.
copyright in, 9—48.
definition, 1.
duration of copyright, 11.
encyclopædias and periodicals, 12.
proprietor of copyright, 11.

LUXEMBOURG,
copyright in, 70.
works produced in, 60.

M.

MANUSCRIPT. *See* UNPUBLISHED WORK.

MAP,
copyright in, 9, 49.

MECHANICAL INSTRUMENTS,
no copyright in, 2.
not infringements of copyright, 28.

MONACO,
copyright in, 70.
works produced in, 60.

MUSIC,
copyright in, 9, 23.
infringement, 27, 38.
See PERFORMING RIGHTS.

N.

NEW EDITIONS,
registration of, 32.

NEWSPAPER. *See* COLLECTIVE WORKS.

NORWAY,
copyright in, 70.
works produced in, 60.

NOTICE
of copyright in United States, 71.
objections, 79.
reserving performing rights in music, 39.
to Customs, 29, 64.

O.

OWNER OF COPYRIGHT. *See* PROPRIETOR.

P.

PAINTINGS, DRAWINGS AND PHOTOGRAPHS,
assignment, 44.
copyright in, 42.
duration of protection, 43.
first publication of, outside British dominions destroys copyright, 43.
infringement, 44.

PAINTINGS, DRAWINGS AND PHOTOGRAPHS—*continued.*
owner of the copyright, 42.
registration, 47.
sale without reservation of copyright destroys, 43.
what is a piratical copy, 45.

PENALTIES,
for infringement of—
copyright in engravings, 54.
paintings, drawings and photographs, 46.
performing right, 39.

PERFORMING RIGHTS,
assignment, 37.
duration, 34, 35.
if first published or performed outside the British dominions, 35.
infringement, 37.
notice of reservation on music, 39.
proprietor, 34.
registration of performing rights, 40.
remedies, 38.
what dramatic or musical works are protected, 34.

PERIODICAL WORKS. *See* COLLECTIVE WORKS.

PHOTOGRAPHS. *See* PAINTINGS, DRAWINGS AND PHOTOGRAPHS.

PIANOLA, PERFORATED SCROLL FOR. *See* MECHANICAL INSTRUMENTS.

PIRACY,
whether piratical book entitled to protection, 10.
See INFRINGEMENT.

PLAYWRIGHT. *See* PERFORMING RIGHTS.

PLOT,
taking from novel an infringement, 26.

POSTHUMOUS WORKS, 5, 11.
copyright in letters, 5, 12.
proprietor of author's manuscript, 12.

PRINTS. *See* ENGRAVINGS.

PROFANE WORKS NOT PROTECTED, 10.

PROFITS,
right to in case of infringement, 22, 25, 39, 45, 53, 58.

PROPRIETOR OF COMMON LAW RIGHTS, 4.

PROPRIETOR OF COPYRIGHT,
engravings, 50.
literary works, 11—16.
assignee, 15, 16.
author, 11.
employer, 15.
proprietor of author's manuscript, 11.
collective work, 12.
paintings, drawings and photographs, 42.
sculpture, 56.

PROPRIETOR OF PERFORMING RIGHTS, 34, 37.

PUBLICATION
divests the common law right, 6.
private circulation, 7.
public exhibition, 6.
performance or recital, 6, 8.
what is publication, 6.

PUBLISHER
liable for non-delivery to libraries, 77.

R.

RECTIFICATION OF THE BOOK OF REGISTRY, 78.

REGISTRATION,
literary works, 29—33.
assignment, 31.
by contributor to collective work, 32.
proprietor of collective works, 31.
false entries, 77.
must be effected before action brought, 29.
original entry, 30.
primâ facie evidence, 33.
rectification of register, 78.
successive editions, 32.
paintings, drawings and photographs, 47, 48.
entry of assignment, 48.
must be effected before infringement, 47.
original entry, 47.
performing rights, 40, 41.

REMEDIES,
infringement of literary copyright, 22—24.
damages, 22.
delivery up, 22, 23.
indictment for conspiracy, 23.
injunction, 22.
penalties for unlawful importation, 23.
profits, 22.
seizure by Customs, 22.
summary proceedings in case of music, 23, 24.
infringement of performing rights, 38, 39.
costs, 39.
injunction, 39.
penalties or damages, 39.
infringement of copyright in paintings, drawings and photographs, 45, 46.
damages, 45.
delivery up of copies, 46.
detention by Customs, 46.
injunction, 46.
penalties, 46.
infringement of copyright in engravings, 53, 54.
costs, 53.
damages, 53.
delivery up of copies, 53, 54.
injunction, 53.
penalties, 54.
profits, 53.
infringement of copyright in sculpture, 58.
costs, 58.
damages, 58.
delivery up of copies, 58.
injunction, 58.
profits, 58.

S.

SCULPTURE,
assignment, 56, 57.
copyright in, 55—59.
duration of protection, 56.
infringement, 57.
must be first published within the British dominions, 55.
owner of copyright, 56.
proprietor's name and date on each copy, 55.

SCULPTURE—*continued.*
remedies, 58.
what protected as, 55.
whether work requires to be made within British dominions or by a British subject, 55.

SEDITIOUS WORKS, 10.

SHORTHAND,
copy in, constitutes an infringement, 26.
copyright in reports, 1.

SPAIN,
copyright in, 70.
works produced in, 60.

SUMMARY PROCEEDINGS
for penalties in respect of infringement of paintings, drawings or photographs, 46.
for penalties in respect of engravings, 54.
seizure of pirated music, 23.

SUPPRESSION OF BOOK,
provision against, 75.

SWEDEN,
copyright in, 70.
works produced in, 60.

SWITZERLAND,
copyright in, 70.
works produced in, 60.

T.

TIME TABLES,
copyright in, 2.

TRANSLATION
an infringement, 26.

TUNIS,
copyright in, 70.
works produced in, 60.

U.

UNITED STATES,
copyright in, 70—72.
notice, 71, 72.

UNITED STATES—*continued.*
conditions precedent, 70, 71.
importation of copyright books prohibited, 72.
manufacturing clause, 70.
registration and deposit of copies, 71.

UNIVERSITY COPYRIGHT, 84.

UNPUBLISHED WORK,
abandonment, 8.
assignment of common law rights, 5.
author's rights in, 2.
conflict of common law and statute, 5.
duration of common law right, 6.
letters, posthumous publication of, 5.
nature of author's common law rights, 2—5.
breach of confidence, 3.
personal property, 5.
right of property, 3, 4.
proprietor of common law rights, 4.
publication, 6.

LONDON :
PRINTED BY BUTTERWORTH & CO., CRANE COURT, E.C.

BUTTERWORTH AND CO.'S STUDENTS' WORKS.

Written by Readers to the Council of Legal Education and other gentlemen specially acquainted with the requirements of Students.

THE "HORNBOOK" SERIES.

A SERIES OF TEXT-BOOKS FOR LAW STUDENTS.

Company Law.—No. 4. TOPHAM'S COMPANY LAW.
The Principles of. 1904. Price 7*s.* 6*d.*; for Cash, post free, 6*s.* 4*d.*

Contracts.—No. 15. PLUMPTRE ON CONTRACTS.
Second Edition. 1897. Price 7*s.* 6*d.*; for Cash, post free, 6*s.* 3*d.*

Conveyancing.—No. 8. STRAHAN'S INTRODUCTION TO CONVEYANCING.
1900. Price 10*s.* 6*d.*; for Cash, post free, 8*s.* 10*d.*

Law Dictionary.—No. 16. MOZLEY & WHITELEY'S LAW DICTIONARY.
Second Edition. 1904. Price 10*s.* 6*d.* net, postage, 4*d.* extra.

Equity.—No. 2. STRAHAN & KENRICK'S DIGEST OF EQUITY.
1905. Price 15*s.*; for Cash, post free, 12*s.* 4d.

*** A COMPANION WORK FOR ADVANCED STUDENTS.
ASHBURNER ON EQUITY.
The Principles and Practice of Equity by W. ASHBURNER, M.A. 1902.
Price 21*s.*; for Cash, post free, 17*s.* 5*d.*

Evidence.—No. 5. POWELL ON EVIDENCE.
Eighth Edition. 1904. Price £1; for Cash, post free, 16*s.* 5*d.*

Executors and Administrators.—No. 14.
ROBBINS & MAW'S EXECUTORS AND ADMINISTRATORS.
Third Edition. 1901. Price 15*s.*; for Cash, post free, 12*s.* 5*d.*

Legal History.—No. 10. CARTER'S ENGLISH LEGAL INSTITUTIONS.
Second Edition. 1906. Price 14*s.*; for Cash, post free, 12*s.*

Libel and Slander.—No. 6. FRASER'S LAW OF LIBEL AND SLANDER.
Principles and Practice. Third Edition. 1901. Price 12*s.* 6*d.*; for Cash, post free, 10*s.* 5*d.*

Mercantile Law.—No. 13. STEVENS' ELEMENTS OF MERCANTILE LAW.
Fourth Edition. 1903. Price 10*s.* 6*d.*; for Cash, post free, 8*s.* 10*d.*

Partnership.—No. 12. UNDERHILL'S LAW OF PARTNERSHIP.
Second Edition. 1906. Price 5*s.* net; postage 4*d.*

Roman Law.—No. 11. WILLIS' ROMAN LAW EXAMINATION GUIDE.
Second Edition. 1904. Price 8*s.* 6*d.*; for Cash, post free, 7*s.* 4*d.*

Torts.—No. 1. UNDERHILL'S LAW OF TORTS.
Eighth Edition. 1905. Price 10*s.* 6*d.*; for Cash, post free, 8*s.* 10*d.*

Trusts.—No. 3. UNDERHILL'S LAW OF TRUSTS AND TRUSTEES.
Sixth Edition. 1904. Price 17*s.* 6*d.*; for Cash, post free, 14*s.* 6*d.*

Vendors and Purchasers.—No. 9.
SEABORNE'S VENDORS AND PURCHASERS.
Sixth Edition. 1904. Price 10*s.* 6*d.*; for Cash, post free, 8*s.* 10*d.*

Wills.—No. 7. UNDERHILL AND STRAHAN ON WILLS AND SETTLEMENTS.
1900. Price 12*s.* 6*d.*; for Cash, post free, 10*s.* 5*d.*

BUTTERWORTH & CO., 11 & 12, Bell Yard, Temple Bar.