JUST PUBLISHED.

COPYRIGHT.

A SKETCH OF

ITS RISE AND PROGRESS:

THE ACTS OF PARLIAMENT

AND

CONVENTIONS WITH FOREIGN NATIONS NOW IN FORCE,

WITH

Suggestions

ON

THE STATUTORY REQUIREMENTS

FOR THE DISPOSAL AND SECURITY OF A COPYRIGHT, LITERARY, MUSICAL, AND ARTISTIC.

EDITED BY

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MUSICAL COPYRIGHT.

(*To the Editor of the* STANDARD.)

SIR,—In your leading article of this morning, on the case of "Boosey v. Fairlie," you allude to a former decision in a similar case, viz., "Wood v. Boosey, which is reported in Mr. Short's "Law relating to Literature and Art," a full report of which is also given in the "Law Reports," 2 Q.B., 340, and 7 B. & S. 869. Mr. Short says, according to the judgment in this case:—"A pianoforte score of an opera is an independent musical composition, separate and distinct from the opera itself; and where such pianoforte score has been arranged by a person other than the composer it is incorrect to register that score as the composition of the composer of the opera."

"It seems impossible," says Cockburn, C. J., "to believe that any musician, however great his talent, whether as a composer or as an executant, from the mere circumstance of having the opera in its entirety before him—that is to say, with all the score for all the instruments, which neither eye nor mind could take in at the same time—could be able to play the accompaniment while singing the music of the opera at the piano. It requires time, reflection, skill, and mind so to condense the opera score as to compose the pianoforte accompaniment. I cannot therefore, bring myself to think that the pianoforte arrangement of the music of an opera, which originally consisted of vocal music and instrumentation, to be executed by some half-hundred instruments, can be said to be anything else than a specific, separate, and distinct work from the opera itself."

With all submission, I ask how can a pianoforte score of an opera, which must contain every note of the vocal part, whether song, duet, trio, quartet, or chorus, be "a separate and distinct work from the opera itself," more especially when the pianoforte accompaniment does not contain a single note which is not to be found in the full score, and which is not, nor can it be, the composition of the arranger? The pianoforte score differs from the full score, only in that the harmony, melody, chorus, and progression is reduced to such a form as to be sung by voices, and accompanied by the piano. The entire work is the composition of the composer of the full score; and it may be played on the pianoforte from the full score by any competent musician at sight. And both the eye and mind of an accomplished musician may see and comprehend the design of the composition at a glance. It is not pretended that a piano can be made to produce the precise sounds of every instrument of the "half-hundred" in an orchestra. But the Chief Justice was decidedly in error when he pronounced judgment upon a pianoforte score of the opera of "The Merry Wives of Windsor" being the composition of any other person than Nicolai, the composer. Now, the requirements of the International Act are, that a work first published in France shall be entered at Stationers' Hall within three months after its publication in France. If it be a musical composition it must be registered within three months after its first representation in Paris, and the form for registry must state the name and address of the composer, the name and address of the proprietor of the copyright, and the right of representation, and the name and address of the author of the libretto, and the title of the work. It does not state whether the work to be entered is to be the full score of an opera, or merely the vocal score and piano accompaniment, which latter is generally the only work published. And, therefore, the work deposited at the time of the entry must be taken as the work to be secured by such entry. You cannot deposit that which has never been published. The work is sent to be entered at the same time it is to be registered; therefore the registrar, if he has any discretion in the matter, must see, and ought to examine before entry, whether the work corresponds exactly with the form of entry. Whose fault is it, then, if the entry is defective? The fact is that the registry at Stationers' Hall is a "delusion and a snare."

The Act of 5 & 6 Vic., c. 45, tells us that there is a book of entry where "may be entered" a copyright; but the entry or non-entry does not either secure or invalidate that copyright, and yet it tells us that no action can be taken to punish

the thief who steals any portion of a copyright unless an entry is made therein. And the law tells that if a piracy is committed it is quite time enough to go and pay 5s. for an entry after you have discovered that somebody has pirated your work, before you take action against the pirate. So that if a man publishes 500 works in a year, he saves £125 by non-entry, and is still secure in his copyright. Now, it will be found that most of the decisions in copyright cases are founded on mere technicalities, some of which are perfectly ridiculous. For instance, in "Low *v.* Routledge" a nonsuit was given simply because the day of publication was entered as the 25th instead of the 23rd day of the month, and the firm was stated to be Sampson Low, Son, and Marston, instead of Sampson Low, Son, and Co. There are several cases of this kind, in which, instead of ordering the parties to amend, without costs, they have been mulcted in costs on both sides, and compelled to begin again *de novo*, when they have succeeded. But these technicalities have ruined many a suitor, and yet the bad law remains *in statû quo*. If the mere omission in the registry of a true date or a name, neither of which proves the non-right of the party suing to be legally entitled to the property, the sooner such technicalities are done away with the better for all parties—except the lawyers. In Germany there is a tribunal for the settlement of such matters as are required to be legislated upon by professional men, who are competent to decide upon their merits. It would be quite as reasonable to decide a case on the subject of musical rights in an entry with the composer's name as it would where only the name of the arranger of the composer's music is mentioned, and under present circumstances more equitable; although it might be better that both should be mentioned. I am, Sir, yours obediently, CHARLES H. PURDAY.

27, *Portland Road, Notting Hill*, May 21, 1877.

Mr. Purday's letter to us on the subject of musical copyright, may be advantageously studied by the commission now engaged with the revision of the International Copyright Convention. The recent decision in the case of "Boosey *v.* Fairlie" shows that it is exceedingly difficult and practically all but impossible for a foreign composer to secure in England the exclusive right of performing his own operas. This is to be regretted, if only for the fact that one of the objects of the Act in question was to place such a right within the foreign composer's reach. Surely it ought to be possible to draw up an agreement between two Governments in such a way that it should be not only intelligible but also serviceable. That portion, however, of the International Copyright Convention which relates to the rights of composers has proved a puzzle to more than one learned judge, and the latest decision as to the right of a composer to claim authority in England over his own productions for the stage only simplifies matters by making it clear that he can acquire no such right except at a cost which, in the great majority of cases, it would be unprofitable to incur. The Convention, for example, stipulates that the foreign composer who wishes to secure for an opera the right of representation in England, shall deposit a copy of his work, and cause it to be registered at Stationers' Hall. Nothing seems easier, if to deposit the opera as reduced for voices and pianoforte will suffice. But nothing is more difficult if the full score is required, seeing that the full score of an opera is but rarely printed. The judges have in their wisdom decided that a work for voices and orchestra is one thing, and the same work for voices and pianoforte quite another. Indeed, Lord Chief Justice Cockburn has declared and laid down as law the principle that the musician who arranges an opera for voices and pianoforte—who substitutes, that is to say, a pianoforte accompaniment for the accompaniment of the full orchestra—is to be looked upon as the "composer" of the opera. He is simply, however, its transcriber and simplifier in regard to the accompaniments, literal transcriber in regard to the voice parts. Assuming that our judges are well able to understand the clauses of the International Copyright Convention, it is impossible not to conclude that the Convention itself is faulty. Nothing is more reasonable than that when a composer registers an opera with a view to its protection he should be compelled to furnish some evidence as to what the work is which he proposes to protect, but for this an edition for voices and pianoforte would amply suffice.—*Standard*, May 29, 1877.

PREFATORY REMARKS.

In compiling this slight sketch on the subject of Copyright, the Editor does not presume to imagine that he has thrown much more light on the basis upon which the laws of literary property have been founded than has hitherto been done. But having been connected with the matter for some years, and forced into defending some actions brought against his brother for opposing the assumed exclusive right to publish the works of foreign composers in England, which common sense told him could not be legally maintained, he has been compelled to make himself more acquainted with the question than has been either pleasant or profitable to him; reference made to the cases is, therefore, simple matter of history.

His experience, however, has led him to discover how very imperfectly the law has been understood either by Publishers themselves, by the Bench, or by the Legal Profession, which the many conflicting *dicta* of the Bench have but too clearly evidenced. It is from these circumstances that he has been induced to put forth the few facts and ideas which he has picked up from time to time, during a period of above half a century, connected with the Music Trade; and that he has resolved to put them in print, simply hoping they may be useful to those who may not have had the same opportunity of becoming acquainted with the matter as himself. The statements respecting Stationers' Hall and its registry have many of them been extracted from Lowndes and other sources already published.

If a common-place mind might suggest an idea respecting a new Copyright Law, would it not be better to repeal those anomalous portions of the present Act of 5 & 6 Vic., c. 45, rather than to endeavour to consolidate all the Copyright Acts into one, perhaps far more difficult to be understood by common-sense people from its necessarily extended character than the present Act; especially if couched, as Acts generally are, in legal phraseology. Let us get rid of such parts of the present Acts as have been stumbling-blocks to the Bench, hardships to the litigants, and incentives to the legal profession to put their unfortunate clients to heavy costs and charges on speculation of the "glorious uncertainty" of the law. Most of the "Amendments" in the Copyright Acts have been anything but "encouragements to authors" to write literary and musical works "of lasting benefit to the world." The Act of Anne is assumed to have taken away the author's common-law right, and to have limited his copyright to fourteen years; compelling him and his assigns to give to certain rich public educational establishments eleven copies of every work published, without fee or reward, into the bargain. The present Act gives to an author's assigns all he has produced, without the least consideration for his family; and the word "author" is interpreted as meaning *any* author, whether he be a subject of Queen Victoria or of her bitterest enemy; or whether a convention for mutual rights be the subject of reciprocity or not. So it has been settled, but whether justly is questionable, if—as in the case of the judgment in Jeffreys *v.* Boosey — English laws were made for English authors, and copyright conventions were based on reciprocity.

COPYRIGHT.

CHAPTER I.

DISCOVERY OF PRINTING AND ORIGIN OF COPYRIGHT.

On the discovery of the art of printing it is said the first inventors were very desirous to monopolise it; they therefore did their utmost to conceal the process of book-making; but in spite of their endeavours it soon spread; printers multiplied, and interfered with one another, as must always be the case in a greater or less degree with persons who are concerned in the same trade. In order to prevent this inconvenience, some of the earlier printers applied to the Pope, the Republic of Venice, and the Duke of Florence to get the sole privilege of printing the books of which they were the first publishers. This privilege was obtained for a term of years, seldom exceeding fourteen, and not often so long, as it appears from the first editions of the Classics, to which patents were commonly prefixed. Hence it would appear that literary property was originally a privilege granted, not to authors to encourage them to write books, but to printers to induce them to print them. The transition from the encouragement of printers to that of authors was, however, natural and obvious. And accordingly, soon after, privileges appear in favour of authors, which were commonly assigned to publishers, whose names were attached to the title-pages. Upon this footing, therefore, the matter stood for a long time, as at present, throughout Europe.

The abstract right does not seem to have been legally recognised; but privileges were granted from favour, and with a view

to public expediency. In ancient times orations, plays, poems, and even philosophical discourses, were usually orally communicated; and all ages have allotted to the composers the profits which arose from this mode of publication. They were rewarded by the contributions of the audience, or by the patronage of those illustrious persons in whose houses they recited their works. A recompense of some sort was regarded as a natural right; and anyone contravening it was esteemed little better than a robber. Terence sold his "Eunuchus" to the Ædiles, and was afterwards charged with stealing his fable from "Nævius and Plautus." He sold his "Hecrya" to Roscius, the player. Statius would have starved had he not sold his tragedy of "Agave" to Paris, another player. These sales were founded upon natural justice. No man could possibly have any right to make a profit by the publication of the works of another without the author's consent. It would be converting to one's own emolument the fruit of another man's labours. Distinct properties were not adjusted at the same time, or by one single act; but by successive degrees, according to circumstances, as the condition of things, or the number and genius of men seemed to require. Previously to the art of printing there were but very imperfect ideas of what is now termed Copyright. The Roman law (Just. II. 1, 33), adjudged that if one man wrote on the parchment or paper of another man, the writing should belong to the owner of the materials; meaning thereby the mechanical operation of writing, for which it directed the scribe should receive satisfaction.

Printing was introduced into England about the middle of the 15th century; but both the date and the mode of its introduction appear doubtful.

Caxton, who it is said was born in Kent about 1412, and who was apprenticed to a mercer in London, on the decease of the principal buyer of foreign silks in the house where Caxton learned that business and the art of buying and selling silks, was installed into the buyer's place, and was frequently sent abroad to make purchases; by which means he became acquainted with, and got initiated into the art and mystery of

printing at his own expense. The first book printed by him was called "The Recuyell of the Historyes of Troye, in the Holye Cyte of Colen, in 1471."* But the first book printed by him in England was "The Game and Playe of the Chesse," in the year 1474. There seems no doubt, however, of Caxton's having been the first printer in England from fusible moveable types. One account states that he set up a shop in Sun Street; but the more probable fact is that or his return from his travels, where he had learned the art, and by the encouragement of the Abbot of Westminster, he first set up a press in that Abbey in 1471, which he continued to work until he died, in 1494. Caxton was called citizen and mercer. Mr. Herbert (in his "Typ. Ant.," p. 2,) appears to think he was appointed King's printer; but when it is considered that we have a minute account of upwards of fifty productions from the Caxton press, and that on none of these does he style himself "Regius impressor," and that for the greater part of his printing career he was without a competitor, he needed no special protection for the works he published; and accordingly we do not find a single royal privilege granted for any of his works. And it seems scarcely probable that this office would originate when there was only a single printer, as it could be of no value. But when several persons began to exercise the art of printing, it was natural that the king should select one out of the rest—the most expert or the best recommended—especially to print papers of State, and matters of Government. Accordingly we find one William Faques or Fakes, who styles himself "Regius impressor," in a proclamation against clipped money in 1504; and from that time until now there has been a regular succession of persons holding that office.

In 1518 we have the first account of an exclusive privilege in the printing of a book, by the successor of Faques,† by Richard Pynson. After this, privileges were granted very

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* Translated from the French by himself.

† Faques and Pynson printed the Acts of Parliament in the 19th year of Henry VII. (1503).

freely in the reign of Henry VIII., and patents to several printers for seven years, for all books they may have printed, or thereafter should print, to be computed from the date of publication; as one to John Gowghe or Gough,* in 1540; to Thomas Berthelet, in 1538, "for sixe yeres;" and to Richard Banks, in 1540. There is also a patent to Reginald Wolfe, of the office of the king's printer, in Latin, Greek, and Hebrew, with a prohibition to print such books as were therein specially assigned to him, or such books as "propria sua industriâ, diligentiâ, atque labore conquisivit."

Here we meet for the first time with a distinct acknowledgment of the existence of property in a literary work, independently of the value of the materials employed in its production: a property acquired by the patentee's own industry, diligence, and labour.

In the meantime had occurred what might be called the first case of piracy on record. Wynken de Worde had printed a "Treatise on Grammar," by Robert Witinton, in 1523, which one Peter Trevers had taken the liberty of re-printing; and in a subsequent edition in 1533, Witinton attacked Trevers with great severity for this act; to prevent a recurrence of which, a privilege was procured from the King. These royal privileges were continued to be granted long after the passing of the Act of Anne, and by all the Georges.

As printers increased and improved, more books were printed and more privileges were granted, as they were found to become more necessary, as a security for their protection against piracy.

In the 25th of Hen. VIII. (1533) an Act was passed for preventing the importation of bound books, and unbound; repealing the Act of 1 Rich. III., which permitted books to be imported and sold, both printed and written, "at the pleasure of the importer," as at that time very few books were to be had in England; but since then they had so much multiplied, and the arts of printing and binding had so much increased, whereby so many persons obtained their livelihood, that it became

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* Gough was called printer, stationer, and author.

necessary for their protection to repeal the Act of Rich. III. and prevent the importation of books, both Latin and English. At the same time, however, it provided that in case of the price of books being raised beyond what was customary, reference might be made to the King, the Lord Chancellor, or any of the Chief Justices, to redress the same and inflict penalties for the same; and that a penalty of 6s. 8d. a copy on the sale of such books contrary to this Act shall be enforced against all persons having them in their possession.

Such was the state of literary property until the reign of Philip and Mary, when, it being found that "many false fond books and other lewd treatises in the English tongue, both heretical and seditious," were being issued from the press, it was determined to unite the printers into one body, that their general conduct could be more easily watched and controlled. Letters patent were therefore granted to the Stationers' Company on May 4th, 1556, as a Corporation, that they might search out and oversee all who followed the art of printing.

The foregoing facts prove that by the increase of printers and the improvements in printing, it became possible for one man, by printing another's work, to avail himself of the money and labour expended by another upon its production without incurring the cost, and so to undersell him. As soon as the injustice of such a case was proclaimed, it was distinctly acknowledged by common justice and equity, that he who had gained to himself by mental labour or outlay of capital that to which he was entitled, was fully supported by the language in which the patents were couched, and the grounds on which the King was induced to grant them.

About this time, also, we find a privilege for printing, which upon the face of it, though not in express words, is granted in consideration of the claims which an author has to his copy.* It is dated 1530, and is in favour of "Maistre Jehan Palsgraue, Angloys, natyf de Londres, et gradué de Paris," for a book to teach the French language, which he is said to have "made

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* "Copy" was used formerly for what is now termed "Copyright."

with a great and long continued dyligence," and in which, "besydes his great labours, payns, and tyme thereabout employed, he hath also at his own proper coste and charge put in prynt;" wherefore, continues the patent, "*we, greatly moued and stered* by dewe consyderation of his sayd *long tyme and great dyligence*, about this good and very necessary purpose employed, and also of his sayd *great costes and charges* bestowed about the imprynting of the same, have liberally and benignely graunted unto the said Maister Palsgraue our fauorable letters of priuilege, concernynge his sayd boke; called "L'Esclarcissement de la Langue Francoyse," for the space and terme of seuyn yeares next and immedyately after the date hereof enswyng," &c. (Herb. "Typ. Ant." vol. i., p. 470.)

As the King's privilege appears to have been the most effectual way of securing the rights of an author at that time, it was very natural that he should endeavour to prevent other persons from infringing his rights; for the King's protecting privilege also acted as a guarantee in the recommendation of his book. It would appear that these licences were not granted solely on the ground of the King's generosity, but that the author had spent much time and labour in the composition of his work, or that the printer had laid out large sums of money in the production of it; and these were the grounds on which the King was induced to grant them. Indeed it is most probable that the parties applying for these privileges never anticipated the protection of more than one edition; as there were comparatively few readers to require a second or third edition as a means of repayment for their outlays at the commencement.

CHAPTER II.

SOME ACCOUNT OF THE STATIONERS' HALL COMPANY AND ITS REGISTER.

The Stationers' Company is said to have had its origin, and was formed into a guild or fraternity, about the year 1403. It had then, as now, bye-laws for the regulation of its fellowship.

The term "Stacyoners" is explained as writers, or lymners of books and dyverse things for the church, and other uses as A B C's, with paternoster, creede, grace, and portions of the Bible, or text writers. Their Hall stands on the site of Burgavenny house, which was modified and re-erected in the 3rd and 4th of Philip and Mary.

"The stacioners," says Stowe, "dwelt in and about Paternoster Row, where also dwelled turners of beads, who where paternoster makers." It would appear, according to Nichols, that notwithstanding all their endeavours, the Stationers' Company have not been able to discover their privilege or charter under which the Company acted as a corporate body. Wynken de Worde was a "citizen and stationer," as is notified in his will, dated 1545. The first place of meeting of the Stationers' Company or Guild appears to have been in Milk Street, but in 1553 they removed to St. Peter's College, near the Deanery. The term stationer is also said to have been given to the transcribers of books and MSS., from the stations they took up and occupied near the gateways of monasteries, and other ecclesiastical foundations, for the sale of their works; and probably for the purchase of similar productions from the monks, who were well-known as transcribers long before the art of printing was invented. Most of the earliest printers seem to have been stationers, and in fact no printer was allowed to follow that occupation except licensed by this body.

After printing became common, the Stationers' Company purchased the copies of books in sheets, bound them up, and sold them by retail.

They do not appear, however, to have had any authority as to the exclusive printing and publishing of books until they were chartered by royal licence by Philip and Mary, on the 14th of May, 1556, under the cognomen of "The Master and Keepers, or Wardens and Commonalty of the Mystery or Art of Stationers,"—an incorporation of booksellers and printers, who, for their general benefit, determined to keep a register, in which should be entered the title of every new book, the name of the proprietor thereof, and the successive transfer of such

proprietorship. The first book entered in their register was in 1558 to William Pekerynge, entitled "a ballet," and called "Arise and Wake," iiij*d.** In 1586 a sheet was printed entitled "Ordinances decreed for Reformation in Printing and Uttering Books."† This was an order of the Star Chamber, to which were attached the names of some of the Privy Council, viz., Lord Keeper Bacon, Marquis of Winchester, Lord Treasurer, Earl of Leicester, &c.—"such ordinance being designed to prevent the bringing in the printing of books against the Religion Established." Queen Elizabeth confirmed the charter of the Company in the first year of her reign. The Company then appears to have had the privilege of printing the Bible, A B C's, catechisms, almanacs, law and other books. But in 1575 certain other persons applied for and obtained the exclusive privilege of printing ballads, damask paper, books in prose and metre, &c., "*very much to the detriment of the members, and* many poor persons employed by the Stationers' Company:" and they consequently petitioned the Lord Keeper to present their complaint to her Majesty, but without success.

The Queen granted patents in the 15th year of her reign to Este, Byrde, and Tallis, musical composers, to print all music-books and ruled paper; and to William Seres, who kept a shop with the sign of the "Hedge-Hog," in a large building called St. Peter's College, which building at the general dissolution of the religious houses was done away with, and became private property. Seres was a printer, and servant to Cecil, the private secretary to King Edward; and Cecil gave him a licence to print all manner of private [illegible]yers, called primers, and that

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* J. Paine Collier published a list of the entries in the Stationers' Hall Registry of books, with notes and extracts from them, during the period of 1557 to 1570; and a further list has been added by Arber, down to the year 1630, in three thick quarto volumes, which give not only the titles of the books, but facsimiles of their original type. They are to be found in the British Museum, among the Catalogues. And it is said that another volume will shortly be added, to complete the series to the present time.

† In which was enacted the forfeiture of all books, the disability to use the art of printing, and imprisonment for three months, against any printer disobeying its injunctions, &c.

none else should print them upon pain of forfeiture of the same; "provided that before the said Seres or his assigns did begin to print the same, he or they should present a copy thereof, to be *allowed* (sanctioned) by the Lords of the Privy Council, or the Lord Chancellor, or by the King's four ordinary chaplains, or two of them; and when the same was or should be from time to time printed, that the said Lords and other the said Privy Council, or by the Lord Chancellor, or with the advice of the Wardens of the same occupation, the reasonable price thereof be set, as to the leaves, as being bound in paste, or boards, in like manner as was expressed in the end of the Book of Common Prayer." This licence was taken away by Queen Mary, but after her death was restored by Cecil to Seres, who afterwards assigned his presses, stock in trade, &c., to Henry Denman, who took seven young men of the Company of Stationers to join him—"but certain inferior persons of the Company, setting up more presses than England could bear, did print other men's copies, forbidden to them, and privileged to others by the Queen's patents." After a long contest it was agreed that those who had privileges were to grant some allowance to the Company of so much per copy for the maintenance of their poor. This matter took place about the year 1583.

John Jugge, the Queen's printer, got the privilege of printing Bibles and Testaments, the which had been common to all printers; Richard Tothil, all law books, who sold the same at extravagant prices, to the great detriment of the poor students; John Day had the sole printing of A B C's and catechisms, with the sole liberty of selling the same by colour of commission. These books, had been the great support of the poorest sort of the Company, so that the Company petitioned the Lord Treasurer for licence to print two little Latin books that were much in request, setting forth that they were a very poor Company, and not able to bear the charge laid on them for FARMING THE RIGHT* to print such books; and pleaded their inability to

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* FARMING THE RIGHT then meant an exorbitant *bribe*, which was not an uncommon case in days gone by. There is no doubt but that monopolies of various kinds were the subject of much abuse, and were granted by way

keep the many poor hands that were belonging to them, without some of these privileges." Christopher Barker, one of the Queen's printers, writing to Lord Burghley, facetiously calls this Company Stationers, Booksellers, Binders, Joyners, Chandlers, and others, being freemen of the said Corporation.

In 1587 the number of printers throughout the kingdom was limited by law to twenty. The charter of Philip and Mary confined the art of printing to stationers. In consequence of the above privileges being taken away, the Stationers' Company were limited to the printing of casual and miscellaneous works, books of entertainment, sermons, pamphlets, and ballads. They were, however, by an arbitary measure of the Star Chamber, afterwards appointed to be the conservators of the licences for the printing of books; and they were required to watch over the publication of political tracts from their possible bearing of a seditious tendency; there being no newspapers* at that time, and much opposition to that arbitary Government. The powers given to this Company by the Star Chamber were by no means of a popular kind. They were required to exercise an unlimited inquisitorial power over all literary productions that emanated from the press; they had permission to search houses and all printing establishments for any publications that were considered obnoxious to the reigning party *or their own*

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of favouritism at an early period, as they have to a certain extent continued to the present time. In the debates on the subject of the abolition of monopolies, when that of playing-cards was mentioned, Sir Walter Raleigh blushed! Upon the reading of the list of patents, Mr. Hackwell, of Lincoln's Inn, stood up and asked: "Is not bread there too?" "Bread!" says one; "Bread!" says another. "This request seems strange," says one of the members. "No, not in the least," says Mr. Hackett, "for if not speedily prevented, a patent for bread will be procured before the next session of Parliament." This conversation was towards the close of the reign of Queen Elizabeth, when it was notorious how many patents for the exclusive publication of books were given; and among others to Edward Darcy for cards, &c., which were the subjects of favouritism.

* The first newspaper published in England was entitled "The English Mercurie," imprinted at London by the Queen's Printer in 1558, copies of which are in the British Museum.

interests; they might seize, burn, destroy, take away, or convert to their use whatever they might deem to be printed contrary to the form of the licensing statute, act, or proclamation, then made or that might be made; and they were not unfrequently opposed in their attempts at making searches. The case of one Roger Ward is especially mentioned as that of an incorrigible offender, who gave the Master and Wardens much trouble because he chose to print anything that suited his fancy. On one occasion his wife and servants forcibly refused to allow the Master and Wardens to search his premises, notwithstanding it was in opposition to royal authority.

At the time of their incorporation, the Company numbered 94 members, whose names were attached to their charter.* By the Star-Chamber decree in 1585, "Every book, or other printed document, must be licensed. Nor shall anyone print any book, &c., against the form or meaning of any restraint contained in any statute or law of the realm, or contrary to any ordinance set down for the good governance of the Stationers Company." Thus it would appear that the object of bestowing these powers on this Company was the performance of certain onerous duties of state in the censorship of the press; and for the suppression of political and religious works supposed to be inimical to the Government or the State Church.

In 1573 there are entries in the register-book of the sale of copies, and their prices. In 1582 provision is made in one of their bye-laws, "that if it be found any other has a right to any of the copies entered in the Register, then the licence touching such copies so belonging to another person shall be void; and that fines shall be imposed upon men for printing other men's copies." Thus we see at this early period that literary rights were respected, and infringement punished by fines, among the members of this community, as well as bought and sold fairly," according to the ideas that prevailed in those days.

In 1611 the Stationers' Company purchased the old house which in the reign of Edward III. was the palace of John, Duke

* They now number from 1,000 to 1100 members of all trades and professions.

of Bretagne and Earl of Richmond, which was afterwards occupied by the Earl of Pembroke, and in Elizabeth's reign belonged to Lord Abergavanny, and took possession of it; but it was entirely burnt down in the great fire of 1666, whereby it is said the Company lost £200,000.

In 1615 the Company obtained a renewal of their charter for the sole printing of Primers, Psalters, both in metre and prose, with and without musical notes; almanacs and prognostications in the English tongue; A B C's, both in English and Latin, &c.; which monopolies had been taken away from them in the early part of Elizabeth's reign.

Cassell's "Old and New London" tells us that "The Bible printed by the Stationers' Company in 1632 had the curious omission in the Seventh Commandment of the word "NOT;" for which Archbishop Laud made a Star-Chamber prosecution, and laid a heavy fine upon the Company, who suppressed all the copies they could lay their hands on. It is called the "Wicked Bible," a copy of which is in the British Museum. In another and later edition, in Psalm xiv., for the Word "*no*," in the text "The fool hath said in his heart, There is *no* God," they substituted the letter "*a*."

In 1622 King James granted a patent to George Wither for the publication of a book called "Hymns and Songs of the Church." The privilege of this patent was, that a copy of Wither's book was to be inserted, "in convenient manner and due place, into every English psalm-book in metre;" and that the printing of it for fifty-one years was reserved to himself and his executors. The poet had won the favour of the King, who gave him this patent, partly as an encouragement to such endeavours, and partly as a means of raising Wither's fortunes after the poverty caused by his imprisonment. The patent, however, was of no service to him. The Stationers' Company refused to bind the "Hymns" with the Bible. When the case was tried, the patent was condemned, and Wither's book had to be sold by itself.* These "Hymns and Songs" were mostly

* The late Rev. H. E. Havergal, M.A., published a small edition of Wither's "Hymns and Songs," with some of the tunes to which they were

composed in prison, and were intended to supersede the metrical performances of Sternhold and Hopkins. In 1624 Wither addressed a pamphlet to Archbishop Abbot and the other bishops, on the necessity of improved psalmody in the churches. He lamented that the language of the Holy Ghost was put in rude and barbarous numbers; while wanton fancies were painted and turned in the most elegant speech. Using the image of the prophet Haggai, he said that "the people dwelt in ceiled houses, while the Ark of God was without shelter." The failure of his patent, after becoming liable for £300 in the publication of his "Hymns," reduced him to great poverty.

This is one of the cases in which the Stationers' Company used their arbitrary power, even in opposition to Royal authority, to the ruin of an estimable man, and against the introduction of a higher class of metrical psalmody than that of Sternhold and Hopkins; which would doubtless have superseded that doggrel, and stopped the sale of their own "copy," which is said to have "apt notes to sing them withal." A copy of which I met with by accident lately, dated 1687.

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originally set by Orlando Gibbons and Tallis, to which he has prefixed the following preface:—"The history of these 'Hymns' is briefly this. Composed at the invitation of the clergy, they were revised and authorised by Archbishop Abbot, who gave order to alter one word only."—"Besides the ordinary allowance of authority," they had "the particular approbation of the King (James I.) himself and of Convocation,"—and in consequence were 'commanded by the Royal patent, dated Feb. 17, 1622-3, "to be inserted in convenient manner and due place into euerie Englishe psalm-book in meeter."—They were printed in 4to and 12mo in 1623, and in 8vo and 12mo probably in 1624. In defiance of those commands, the monopolising Company of Stationers maliciously endeavoured to prevent their sale. Hence the volume has been so little known. "The larger and more useful portion of these beautiful compositions is herewith reprinted (1846)." These Hymns were "fitted with tunes by that rare musition Orlando Gibbons," some of which are appended to this little volume. "Nevertheless all, but some few, may be sung to such tunes as have beene heretofore in use."

CHAPTER III.

STAR-CHAMBER DECREES AND BYE-LAWS, &c.

In 1637 a decree was passed—13th Charles I.—by which printers were placed under several arbitrary regulations. No printing was to be carried on except in the city of London, and no one should import from abroad or put to sale any books which the Company of Stationers or any other person had or should by any letters patent, order, or entrance in their register-book, or otherwise have the right, privilege, authority, or allowance solely to print, on penalty of forfeiture of books, and such fine as the Court should think fit to levy.

In 1640 the infamous Star Chamber was abolished.

From the great rebellion in 1640 to the restoration in 1660 the subject of the exclusive property in literary works was not lost sight of, although attempts were made to induce the government to allow all books to be printed by anybody who wished to do so; yet Offspring, Teatly, Burges, Calamy and others, who were much favoured by the ruling party, made strong representations against such malpractices to Parliament, urging the facts that large sums of money had been paid by booksellers and stationers to authors and others in the production of useful books. "We conceive it to be both just and necessary that they should enjoy a right to the sole printing of their copies, for unless they do, all scholars will be utterly deprived of any recompense for their studies and labours in writing and preparing books for the press, to the great discouragement of learned men, and the abuse of all kinds of learning." These representations had the desired effect, and an ordinance for the suppression of these great abuses was published June 14, 1643.

In 1644 Milton published his famous speech on the liberty of unlicensed printing, against the ordinance of the Star Chamber, in which he says, "God forbid that any man's right be gainsayed."

In 1649 the Act of 13 & 14 Chas. II. forbade anybody to print any book without being licensed and entered in the register-book of the Stationers' Company; which licence, with its arbitrary regulations, was abolished in 1679.

In 1681 we find a bye-law which states "that divers members of the Company had great part of their *estates* in copies; and that by *ancient usage*, when any books or copies were entered in their register to any member of the said Company, *such persons were always reputed as the proprietors, and ought to have the sole printing thereof.*"

In 1667 Milton sold the copyright of his "Paradise Lost" to Simmons for £5, but he took good care to secure to himself another £5 after the sale of 1,300 copies, and also an agreement to receive £5 for every 1,500 copies afterwards; but as he only received two instalments before his death, he reserved the same right to his widow, who sold the exclusive right to the same publisher for £8, by a receipt dated April 29, 1681. It afterwards became the property of Tonson, who brought an action and obtained an injunction eight years after the twenty-one years given by the Act of Anne had expired. This is, therefore, pretty good evidence of the existence of a common-law right in authors, even after the passing of the Act of Queen Anne. Lord Hardwicke granted an injunction for the sole publication of Milton's book to Tonson in 1739 (Tonson *v.* Walker, cited 4 Burr., 2326; Parl. Hist., vol. xvii., p. 999). There are similar cases cited in a book on the Law of Copyright by John Shortt, LL.B., published by Cox, 10, Wellington Street, Strand.

In 1650, by a rescript of the Lord Mayor, the Stationers' Company were ordered to substitute the arms of the Commonwealth for those of the late King, and to remove the King's picture and arms from the Hall.

Stationers' Hall was in 1677 used for divine service by the parish of St. Martin's, Ludgate; and towards the end of the seventeenth century an annual musical festival was instituted on the 22nd of November in commemoration of Saint Cecilia, and as an excuse for some good music. A splendid entertainment was provided in the Hall, preceded by a grand concert of

vocal and instrumental music, which was attended by people of the first rank. The special attraction was always an ode to Saint Cecilia, set by Purcell, Blow, or some other eminent composer of the day. Dryden's and Pope's odes are almost too well known to need mention; but Addison, Yalden, Shadwell, and even D'Urfey, tried their hands on praises of the same musical saint. The 22nd of November was their grand almanac publication day.

In 1688 application was made by a nonconformist minister and his elders for the use of the Hall as a meeting place, but it was refused by the Company.

By another bye-law, in 1694, after the usual recitals, and stating that copies were constantly bargained and sold amongst the members as their property, and devised to their widows for their maintenance, and to their children as legacies, "*it is ordained* that when any entry shall be made of any book or copy by or for any member of this Company, in such case, if any other member shall without licence or consent of the member for, or to, or by whom the entry is made, print, or *import*, or expose for sale, &c., they shall for such copy forfeit the sum of twelvepence;" which forfeits were to be paid into their treasury. "And it is ordained for the better preservation of the said ancient usage from being invaded by evil-minded men."

The first action brought for piracy was for the "Pilgrim's Progress," soon after the expiration of the Licensing Act; but there does not seem to have been any settlement of it. This Act was revived in the reign of James II., who granted a monopoly to the two Universities and the Stationers' Company for the sole printing and publishing of almanacs, which that Company *carried on by injunctions and prosecutions for a century*.

The history of the royal pretensions to grants of this kind, is succinctly stated by Lord Eldon, in Gurney *v.* Longman, as an instance of the necessity of caution in similar claims. His Lordship is reported to have said,—"It appears to me, in the case of Millar and Taylor, that the Crown had been in the constant habit of granting the right of printing almanacs, and at last that James II. granted that by charter to the Sationers'

Company. At length one Carnan,* an obstinate man, insisted on printing them. An injunction was granted to the hearing, but the Court of Exchequer directed the question to be put to the Court of Common Pleas, "Whether the King had a right to grant the publication of almanacs, as not falling within the scope of expediency, the foundation of prerogative copies." That Court returned for answer twice, "that the charter was void, and that almanacs were not prerogative copies." The injunction was accordingly dissolved after a century of prosecutions and usurpations by the Stationers' Company.† True, however, to their ancient despotic proclivities, they petitioned Parliament to be allowed to bring in a Bill upon which to found an Act to secure to them a continuance of their "Old Moore's" and other almanac monopolies. But the manner in which they had carried on their prosecutions for so many years had so thoroughly shown up the injustice of their proceedings, that their Bill was rejected by the legislature without hesitation. The licensing system was, however, kept up by royal authority, even to the reign of George III.

The following is a copy of one of the royal patents.

ANNE R.

Whereas Our Truly and Well-beloved *Richard Smith*, of our City of *London*, Bookseller, has humbly represented unto Us, that he has, with great Labour and Expence, prepared for the Press, a new Edition of the Sermons, and other Works, written in *English* by the Right Reverend Father in God, Dr. *William Beveridge*, Bishop of St. *Asaph*, deceased; and has therefore humbly besought Us to grant him Our Royal Privilege and License, for the sole Printing and Publishing thereof, for the Term of Fourteen Years: We being willing to give all due Encouragement to Works of this Nature, tending to the

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* 2 W. Bl. 1004.

† In consequence of this decision, it was enacted that £500 each should be paid to Oxford and Cambridge Universities out of the duty upon almanacs as a compensation for £100 a year, for which they had demised to the Stationers' Company the privilege of printing almanacs.

Advancement of Piety and Learning, are graciously pleased to condescend to his Request: And do therefore, by these Presents, grant to him the said *Richard Smith*, his Executors, Administrators, and Assigns, Our Royal License for the sole Printing and Publishing the *English* Works of the said late Bishop of St. *Asaph*, for the Term of Fourteen Years, from the Date hereof; strictly forbidding all Our Subjects, within Our Kingdoms and Dominions, to Reprint the same, either in whole, or in part: or to import, buy, vend, utter, or distribute any Copies thereof reprinted beyond Seas, during the aforesaid Term of Fourteen Years, without the Consent and Approbation of the said *Richard Smith*, his Heirs, Executors, and Assigns, under his or their Hands and Seals first had and obtained, as they will answer the contrary at their Perils. Whereof the Master, Wardens, and Company of Stationers are to take notice, that the same may be entered in their Register, and that due Obedience be rendered thereunto. *Given at Our Court at* Kensington, *the 5th day of* June, 1708, *in the Seventh Year of Our Reign.*

By Her Majesty's command,

SUNDERLAND.

The entry of books in the Register of the Stationers' Company, had been so often recognised and treated as equivalent to proof of ownership by decrees and other acts, that a legal title was thought to be attained by it, even paramount to that of the King's patentee, if he had not registered his work there: and Atkyns, who held a patent from the King for printing all books touching the Common Law, finding parties acting in defiance of it on the pretext of priority of title by entry, petitioned the King, who issued a proclamation,* wherein, after stating that differences had arisen between the Stationers' Company and Mr. Atkyns, to whom the King had granted the sole right of printing all law books, *owing to divers copies* of such books *being entered* in the register-books of the Stationers' Company, by which *a private property* was pretended to be *gained* thereto;

* Dated November 8, 1671.

it was stated to be his Majesty's pleasure, that no book concerning the Common Law should be entered in the register-book, so as to give the person entering it any property in such book, but that the printing thereof be solely reserved to the said Edward Atkyns.

In the reign of William and Mary, when the licensing monopoly was about to expire, it was renewed by the 4 Wm. & M., c. 24, s. 15, for a year, from February 13, 1692, O.S., and from thence until the end of the next session of Parliament. "It may appear somewhat strange," says Mr. Lowndes, "that in times when liberty so zealously asserted her rights, a Bill which so completely fettered the press should have been renewed; but it was, in a manner, secretly passed through the House of Commons, it being an amendment proposed in Committee to a general Act for renewing about a dozen statutes then about to expire. And when the motion was put, that the House agreed with the Committee in that amendment, it was carried by a majority of only 19 out of 179 members present. On being submitted to a Committee in the House of Lords, a petition was presented by several booksellers, binders, and others, dealers in books, and printers, praying to be heard before passing the Bill, when it was ordered that they should be heard. But they do not appear to have been successful, as the Bill was soon after read a third time and passed. A protest was, however, drawn up by eleven Lords, which concludes thus against the Bill: "Because it subjects all learning and true information to the arbitrary will and pleasure of a mercenary, and perhaps ignorant, licenser; destroys the property of authors in their copies, and sets up many monopolies." We learn also from "Reasons,* humbly offered to be considered before the Act of Printing be renewed," that this destruction of property referred to certain malpractices in the management of the register-book of the Company of Stationers. The Company, who, it appears, were not privileged to do so by any express words in the statute, sometimes asked large sums of

* From a broad-sheet in the British Museum, entitled "Reasons," &c., as above.

money for making an entry in the Register, and at others refused, or neglected to enter books; and that they not unfrequently made false entries and erasures, to the confusion of all property. It was also alleged that the terms of the Act itself were liable to misconstruction, as it seemed to make the fact of entry equivalent to proof of legal ownership. By the said Act it is enacted, that a book being licensed, and entered in the register-book of the Stationers' Company, "it is forbid to be printed without the owner's licence (who by virtue of that entry is owner), under the penalty of 6s. 8d. a copy; which Register hath, by the undue practices of the Master and Wardens, been so ill-kept, that many entries have been unduly made, insomuch that the true proprietors, both by purchase, licence, and entry, all duly made of several books, which afterwards have been erased (or the leaves wherein they have been written have been cut out), and undue entries made to others who had no right; which is directly contrary to the plain words and meaning of the said Act, whereby the owners have not only been defrauded of their rights, but also rendered liable to the penalty of 6s. 8d. per copy for all books they printed, sold, or bound." Many learned authors have been defrauded of their rights thereby, who, after many years' pains and study, and afterwards by a bare delivery of their books to be licensed, have been barred by surreptitious entries made in the said Register (to instance, in the book called "Reguli Placitandi," among many others, written by a learned lawyer and worthy Member of Parliament).

Whether these statements had anything to do with the penalties enacted against the registrar's refusal or neglect to enter, according to the future Acts for Copyrights, it is impossible to say. The Licensing Act so renewed had but a short duration; but another attempt was made to renew the Act of 13 & 14 Car. II., c. 23, when the House rejected it, and ordered the Committee to prepare a Bill for the better Regulating of Printing and Printing Presses. The Company of Stationers having heard of this Bill, presented a petition against it, alleging that "if their property should not be provided for, many widows and

others, whose sole livelihood depended on the petitioners' property, would be utterly ruined." The Commons, not liking the passing of this Bill, desired a conference, and among other reasons objected to the clause of prohibiting any printing before entry in the Register, except Proclamations and Acts of Parliament, "whereby both Houses are disabled to order anything to be printed; and the Company are empowered to hinder the printing of all innocent and useful books, and have an opportunity to enter a title to themselves and their friends for what belongs to and is the labour and right of others." Here, then, we may see why Mr. Godson, in his work on "Patents and Copyrights," called this delectable Company "the monopolists of books and the destroyers of literature;" and why the opposition to their monopolies induced them in a bye-law to term their opponents "evil-minded men." Some of the old leaven seems still to stick to them, if we may judge from the *courtesy* frequently displayed at Stationers' Hall Registry of late years.*

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* Peter Cunningham, in his "History of London," tells us "that the great treasure of the Stationers' Company is its Register, where every publication, from a Bible to a ballad, was required to be entered." One is somewhat at a loss to quite understand Peter's statement of what this "great treasure" consisted—whether it was the amount of the fees extracted from the authors' and publishers' pockets for the entry therein, for Peter does not say anything about the fees, which began in the reign of Anne at 6d. and then were enhanced by the Act 54 Geo. III., c. 156, to 2s., and 1s. for a copy, and another 1s. for peeping into the book; and by the Act 5 & 6 Vic., c. 54, to six times 5s. for entry, and another six times 5s. for copy of entries, and then 1s. each for *every entry searched for or inspected in the said book*, which book you cannot inspect until you have made a search for, what you want to "inspect" in the indexes tendered to you for the search; and if you don't find what you want in the index, you must pay for *not* inspecting the "book." Very few people know that every book which is entered at Stationers' Hall ought to find its way to the British Museum; and no book ought to be entered without the registrar's seeing that it is published, and corresponds with the document brought for entry.

CHAPTER IV.

ON THE ACTS OF PARLIAMENT ON COPYRIGHT.

It would appear that previously to the passing of the first Act, viz., 8 Anne, c. 19 (1710), piracy was rampant among the printers and small publishers; that Act being the result of continuous petitions, and applications to Parliament by booksellers and others for the redress of their grievances, and *protection from piracy*, from 1703 to 1709, the Act being passed in 1710; these piracies were made by persons so poor that actions brought against them were utterly futile, as they had nothing to pay with. It is said the title of the Bill brought into Parliament, which was to be the foundation of an Act, was "A BILL TO SECURE THE UNDOUBTED PROPERTY OF COPIES FOR EVER." It is not easy to see, therefore, how a Bill to secure the rights in literary property to authors and their assigns could be turned into an Act to take that property away, after a limited period, especially as this Act was passed for the encouragement of learned men to compose and write useful books; and that "the authors and their assigns shall have the sole liberty of printing and publishing any book which shall have been published before the 10th of April, 1710, for the term of twenty-one years, to commence from that day," thus acknowledging that a previous right existed before the passing of this Act. There can be no doubt but that the Bench generally considered the Act of Anne did not interfere with the vested rights of authors, especially as that Act was called "*An Act for the Encouragement of Learning*," by vesting in the authors or purchasers of the copies of printed books the rights during the times therein mentioned. Yet by the case of Donaldson and Becket,* the House of Lords decided by a majority of six judges against five (Lord Mansfield not voting) that the Act of Anne took away the common-law right, and therefore the term of copyright must in future be subject to

* Donaldson *v.* Becket, 4 Burr. 2408.

the limitation of the statutes. This decision has never been reversed, although admitted to be unjust.

By the Act 13 & 14 Car. II., c. 33, a clause was inserted which obliged the printer of every work to reserve *three copies:* one for the King's Library, and one each for the Universities of Oxford and Cambridge. And this was the foundation of the present claim of public bodies to a copy of every work published. The Bill on which the Act of Anne was founded originally only required *three copies* to be given, as before; but in its passage through the Commons two more copies were added for Sion College and the Edinburgh University. But the Scotch peers thought this too good an opportunity to be lost for enriching their public libraries at the expense of the poor author; accordingly four more copies were added for Scotland, making nine; and the rendering of these copies was made compulsory under a penalty of £5 and the value of the work for every default of delivery. By the Act of the Union with Ireland (where piracy had been carried on to a great extent) that country was included in the Copyright Laws, and two others copies, one for Trinity College and another for the King's Inns, Dublin, were added to the *compulsory gift.* making *eleven copies* of every work published *to be forced from the publisher to provide books without fee or reward to these rich educational establishments;* and they were to have those printed on the best paper, and bound.

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CHAPTER V.

OPERATION OF ACTS OF PARLIAMENT.

The decisions in the cases, that there was no common-law right in authors after the passing of the Act of the 8th Ann, "alarmed the universities for their copyrights. These powerful bodies, allied as they were to both Houses of Parliament by ties and associations, had no difficulty in obtaining that authority for themselves which was sternly denied to the owners of copy-

right at large." Thus the Act of 15 Geo. III., c. 53, which enabled the Universities and Colleges of Eton, Westminster, and Winchester to hold copyrights in perpetuity, was passed; which, considering the times in which we live, and the compulsory furnishing of books to these universities, and the limitation of the term of copyright to authors, ought to be, at least, put upon the same footing as authors themselves.

The "Oppressive Library Tax," has ever been distasteful to the booksellers, and they tried by every possible means to avoid it. They therefore only entered the *first volume* of any large work they published, which, of course, would be useless, and was seldom demanded. To remedy this a clause was inserted in the above Act, that no penalties under the 8th of Anne should accrue, "unless the title to the whole copy of the work, and every volume thereof, should be entered in the Register, and unless *nine copies* were delivered to the warehouse-keeper of the Stationers' Company for the use of the libraries in that Act mentioned."* But the effect of this concession did not answer the expectation; for the booksellers preferred losing the "*protection*" and the assumed "*encouragement*" pretended to be held out by the Act; and they consequently refused to enter their works in the register-book for the gratuitous gift of nine copies of *costly and expensive works.* They reasoned that if they were willing to relinquish all *benefits* "under the Copyright Acts, by not entering these works in the register-book of the Stationers' Company, there was no power, legal or equitable, which could force them to give up their costly property;" for the obligation could not take effect if they did not claim under the statute; it being imposed only in exchange for the benefit conferred. The universities taking the same view—which indeed seemed a just one—and finding they did not get copies of these valuable works, which were most expensive to purchase, and that every expedient was resorted to to evade their claim to the gratuitous delivery of copies, procured a Bill to be brought

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* Consequently for the first fifty years after the passing of the Act of Anne very few works were entered in the book of registry at Stationers' Hall.

into Parliament to secure to them the right to these copies, and to offer a supposed equivalent for this "*iniquitous tax*," in the shape of an extension of the term of copyright.

The means for the *further encouragement* of learning by taking away from them the common-law right, limiting the term of protecting it to the short period of fourteen years, and compelling them to give eleven copies of every work gratuitously to the public libraries was "*encouragement*" *with a vengeance!* However, the Bill was read a first time on the 16th of June, 1808, and pressed to a second reading by Mr. Villiers, who on the 22nd moved that it should go into Committee. Sir Samuel Romilly, however, "regretted that the most objectionable part of the measure, *the laying a tax on authors for the supply of books to the Universities*, should be insisted upon. There were many works," he said, "which cost fifty guineas a copy, and it was monstrous that the authors and publishers should be compelled to give away eleven copies, amounting to 550 guineas, when there was no danger from the large outlay in their production, of any piracy of them, especially as the publishers were not anxious about the copyright; these therefore ought to be exempted from any such tax." The Bill was then not proceeded further with, as a prorogation took place on the 4th of July, and the next session Mr. Villiers was sent as ambassador to Portugal. Thus matters remained until 1811, when Professor Christian persuaded the university that "the true construction of the Act of Anne required a delivery of all the copies, whether entry was made or not at Stationers' Hall, and that they had a clear right to enforce the law." According to this advice, an action was brought by that university against one Bryer,* a bookseller, for non-delivery of a book he had published and not entered; and the King's Bench decided in their favour. Soon after this decision, a motion was made for an amendment of the law on this subject, by a Mr. Giddy, which was to procure for authors and booksellers an enactment destructive of that privilege which the decision in the King's Bench had now enabled the universities to enforce. A petition

* University *v.* Bryer, 16 East, 317.

was therefore drawn up by the booksellers and publishers of London and Westminster, complaining of the clause, and showing the hardship in the case of expensive works, of which only a limited number of copies were printed. They also complained of the further term of fourteen years being dependent on the authors being alive at the end of the fourteen given by the former Act, "which," they say, "is a distinction in many cases productive of great hardship to the families of authors, and is not founded on just principles:" and Sir Samuel Romilly said, "It was a mistake to suppose that the Act of Anne conferred a benefit on authors; no such thing! Before the passing of that Act, authors had an exclusive property in their works; and the Act in question went to limit that right rather than to enlarge it: for the only privilege conferred by it went to enforce some penalties which were immaterial. It operated in a way most injurious to the best interests of literature. Was not the principal object of this Act to punish the piracies which were so rife at the time the petitions were made for the protection of authors?" If so, it certainly could not be intended to limit their rights, and if rightly understood, such must have been the intention of the legislature; as is evident by some of the decisions given by the judges—who were by no means unanimously agreed—that the Act of Anne took away the common-law right of authors.

By the Act 44 Geo. III., c. 107, the extension of another fourteen years was given, making twenty-eight years, if the author was living at the end of the first fourteen. But as the booksellers then declared they would not give a penny more for a copyright for twenty-eight years than they formerly gave for fourteen, so they now insist upon purchasing the author's *sole right* of forty-two years, and very few authors are in a position to demand that after a certain time a copyright shall return to them or their families, be they ever in such circumstances as to need it. Why subsequent legislators have manifested so determined an opposition to the extension of the period of a copyright for any considerable length of time, or why the property in the production of a man's brains should be

treated with less consideration than property in land or in the funds, it is not easy to understand; but there seems to be an unaccountable prejudice against acknowledging and admitting that property in a book of immense value to the community at large should not be deemed as sacred and genuine a right as that in a freehold or copyhold estate. It is true that one is the result, very often, of years of laborious study, industry, thought, and research, while the other is frequently owing to the accident of birth, or the good luck of speculation; but if we look at the case in its true relation to the benefits conferred on society, who is so great a benefactor to his species as the man of genius and learning, whether his works be literary, musical, or artistic? How many millions of human beings have been delighted, and pecuniarily benefited by the performance of the works of Handel and other great musical geniuses, at the grand musical festivals, given for charitable purposes alone? How many millions of printers, booksellers, papermakers, bookbinders, typefounders, pressmakers, toolcutters, artists, engravers, and others, have been clothed, fed, and enriched by the printing, publication, and sale of the works of men of genius, and learning—literary, musical, and artistic; many of whose descendants, so far from participating therein, have died neglected and in poverty, while some of the publishers of their works (which the state of the law has permitted them to print without fee or reward to the progeny of their originators) have realised large fortunes by them! It is to this side of the picture that we should look when we are obtaining knowledge from the perusal and study of these works, or when we are receiving the highest gratification from the reading, exhibition, or performance of them. There would be little need of the (I had almost said beggarly) gratuities bestowed on the widows or families of such men, or sometimes on the men themselves, in the latter years of a life devoted to their art, if a proper appreciation of their rights had been well considered and acted upon before the law had been settled so unsatisfactorily. But there is still the opportunity in the proposed new Act to make the *amende honorable*. Let us hope it will be properly considered.

CHAPTER VI.

ON THE BILL BROUGHT INTO PARLIAMENT TO REDUCE THE NUMBER OF COPIES DEMANDED BY THE PUBLIC LIBRARIES UNDER ACTS OF ANNE AND 41 GEO. III., &c.

This Bill was brought into Parliament by Sir Egerton Bridges in 1817, to reduce the number of copies demanded previous to the Act of Anne, viz., "*three.*" Numerous petitions in favour of and against this Bill were presented; and among the rest "from certain authors and composers of books," who remarked: "The petitioners humbly submit that in this great commercial and wealthy country, reputation alone cannot be a sufficient stimulus to authors to compose or publish valuable works, and more especially those which involve much expense; the affluence of the country operates not only to make the annual expenditure for subsistence considerable, but also to enhance the charges of every publication, the same prosperity of the country leading to costly habits of living, prevents men of literary reputation from holding the same rank in this country that it obtains in some others; justice also to the families who have to derive their nurture and respectability from parental labours, compels the parents to devote some portion of their attention to pecuniary considerations. Hence an author can rarely write for fame alone; and every subtraction from his profit, and every measure that will diminish his ardour to prepare, and the readiness of booksellers to publish his work—especially as so many may require such large sums to be expended and risked upon them—is an injury, not only to authors, but to literature itself. That not only great national celebrity arises from superior excellence in works of art and literature, but it may be considered to be equally true that whatever discourages or obstructs the progress of literature (and the fine arts) in any country, will produce in time a

national inferiority; and those political effects will be severely felt when they will be, with much difficulty, remedied."

The booksellers complained very much, and with some justice, that the libraries, with the exception of two, did not confine their demands to useful books, but exacted a copy of every work, however trifling it might be; even novels and music.* In the course of the debate Mr. Brougham said:—"Certainly the provisions of the Act rendered it necessary to be amended, as it imposed a greater burden on authors than they ought to bear. It certainly was not any 'encouragement to learning' to impose on poor men the task of supplying the universities with books, and thereby unnecessarily sparing the funds of those rich and well-endowed bodies."

A Committee was appointed to search into the origin of this delivery of copies, and to report thereon to the House; which they did on the 5th June, 1818, and after tracing it from the early agreement made by Sir Thomas Bodley with the Stationers Company,† remarked that in no other country was there a demand of this nature to the same extent. In America, Prussia, Saxony, and Bavaria, one copy only was required; in France and Austria, two; and in Belgium, three. They concluded by advising that this gratuitous delivery be done away with except as regarded the British Museum, and if the copyright be actually abandoned, then that no delivery at all should be necessary. On the report being given in, a debate arose, and it was then urged against the adoption of it, that the resolutions the Committee had come to were carried by a slight majority; a majority of only one in one case, and of the casting vote of the chairman in another. The report, however, was ordered to be printed; but the Parliament shortly after breaking up, nothing more was done with the Bill, and when the new

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* It is a curious fact that applications were made from the universities so late as 1874 for the popular comic songs of the day, such as "Champagne Charley," "Tommy, make room for your Uncle," and such like classical works.

† Which was a private agreement between Sir Thomas Bodley and that Company, and had no foundation in any Act or State ordinance.

Parliament met on the 14th of January, 1819, the subject was not resumed, although on the 22nd of March a petition for the alteration of the existing law was presented by the booksellers, in which it was stated that the delivery of eleven copies of only five works—viz., Dugdale's "Monasticon," his "History of St. Paul's," "Portraits of Illustrious Personages," Ormerode's "History of Cheshire," and Wood's "Athenæ Oxiensis," would amount to £2,198 4s., and that the delivery of only one work, Dodwell's "Scenes and Monuments of Greece" would be £275 at trade price.

We do not find the subject mentioned again for twelve years, when Mr. Spring Rice suggested to buy up the right of the Mareschal College of Aberdeen, when the hardship on the proprietors of copyrights was again referred to, and a wish expressed to do away with this "oppresive tax." Such was the state of affairs until 1836, when a Bill to do away with the eleven copies was the cause of an Act, 6 and 7 William IV., c. 110, to reduce the number to five, which has remained in operation ever since—although the six denuded libraries were compensated by being allowed a money payment annually of £3,029 1s. 10d. out of the Consolidated Fund, which is paid to the present day.*

The next Act on Copyright is that of 8 Geo. II., c. 13 (1735), which is called "An Act for the Encouragement of the Arts of Designing, Engraving, and Etching Historical and other Prints, by vesting the properties thereof in the inventors and engravers for fourteen years."

This was repealed by 5 & 6 Vic., c. 45, s. 1.

Then in the 12 Geo. II., c. 36 (1739), an Act was passed for prohibiting the importation of books reprinted abroad, and first composed or written and printed in Great Britain; and for repealing so much of the 8th of Anne as empowered the limiting the prices of books.

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* It is stated on good authority that the annual value of the books obtained by the four Collegiate Libraries from the publishers gratuitously amounts to upwards of £1,500 for each! and that they pay a handsome salary for collecting them.—Ed.

Then came an Act, the 7 Geo. III., c. 38 (1766), to amend and render more effectual an Act made in the 8 Geo. II., for encouraging the arts of designing, engraving, and etching historical and other prints, and for vesting in and securing to Jane Hogarth, widow, the property in certain prints engraved by the celebrated Hogarth, her husband.

Then an Act was passed, 15 Geo. III., c. 53 (1775), to enable certain colleges and universities to hold copyrights in perpetuity, in any works presented or bequeathed to them for the advancement of learning; which Act has never been repealed.

Then an Act, 17 Geo. III., c. 57 (1777), for securing more effectually the copyright in prints, &c.

Then came the Act 41 Geo. III., c. 107 (1801), which gave to authors a second fourteen years, if they were living at the end of the first fourteen, enacted by 8 Anne, and which added to the "Library Tax" two more copies for taking from authors the rights and privileges which they held before the passing of these "Acts for the encouragement of learned men to write useful books."

Then was passed an Act 54 Geo. III., c. 56 (1814), for encouraging the art of making new models, casts, and busts, &c.

And in the same year was passed the Act 54 Geo. III., c. 156, for extending the term of copyright to twenty-eight years certain, and for the author's life, which Act was partially repealed by 5 & 6 Vic., c. 45, except where the term of copyright had not expired. And sec. 4 gave the extension to authors and their assigns, by entering a "minute of consent," to accept the benefit so conferred by the present Act.

Since the passing of the foregoing Acts, there have been enacted the following:

3 Wm. IV., c. 15, to Amend the Laws relating to Dramatic Literary Property (June 10, 1833).

An Act (5 & 6 Wm. IV., c. 65, Sept. 9, 1835), for preventing the Publication of Lectures, without the consent of the lecturer.

An Act to extend the protection of copyright in prints and engravings to Ireland (6 & 7 Wm. IV., c. 59, Aug. 13, 1836).

An Act to reduce the Duties on Newspapers (6 & 7 Wm. IV., c. 76).

An Act to give protection to persons employed in the publication of Parliamentary Papers (3 Vic., c. 9, April 14, 1840).

An Act to Amend the Law of Copyright (5 & 6 Vic., c. 45, July 1, 1842), see the end, where the whole Act is given.

An Act to Consolidate and Amend the Laws relating to the Copyright of Designs for Ornamenting Articles of Manufacture (5 & 6 Vic., c. 100, August 10, 1842).

An Act to Amend the Laws relating to Copyright of Designs (6 & 7 Vic., c. 65, August 22, 1843).

An Act to Amend the Law relating to International Copyright (7 Vic., c. 12, May 10, 1844).

An Act to Amend the Law relating to the Protection in the Colonies of Works entitled to Copyright in the United Kingdom (10 & 11 Vic., c. 95, July 22, 1847).

An Act to Extend and Amend the Acts relating to Copyright in Designs (13 & 14 Vic., c. 104, August 14, 1850).

An Act to enable Her Majesty to carry into effect a Convention with France (and other foreign countries) on the subject of Copyright, to extend and explain the International Copyright Acts, and to explain the Acts relating to Copyright in Engravings (15 Vic., c. 12, May 28, 1852); see also the Convention with Italy, which is given *in extenso* further on, and which is the same as that of all other foreign Conventions.

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CHAPTER VII.

ON THE EXTENSION OF COPYRIGHT IN 1814.

By the Act 54 Geo. III., c. 156, a farther extension of copyright was given to authors and their assigns, viz., to twenty-eight years certain, and the natural life of the author; and if the author made no provision to sell his copyright for twenty-eight years *and his life*, but reserved the contingency of his chance of living more than the twenty-eight years, the copyright returned to him for the rest of his life (see sec. 4). But, notwithstanding this provision, a contrivance was made,

in the assignment of a copyright, to neutralise the authors' life contingency by the use of the words, "All my right and title, present and future, vested and contingent;" which if an author signed without noticing, he cut himself off from all future participation in his work. And it was even attempted to confer this right on no less a foreign musical composer than Beethoven himself, if we may judge from the following copy of a receipt sent to that eminent composer to assign the compositions therein specified as follows :—"Received of Mr. Birchall, music-seller, 133, New Bond Street, London, the sum of 130 gold Dutch ducats for all my copyright and interest, '*present and future, vested and contingent*,' or otherwise, within the United Kingdom of Great Britain and Ireland, of and in the following compositions, viz. :—'A Grand Battle Symphonie descriptive of the Battle of Vittoria,' &c.; 'A Grand Symphony in A;' 'A Grand Trio for Pianoforte, Violin, and Violoncello in B;' and 'A Grand Sonata dedicated to the Archduke Rodolph of Austria.' And in consideration of such payment I hereby engage to execute a proper assignment when called upon; and I promise that none of the above shall be published in any foreign country before the day fixed upon for such publication between R. Birchall and myself shall arrive.—Signed, LUDWIG VAN BEETHOVEN." One of these compositions, the grand sonata, was published by Longman and Heron, of Cheapside, and was the cause of an application to Shadwell, V.C., for an injunction.*

By sec. 6 of this Act the warehouse keeper of Stationers' Hall was to give correct lists of all entries of books every three

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* The case of Birchall *v.* Longman and Heron, brought before Shadwell, V.C., as reported in the *Morning Chronicle* of December 18, 1818, was an application for an injunction to restrain defendants from continued publication of a set of sonatas by Beethoven, which Mr. Birchall had paid the composer 130 gold ducats for the MS. copyright of, and first published the work in England. The Vice-Chancellor refused the injunction until the plaintiff should make affidavit that the work had not been published in Vienna, for if such was the case he, the Vice-Chancellor, saw no reason in law to prevent the defendants or any other person from selling and publishing them here; but the case seems to have gone no farther.

months to the librarians of the eleven libraries entitled to have a copy of all works published, and to call upon publishers for the same.

By sec. 5 it was enacted that if every book published was not entered at Stationers' Hall, the publisher of any book not so entered should be subject to a penalty of £5 and eleven times the price it was sold at. Rather hard lines for a man, who was compelled to give to the public libraries eleven copies of every book he published gratuitously. Some people have expressed surprise that Parliament did not bring in a Bill to compel butchers and bakers to supply students of the universities with meat and bread gratuitously, which would be quite as reasonable.

Although every effort was made to get rid of the "obnoxious Library Tax," matters remained in this state until Mr. Buckingham, on the 28th of April, 1836, moved for leave to bring in a Bill to do away with this tax in a speech which merely recapitulated the arguments already noticed. The bill remained some time in the House of Commons, but passed quickly through the Lords, and received the Royal assent on August 20, 1836. It enacts that so much of the 54 Geo. III. as relates to the delivery of a copy of every book published to the warehouse keeper of the Stationers' Company for the use of the libraries of Zion College, the four universities of Scotland, and the King's Inns Library, Dublin, should be repealed; and it empowers the Lord Treasurer to make compensation out of the Consolidated Fund to those libraries for the loss of that privilege, which compensation is to be exclusively applied to the purchase of books. The amount paid annually to these six denuded libraries is about from £400 to £600 each, according to their importance—(6 & 7 Wm. IV., c. 110).

On the establishment of peace with France a field was opened for the publication of English works in Paris, there being at that time no international law by which foreign (English) works could be secured by copyright to their authors; consequently popular English works were published in Paris to some extent. Galignani, Treüttel & Würtz, and others published

them at a much lower price than they were to be had for in England; and people who went to Paris were permitted to bring home a single copy which had been cut and read without paying any customs duty until complaint was made by English publishers of the injury to their trade, when every effort was made to prevent such works passing the Custom House, and they were frequently seized. Then they were smuggled over, until an entire stop was put to such an illicit trade. Sir Walter Scott, however, went over to Paris to try to introduce some plan by which his works might have some security there, but Galignani told him he could not obtain any exclusive right in Paris; he, however, offered Sir Walter £10 for proof sheets. This Sir Walter refused, and went to Treütel and Würtz, who offered him £100 for first proofs. This was accepted, but Galignani was too deep for him; and, bribing the compositors, got his sheets first, and forestalled Treütel and Würtz in the publication of Sir Walter's "Life of Napoleon." This fact I had from an English *employé* who was in Treütel and Würtz' establishment at the time.

Some arguments which have been broached in opposition to the extension of the term of copyright before the passing of the present Act were futile in the extreme, such as that a monopoly for a lengthened period would raise the price of books to such a pitch that it would materially impede their general circulation, and consequently abridge the spread of knowledge among the people at large. Such an idea is opposed to the general principles of trade, and utterly against the interest of the publishers themselves, which has been abundantly proved by the production of the best works at a price within the reach of almost the poorest of the people. This is not only the case with literary, but with musical works and the works of art, while every facility, on the contrary, is given to the spread of knowledge. Then there has been a confounding, very thoughtlessly, of copyright with patent right, between which there is a wide difference, as a celebrated Scotch writer on the principles of the law of Scotland shows. "Although at common law," he says, "a mechanical invention and a literary composition may

be similar, there is a remarkable difference in the consideration on which the limited monopoly of each ought to stand. In the mechanical arts the public is concerned in the invention being opened to them at no very distant period, for no use being desirable from the invention without the absolute possession of the individual machine or manufacture if the public is entirely in the power of the monopolist. And yet the invention would probably have been made by others if not unfairly restrained. But in the case of a book, not only is it impossible that any other person could have composed the same book, but it is a kind of production of which the public has the benefit by the knowledge diffused; the value, and consequently the power of keeping up extravagant prices, is restrained by the interest of both author and publisher. There are not, therefore, the same reasons for limiting the monopoly of a copyright as there are for setting bounds to that of inventions."

A similar distinction was made by Lord Selbourne (then Sir Roundell Palmer) in his speech in seconding the motion of Mr. Macfie in a debate in the House of Commons on the subject of patent right. "Some persons imagined," he said, "that there was a sort of either moral or natural right in inventors to some such protection as was given by patents; and the principle was sometimes expressed in this way, that a man had a right to the fruit of his brains. Now, he held that invention and discovery were *essentially unlike copyright;* copyright applied to a creation. A man wrote a book, and this brought into existence something which had no existence in the nature of things before. The rest of the world were not in a race with him to write that particular book. But in the case of inventions and discoveries, the facts with which they were concerned lay in Nature itself; and all mankind who were engaged in pursuits which gave them an interest in the investigation for practical purposes of the laws of Nature had an equal right of access to the knowledge of those laws, and might be equally in the track for obtaining it." Thus it may be seen that *there would be really no reason why the projected new copyright law should not extend the present period in granting to the*

families of authors some advantages not now available, and something might be done to avoid that eloquent reproach of Dryden—"that it continues to be the ingratitude of mankind that they who teach wisdom by the surest means shall generally live poor and unregarded, as if they were born only for the public and had no interest in their own well-being, but were to be lighted up like tapers, and waste themselves for the benefit of others."

If, then, the limitation of the ancient rights of authors had been compensated for by a uniformity in the details of the law, by simplicity in the mode of proving those rights, or in the transfer of them to publishers, or even if a summary and cheap remedy for their infringement had been enacted, something would have been gained by the limitation of the term of copyright. But the fact is, that the penal clauses in the Acts have made matters worse. No sensible man will now bring an action for piracy unless he has plenty of money in his pocket, and does not care about spending it in a determination to punish a delinquent; for if he gains his cause, he is sure to be money out of pocket by his solicitor's bill. The "glorious uncertainty" has often deterred a man from legally asserting his rights, even though he may have an abundance of facts to prove them. Quibbles and quirks are sure to turn up to damage his case, however good it may be, and to gloss over the venality of a piracy. One point in all the foreign laws of copyright is worthy of remark and imitation, viz., that they set a limit to the period of all copyrights to the publishers, reserving to the author and to his descendants a farther term; but in England, everything is given to the author for the present, and nothing to his descendants. For who will say to an author, "I will only purchase your copyright for twenty-one years: the other twenty-one you ought to reserve for your family?" And few publishers care anything about the family of an author.

Then, again, if the Stationers'-Hall Registry had continued to be carried on in accordance with the method which they say was adopted by themselves for their own works,—viz., that

when a work changed hands it was re-entered under the name of the new proprietor thereof—some credit would have been due to that Company, and there would have been an invaluable document, if the public registry had been of this character, and continued to the present time. But the Stationers'-Hall Company have not done this for anybody but themselves—even if they have such a register "for their own general benefit,"—and if the assertion of the clerk to Mr. Matthieson* is to be relied on—and I see no reason to doubt it—viz., "that a large number of books were registered with only the month, and some with only the year, of publication," my statement in the *bookseller* of June, 1869, is true, that "the entry at Stationers' Hall has been made one of the most prolific causes of litigation," and the cases I have hitherto quoted are perfectly true. How little reliance, then, is to be placed on the entries at Stationers' Hall may be readily imagined. But it is not alone to the fact of the negligence, or ignorance, or even the impertinence of the officials that I wish to call attention; there is something to be said of the Acts of Parliament on this subject, and I will take them in rotation. First, that of Anne, which says no person shall be subjected to any penalties for printing or publishing any book, unless the title to the copy of such book shall be entered in the Register of the Stationers'-Hall Company, "*after the manner that hath been usual*," *before publication*. Now what was the inducement held out to make entry in this Register? Why, that *nine copies of every work published should be gratuitously presented to the universities and certain public libraries*. Of course the booksellers declined the honour of furnishing literary food at their own expense to these libraries, who could much better afford to pay for books than they could to give them. The consequence was that very few entries were made for the first fifty years, until that ungracious action was brought by the University of Cambridge against Bryer, to compel the booksellers to give their works away for the chance protection afforded by that which might never be required. It was an understood thing that if the works were

* See his letter, p. 46.

not entered they could not be demanded; and although the Act of the Union, viz., 41 Geo. III., c. 107, exacted two more copies, making eleven, to be given by the publishers thereof, it enacted also that *no penalties should be enforced against the piracy of any work unless it should be entered in the register-book.* Even this had not the desired effect upon many of the publishers, who still evaded the Act, by not entering, until the Act of 54 Geo. III., c. 156, made it *a penalty of £5, and the forfeiture of eleven copies, if neglect or refusal to enter at Stationers' Hall Register was made by any publisher, pursuant to that Act.* This, however, was evaded greatly, until the universities and other libraries got tired of importunity, and did not care to risk the expense of actions. It is also curious to observe that the Stationers' Company lent themselves to the exaction of the library tax; and, no doubt, were the cause of the enhancing of the fees from 6d. to 2s. and then to 5s. for every entry or copy of entry; and they are as hungry after these fees as any parish clerk or sexton, whose very existence depends upon them. But the worst of the matter is that there is not only an absence of common civility, but an absolute invalidation of the entries, which has been proved in our courts of law and equity, although the registrar has escaped without punishment hitherto, as the former penalty cannot now be enforced.

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CHAPTER VIII.

OBSERVATIONS ON THE ACT OF 5 & 6 VIC., c. 45.

We now come to the present Act, which is given in full at the end of this book, and to which some allusions have been already made. This Act, called Talfourd's Act, although it was eventually carried through the House of Commons by Lord Mahon, now Earl Stanhope, was passed almost expressly to secure to the family of Sir Walter Scott an extension of the

copyright in his wonderful works of fiction, which had attracted the attention of all the world beyond any literature of the kind ever before published, and still continues to hold the most distinguished position in the estimation of all kinds of readers.

The Act of 5 & 6 Vic., c. 45, has created more difference of opinion in the minds of both Bench and Bar than any other Copyright Act in our code, and it is admitted on all hands that its present position is a most anomalous one. There is something in the very preamble so grandiloquent that to a common-sense mind it is not at all comprehensible. The idea of a "*law* to afford greater encouragement to the production of literary works of lasting benefit to the world" is so new that we do not wonder that so much difference of opinion has been taken as to its meaning; and that the word "author" should be said to be interpreted in its largest possible sense, so that the word is made to include every living subject of every community of people of the known world, friend or foe, alien, or "amy" author, in the widest sense of the word. We go on a little further in this delectable Act, and we find that the words, "*British Dominions*," mean "all the possessions of the Crown," both at home and abroad; and that "assigns" shall be considered 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 publication of any book, and whether acquired by sale, gift, bequest, or by operation of law, OR OTHERWISE. Then the term of copyright is fixed at forty-two years certain, or to forty-two, and seven years after the author's death, should he outlive the forty-two years. The question of the seven years has never been disposed of legally. Then by sec. 4, if any author's work has been published before the passing of this Act, and he and his assignee agree to accept the benefit of the extension given by this Act, and they join in the "minute of consent" given in the schedule, and enter it at Stationers' Hall, then the extension to the forty-two years under this Act shall be given to the person named in the said minute of consent as the property of that person. Then by sec. 8, the "library tax" for the copies for the four col-

legiate libraries, which ought to have been repealed, was still enacted (with its penalties for non-delivery), if applied for WITHIN TWELVE MONTHS of their publication. But it is not compulsory to give them after that period.

Next we have the "Book of Registry," with the invitation to pay 5s. for the entry therein, with the bait held out that on payment of another 5s. for a copy of entry, "such copies, impressed with the stamp of the Stationers' Company, shall be received as *prima facie* proof of proprietorship, or assignment of copyright in all courts." But sec. 24 says that the omission to make such entry shall *not affect the copyright*, but only the right to sue for piracy, which no proprietor of copyright can sue for until he has made the entry; but as that entry can be made at any time before the necessity for suing may come, the chances are that not one publication in a hundred may be pirated, consequently £25 in every one hundred publications, not entered, may be saved.

By section 16, if a person in his entry does not specify the *very day* of the publication of his work, or the exact names of the firm who published it, or if not corresponding with the title of the work, he may be defeated in an action for piracy, have his suit dismissed, and be compelled to begin again *de novo*, although he may be able to show a proper assignment and title to the work pirated, and may be put to costs and charges, not only of his own, but those of the pirate also.

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CHAPTER IX.

CORRESPONDENCE ON THE REGISTRY AND SEARCH OF BOOKS.

STATIONERS'-HALL REGISTRY.

From "The Times," August 11th, 1867.

SIR,—Having occasion to make a search in the Copyright Registry Book at Stationers' Hall a few days ago, my request was met by the clerk with the singular—not to say impertinent

—remark, "It is not convenient." On asking "Why?" "I am using the book," was the reply. I had not said what book I wanted, but I immediately asserted my right, and quoted the 11th section of the Act, 5 & 6 Victoria, cap. 45, which says—"And be it enacted that a book of registry, &c., shall at all convenient times be open to the inspection of any person on payment of 1s. for every entry which shall be searched for in the said book," &c. Finding I was peremptory the clerk handed me an index, to which I objected that the Act said nothing about an index; I therefore insisted on seeing the book. The clerk then referred to the registrar, who admitted the time was convenient, but requested to know what I wanted to search for; this I objected to as a stretch of power not recognized by the Act, and declined to state. I mentioned, however, that the entry was made during the month of July, but I had not the exact date. The registrar then said, "You must give me the name of the work or you cannot make the search," alleging that there were persons who made entries in the registry which they did not wish everybody to see. I remarked that was an extraordinary idea, as the register-book was said by the Act to be "open to anybody on payment of 1s.," which I did not object to pay. I therefore said, "Do you refuse to allow me to make a search?" His reply was, "Unless you say what you are going to search for, I do;" and turned about and went into his office and shut the door. I then turned to the clerk and requested to see if the work I had left to be entered about a week previously, and which he had refused to let me see entered on the day I left and paid 5s. for it, had—as he assured me it would be—been entered on that day. He then handed me the book; seeing the entry with the date attached to it, I very naturally asked if it was entered on that date; this he declined to state, for I had gone to the office four days after it was left, and he admitted it was not then made, but said it had been made since. This I found to be, by the registrar's own confession, the usual mode of registration of copyrights at Stationers' Hall.

Now, Sir, if dates are of any value in a registry, I presume

the entry should be made on the day on which it is dated, and not a week, or it may be a fortnight, afterwards. The excuse for this was that they had sometimes more entries to make in a day than one clerk could do. I objected to this, that if one clerk was not enough he ought to employ two, and if one book was not sufficient he ought to have two. The fees of the office, I am told, amount to nearly £1,000 a year, and the work is done anything but systematically. There is but one book for the entry of literary and musical works, maps, plans, &c., and these are jumbled up in such a way that if a Parliamentary return should be asked for in their separate classes it would be a work of years to obtain it, and I am told, Sir, that such a return has never been made or asked for. Where then, Sir, is the use of the registry of copyrights under such a system? One object for which this registry was instituted was that anybody might see, from time to time, what works had been entered, and when the copyrights expired that those who desired to do so might legally reprint them. And it is to the competition in the publication of the works of our best authors that we are indebted for the spread of knowledge among the people. If we look, Sir, at the history of Stationers' Hall we must conclude that Mr. Godson's remark is true, that "they were the monopolists of books, and the destroyers of literature." How often have they obtained injunctions against those who presumed to publish almanacs, until "one obstinate man," Carnan, persisted in the printing of them, compelling the Company to try their common-law right to this monopoly, and beat them; and this not half a century ago. They then tried to obtain an Act of Parliament for this monopoly, but failed. And even now we must not pry too closely into their books!

Your insertion of these facts will oblige

Yours obediently,

CHARLES H. PURDAY.

24, *Great Marlborough Street*, W., August 9, 1869.

My letter to the *Times* produced the following, and others, in the *Telegraph*:—

From the "Daily Telegraph," August 13, 1869.

SIR,—Mr. Purday's letter in the *Times* of yesterday calls attention to an institution, the Registry at Stationers' Hall, which urgently calls for disestablishment.

The object of the 11th section of the Copyright Act (5 and 6 Vic., c. 45) was to provide a cheap and simple mode of securing and transferring the ownership of literary productions by an entry in the register kept at Stationers' Hall.

But the 24th section, by making such an entry a condition precedent to any proceedings for the protection of his property, places the owner of a copyright at the mercy of pirates. The "entry" must be "an entry pursuant to the Act." It must contain, according to the 13th section, "the title of the book, the time of the first publication, the name and place of abode of the publisher, and the name and place of abode of the proprietor of the copyright." Any error or omission, however unimportant, ensures the failure of any proceedings which an author or the owner of copyright may take. If he files a bill in Chancery and applies for an injunction, or commences an action and asks a jury for damages, the pirate has only to call the Judge's attention to the omission of a date or a Christian name—or to prove a discrepancy between the fact and the entry—the 23rd instead of the 25th, the business address instead of the abode of the publisher—and the owner's bill must be dismissed, or in his action he must be non-suited, and in either event must pay the pirate's costs.*

That which in the 11th section is intended as a boon, by being made in the 24th section compulsory becomes a protection to the wrongdoer, a hindrance and discouragement to the right owner. The instances I have given are not imaginary. In "Low *v.* Routledge" the date of first publication was really stated to have been the 25th instead of the 23rd of May, *and the plaintiff's bill had to be dismissed with costs, a new entry had to be made, and a new bill filed, before Messrs. Low could protect*

* This is a hard case. It ought to be sufficient that a proprietor of a copyright show clear proof of his proprietorship, and that no such technicality should defeat his action.

the copyright they had purchased; and in "Mathieson v. Harrod," in which the month without the day was given, *the Court decided that the day was essential, and dismissed the plaintiff's bill with costs.*

Your obedient servant,

E. Benham.

8, *Essex Street, Strand*, August 12, 1869.

From the "Daily Telegraph," August 17, 1869.

Sir,—Having been the pioneer of the ventilation of the abuses of the Stationers' Hall Registry, I am glad to observe that I am not the only person to see the necessity for the disestablishment of that institution. In my letter to the *Bookseller* of June last, I made some important charges against the registrar's doings, which were personally reiterated by the friend who accompanied me when we went to Stationers' Hall to make an entry on the 22nd ultimo, an account of which is given in your contemporary of the 11th instant. But, fearing my communication might be too long, I omitted to state that the registrar charged upon a Mr. Purday, that the case of Chappell was untrue, and that the public would know how to appreciate any other statements made by that person. I immediately turned round to Mr. Greenhill, the registrar, and said, "I am that Mr. Purday, and I had the statement from Mr. A. Chappell himself." But I find the error arose from the tendering the index instead of the book of entry to Mr. Chappell to search. And this is the common trick at Stationers' Hall, when anybody wants to make a search. They are very tenacious of your seeing any other portion of their books but that page on which the entry is made. And, as I have before stated, the clerk has been known to place a sheet of paper on the opposite page, in order that you shall not see too much for your shilling. This case happened to myself some years ago. Then, Sir, will the registrar deny that it is a frequent occurrence with his clerk to suggest that such and such lines of your memorandum of entry may be struck out as not necessary, and that he has frequently run his pen through some of those lines on the very memorandum itself? And will he deny that

numberless entries have been made with merely the first line of the titles—the essential parts, viz., the names of the writer of the words and the composers of the music, being entirely left out of the entries of the titles of these works? Well might Mr. Greenhill say "it was not worth his while to notice such statements." But it is important to everybody that such a registry as that at Stationers' Hall should be thoroughly investigated, as the Act of 5 & 6 Vic., c. 45, has taken away the penalties of former Acts for misdoings on the part of the registrar. Your insertion of this will confer an obligation on all parties concerned in true registries.

I am, yours, &c.,

CHARLES H. PURDAY.

24, *Great Marlborough Street, W.*, August 16, 1869.

From the "Daily Telegraph," August 15, 1869.

SIR,—Allow me to call the attention of your readers to a few facts relating to the cause "Mathieson *v.* Harrod," mentioned by your correspondent Mr. Benham. In the Copyright Act (5 & 6 Vic., c. 45) the words used are "date of publication;" but in the prior Copyright Act the words are "day of publication." The word "date" has usually a different meaning to the word "day," and at Stationers' Hall the word "date" was used in its ordinary acceptation as a vague term. When I went to Stationers' Hall to register my book, *which I told the clerk was for a legal purpose, he then said the month of publication was quite sufficient date; even afterwards, when I went to the Hall and produced the opinion of counsel that I might lose my cause because the day was not registered, the clerks in the office treated the opinion with contempt*, remarking that a large number of books were registered with only the month and some with only the year of publication, and that they had always registered books in this way, and would continue to do so, or words to that effect. Hoping for some alteration in the law of copyright and in the method of registration,

I am, Sir, yours, &c.,

JAMES MATHIESON.

This case was an application for an injunction for the piracy contained in a Brighton Directory, which was defeated by the pirate on the ground that the entry of the work at Stationers' Hall was defective, as the *day* of first publication was not specified in that entry. The Judge consequently refused to grant an injunction ; and this refusal threw the heavy costs of the defendant, as well as those of his own, on the plaintiff, who had no remedy against the registrar, although his clerk was the sole cause of difficulty.*

By these cases will be seen the anomaly of the present Act, which, while it holds out that an entry is optional, and that a non-entry does not invalidate a copyright, yet if an author's work is pirated, he *must* enter it before he can bring any action for piracy ; and if it should happen to be many years after the publication of a work before a piracy takes place, the author or proprietor of his work may be non-suited if his entry does not state the very *day* of its publication, or the exact names of the pirate's firm. He must pay the costs on both sides before he can renew his action.

Having occasion to search the register-book, at Stationers' Hall, on going there one morning to see if some entries had been made, under the Act of 54 Geo. III., c. 156, I was informed by the clerk that Mr. Greenhill, the registrar, was not there, and would not be until the next day ; and he had not the key of the strong room, where those books were kept ; but if I would make an appointment he would write and inform Mr. Greenhill. I said it was very inconvenient for me to lose my time, and the Act had provided for the inspection of the books from 10 to 4 every day. I saw the registrar the next day, and complained. Shortly afterwards I was treated a second time in the same way. I then wrote to the Master and Wardens,† when I received the following reply :—

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* Mathieson v. Harrod, *L. Rep.* 7, 272; *L. J.*, 129; ch. 19; *L. T.*, N.S., 629.

† The preamble of 5 & 6 Vic., c. 45, shows that where there is any subsisting right under 54 Geo. III., c. 156, that portion of the Act is not repealed ; and the right of searching the books under that Act still exists.

Fenchurch Street Buildings,
Sept. 30, 1870.

SIR,—I am directed by the Master and Wardens of the Stationers' Company to acknowledge the receipt of your letter, dated the 27th inst. They regret that you should have experienced any inconvenience in searching their register of 1826, but would suggest that your reference to the Copyright Act is hardly relevant to the subject, as that Act refers only to the books of registry kept in pursuance of its enactments, and not to books of earlier date. Every facility will, however, be given to the public for searching the books belonging to the Company,

I am, &c.,
CHAS. ROBT. RIVINGTON,
Clerk to the Company.

I then wrote to the Board of Trade, on the 3rd of November following, complaining of the conduct of the registrar, to which communication I received the following reply :—

Office of Privy Council for Trade,
November 16, 1870.

SIR,—I am directed by the Lords of the Committee of Privy Council for the Board of Trade to acknowledge the receipt of your letter of the 3rd inst. complaining that the register of copyrights at Stationers' Hall has not been open for public inspection at "all convenient times," as required by sec. 11 of the Act 5 & 6 Vic., c. 45. In reply, I am to state that my Lords have placed themselves in communication with the Stationers' Company upon the subject, and have received the answer, of which I enclose a copy for your information.

I am, Sir, your obedient servant,
LOUIS MALLET.

The following is a copy of Mr. Rivington's answer to my complaint to the Privy Council for Trade Secretary :—

SIR,—Your letter of the 9th inst., addressed to the Secretary, Stationers' Hall, has been handed to me ; and, in reply, I beg to inform you that Mr. Purday's statement is not quite

correct. The books which Mr. Purday desired to search upon the occasions referred to in his letter, were not the register books required to be kept under the Copyright Act of 5 & 6 Vic., c. 45, but earlier books of registry belonging to the Stationers' Company,* which, in consequence of their literary value, and for their better security, are kept in the Company's strong room, though access can always be obtained to them by the public upon short notice to Mr. Greenhill, the registering officer, appointed under the Copyright Act, or to myself. I enclose a copy of my letter to Mr. Purday, informing him of these facts, and would add that the books of entry required to be kept by the 11th section of the Copyright Act are always open to the public for inspection, between the hours of 10 in the morning and 4 in the afternoon, whether the registering officer is there or not, upon payment of the fee of 1s.

I am, &c.,

CHAS. ROBT. RIVINGTON,

Clerk to the Company.

In reply to the above, I wrote the following :—

To L. Mallet, Esq., Office of Committee of Privy Council for Trade.

201, *Regent Street*, Nov. 18, 1870.

SIR,—I have the honour to acknowledge the receipt of your favour of the 16th inst., enclosing a letter from Mr. Rivington dated the 14th inst., and in reply to Mr. Rivington I beg to say that the books which I desired to search and was not able to do so, in consequence of Mr. Greenhill's absence from his office, were those containing the registry of copyrights under the Act of 54 Geo. III., c. 156, passed in 1814, which, with that of 41 Geo. III., c. 107, and that of 8 Anne, c. 9, were repealed by the Act of 5 & 6 Vic., c. 45—"except so far as the continuance of either of them may be necessary for the carrying on or giving effect to any proceedings at law or in equity

* It is a question, I presume, whether the property in these books belongs to the Stationers' Company or the public, who have paid for the registry therein.

pending at the time of passing this Act, or for the enforcing any cause of action, or suit, or any right of contract subsisting." Now, Sir, as there are still subsisting rights under the Act 54 Geo. III., c. 156, which make it necessary that the books under that Act should be open to the public inspection as well as those under the present Act, I cannot conceive that Mr. Rivington or Mr. Greenhill can have any authority to demand a special notice for permission to search these books beyond the payment of the fee mentioned in sec. 11 of the present Act. Both Acts clearly show that the books shall be open at all convenient times for inspection, and Mr. Rivington's letter to you admits these convenient times to be from 10 to 4 daily. Now, as it is important that the public should have every proper access to these books, I cannot help feeling that both Mr. Rivington and the registrar are exceeding their duty in withholding the facility for searching them. As to Mr. Rivington's assumption of these books being "the property of the Stationers' Company," that is a matter for other consideration than mine; but I humbly hope the Lords of the Privy Council for Trade will not permit the public to be inconvenienced by any *fancied right* that the Stationers' Company may set up in this matter to abridge the freedom of search, which has always until now been considered due to those in whose interest I have taken the liberty to address the Board of Trade on this subject.

Apologising for the trouble I am giving, I have the honour to be Your obedient servant,

C. H. PURDAY.

CHAPTER X.

ON SOME NEEDED ALTERATIONS OF THE ACT.

Not very long ago I took a published song down to the registry of Stationers' Hall to be entered, and although I showed the clerk the printed copy he absolutely refused to enter it, on the ground that the document for entry was *dated*

on the day of the publication of the song, and would give me no other reason than that it was *not their rule to receive a work on the day of publication*, as so stated in the form for entry. I was therefore compelled to take *the same document* down again the next day. Now, there could be no possible excuse for this refusal to enter on the day of publication but the caprice of the clerk or the direction not to do so from the registrar. The law has been over stringently exercised as to the excessive nicety in its ruling as it respects mere technical inaccuracies in the wording of an entry. And it does seem a hard case that the mere alteration of the day of an entry should give a pirate the opportunity of inflicting upon the rightful owner of a copyright the serious costs of an action upon so trifling a matter, and thus to compel him to amend his case and renew his action in order to punish such a shameful dereliction of principle as that of a piracy. This matter requires to be amended as much as any other portion of the Act of 5 & 6 Vic., c. 45. The evident intention of the law is to punish offenders; not to allow quibbles to defeat its object. If the spirit of a law was oftener attended to rather than the mere technicalities, there would be much less occasion for litigation. Well might V.C. Kindersley say he was "almost ashamed to descend to these minute particulars," when it would have been much more reasonable to have ordered the plaintiffs to amend "these minute particulars," and to have made the costs costs in the cause *(Low* v. *Routledge).*

The settlement of cases upon mere technicalities appears to be a favourite system in the present day. The case of Hutchings and Co. *v.* Wood and Planché, which was an application of the plaintiffs for an injunction against the defendants for the publication and sale of the words of three songs which the author, Planché, had allowed the original publishers, D'Almaine and Co., a licence to publish without receiving any consideration, and which, on the demise of Mackinlay, the successor of D'Almaine and Co., the executors of Mackinlay had sold by auction to the plaintiffs, with the plates to which they were adapted, the music itself being non-copyright. And

as Planché had reserved to himself the right of printing the words, he conceived, on Mackinlay's demise, that he had only given him a revocable licence to use them personally. His executors had no right to sell them without Planché's consent. He therefore sold them to Mr. Wood, who published one of them in a work called the "Gems of Melody;" and although Mr. Wood offered to the plaintiffs a consideration rather than have any squabble with them, they refused, insisting upon bringing the matter before a court of equity. Consequently, plaintiffs applied for an injunction, which, on partly hearing, Sir Chas. Hall intimated that if he gave defendants the benefit of the technicality he should not allow either party costs; he therefore advised the parties to settle the matter out of court, which was done by plaintiffs agreeing to have their bill dismissed; and they afterwards bought Mr. Wood's right.

A case is now pending in which Messrs. Routledge and Co. agreed to publish a book entitled "The Church and Home Metrical Psalter and Hymnal," edited by Charles H. Purday; and some two years and a half after its publication these gentlemen took four-fifths of the contents of Mr. Purday's book, viz., 80 of the tunes out of 100, and 460 of the psalms and hymns, as arranged, composed, and adapted by him, with the identical title, size, and price of his book, and in many cases used the same stereotype; and, in contravention of their agreement, published another book, under the editorship of the Rev. W. Windle, rector of St. Stephen's, Walbrook, who, in his preface, says, "A few words with regard to the tunes. For the selection of these, and for the adaptation of the hymns to them, the editor is mainly responsible, while for the harmony the able assistance of Mr. Cooper, organist to Her Majesty's Chapel Royal, has been obtained." And then, after stating how many persons he was indebted to for permission to use their compositions, among the rest he untruly mentions C. H. Purday, from whose work, without any permission, he had abstracted all its value, taking credit for Mr. Purday's labours, suppressing his name from the title-page, and, "in conclusion," Mr. Windle says, "this humble contribution to the service of

sacred song—a LABOUR OF LOVE on the part of the editor—is committed to the press with the earnest prayer that the great Head of the Church will make it effective in the promotion of His glory," &c.—Signed, "W. W."; for which "labour of love" he has been paid £100, and Mr. Cooper £50. Messrs. Routledge having published four editions, consisting of more than 30,000 copies of the piracies of Purday's book, refuse to fulfil their own agreement to complete the purchase of the copyright, nor will they desist from the sale of their pirated copies, unless compelled to do so by a court of justice.

I may also mention a case where a professor offered for sale a song, with an agreement that it should be sung by a certain lady all through a country tour, which was accepted by a music-seller verbally, intending to pay the terms, seven guineas, when the lady began to sing it; but as she never did sing it, although the professor came in a great hurry one morning and desired it might be published, as she was to sing it on such an evening at Gravesend; the song was consequently got ready and sent as requested, but was not sung, and the publisher refused to pay the money, was summoned to a county court for the amount, but the judge non-suited the professor, on the ground of there being no written memorandum of the sale.

CHAPTER XI.

VARIETY OF OPINIONS RESPECTING COPYRIGHT.

From observations made by me in the pursuit of this subject, it is evident the large publishing houses among the bookselling trade would care but little about the alteration of the present law as long as it gives them so lengthened a period of copyright in an author's work, and reserves nothing to an author's family, should they need it. Their great object is that an international law should be brought about with America. But it appears there is little or no chance of such a convention taking place unless English authors and their assigns submit

to be controlled by principles which appear to English minds rather one sided and derogatory, especially when English authors are the great producers of literary works. It is therefore only by concession and arrangement that any settlement of this matter can be put satisfactorily upon anything like a fair understanding; so as that the present mode of mutual reprisal may be abandoned, and the unprincipled abettors be restrained by Government influence and laws on both sides of the Atlantic.

It seems extremely difficult, from long habit, to show people that the publication of a book or a piece of music without the consent of the author is not as much an unprincipled appropriation of another man's property as the taking from him any other article belonging to him. It is astonishing to find how few people really understand what a copyright means. Some persons, even among publishers themselves, think that if they purchase a manuscript from an author, and they publish it as it is, and it is not so successful in its original form as they anticipated, they have a right to take any portion of it, make some addition to it, or get some other person to do so, and republish it under the same title, without consulting the author, even to suppressing his name, and thereby shelving the original work; that they are perfectly justified in so doing, and defy any complaint that the author may make, insisting on their right to do as they like with his work. There are other publishers who buy the plates of musical works at auction sales or otherwise, who re-publish these works in an altered or mutilated form, changing the author's name for some other, who never saw the work, or who perhaps, never existed; yet these unscrupulous publishers assume they have a right to do such shameful tricks. Other people think if they suggest a title, and enter it at Stationers' Hall, they may prevent any other person from using it; but if they rely on such entry they may find their mistake, as the registrar has no right to enter any unpublished work. Another publisher thinks he should be at liberty to publish any man's work if he only pays him a per-centage on the sale of it. This is quite an American idea.

Although laws have been professedly enacted for the protection of authors, yet there would be no advantage in writing books if there were no publishers to produce them. And it is not often that an author is in such circumstances as to enable him to publish his own works and to make them known. The publisher therefore takes care to make such a bargain as shall give him his remuneration for his outlay and risk; and this is by no means to be deprecated, provided he gives a fair consideration for the time and labour bestowed on a literary or musical work of importance. Then, how few are the publishers who, if they get a prize from an author, and realise a large sum thereby, ever deign to think of sharing any portion of that prize beyond the amount paid for the manuscript. It is true that the popularity of one work may lead to the sale of others by the same author. Authors are not unfrequently what are termed "booksellers' hacks," and are often paid a bare subsistence for their labours. The bookseller, or musicseller, suggests this, that, and the other work, which he thinks he can make pay, and the "hack" carries out the ideas suggested, and produces what is required. The majority of authors frequently live from hand to mouth; at least, such has been my experience of more than half a century among music publishers.

It is only extraordinary that, owing to the loose manner in which memorandums of copyrights are given and received, a great deal more litigation is not the consequence. It is true that among authors there will be unprincipled individuals, who now and then have been known, not only to sell their works twice over, but to sell works which have been copied from other people's. And it is also true that there are unprincipled publishers who refuse to fulfil their agreements with poor authors. Other publishers have been known to take a poor author into their employ, paying him just enough to keep body and soul together, spin his brains, and take all the produce to themselves.

How often does it happen that authors and musical composers have died penniless, and left their children to the tender mercies of the public. Others think that the present term of

copyright is too long to be disposed of all at once; but they know publishers will not purchase half its period, and agree to allow the other half to return to the author or his descendants. Cases have occurred where authors have made provision for their children by presenting or securing to them the profits of certain of their books; but by far the greater number of authors (and musical composers especially) have died, leaving their families almost destitute; and the history of musical composers proves this fact to a demonstration, but it would be hardly delicate to mention names. This has also been the case with many public singers, both male and female, whose necessities have been partially relieved by getting up for them a concert or a subscription.

"I believe," said Serjeant Talfourd, in his speech on the extension of the term of copyright, "when the opponents of literary property speak of glory as the reward of genius, they make ungenerous use of the very nobleness of its impulses, and show how little they have profited by its high examples. When Milton, in poverty and in blindness, fed the flame of his divine enthusiasm by the assurance of a duration equal with its language, with Lord Camden I agree that 'No thought crossed him of the wealth which might be (and has been) amassed by the sale of his poem.'" But surely some shadow would have been cast upon the "clear dream and solemn vision" of his future glory had he foreseen that, while booksellers were vying with each other in the splendour of their editions of his works, his only surviving descendant—a woman—should be rescued from abject want only by the charity of Garrick, who, at the solicitation of Dr. Johnson, *gave her a benefit at the theatre which had appropriated to itself all that could be represented of "Comus."* Then we might cite the petitions* of English

* Mr. Serjeant Talfourd, in order to strengthen his own arguments for the "amending" of the Copyright Law, and the extension of the term of copyright to authors, obtained a number of petitions, which were presented to Parliament; but there was one which he "thought too richly studded with jests to be presented to the House of Commons; yet its wit embodies too much wisdom to allow of its exclusion from this place" (viz.,

authors given by Talfourd in his "Three Speeches" in Parliament; and the fact that that portion of his Bill which contemplated including a foreigner in the participation of English rights, of which these were the words in clause 11:—"*To provide that as some doubts have been entertained respecting the right of foreign authors, whose works have been published in a foreign country, to enjoy property in the copyright thereof in the British Dominions, it is proposed to secure to them or their assigns, such copyright, on registering their works at Stationers' Hall within one year of the first publication in a foreign country.*" *This clause was rejected in Committee, and was expunged*—a plain proof that the legislature never intended to give a foreign author the same rights as a British subject. But this has

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his "Three Speeches" on the subject "in the House of Commons",) and as it was not presented, I have here given it as a literary curiosity:—

The humble Petition of the Undersigned Thomas Hood

Sheweth—

That your petitioner is proprietor of certain copyrights, which the law treats as copyhold, but which, in justice and equity, should be freeholds. He cannot conceive how "Hood's Own," without a change in the title-deeds as well as the title, can become "Everybody's Own" hereafter.

That your petitioner, may burn or publish his manuscripts at his own option, and enjoys a right in and control over his own productions, which no press, now or hereafter, can justly press out of him.

That as a landed propietor does not lose his right to his estate in perpetuity by throwing open his grounds for the convenience or gratification of the public, neither ought the property of an author in his works to be taken from him—unless all parks become commons.

That your petitioner, having sundry snug little estates in view, would not object, after a term, to contribute his private share to a general scramble, provided the landed and moneyed interests, as well as the literary interests, were thrown into the heap; but that, in the meantime, the fruits of his brain ought no more to be cast amongst the public than a Christian woman's apples or a Jewess's oranges.

That cheap bread is as desirable and necessary as cheap books, but it hath not yet been thought just or expedient to ordain that after a certain number of crops, all cornfields shall become public property.

That whereas, in other cases, long possession is held to affirm a right to property, it is inconsistent and unjust that a mere lapse of twenty-eight, or any other term of years, should deprive an author at once of principal and

been done in contravention of the International Act, which required that the foreign author should be the subject of a country which reciprocated such rights to English authors. For eleven years the question of these foreign rights was bandied about by the Courts; some of the judges decided that the English asignee (not of the foreign author, but of the author's foreign publisher) had the same rights as English subjects; and, consequently, if he entered a work at Stationers' Hall, and *paid a nominal sum to the foreign publisher*, he was entitled to the same privileges as English authors, and their assigns. Other judges, however, refused to acknowledge such assumed rights, and denied them to the litigants. Until the case of Boosey *v.* Purday, and eventually Jefferys *v.*

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interest in his own literary fund. To be robbed by Time is a sorry encouragement to write for Futurity!

That a work which endures for many years must be of a sterling character, and ought to become national property—but at the expense of the public, or at any expense, save that of the author or his descendants. It must be an ungrateful generation that in its love of cheap copies can lose all regard for "the dear originals."

That when your petitioner shall be dead and buried, he might, with as much propriety and decency, have his body stolen as his literary remains.

That by the present law, the wisest, virtuousest, discreetest, best of authors is tardily rewarded, precisely as the vicious, seditious, or blasphemous writer is summarily punished—namely, by the forfeiture of his copyright.

That your petitioner hath two children who look up to him, not only as the author of the "Comic Annual," but as the author of their being. That the effect of the law as regards the author, is virtually to disinherit his next of kin, and cut him off with a book instead of a shilling.

That as a man's hairs belong to his head, so his head should belong to his heirs—whereas, on the contrary, your petitioner hath ascertained, by nice calculation, that one of his principal copyrights will expire on the same day that his own son should come of age. The very law of nature protests against an unnatural law which compels an author to write for anybody's posterity except his own.

Finally, whereas, it has been urged, "If an author writes for posterity, let him look to posterity for his reward,"—your petitioner adopts that very argument, and, on its principle, prays for the adoption of the Bill introduced by Mr. Serjeant Talfourd, seeing that by the present arrangement posterity is bound to pay everybody or anybody but the true creditor.

Boosey, was carried to the highest tribunal of the land, where the assumed right of English publishers to an exclusive publication in the works of foreign composers was completely exploded, and it was clearly shown that no such rights ever existed under the English Acts of Parliament, nor was it ever contemplated by these Acts to include any but British subjects, as such *by birth or residence* in *the British Dominions.** Thus was the indomitable persistence of the defendant in Chappell *v.* Purday, Cocks *v.* Purday, and Boosey *v.* Purday, shown to be perfectly just, equitable, and right, although the battle was fought, not only against the idea of publication on the same day giving copyright both to the foreign and the English publisher, but against the assumption of such a right. The contrivances of these publishers never had any authority from the authors themselves; nor did the foreign authors ever participate in the trifling sums paid for the exclusive publication of their works by English publishers until national conventions gave them such rights.

In the case of Boosey *v.* Purday, upon which an action was brought for the selling of foreign copies of the opera "Somnambula," imported by Ewer & Co. from Germany, and sold to the defendant, who resold them openly, under the belief that no action could be brought for the sale of foreign copies of a work, written in a foreign language, composed by a foreign author, and produced in a foreign country. When this case was before the court, defendant's counsel wished to have a copy of the entry at Stationers' Hall of this opera, which, on being applied for, the registrar said that the ten pieces from the opera were entered separately, and that he should charge 50s. for them. I refused to pay this, as they all belonged to the same work; consequently, the registrar and his book were subpœnaed, and 40s. saved.

In the case of Jefferys *v.* Boosey, Mr. Jefferys had little or no trouble in working it out, as I had paved the way by taking a journey to Milan for the purpose, and bringing back full evidence of the prior publication there, even to the engraving of

* The American law states residence to be at least twelve months.

the ten sets of plates by the Milanese engraver—which plates were brought to England and sold for a shilling a set to Boosey —in order to show the payment of a *valuable consideration* to found a claim for copyright upon; it being patent to the whole trade, by the signatures on the copies, that a share, or royalty, was to be paid to Ricordi, the Milan publisher, for all copies printed therefrom.

In the case of Chappell *v.* Purday, although the plaintiff proved neither legal nor equitable right, yet, on going before the Vice-Chancellor to take the bill off the file, Shadwell decreed that bothparties should pay their own costs; which, on appeal to L. C. Cottenham, was reversed, Lord Cottenham stating that the defendant could not be allowed to be put into a worse condition than he would have been if no trial had taken place.

With respect to the assumption of copyright by foreign composers in England, both Haydn and Mozart were "domiciled" in London for some time. Haydn wrote his "Twelve Symphonies" here for Salamon's concerts, but no copyright was claimed for them. He also wrote his "Canzonets" to Mrs. Hunter's poetry; and, although copies were signed, they were not claimed to be copyright for Haydn, whatever they might have been for Mrs. Hunter in the words; yet the words of songs at that period were supposed to be open to anybody. The only opera of Rossini's for which copyright was assumed was "The Siege of Corinth," by Isaac Willis, which he simply imported a copy of, and deposited at the British Museum. D'Almaine also tried on the "William Tell," after its being dramatised for the English stage, but without effect, as far as the music was concerned; and no opera of Auber's except "Lestocq," "Gustavus," and "Fra Diavolo" was attempted to be claimed as copyright; it being the overture to "Fra Diavolo" which was the subject of dispute in the case of Chappell *v.* Purday, and which led to a four years' litigation. In the case of "Lestocq," D'Almaine *v.* Boosey (1 Y. and Col., 288), plaintiff published the airs for the flute; he also assumed copyright in "Gustavus," entering a foreign copy; and in "Fra Diavolo" claimed right by entry, *in case he should buy it!*

CHAPTER XII.

LIBERALITY OF MANAGERS AND PUBLISHERS.

Mr. Planché, in his "Recollections" (a most amusing work), says: "On the morning after the fiftieth representation of my drama of 'Charles the Twelfth,' my wife received a very handsome silver tea-service, with a note from Mr. Price, the manager, begging her acceptance of it, 'as a small acknowledgment of the great success of my drama.' This drama contained Barnett's popular song, 'Rise, Gentle Moon.' In contrast to this I may mention that the late Charles E. Horn sold to Mr. Isaac Willis his song, 'Cherry ripe,' for five guineas; which song was sung by Madame Vestris, and became extremely popular, and by the sale of which Mr. Willis realised a little fortune. Meeting Mr. Horn one day in Bond-street, Mr. Willis said, 'Horn, your song has been very successful, and I want to make you a present, come and breakfast with me,' on such a day. Horn mentioned the matter to some of his friends, who congratulated him; and speculated upon what it should be. One said, 'A gold watch and chain;' another, 'A silver tea-service;' a third, 'A purse of gold,' and so on; all believing it would be something very handsome; so Horn, when the day came, had raised his expectations considerably. The breakfast over, 'Well, Horn,' said Willis, 'I promised you a present, and here it is,' unfolding *half a dozen silver tea-spoons, with some full-blown cherries engraved thereon.* Poor Horn was dreadfully chop-fallen, and as he said, 'I slunk out of the house without even saying Thank ye.'"—(Edit.)

With respect to the drama of "Charles the Twelfth," Mr. Planché tells us, "A far greater benefit, not to me alone, but to English dramatic authors in general, resulted ultimately from its 'great success.' The piece not being printed and published, which, if it had been, would have entitled any manager

to perform it without the author's consent—Mr. Murray, of the Theatre Royal, Edinburgh, wrote to inquire upon what terms I would allow him to produce it. I named the very moderate sum of £10, which he declined paying, on the plea that since the introduction of *half price* in the provinces it would barely cover the expenses of producing after-pieces. This was all very well; but Mr. Murray obtained a surreptitious MS. copy in the face of his excuse, and produced the pieces, without permission, at *whole price*, leaving me to my remedy. I did not bring any action against him; but I asked Poole, Kenney, Lunn, Peake, and some other working dramatists to dine with me and talk the matter over; when it was agreed to take immediate steps to obtain the protection of an Act of Parliament, which was eventually carried through both Houses by the influence of the Hon. Geo. Lamb and Lytton Bulwer, and the result was the Act of 3 Wm. IV., which received the royal assent, June 10, 1833." Mr. Planché also states that on the production of his drama, "The Brigand," he had written the melody and words of the song, which was published by Latour, entitled "Love's Ritornella," or as he calls it, "Gentle Zitella," which Mr. T. Cooke had been paid £25 for arranging. It became immensely popular; and brought Mr. Latour a profit of £1,000, while he (Mr. Planché) never got a sixpence for it, Mr. Latour's excuse being that he had sold his business to Mr. Chappell, and that Mr. Planché must apply to Mr. Chappell for his remuneration; and when Mr. Planché went to Mr. Chappell, he was told that Mr. Chappell had paid so large a price to Mr. Latour, that Mr. Planché must look to Mr. Latour for his remuneration, as Mr. Chappell had agreed to give Mr. Latour £500 more for his business, in consequence of the popularity of "Love's Ritornella." Thus Mr. Planché got the oyster-shells, and the publishers the oyster. It is true that Mr. Planché has been paid a small sum lately for the reversion of this song by the present publisher.

It had been long the custom, says Mr. Planché, for an author to allow the composer of his opera to publish the words with the music (or rather he might have said "for musicsellers to

take the liberty to publish the words with the music without the consent of the authors.") Words were not considered of any value, and in a literary point of view there might in too many instances have been some truth in the assertion. Still without the words, poor as they might be, the music of an opera would be comparatively of no value, and could not have been published. That fact never appeared to have occurred to any one, or, if it had, no author had thought it worth while to moot the question. In those days successful dramas had a certain sale; and there were booksellers who would give a very fair price for a new play, and a much larger one for an opera, as the sale of the book of the songs in the house would alone net a sufficient sum to pay the author, and the expenses of printing at least, without reckoning the money taken over the counter for copies of the complete libretto.

But booksellers were becoming chary of purchasing copyrights of dramas, unless at such low prices as to enable them to vend them in a small size at 6d. or a 1s., instead of, as formerly, in 8vo at 3s. or 5s. The lyric drama also, assuming gradually a more strictly operatic form, as the works of Bishop, Rodwell, T. Cooke, and the English adaptations of foreign composers superseded those of Shield, Arnold, Mazzinghi, Reeves, Dibdin, and others of the earlier musical composers, which consisted of little else than songs, duets, a glee or two, and two or three short choruses. While the larger works of the more modern school necessitated a larger book, which contained all the libretto, every word of which was printed by the musicsellers and published with the music, without the least compensation to the bookseller who had purchased the libretto of the author.

Mr. Miller, Mr. Dolby, and other theatrical booksellers, who had been accustomed to pay the dramatists £50, £60, and £100 for these copyrights, no longer offered such sums, which by degrees were getting few, and beautifully less, while the musicsellers were making large fortunes by the sale of the songs, for the words of which they had not paid a single sixpence. The case of "Gentle Zitella," though the most flagrant, says Mr. Planché, was by no means the first. The

ballad of "Rise, Gentle Moon," which was published by the composer, commanded a large sale without my receiving the slightest consideration for it. I determined therefore to be the victim of tyrant custom no longer; and I told George Rodwell, who was just about to publish the vocal pieces of my operetta, "The Mason of Buda," that I should expect some payment; I cared not about the amount, provided it was a sufficient recognition of my right as author of the libretto.

My protest was contemptuously disregarded, and the music with my words was published in defiance of it by D'Almaine. I walked into the city, not to my lawyer, but to Mr. Cumberland, who was then publishing his series of plays, called "The Theatre," explained the case to him, and sold and assigned in due form, all my rights and interests, vested and contingent, in the libretto of the operetta of "The Mason of Buda." On my return home I informed D'Almaine and Co., of the step I had taken, and that as they had declined to deal with me, they would now have to deal with Mr. Cumberland. My letter was speedily followed by one from Cumberland's solicitor, who prohibited the further sale of the music, and demanded an account. How the matter was settled between D'Almaine and Cumberland, I never heard; but I was warmly thanked by Fitzball, to whom D'Almaine sent in a great pucker and paid him for a host of things which he would never have been paid for, but for this movement. "I had the gratification also of feeling in this case, as well as in that of the Dramatic Authors Act, that I was not simply struggling for my own benefit, but for that of all my extremely ill-treated brethren, whose claims were invariably the last considered by managers or publishers."

As an evidence of the value of the words of popular songs, I may show that they have not only been accessory to the popularity of the music to which they have been attached, but they have saved the copyright of the music itself. It is well known that Barry Cornwall (Mr. Proctor) wrote the words of above forty of the Chevalier Neükomm's songs; and that he never had one penny for them until shortly before the sale of Cramer & Co.'s catalogue. The music of these songs had been long out

of copyright, until I one day suggested to Mr. Wood the propriety of obtaining the copyright of the words, which would secure both. To this he agreed, and I obtained an assignment from Mr. Proctor, who was then in his eighty-second year, and at the sale, by Puttick & Simpson, some of these songs, including "The Sea," fetched about £200. It was a similar case with "The Brave Old Oak," and "Good-bye, Sweetheart," the one realising £480, the other £400; "Only to Love," by Santley, fetched £264.

To show the value of musical copyright, many other works realised large prices after they had been published some years; for instance—Arditi's "Il Bacio," £728; Macfarren's "Beating of my own Heart," £375; Wallace's "Fireside Song," £172; "Sleeping I dreamed," £137; the opera of "Lurline," £2,400; the opera of "Maritana," £2,250; Balfe's duet "The Sailor sighs," £324; Linley's "Little Nell," £187; Smart's "The Birds are telling," £300; "She wore a Wreath of Roses," Knight, £500. John Thomas's and Oliphant's Welsh Melodies, with Welsh and English words, 3 vols., realised the large sum of £1,500. Costa's oratorio "Eli" sold for £1,500; Sterndale Bennett's "Woman of Samaria," £590; Balfe's opera "Rose of Castile," £1,250; Annie's Tryste," Aytoun, £94; "Norah Darling," Balfe, £125; Barnett's "Sea Flowers," trio, and song "When first I met Thee," £114; Blumenthal, "A Day-dream," £135; "The Requital," £310; Bordese, "David Singing before Saul," £82 10s.; Costa's oratorio "Naaman," £725; "Through the Wood," &c., Horn, £120; Benedict's opera "The Brides of Venice," £135; Weber's opera "Oberon," words only, copyright, £333; "Why do I weep for Thee?" Wallace, £152 10s., and "Sweet and Low," £254. "The May Queen" was sold after four years at £1,865. These are only a few of the cases where large sums have been realised by the sale by auction of musical works.

Contrasted with these, we may mention the sums paid to Handel for his operas and oratorios, by Walsh; viz., 20 guineas each. Walsh is among the number of those illiberal publishers who seemed to take every mean advantage of authors and com-

posers in their power; the consequence was that Handel was compelled to obtain a royal licence to secure himself, if possible, from the piratical publication of many of his works, even against Walsh, his own publisher. Handel therefore employed another engraver, which Walsh not liking, he actually re-engraved the same works in opposition, without payment to Handel. Walsh, it appears, although extremely rich, was mean and parsimonious. In the article in the biography of musicians, it is said that Walsh obtained Geminiani's MS. of his Op. 2 surreptitiously, engraved it, and was about to print it; but thinking it would be better to have the author's corrections, he gave him the alternative to correct it or have it printed without. This Geminiani treated as an insult, and threatened Walsh with an injunction; which Walsh compromised, and produced the work with the corrections and sanction of the author. Thus it would appear, notwithstanding royal licenses and Acts of Parliament, there were pirates in those days as well as at present; but they *were not quite so numerous, if as unscrupulous.*

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CHAPTER XIII.

INTERNATIONAL COPYRIGHT,

Letter from Mr. Purday to Mr. Macfie in 1869.

The Act of 1 & 2 Vic., c. 69,* was passed into a law under the title of "An Act for securing to Authors in certain cases the benefit of International Copyright," the date of which was July 31, 1838. The 14th section is in these words: "And be it enacted, that the author of any book to be, after the passing of this Act, *first published out of Her Majesty's dominions*, or his assigns, *shall have no copyright therein within Her Majesty's dominions*, otherwise than such (if any) as he may become entitled to under this Act." Section 9 says that no protection of copyright shall be given to a foreign author, unless such pro-

* This Act was amended by 7 Vic., c. 12, which, although it was extended to other works besides books, still made reciprocity necessary to acquire copyright.

tection shall be reciprocated to an English author by the country to which the foreign author belongs. Now, nothing can be clearer than that the Act of 5 & 6 Vict., c. 45, never contemplated giving protection to a foreign author; but, on the contrary, that it was passed solely for the benefit of English authors. . . . At last the whole matter was brought before the House of Lords, in the case of Jefferys *v.* Boosey, where it was decreed that a foreign author was not an author within the meaning of the Acts of Parliament, and could neither claim any copyright himself nor assign any to an English subject, unless he was resident in the British dominions at the time he sold his work, and published it there before there was any publication abroad. This decision, after eleven years' litigation by various parties,* my brother, being defendant, was perfectly convincing that, if the subject came to be thoroughly investigated, no such claims as were set up by the monopolists could be maintained either at common law or in equity. The House of Lords, however, were not called upon to decide what was meant by the term *residence*. This decision gave rise to an attempt to obtain an English copyright in an American author's book, which succeeded. The scheme was this: An American authoress of little repute wrote a novel, one copy of the manuscript of which, it is said, was handed over, for a consideration, to an English bookseller, to publish in England; the work was got ready on this side of the Atlantic as well as on the other side, and, after agreeing as to the date of entry at Stationers' Hall, and the publication of the same in London, the lady was desired to go over the Victoria Bridge into Canada, one of the British dominions, and remain there a few hours or days, while the publication took place in London; then she was to go back again for the protection of the same work, as a copyright, in her own country. Meanwhile, an English publisher, hearing that such an artifice was about to be attempted, procured an American copy of the said work, and republished it in a cheap form. The consequence was that an application for an injunction was applied for by the first party, which was granted, and appealed against

* Chappell *v.* Purday, Cocks *v.* Purday, Boosey *v.* Purday.

to the Lords Justices, who gave it as their opinion that the word "author" in the Act of Parliament was to be interpreted in its widest sense, and that there was no limitation to that word in the Act of Parliament; therefore, it was maintained that *any* author could have a copyright in England who complied with the requisitions of the Act; and this scheme was confirmed by Lord Chancellor Cairns, who remarked that none of the former decisions had stated that it was other than necessary to be in the British dominions during the time of the publication of the work. This device may have facilitated the desire for an international law upon a righteous foundation, then loudly advocated in America, but now repudiated.

In the judgment given in the House of Lords, in the case of Boosey's assumption to the exclusive right of printing the opera of Bellini, the subject of residence in England was debated, and Lord St. Leonards used these remarkable words: "Now the American Legislature have no such difficulty. They have expressly enacted that copyright there shall be confined to natives or persons resident within the United States. Those are the express words of their statute." And we may remark, further, that unless an alien author has resided at least twelve months in America, and has made a declaration in these words, "I do declare on oath that it is *bonâ fide* my intention to become a citizen of the United States," &c., he cannot obtain the privilege of copyright in anything he may publish there. This conflict of opinion must necessarily end, therefore, in a new Act of Parliament, which has been long needed to settle this and other much-vexed questions of copyright.

Letter to Mr. Macfie on Convention with America.

24, *Great Marlborough Street, June* 15, 1869.

Dear Sir,—I think your suggestion of the payment of a royalty upon the publication of an author's work, if made mutual in both America and Great Britain, would go far to reconcile the two nations to abandon the present unfair reprisals; more especially if it were left to the option of any publisher to reproduce such works in the form most suited to his particular

trade. Some publishers choose to publish in one form, and some in another, more or less expensive, according to the taste or wants of their customers. It is true, there might be some difficulty in arranging the per-centage per copy upon such a scheme; but that might be regulated according to the price and style of getting up of the work, which should always be determined upon before the work is issued.*

The question of copyright in music is one which presents features appertaining to itself exclusively. One feature which it shares along with the other fine arts is this great fact: that music is a universal language, and addresses itself equally to all nations. Its range, therefore, is far wider than literature. It needs no translation.

The taste for music is more widely diffused than that for painting and sculpture, from which it differs in a way that causes very considerable embarrassment when the question of copyright comes to be particularly dealt with. Like paintings and statues, music may be reproduced in a permanent form; but, unlike them, the chief value of its copyright privilege is reproduction in sounds, and, therefore, in a form unsubstantial and transient. He, therefore, who would deal satisfactorily with this branch of the wide question of copyright has to provide for a demand, and overcome difficulties, such as do not belong to literary and artistic copyright. But, still further, music—say that of an opera—may be separated into parts without serious diminution of its revenue-bearing value. Once more, there is the *libretto;* it belongs to the range of literature. Questions, therefore, arise, and must be provided for, with respect to the affinity of that part with the music, its reproduction in the form of translation, and its being, as it frequently is, the work

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* A fact transpired only a few days since of an order being sent from one of our Colonial towns for some of the musical works published in Bond-street, on which it was stated that they *must be* "*American printed copies.*" . . . It is said that the Americans have the means of disposing of 30,000 or 40,000 copies of any popular book or song they choose to reproduce. This, of course, is a fine premium for supplanting the English publisher in the sale of his own copyright works in his own colonies.

and property of an author other than the composer of the music.

There is still so much uncertainty, approaching to confusion, as to what really is the law, especially with regard to international copyright, in this branch, that thorough revision and immediate international negotiations are absolutely necessary.

The laws of copyright should be divested of all ambiguity and superfluous legal verbiage. In fact, they should be made so plain that "he that runs may read," and understand them. The payment of a royalty on foreign works is not a new thing here. Chappell pays 1s. a copy, besides a considerable sum for the copyright, of the last work of Rossini—viz., the "Messe Solennelle," for the exclusive selling of the work, and for the right of performing it here. Any other information I can give you I shall be happy to afford.

I am, dear Sir, yours obediently,

To R. A. Macfie, Esq., M.P. C. H. Purday.

To show how little the knowledge of and interest in the law of copyright has been understood by the legislature for the protection of authors, an Act was passed 22nd July, 1847 (10 & 11 Vic., c. 95), by which our colonies might import and sell copyright works reprinted abroad to the manifest disadvantage of the authors and their assigns, by simply paying an *ad valorem* duty of 20 per cent. on their importation into the colonies, which duty was to be collected by the Custom-house authorities, and transmitted to the authors of these books. But to enable the Custom-house authorities to ascertain what works were copyright or what were not, a table of prohibitions is given in the 8 & 9 Vic., c. 86, which says: "Books wherein the copyright shall be subsisting, first composed, or written, or printed in the United Kingdom, and printed or reprinted in any other country, as to which the proprietor of such copyright or his agent shall have given to the Commissioners of Customs a notice in writing that such copyright subsists, such notice also stating when such copyright shall expire." Quite ridiculous.

Then again the Alien Law (7 & 8 Vic., c. 66) was brought

forward—in Low *v.* Routledge—to assume that as the Act of 5 & 6 Vic., c. 45, had interpreted a copyright as personal property, *any* alien was entitled to copyright as well as a British subject, by publishing in England, although the 1 & 2 Vic., c. 89, and 7 Vic., c. 12, declare that a foreign author has no claim to copyright in England unless he belongs to a country that reciprocates such rights. How are these contradictions to be reconciled?

By a return made to the Board of Trade some few years ago of the amount of the *ad valorem* duty on English copyright works reprinted in America or other foreign countries, and imported into and sold in Canada and other British colonies, in accordance with the Act of 10 & 11 Vic., c. 95, it appears that payments were made to the following authors, viz.:—Threepence to Wm. Howitt, fourpence to Robert Chambers, and several other literary celebrities in the same proportion, amounting altogether to 20s. for as many years. How far the Custom-house authorities were accountable for this ridiculous sum it is not difficult to divine, as they must either have been utterly ignorant or entirely neglectful of their duty in permitting these pirated books to be imported without collecting the amount of duty thereon.

As to music, there is not the least mention of any having passed the Customs, although the following colonies were admitted to the like privilege with Canada, viz.:—Antigua, Bahamas, Barbadoes, Bermuda, British Guiana, Cape of Good Hope, St. Christopher, Grenada, Jamaica, St. Lucia, Mauritius, Natal, Nevis, New Brunswick, Newfoundland, Nova Scotia, Prince Edward's Island, and St. Vincent's. Thus all the important colonies, excepting those of Australia, had these privileges.

Consequently the measures taken to collect the duty are completely inoperative; and Mr. Lovell (a Montreal publisher), in a letter to Mr. Rose, says, "At present only a few hundred copies of pirated works pay duties, and many thousands pass into the country without paying a single fraction, thus having the effect of seriously injuring the publishing

trade of Great Britain, to the consequent advantage of the United States." On looking over the entries of the Custom-house, he says that "1,000 copies of a popular reprint of a copyright English work were passed and absolutely sold within a few days by one bookseller alone, in the month of April, 1868, and for three months from that period only a few copies of some periodical works were entered." What has been done since we are not informed.

By the 28 & 29 Vic., c. 2 (passed in 1865), it is enacted that any colonial law which is or shall be in any respect repugnant to the provisions of any Act of Parliament extending to the colony to which such law may relate, shall be read subject to such Act, and shall to the extent of such repugnancy, but not otherwise, be and remain absolutely void and inoperative.

Under such circumstances as the above, what can be done to remedy such a state of things except a convention?

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CHAPTER XIV.

TERM OF COPYRIGHT IN THE UNITED STATES OF AMERICA AND OTHER COUNTRIES.

AMERICA.

It would seem that after the struggle in America for independence had been successfully waged and settled, different laws for the security of literary property were instituted in different States; consequently, what was copyright in one State was not respected in another. Congress, therefore, in the second session, 1790, passed an Act on the model of that of 8 Anne, c. 19, which was amended in 1802; but both were repealed by an Act passed Feb. 3, 1831, by which copyright was secured to an author, being a citizen of the United States (or resident therein), *for the term of twenty-eight years;* and if either he or she, his wife, or children, survived that period, then for a further term of fourteen years.

On February, 16th, 1837, a report was made, and a Bill was subsequently brought in to extend to authors of Great Britain

the same privileges as American authors enjoyed, but nothing appears to have been done to follow up the matter.

Several efforts have been made since to bring the Americans to some tangible understanding on the subject of international copyright, without success. They will deal only with authors, and insist upon printing and publishing their works in America.

The above Act in 1831 was amended and enlarged by subsequent Acts (passed in 1834, 1846, 1856, 1859, 1861, 1866, and 1867), which continued in force down to July, 1870, when an Act was passed to revise, consolidate, and amend the statutes relating to copyrights and patents, repealing the previous enactments on the subject.

The present Act confers copyright only on those who are citizens of the United States, or resident therein. The word "resident" is interpreted to mean *permanently resident;* so that a person temporarily residing in America, even though he has declared his intention of becoming a citizen, cannot take or hold a copyright,* nor can the assignee of a work composed by a non-resident alien have a copyright in it,† in the United States. Piracy is punished by penalties, as in other countries.

FRANCE.

In France, as in England, the first protection that literary property received was by means of privileges; but with this difference, that the infringement of those privileges in the former country was visited with much heavier penalties than in the latter: for the printing a work, the sole right to which belonged to another, was looked upon as little better than a theft, and punished accordingly.

Several laws were promulgated from that of Louis XIV. to that of the Code Napoléon in 1810—the one which is still in operation—by which the property in a work was secured to an author "for his life," to his widow "for her life," and, after their decease, to their children "for twenty years." If there are no children, then the other heirs or assignees shall only enjoy the

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* Carry *v.* Collier (56 Nile's Reg., 262.)

† Keene *v.* Wheatley (9 Amer. Law Reg., 45.)

exclusive privilege for ten years from the death of the author. Besides an action for damages for piracy, all copies shall be confiscated for the author's profit, and a penalty imposed of not more than 2,000 francs, or less than 100, against the offending party.*

RUSSIA.

In Russia we shall find what no other code contains, viz., an enactment conferring on authors certain degrees for literary success, titles of rank and honour; and the author or translator of a literary work shall have the sole right of printing and disposing of it during his lifetime; and his heirs shall enjoy the same for the term of twenty-five years after his demise, and for a further term of ten years, if they shall have published an edition within five years before the expiration of the first term. In every case a party guilty of piracy shall pay the proprietor of the work the difference between the actual cost of the pirated edition, and the selling price of the original; and shall forfeit to the use of the proprietor all the copies of such unlawful reprint, and, until definitive judgment shall be pronounced, the edition accused of being pirated shall be restrained from being sold. The judgment shall determine the amount of damages resulting from the offence.

The copyright of a work which the author has not parted with cannot be taken in execution by his creditors, whether it has been published or not, nor can the creditors avail themselves of the benefit of it in case of the bankruptcy of the bookseller who shall have published it for the author. This law of Russia may challenge comparison with any legislative enactments made by most European Governments.

PRUSSIA.

By the law of Prussia of the date of July 11th, 1837, the copyright was put upon a more favourable and juster basis than previously. Section 5 declares that an author shall enjoy the sole right of printing his work "for his life."

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* No foreign author's work is allowed to be published in France without the consent of the author, no matter how long such work may have been printed in his own country.

Section 6 confers on the heirs of an author the same right "for a period of thirty years," to be reckoned "from his death." The same rights are given for a posthumous work; and after that period every work shall be common to anybody to print.

Section 38 makes provision for a reciprocity of rights in foreign states, and in Germany; but prevents the importation of piratical works of German copyrights printed abroad, in France, Belgium, and Switzerland.

GERMANY.

A convention was made between Prussia and England in 1846 for reciprocal rights, and with France and other Continental States since. Anybody may make arrangements from the "melodies" of a German composer's work, if they are *bonâ fide* distinct compositions for piano, violin, flute, or any other instrument;* but must not reprint a song or other vocal composition as originally composed, with the words.

HOLLAND AND BELGIUM.

Before the French Revolution an author's copyright was perpetual, and might be transmitted to his heirs or assigns for ever. By the law of January 25th, 1817, copyright was limited to the author's life, and to his heirs or representatives for twenty years after his death. The penalty for piracy was confiscation of all copies and a fine of 1,000 florins, or not less than 100, which was to be given to the poor of the district where the offender resided; and, in case of a second offence, he was disabled from carrying on the trade of printer or bookseller, notwithstanding the imposition of the penalties.

AUSTRIA.

An Imperial ordinance in 1835 declared copyright to be on the same footing as the Germanic Diet, with the same penalties for piracy. But Austria has never come into an international copyright convention with England, nor has Russia, Norway, or Sweden. Conventions are now in operation with Prussia, France, Belgium, Italy, Spain, Hesse-Darmstadt, Anhalt, and Hamburg.

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* An effort is now making to repeal this enactment, and require consent.

GREECE.

In Greece, under the present *régime*, the term of copyright is fifteen years.

SPAIN.

In Spain the law of copyright was perpetual; it is now limited to the author's life, and fifty years after his death to his heirs.

The penalties for piracy, with summary mode of punishing it, are much less expensive, and more effectually carried out, in all other countries than in England, and its venality is treated with more contumely and disgrace to the perpetrator.

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CHAPTER XV.

ON THE QUESTION OF FOREIGN COPYRIGHT.

Referring once more to the assumption by the principal musicsellers of former days, in the exclusive publication of the works of foreign composers, Mr. Lonsdale, of Bond Street (who was the victim of a prosecution for the publication of a piece of dance-music some thirty years ago), had the curiosity afterwards to extract from the Stationers' Hall Registry upwards of 100 works of foreign composers, entered there under the impression that such entry gave *prima facie* copyright thereby,—as Mr. D'Almaine said (at the trial of Chappell *v.* Purday), when asked why he entered the opera of "Fra Diavolo" as his property, "In case I should purchase it." Among these entries were about eighty operas written by foreign composers, and produced in foreign countries, in a foreign language, by Adam, Auber, Bellini, Bertin, Boieldieu, Carafa, Donizetti, Gabussi, Gomis, Halevy, Herold, Kreutzer, Mabellini, Marschner, Mercadante, Meyerbeer, Mozart, Nicolai, Niedermeyer, Pacini, Paer, Persiani, Ricci, Rossi, Rossini, Spohr, Thomas, Vaccaj, Weber, Winter, and others, not a fourth part of which were published in England, or ever intended to be so by those who entered them. These entries were made between 1825 and 1841. There being at that period no convention with foreign coun-

tries, or any other registry but that used for the entry of English copyrights; consequently *they were all wrong entries!* Wrong entries are constantly being made the cause of litigation; but, whether from ignorance or neglect at Stationers' Hall, the result is fatal to litigants.

The first attempt to assume a copyright in the works of foreign composers of music appears to have been the case already given, of Birchall *v.* Longman and Heron.* Then came that of Clementi *v.* Walker (2 Barn. and Cres., 861), on a composition of Kalkbrenner, proved to be first published in Paris. Then the case of D'Almaine *v.* Boosey (1 Y. and C., 288), respecting an opera by Auber, "Lestocq."

Mr. Murray encouraged the American author Washington Irving by paying him large sums of money for the exclusive publication of his works, which he afterwards found he could not maintain any copyright of in England. Colburn and others followed, with the like result; but for a time no one chose to dispute the matter by any litigation, on account of the cost. At last, however, these assumptions became so common that for several years the mere putting on the works of foreign composers "This work is copyright" deterred many of the music trade from reprinting them, until the contrary decisions of the courts made it necessary that some proper understanding should be arrived at. This brought about a determination to have the matter settled by the highest tribunal of the land, viz., the House of Lords. And the judgment in Boosey *v.* Jefferys being diametrically opposite to that of Boosey *v.* Purday alarmed all the publishers. A public meeting was called at the Hanover Square Rooms, presided over by Sir E. Bulwer Lytton, on July 1, 1851 (about which time the subject of international copyright was taken up by the leading journals of the day), at which meeting resolutions were taken, and speeches made, deprecating the conflicting decisions; and a determination was come to to apply to Parliament for an alteration of the law. But in the interim it was resolved that the case of Boosey *v.* Jefferys should be taken up to the House of

* See *ante*, p. 33.

Lords, which tribunal settled the much-vexed question by declaring that, as English laws were made for English subjects, a foreign author was not an author within the protection of English laws, and could neither hold nor dispose of a copyright in England, unless he became a resident in the British Dominions. But the term of residence was not given.

The following is from a leading article in the *Times* of Nov. 26, 1851, on the convention with France:—

"The most hopeless subject of negotiation with the Governments of other countries has long appeared to be an international copyright law. Intellectual 'produce' has been the only description of goods excluded from equitable conditions of exchange. With regard to hogsheads of sugar, bags of coffee, and bales of cotton, there could exist no rational doubt that, sooner or later, the commercial transactions of the world would be placed upon a rational footing. The advocates of exclusion and monopoly invariably fabricated an economic system in accordance with their own views, and endeavoured to invest it with the most fascinating attributes of philosophy and justice. There was error in their calculations, but it was error under the colour of reason, and wrong with the semblance of right. The property in literary works has been regarded from a different point of view. The various Governments of Europe and the United States of America have, from time immemorial, virtually declared that a work of literature or art, the property of a single individual in a single nation, was a fair mark for piracy and theft. Genius has been outlawed. The property it should have owned, whether in its most splendid or most trivial productions, has, by the comity of nations, been treated in the same way as the goods of a convicted felon. All this has been done in the broad light of day, under the sanction of the most distinguished statesmen of the most civilised nations of the world. Ignorance must not be pleaded in bar of the indignation which such a policy is calculated to inspire in any mind not destitute of the first impressions of right and justice.

"The time has long since passed away when it was considered fair to rise in public and maintain that a sufficient copyright

law should not form part of the municipal institutions of each particular country. The United States would protect the property of Mr. Prescott in his 'History of Peru;' France that of M. Thierry in his 'Chronicles of the Merovingian Kings;' England that of Mr. Macaulay in his 'History of the Times of James II. and his Successors.' Each Government acted respectively against the piratical attacks upon the property of its own subjects by its own subjects. But here the defence stopped. Mr. Macaulay's history would be reprinted in a cheaper form in the United States; that of Mr. Prescott—with certain possibilities in his favour—in England; and the chronicles of M. Thierry might be re-issued at the pleasure of the booksellers in either country. Still worse, copies might be, and actually were, multiplied at a cheap rate in Brussels by compositors versed in the French language, and then disseminated over the Continent, to the prejudice of the author's legitimate rights. In each State the obligation of the Government to maintain the rights of its own subjects against its own subjects was fully recognised; but at this point all stopped short. Nor, in fairness, can the reprehension be confined to the leading statesmen of the time, no matter what their country, or what their political connections. The real blame lay with the great bulk of the population, whether in Europe or in America. There has too long existed a profound immorality of thought with regard to the productio s of literary genius. Men have said, 'It is for our interest to have the readiest means of access to the works of literary men. Their labours cannot be the subject of property any more than the wild fowls of the air. They are *feræ naturæ*, irreclaimable, and therefore the subjects of dominion to the first person who can reduce them into possession.' Such has been the spirit in which the various nations of the world have acted time out of mind with regard to literary property. How shortsighted the policy has been the example of Belgium will best evince. The effect of the habitual piracy practised by the Brussels publishers on the works of French authors has simply been the extinction of original literary genius throughout Belgium."

In a work called the "History of Ancient America," which fell into my hands some years ago, written by George Jones, M.R.S.I., F.S.V., published in 1843 by Longman & Co., London; Harper & Co., New York; Dunker, Berlin, and Klinsieck, Paris, the following "Notice to booksellers, proprietors of circulating libraries, and the public," is attached.

"This is to give notice that the 'Original History of Ancient America' (of which this is the first volume) is copyright and legally secured to the proprietor, both in England and America. The penalties, therefore, for any infringement will be enforced by the publishers, according to the new Act of Parliament and the Acts of the Congress of the United States. By the former, especially as applied to England and her colonies, any person having in his possession, for sale or hire, any *foreign edition* of this English copyright is liable to a heavy penalty; and any copy found in the possession of a traveller from abroad will be forfeited. London, June, 1843." This notice is supposed to have been a dodge of Brother Jonathan; as we do not believe Messrs. Longman & Co. would have lent themselves to so ridiculous a humbug.

Some forty years ago, Mr. Gardiner, of Leicester, brought out a book at his own expense, entitled "The Music of Nature," a thick 8vo, in which he attempted to prove that "what is passionate and pleasing in the art of singing, speaking, and performing on musical instruments is derived from the sound of the animated world." Of this work, containing somewhat of the marvellous, he printed an edition of 500 copies; but having, contrary to his expectation, disposed of all the copies, and finding there was still a demand for more, learning that it had been published in America, he sent over for copies, paying 6s. a copy in sheets, binding them up in accordance with that published by himself, cancelling the American title, and adding that published for him by Longman & Co., and sold the work as the original edition.

When I was in business in Great Marlborough Street, a person came into my shop one day for a song, which I handed to him, and, on asking the price, he remarked, "We get these

things much cheaper in our country;" to which I replied (from his manner of speech), "America, I suppose?" "Yes." I then said, "Well you may; for you pay nothing for the copyright. You take our works and publish them whether we like it or not." "Well," said he, "and you take ours." "Oh!" I said, "but you have nothing to take." Not liking this reply, he put down the song and walked out, looking as red as a turkey-cock. Few Americans like to be told the truth in this matter.

Some years ago Captain Marryatt, the author, went to America and tried to obtain a copyright for his works there; but was told if he liked to renounce his allegiance to Her Majesty the Queen of England and become an American citizen he could have the same rights as other American authors. He replied that he had no desire to be strung up on the yard-arm of his own vessel as a traitor. He would therefore decline the honour of American citizenship.

In 1869 an attempt was made on both sides of the Atlantic, by discussing the matter of international copyright between the United States and England, to come to some understanding. A considerable amount of recrimination was used without effecting any good. Having occasion to write to my friend the late Dr. Mason of New York, I mentioned the subject of copyright conventions, and received a reply, which I sent to the *Bookseller* in August, 1869:—

Sir,—On Saturday last I received a letter from Dr. Lowell Mason, of New York, the prime mover of Musical Education in America for the last fifty years, and the best class-teacher on that subject that it has been my happiness to be acquainted with. His method of teaching is both philosophical and simple. As a national method, it is by far the best I have ever seen; and its adoption in this country would be a most valuable boon to our national as well as to our general schools. His plan is founded upon the system of Pestalozzi, which system is better adapted to bring out the ideas of the children themselves, and thus really to thoroughly educate them, than any other system whatever. He has not yet published his book, but he has so imbued his scholars with its practical use and

working that those who are well versed in his method want nothing but the "black board" and a piece of chalk to teach with. He uses the Universal Notation, and makes the learning to read music one of the pleasantest of gratifications, and at the same time he imparts the most complete and effectual knowledge of that delightful art, so that it can never be forgotten by those who have once gone through his course. He is now preparing his plan for the Press, although in his seventy-eighth year; and he tells me he hopes his work will shortly be published.

In my last letter to him I broached the subject of international copyright, and animadverted upon that subject rather strongly, urging against the American booksellers the taking the works of our authors and republishing them, without even an acknowledgment, in most cases. It is true they could not help admitting their authorship, but they utterly ignored their right to pay anything for them. He says in reply, "As to the international copyright question: my son, who is a bookseller, was present when my wife read to me your letter (he himself, being nearly blind, was unable to read it). He said, 'I have been familiar with the book business, and with booksellers and publishers, for about twenty years, and I have never heard from one single person the utterance of the least disinclination to reciprocate a just and fair law on that subject. I think, on the contrary, it has been universally desired in this country.' Now, if so, where are the greedy booksellers of whom you speak? The fact is, if I mistake not, the English claimed all, and they would allow the Americans nothing; but, now that they see there is something here, they are beginning to yield somewhat, and the old will is being subdued. Our late civil war has had no small influence in bringing about a different estimation in England of Yankeedom than had before prevailed." Thus, you see, sir, it is only needful that we show to the Americans our willingness to meet them fairly, and to urge on our ministers to make a strong move in the matter, especially as the present American Ambassador is so clever a literary man; and there is very little doubt but that an international copyright will be

speedily and easily accomplished. By lending your aid to so excellent an object you will be doing an important service to all concerned in that great desideratum.

I am, &c.,

CHARLES H. PURDAY

Mr. Justin McCarthy wrote a letter to the London *Echo* on the subject of international copyright, in which he pays an unmerited compliment to American publishers, as a class, for their *honourable treatment* of English authors whose works they reprint. "There are not many examples, probably, in human affairs," says he, "of men thus systematically paying, as a trade practice, money which no law of their country binds them to pay." Indeed, we believe the sentiment of the trade on this subject is actually in advance of the sentiment of the public, and when we get an honest copyright law, as we doubtless shall in time, the booksellers will be the leaders of the reform. A great deal of the popular dislike—or perhaps it would be more correct to say apathy—towards the proposed measure springs from two misconceptions; it is believed, first, that international copyright would raise the price of books to the same high standard which prevails in London; and, secondly, that the manufacture of books on this side of the water would be checked, and we should import what we now make. Neither result would be likely to follow. The royalty to an author does not sensibly enchance the cost of a book to the purchaser. It is but a small sum on each volume—say, ten cents on a book which sells for a dollar—and the publisher can afford to pay that for the security which a copyright law gives him. As the case now stands English reprints are not cheaper on the average in our works than American books. If English books are dear, it is because English publishers find it for their advantage to print small editions in expensive style and charge a high price. If American books are cheap, it is because we have a large community of readers who prefer inferior type and paper with a correspondingly reduced price. Copyright or no copyright, our market would certainly be supplied with the quality of goods which the public taste required.

Neither does international copyright necessarily imply that the manufacture of reprints in this country must be stopped. It only provides that when we reprint a book we shall pay for it, and acquire by such payment a right of property in it. Whether foreign works designed for circulation in the United States shall be printed in London and Edinburgh, or in New York, Boston, and Philadelphia, does not depend in the least upon the tenure of literary property. It is an economical question with which the tariff will have a great deal more to do than the copyright bill.—*New York Tribune.*

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CHAPTER XVI.

ON AMERICAN IDEAS OF CONVENTION.

From an article in the *Fortnightly*,* contributed by Dr. Appleton, we find the subject of international copyright with America is again mooted in all its phases; and every objection brought forward that can possibly be urged against anything like a liberal view of it taken by the American protectionists. If Brother Jonathan could have it all his own way, he might be induced to try how the matter would work; but the "allmighty dollar" has more influence on the American mind than the pretence that high prices in scientific works written by English authors would drive Yankee mechanics to take up cheap and immoral literature in their place, because of the few shillings they might have to pay more in a year for better works, or rather better copies of scientific works.

Protectionist economy and political economy may be very different matters. It is not always the selfish principle that makes a man or a country rich; on the contrary, it is "liberality begets liberality." Not that we ask the Americans to be liberal; what we ask of them is to be honest.

"The fundamental idea of Mr. Carey's social science in his statement is that of the decentralisation of industry. A com-

* February, 1877. Chapman and Hall.

munity, he holds, should aim at producing all the commodities it needs, so as to be independent of its neighbours. Now international copyright, supposing it established, would either place the monopoly of the American market for English books in the hands of the great English firms, thus making America dependent upon her neighbour, or else it would place it in the hands of five or six of the most important firms in the three Atlantic cities, New York, Boston, and Philadelphia; thus conflicting with the principle of internal decentralisation. As to the payment of English authors, he admits "he does not agree with those who protest against international copyright on the score that such payment would increase the price of those reprints."

"If nothing better than this can be said," he exclaims (in his "Letters on International Copyright"), "we may as well at once plead guilty to the charge of piracy and commence a new and more honest course of action. Evil may not be done that good may come of it, nor may we steal an author's brains that our people may be cheaply taught. We stand in need of no such morality as this. We can afford to pay for what we want; but even were it otherwise, our motto, here and everywhere, should be the old French one: *Fais ce que doy, advienne que pourra.*" But we may ask if this motto Brother Jonathan quotes is either believed in by him or ever carried out in reality. It is the old adage, "Don't do as we do, but do as we say," not, "Do what is right, come what may." This last is not Brother Jonathan's principle in dealing with English copyrights, or anything else English.

(From the "Standard" Feb. 2, 1877.)

In the new number of the *Fortnightly Review* Dr. Appleton ably states some of the difficulties standing in the way of an adjustment of the vexed question of international copyright. Opinion in the United States, says Dr. Appleton, appears to be divided, roughly speaking, according to geographical area. The New England States, to which the greater number of eminent American authors belong, are in favour of an international

copyright wholly unfettered and unrestricted. A few of the Boston publishers entertain similar views. On the other side, however, is the "Philadelphia School," led by Mr. Carey, a distinguished economist and a powerful advocate of protection. He is strongly opposed to international copyright in any shape or form, and he is backed up by several important interests in the Middle and Western States. Chief among these of course are the large publishing houses, much of whose trade consists of the reprinting of English books, and who fear that with English competition they would be unable to maintain their ground. The paper-makers, printers, and type-founders are influenced by the same considerations; and lastly, but by no means least, there are the Western farmers, whose experience of the working of the Patent Laws impels them to object to any change which is calculated to enlarge the rights of foreigners, either as authors or inventors. But although these several classes are opposed to international copyright, they are not altogether satisfied with things as they are. The publishers are put to great inconvenience and sometimes to useless expense in their efforts to anticipate competition, and as a natural consequence of the haste with which the work has to be done it is seldom of a satisfactory character. Excellence of workmanship is scarcely to be expected where the principal consideration is to be the first in the market. The continuance of the existing order of things, therefore, is almost as injurious to trade interests as it is detrimental to the just rights of authors. Yet the probability of any agreement upon the subject being arrived at by those whose interests are immediately concerned is exceedingly remote. The proposal which appeared to command the most general approval was that an English author should be allowed to copyright his book in the United States if it was wholly remanufactured there. This plan, it was hoped, would meet the wishes of the printers and publishers; but it was at once objected that an English house having an American branch and an American partner would be able to control the market and drive the American houses from the field. Mr. Sherman's bill suggested a compromise, in accordance with which a foreign

author could obtain copyright for his book in the United States, and then any publisher could produce it, paying the author a royalty upon the selling price of each copy. The New York houses, however, such as Harper & Co., contended that nobody would undertake the cost of printing, publishing, and advertising a book which every house was at liberty to publish. Finding it impossible to harmonise the various conflicting views, the Congressional committee reported to that effect, and added that "any project for an international copyright will be found upon mature deliberation to be inexpedient." This was merely shirking the difficulty, and the efforts that have since been made to bring about an understanding which shall be satisfactory to all parties prove that sooner or later a basis will be discovered upon which negotiations can be carried to a successful issue. But we are inclined to think that this is a question which the United States Government is morally bound to take up. The matter ought no longer to be left in the hands of individual members of Congress, however influential or however earnest their intentions. The Government of a country is the guardian of public morality, and it is unworthy of a great people to violate the principles of justice by taking advantage of the mere absence of legislation. The more respectable American publishers feel this, and are anxious to remove the stigma which now rests upon them as a class. They deal liberally with English authors, although they are fully aware of the risks they run from unprincipled men, whose only aim is to put money into their own pockets. But, we repeat, it is to the Government of the United States that both they and we are entitled to look for redress. A strong Government, desirous of standing well in the eyes of the world, could easily frame an Act which would answer all reasonable objections, and override those less worthy of consideration. We trust that when the Royal Commission, now sitting at Westminister, has reported, the American Government may be moved to take such action as will vindicate the honour of the country and the honesty of her citizens.

CHAPTER XVII.

AN ACT TO AMEND THE LAW OF COPYRIGHT
(5 & 6 Vic., c. 45).

Whereas it is expedient to amend the law relating to copyright, and to afford greater encouragement to the production of literary works of lasting benefit to the world: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by 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, 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 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.

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 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.

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. And whereas it is just to extend the benefits of this Act to authors of books published before the passing thereof, and in which copyright still subsists, be it enacted, that the copyright which at the time of passing this Act shall subsist in any book theretofore published (except as hereinafter mentioned) shall be extended and endure for the full term provided by this Act in cases of books thereafter published, and shall be the property of the person who at the time of passing of this Act shall be the proprietor of such copyright: Provided always, that in all cases in which such copyright shall belong in whole or in part to a publisher or other person who shall have acquired it for other consideration than that of natural love and affection, such copyright shall not be extended by this Act, but shall endure for the term which shall subsist therein at the time of passing of this Act, and no longer, unless the author of such book, if he shall be living, or the personal representative of such author, if he shall be dead, and the proprietor of such copyright, shall, before the expiration of such term, consent and agree to accept the benefits of this Act in respect of such book, and shall cause a minute of such consent in the form in that behalf given in the schedule to this Act annexed to be entered in the book of registry hereinafter directed to be kept, in which case such copyright shall endure for the full term by this Act provided in cases of books to be published after the passing of this Act, and shall be the property of such person or persons as in such minute shall be expressed.

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 license 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 license.

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.

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 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.

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 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.

9. Provided also, and be it enacted, that if any publisher shall be desirous of delivering the copy of such book as shall be demanded on behalf of any of the said libraries at such library, it shall be lawful for him to deliver the same at such library, free of expense, to such librarian or other person authorised to receive the same (who is hereby required in such case to receive and give a receipt in writing for the same), and such delivery shall to all intents and purposes of this Act be held as equivalent to a delivery to the said officer of the Stationers' Company.

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.

11. And be it enacted, that a book of registry, wherein may be registered, as hereinafter enacted, the proprietorship in the copyright of books, and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licenses 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 license 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.

12. And be it enacted, that if any person shall wilfully

make or cause to be made any false entry in the registry book of the Stationers' Company, or shall wilfully produce or cause to be tendered in evidence any paper falsely purporting to be a copy of any entry in the said book, he shall be guilty of an indictable misdemeanor, and shall be punished accordingly.

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

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.

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.

16. And be it enacted, that after the passing of this Act, in any action brought within the British Dominions against any person for printing any such book for sale, hire, or exportation, or for importing, selling, publishing, or exposing to sale or hire, or causing to be imported, sold, published, or exposed to sale or hire, any such book, the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action; and if the nature of his defence be, that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the

proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when and the place where such book was first published, otherwise the defendant in such action shall not at the trial or hearing of such action be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright therein; and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the copyright therein, than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication with the title, time, and place specified in such notice.

17. And be it enacted, that after the passing of this Act it shall not be lawful for any person, not being the proprietor of the copyright, or some person authorised by him, to import into any part of the United Kingdom, or into any other part of the British Dominions, for sale or hire, any printed book first composed or written or printed and published in any part of the said United Kingdom, wherein there shall be copyright, and reprinted in any country or place whatsoever out of the British Dominions; and if any person, not being such proprietor or person authorised as aforesaid, shall import or bring, or cause to be imported or brought, for sale or hire, any such printed book, into any part of the British Dominions, contrary to the true intent and meaning of this Act, or shall knowingly sell, publish, or expose to sale or let to hire, or have in his possession for sale or hire, any such book, then every such book shall be forfeited, and shall be seized by any officer of Customs or Excise, and the same shall be destroyed by such officer; and every person so offending, being duly convicted thereof before two justices of the peace for the county or place

in which such book shall be found, shall also for every such offence forfeit the sum of ten pounds and double the value of every copy of such book which he shall so import or cause to be imported into any part of the British Dominions, or shall knowingly sell, publish, or expose to sale or let to hire, or shall cause to be sold, published, or exposed to sale or let to hire, or shall have in his possession for sale or hire, contrary to the true intent and meaning of this Act, five pounds to the use of such officer of Customs or Excise, and the remainder of the penalty to the use of the proprietor of copyright in such book.

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 person 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.

19. And be it enacted, that the proprietor of the copyright in any encyclopædia, review, magazine, periodical work, or other work published in a series of books or parts, shall be entitled to all the benefits of the registration at Stationers' Hall under this Act, on entering in the said book of registry the title of such encyclopædia, review, periodical work, or other work published in a series of books or parts, the time of the first publication of the first volume, number, or part thereof, or of the first number or volume first published after the passing of this Act in any such work which shall have been published heretofore, and the name and place of abode of the proprietor thereof, and of the publisher thereof, when such publisher shall not also be the proprietor thereof.

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.

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.

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.

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.

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.

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

26. And be it enacted, that if any action or suit shall be commenced or brought against any person or persons whomsoever for doing or causing to be done anything in pursuance of

this Act, the defendant or defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff shall become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath; 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 or books to be delivered for the use of the British Museum, or of any one of the four libraries hereinbefore mentioned.

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.

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 the 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.

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.

30. And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present session of Parliament.

SCHEDULE to which the preceding Act refers.

No. 1.

Form of Minute of Consent to be entered at Stationers' Hall.

We, the undersigned *A. B.* of , the author of a certain book intituled *Y. Z.* [*or* the personal representative of the author, *as the case may be*]. and *C. D.* of , do hereby certify, that we have consented and agreed to accept the benefits of the Act passed in the fifth year of the reign of her Majesty Queen Victoria, cap. , for the extension of the term of copyright therein provided by the said Act, and hereby declare that such extended term of copyright therein is the property of the said *A. B.* or *C. D.*

Dated this day of 18 .

(Signed) *A. B.*
C. D.

Witness

To the registering officer appointed by the Stationers' Company.

No. 2.

Form of Requiring Entry of Proprietorship.

I, *A. B.* of do hereby certify, that I am the proprietor of the copyright of a book intituled *Y. Z.*, and I hereby require you to make entry in the register book of the Stationers' Company of my proprietorship of such copyright, according to the particulars underwritten.

Title of Book.	Name of Publisher, and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
Y. Z.		*A. B.*	

Dated this day of 18 .

Witness, *C. D.*

(Signed) *A. B.*

No. 3.

Original Entry of Proprietorship of Copyright of a Book.

Time of Making the Entry.	Title of Book.	Name of the Publisher, and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
	Y.Z.	*A.B.*	*C.D.*	

No. 4,

Form of Concurrence of the Party assigning in any Book previously registered.

I, *A. B.* of , being the assignor 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.	Assignor 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.*

CHAPTER XVIII.

ON THE STATUTORY REQUISITES TO BE OBSERVED UNDER THE PRESENT ACT, 5 & 6 VIC., c. 45.

Registration, according to sec. 11, provides a book at Stationers' Hall, "where *may be entered*," according to a certain form in that section, the proprietorship of a copyright; which entry, on payment of 5s., may be made; and a copy of which entry, on payment of 5s. more, shall be *prima facie* proof of assignment, and be received as evidence in all courts and summary proceedings, subject to be rebutted by evidence to the contrary.

Sec. 13 shows that such entry must state the *title of the work*, the *name and place of abode of the proprietor* of the copyright, and the name and place of abode of the publisher, and the date of publication; and that it shall be lawful for every registered proprietor to assign his interest or any portion of his interest in such assignment on payment of 5s.; and such assignment so entered shall be effectual in law without being subject to any stamp duty, &c.

No copyright, however, is acquired by the registration, nor

will any entry of a work be made before publication. And although no person need make entry, except he wants to bring an action for infringement of his copyright, it will be time enough to enter when such infringement is made, before he takes action to punish the wrong-doer. But when entry is to be made, care must be taken to be strictly accurate, or it may compel the proprietor to amend his case before it can be proceeded with. The form of entry is to be found in the Schedule No. 2, at the end of the Act. It has been decided that if there is the slightest omission in the description of the entry, it may cause a nonsuit; and although the plaintiff may have a regular assignment to prove his proprietorship, yet that will not avail unless his work be entered *as the Act directs*, viz.: the *very day* of publication, the exact names and addresses of the publisher and proprietor, and the particulars of the title of the work.

The statute authorises any person to make an entry as proprietor; but it does not say what such person may require to do in order to satisfy the keeper of the Register before he will make such registration (18 Scotch Session Cas. 915).

In a periodical work it is only necessary to register the first part, number, or volume (see sec. 19). But a *title only* cannot be secured by entry (Hogg *v.* Maxwell, L. Rep., 2 chap., App. 316.)

A copy of every work published must be deposited at the British Museum within one month of its publication within the bills of mortality, or if published in any other part of the United Kingdom, within three months of its publication, under a penalty of £5 and the value of the book, for default of delivery (see secs. 6, 7, and 8).

The provisions of the Act as to registration will be found in sections 11, 12, 13, 14, 19, 22, and 24. Entries of assignments, and licenses of copyright, and proprietorship thereof may be made in the Register at Stationers' Hall. To register a copyright, form No. 2 is generally used; but to register an assignment, form No. 4 must be filled up and signed by the assignor. There are five different forms, which are given in the schedule at the end of the Act, but no form for the

right of performing a drama or musical composition. Form No. 1 is called a "Minute of Consent," and is intended to secure the extension of the term of copyright in works published before the present Act, in which there is still subsisting copyright. (See sec. 4 for an explanation of this "Minute of Consent," which author and assignee must both sign.)

For the right of representation or performance of a drama, tragedy, comedy, play, opera, farce, or any other dramatic piece or musical composition, a separate entry must be made, unless the assignment states that such right is purchased with the copyright (see sec. 20 and 22). It has been settled by the Bench that the singing of any song or musical composition, if performed in a concert room, without the written permission of the proprietor, makes the performer liable to a penalty of 40s.; and this penalty has been frequently exacted, as well for the words as the music, to the great disgust of singers, who were innocent of any such penalty, or requisite in the performance of such composition. It is only lately that such penalties have been imposed on singers and musical performers. For although the Dramatic Act of 3 and 4 Wm. IV., c. 15, has been in operation forty-five years, and the Act 5 and 6 Vict., c. 45, thirty-five years, yet no idea was entertained that the singing a song or performing an overture at a concert could be the subject of an action against the performer for a penalty unless a written permission was first obtained from the proprietor thereof. The result will end in singers and performers avoiding such works as will make them liable to these prosecutions.

TRANSFER OF COPYRIGHT.

Copyright is personal property, and may be conveyed by will or gift, but the transfer must be in writing.

If a copyright be the property of a female before marriage, it becomes, as well as her other personalty, the property of her husband after marriage.

In case of intestacy a copyright devolves by operation of law upon the executors or administrators, who, as such, possess all the rights that the original owner enjoyed.

To transfer a copyright from an author to any other person there must be a written memorandum, but that memorandum need not be a lengthy document. The House of Lords ruled in the case of *Kyle v. Jefferys*, that a simple receipt upon a penny stamp, with these words, viz.: "Received of Mr. Jefferys the sum of two guineas for the copyright of the words of a song entitled 'The Old Arm Chair,' written by me, Eliza Cook," was as good an assignment as need be. (21 Scotch Sess. Ca., N.S., 8; 18 Scotch Sess., N.S., 906.) The general assignment of a copyright is usually somewhat similar to the following:

I, A. B. (*name in full*) of (*place of residence*) in consideration of receiving the sum of (*here state the amount*) paid to me this day by C. D. (*name in full*) of (*address in full*) hereby assign all my copyright and interest to the said C. D., of and in a work entitled (*here name the work in full*), written (*or* composed) by me (with the right of performing or representing the same). As witness my hand this —— day of —— A. B.

If in the purchase of a work it is desired to have the right of performance, as well as the copyright, it should be so stated on the memorandum of assignment, adding the words "with the right of performing or representing the same." When an author sells his copyright, he should be careful to read the document on which he makes his assignment, that he may clearly understand the terms on which he disposes of it. An author may license his work to be published for any portion of the forty-two years given by the present Act, if it be so agreed upon between the author and the publisher, and after the expiration of such licence the copyright shall return to the author. In case of there being any number of copies not sold during the term of the licence to publish, the author may stipulate in his agreement that such unsold copies shall be offered to him at the cost of printing and paper, with a small per-centage beyond their cost, if so agreed between him and his publisher; if not, the publisher will be entitled to sell the remaining copies for his own benefit.

CHAPTER XIX.

ON WHAT AMOUNTS TO A PIRACY.

By the French law a piracy is treated as a worse crime than that of entering a neighbour's house and stealing his goods, and is very summarily dealt with.

1. By the English law it has been decided that the taking another man's title, by which that man is injured in the sale of his work, is a piracy. It is considered that the title of a work is a kind of trade mark which is used to distinguish his work from others, and which no other person can use without damaging his property.

2. A Scotch judge has said :—A person might as well steal books as appropriate their contents and transcribe them into his own publication. (Lord McKenzie, in Walford *v.* Johnstone, 20 Sess. Cas., 120.)

3. The case and dicta on this point seem to warrant the conclusion that any unauthorised use of a copyright in a later publication is an infringement of the earlier, unless the use involves a fair amount of thought and judgment.

4. In allusion to a literary copyright work then before him, Lord Eldon said that it was equally competent to any other person to set about a similar work *bona fide* his own (Hogg *v.* Kirby, 8 Ves., 222).

5. Again, in Longman *v.* Winchester, Lord Eldon states the question before him, "whether it is not perfectly clear that in a vast proportion of the work of these defendants, no other labour has been applied than copying the plaintiff's work. To the extent, therefore, in which the defendant's publication has been supplied from the other work, the injunction must go ; but I have said nothing that has a tendency to prevent any person from giving to the public a work of this kind, if it be the fruit of original labours, but if it is a mere copy of an original work

this Court will interpose against that invasion of copyright." (16 Ves., 269.)

6. Sir R. Kindersley, V.C., has defined unfair use of an original work to be the extraction of its vital part. (Murray *v.* Bogue, Drew, 369.)

7. Lord Cottenham has said, "When it comes to a question of quantity it must be very vague: one writer may take all the vital part of another's book, though it might be a small proportion of the book in quantity; it is not only quantity but value that is always looked to. It is useless to refer to any case as to quantity." (Bramwell *v.* Halcomb, 3 M. & Cr. 738.)

8. Lord Jefferys (in Alexander *v.* McKenzie) said, "If it is quite plain that the similarity of the substance of a second work is not a mere coincidence, which is the result of similar observation, but if the second work is substantially a transcription of the first, with merely colourable alterations, then there is an undoubted infringement of the copyright in the first work, and the alterations only make the case worse, as they indicate that the party has resorted to a device like that used in stolen goods, of altering the marks on them to prevent identification." (9 Sess. Cas., N.S., 758.)

9. Lord Erskine remarked (in Carey *v.* Kearsley, 4 Esp., 168), "In short, to borrow the language of J. Story, we must, in deciding questions of this sort, look to the nature and objects of the selections made, the quantity and value of the material used, and the degree in which the use may prejudice the sale or diminish the profits, or supersede the objects of the orginal work."

10. Wood, V.C. (now Lord Hatherley, C.) said (in Jarrold *v.* Houlston, 3 K. & J., 716), "If, knowing that a person, whose work is protected by copyright, has with considerable labour compiled a work from various sources, in themselves not original, but which he has digested and arranged, you being minded to compile a work of a like description, instead of taking the pains of searching into all the common sources and obtaining your subject matter from them, avail yourself of the labour of your predecessor, adopt his arrangements, or adopt them with a slight degree of colourable variation, and thus save

yourself the pains and labour by availing yourself of the pains and labour which he has employed, that I take to be an illegitimate use."

11. Copyright may also be infringed by the importation for sale or hire, in any part of the British Dominions, of pirated copies printed abroad. This is now prohibited by statute, under a penalty of £10 for every offence, and double the value of every copy imported, besides the forfeiture of such copy. (See 5 & 6 Vic., c. 45, sec. 17.)

12. Piracy is the infringement of copyright. It would not be easy, perhaps, to give any other definition of piracy which would apply to the infringements of property in all the different subjects in which our law now confers a copyright; but the leading and distinguishing features of piracy is, that it reproduces the pirated work in such a manner as to interfere with the profit and enjoyment which the proprietor derives from it.

13. "It is enough," said Lord Ellenborough (in Roworth *v.* Wilks, 1 Camp. 98), "that the publication complained of is in substance a copy, whereby a work vested in another is prejudiced." James, V.C. (in Bramwell *v.* Halcomb, 3 M. & Cr., 738), says, "The plaintiff has a right to say this, that no one is permitted, whether with or without acknowledgment, to take a material and substantial portion of his work for the purpose of making or improving a rival publication."

AGREEMENTS BETWEEN AUTHORS AND PUBLISHERS.

In entering into agreements respecting the sale of copyright, care should be taken to make the provisions so clear that disputes may not arise from want of a proper understanding of what is intended by the parties to be conveyed, as decisions have been given by the judges which bore on the face of them hardships, in consequence of the loose manner in which agreements had been drawn up, which have sometimes led to the disallowance of both costs and damages.

An agreement between an author and a publisher that the latter should publish at his own risk and expense a work belonging to an author, on terms of an equal division of the profits

after all expenses had been paid, may be regarded in the double light of a licence and a partnership—a licence for the publication of the work, and then a joint adventure between the author and the publisher in copies so published. The publisher cannot be considered in such a case as merely the agent of the author, as a mere agent never embarks in the risk of the undertaking. (Stevens *v.* Benning, 6 D. M. & G., 231; Reade *v.* Bentley, 4 R. & J., 663.)

If a person contracts to supply another with a composition in such a form as to enable the latter to publish it as his own, a Court of Equity will not restrain the publication of the MS. in an altered or mutilated form. (Cox *v.* Cox, 11 Hare, 118.)

If a publisher puts forth an inaccurate edition of an author's work, purporting to be executed by him (the author), the author may maintain an action against the publisher for injury to his reputation, even where the publisher is owner of the copyright. (Archbold *v.* Sweet, 1. M. & Rob., 162.)

A publisher agreeing to publish a work on certain conditions must fulfil those conditions, and has no right after publishing such work to republish any portion thereof to the detriment of the author's work without the consent of the author, unless it is so stated in the agreement.

If it is sought to put an end to an agreement to share the profits of publication between an author and a publisher, a difficulty may sometimes arise in the choice of the time for making the requisite application. If the author seeks to determine the contract, and to prevent the publication of any subsequent edition by the publisher, he must take steps for the purpose before any additional expense is incurred by the publisher in respect of such subsequent edition. If expense has been incurred before notice is given, the publisher has a right to be indemnified for it by the profits on the sale; but where no expense has been incurred in respect thereof, the author has a right to determine the joint undertaking and to prevent further publication of his work, even though the publisher has stereotyped the work previous to the publication of the last published edition (4 R. & J., 656.)

If a proprietor of a copyright prints a number of copies of a work, and afterwards sells the plates from which the work is printed, and with the plates he sells some of the copies by auction, he is not bound to let the purchaser have any more than those sold with the plates, but may reserve copies for sale afterwards, unless there is some stipulation to the contrary in the conditions of sale (Taylor *v.* Pillow, L. Rep., 7 Eq., 418.)

It has been decided by the L. C. J. Cockburn, that a pianoforte score of an opera is an independent musical composition, separate from and distinct from the full score. It is incorrect to register such pianoforte score as the composition of the original composer. It must, therefore, be registered under the name of the arranger as well as the composer, to legally claim copyright in it. (Wood *v.* Boosey L. Rep., 3 Q. B., 233.) Not that it is believed this decision will be followed in any future case of the kind. It is quite a mistake to call the arranger of an opera the composer thereof.

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CHAPTER XX.

AN ACT TO ENABLE HER MAJESTY TO CARRY INTO EFFECT A CONVENTION WITH FRANCE ON THE SUBJECT OF COPYRIGHT, &c.—(15 & 16 Vic., c. 12.)

Whereas an Act was passed in the seventh year of the reign of Her present Majesty, intituled "An Act to amend the Law relating to International Copyright," hereinafter called "The International Copyright Act:" And whereas a convention has lately been concluded between Her Majesty and the French Republic, for extending in each country the enjoyment of copyright in works of literature and the fine arts first published in the other, and for certain reductions of duties now levied on books, prints, and musical works published in France: And whereas certain of the stipulations on the part of Her Majesty contained in the said treaty require the authority of Parliament: And whereas it is expedient that such authority should be given, and that Her Majesty should be enabled to make similar stipu-

lations in any treaty on the subject of copyright which may hereafter be concluded with any foreign power: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. The eighteenth section of the said Act of the seventh year of Her present Majesty, chapter twelve, shall be repealed, so far as the same is inconsistent with the provisions hereinafter contained.

2. Her Majesty may, by Order in Council, direct that the authors of books which are, after a future time, to be specified in such order, published in any foreign country, to be named in such order, their executors, administrators, and assigns, shall, subject to the provisions hereinafter contained or referred to, be empowered to prevent the publication in the British Dominions of any translations of such books not authorised by them, for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorised translations of such books hereinafter mentioned are respectively first published, and in the case of books published in parts, not extending as to each part beyond the expiration of five years from the time at which the authorised translation of such part is first published.

3. Subject to any provisions or qualifications contained in such order, and to the provisions herein contained or referred to, the laws and enactments for the time being in force for the purpose of preventing the infringement of copyright in books published in the British Dominions shall be applied for the purpose of preventing the publication of translations of the books to which such order extends which are not sanctioned by the authors of such books, except only such parts of the said enactment as relate to the delivery of copies of books for the use of the British Museum, and for the use of the other libraries therein referred to.

4. Her Majesty may, by Order in Council, direct that authors of dramatic pieces which are, after a future time, to be specified

in such order, first publicly represented in any foreign country, to be named in such order, their executors, administrators, and assigns, shall, subject to the provisions hereinafter mentioned or referred to, be empowered to prevent the representation in the British Dominions of any translation of such dramatic pieces not authorised by them, for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorised translations of such dramatic pieces hereinafter mentioned are first published or publicly represented.

5. Subject to any provisions or qualifications contained in such last-mentioned order, and to the provisions hereinafter contained or referred to, the laws and enactments for the time being in force for ensuring to the author of any dramatic piece first publicly represented in the British Dominions the sole liberty of representing the same shall be applied for the purpose of preventing the representation of any translations of the dramatic pieces to which such last-mentioned order extends which are not sanctioned by the authors thereof.

6. Nothing herein contained shall be so construed as to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country.

7. Notwithstanding anything in the said International Copyright Act or in this Act contained, any article of political discussion which has been published in any newspaper or periodical in a foreign country may, if the source from which the same is taken be acknowledged, be republished or translated in any newspaper or periodical in this country; and any article relating to any other subject which has been so published as aforesaid may, if the source from which the same is taken be acknowledged, be republished or translated in like manner, unless the author has signified his intention of preserving the copyright therein, and the right of translating the same, in some conspicuous part of the newspaper or periodical in which the same was first published, in which case the same shall, without the formalities required by the next following

section, receive the same protection as is by virtue of the International Copyright Act or this Act extended to books.

8. No author, or his executors, administrators, or assigns, shall be entitled to the benefit of this Act, or of any order in Council issued in pursuance thereof, in request of the translation of any book or dramatic piece, if the following requisitions are not complied with (that is to say) :—

1. The original work from which the translation is to be made must be registered and a copy thereof deposited in the United Kingdom in the manner required for original works by the said International Copyright Act, within three calender months of its first publication in the foreign country :
2. The author must notify on the title-page of the original work, or if it is published in parts on the title-page of the first part, or if there is no title-page on some conspicuous part of the work, that it is his intention to reserve the right of translating it :
3. The translation sanctioned by the author, or a part thereof, must be published either in the country mentioned in the Order in Council by virtue of which it is to be protected or in the British Dominions, not later than one year after the registration and deposit in the United Kingdom of the original work, and the whole of such translation must be published within three years of such registration and deposit :
4. Such translation must be registered and a copy thereof deposited in the United Kingdom within a time to be mentioned in that behalf in the order by which it is protected, and in the manner provided by the said International Copyright Act for the registration and deposit of original works :
5. In the case of books published in parts, each part of the original work must be registered and deposited in this country in the manner required by the said international copyright within three months after the first publication thereof in the foreign country :

6. In the case of dramatic pieces, the translation sanctioned by the author must be published within three calendar months of the registration of the original work:

7. The above requisitions shall apply to articles originally published in newspapers or periodicals, if the same be afterwards published in a separate form, but shall not apply to such articles as originally published.

9. All copies of any works of literature or art wherein there is any subsisting copyright by virtue of the International Copyright Act and this Act, or of any Order in Council made in pursuance of such Acts or either of them, and which are printed, reprinted, or made in any foreign country except that in which such works shall be first published, and all unauthorised translations of any book or dramatic piece the publication or public representation in the British Dominions of translations whereof not authorised as in this Act mentioned shall for the time being be prevented under any Order in Council made in pursuance of this Act, are hereby absolutely prohibited to be imported into any part of the British Dominions, except by or with the consent of the registered proprietor of the copyright of such work or of such book or piece, or his agent authorised in writing; and the provision of the Act of the sixth year of her Majesty, "to amend the Law of Copyright," for the forfeiture, seizure, and destruction of any printed book first published in the United Kingdom wherein there shall be copyright, and reprinted in any country out of the British Dominions and imported into any part of the British Dominions by any person not being the proprietor of the copyright or a person authorised by such proprietor, shall extend and be applicable to all copies of any works of literature and art, and to all translations the importation whereof into any part of the British Dominions is prohibited under this Act.

10. The provisions hereinbefore contained shall be incorporated with the International Copyright Act, and shall be read and construed therewith as one Act.

11. And whereas Her Majesty has already, by Order in Council under the said International Copyright Act, giving

effect to certain stipulations contained in the said convention with the French Republic; and it is expedient that the remainder of the stipulations on the part of Her Majesty in the said convention contained should take effect from the passing of this Act without any further Order in Council; during the continuance of the said convention, and so long as the Order in Council already made under the said International Copyright Act remains in force, the provisions hereinbefore contained shall apply to the said convention, and to translations of books and dramatic pieces which are, after the passing of this Act, published or represented in France, in the same manner as if Her Majesty had issued her Order in Council in pursuance of this Act for giving effect to such convention, and had therein directed that such translations should be protected as hereinbefore mentioned for a period of five years from the date of the first publication or public representation thereof respectively, and as if a period of three months from the publication of such translation were the time mentioned in such Order as the time within which the same must be registered and a copy thereof deposited in the United Kingdom.

12. And whereas an Act was passed in the tenth year of Her present Majesty, intituled "An Act to amend an Act of the seventh and eight years of Her present Majesty, for reducing, under certain circumstances, the duties payable upon Books and Engravings:" And whereas by the said convention with the French Republic it was stipulated that the duties on books, prints, and drawings published in the territories of the French Republic should be reduced to the amounts specified in the schedule to the said Act of the tenth year of Her present Majesty, chapter fifty-eight: And whereas Her Majesty has, in pursuance of the said convention, and in exercise of the powers given by the said Act, by Order in Council declared that such duties shall be reduced accordingly: And whereas by the said convention it was further stipulated that the rates of duty should not be raised during the continuance of the said convention; and that if during the continuance of the said convention any reduction of those rates should be made in

favour of books, prints, or drawings published in any other country, such reduction shall be at the same time extended to similar articles published in France: And whereas doubts are entertained whether such last-mentioned stipulations can be carried into effect without the authority of Parliament: Be it enacted, That the said rates of duty so reduced as aforesaid shall not be raised during the continuance of the said convention; and that if during the continuance of the said convention any further reduction of such rates is made in favour of books, prints, or drawings published in any other foreign country, Her Majesty may, by Order in Council, declare that such reduction shall be extended to similar articles published in France: such order to be made and published in the same manner and to be subject to the same provisions as orders made in pursuance of the said Act of the tenth year of Her present Majesty, chapter fifty-eight.

13. And whereas doubts have arisen as to the construction of the schedule of the Act of the tenth year of Her present Majesty, chapter fifty-eight:

It is hereby declared, That for the purposes of the said Act every work published in the country of export, of which part has been originally produced in the United Kingdom, shall be deemed to be and be subject to the duty payable on "Works originally produced in the United Kingdom, and republished in the country of export," although it contains also original matter not produced in the United Kingdom, unless it shall be proved to the satisfaction of the Commissioners of Her Majesty's Customs by the importer, consignee, or other person entering the same, that such original matter is at least equal to the part of the work produced in the United Kingdom, in which case the work shall be subject only to the duty on "Works not originally produced in the United Kingdom."

14. And whereas by the four several Acts of Parliament following: (that is to say,) an Act of the eighth year of the reign of King George the Second, chapter thirteen; an Act of the seventh year of the reign of King George the Third, chapter thirty-eight: an Act of the seventeenth year of the reign of King

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

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

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CHAPTER XXI.

STATUTORY REQUISITES IN ORDER TO SECURE INTERNATIONAL COPYRIGHT.

To obtain copyright in the British Dominions of any book, dramatic or musical composition, first produced in a foreign country with which a copyright convention has been established with Great Britain, it is necessary that such book, &c., shall be entered at Stationers' Hall within three months of its first production or publication in the foreign country where it shall have been originally produced; and that one copy of such book, dramatic or musical composition, shall be delivered to the

registering officer at Stationers' Hall; but it is not stated within what time such delivery should be made. The registrar of the said Company to whom such copy is delivered is to give a receipt in writing for the same, and shall, within one month after receiving it, deposit the same at the British Museum. In the registration of such book, dramatic or musical composition, it is necessary that the title (that is, the full title) thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the copyright thereof, and the time and place of the first publication, representation, or performance thereof should be all stated on the document presented for registration; and it would be well to present the copy of the work at the same time, so that the registrar may compare the work with the document to be registered; as it has been decided in the case of Wood *v.* Boosey (7 B. and S., L. Rep., 2 Q.B.), and affirmed by the Exchequer Chamber (9 B. and S., 175), that an arrangement of a pianoforte score of an opera composed by Nicolai, but arranged by Brissler, of Berlin, should not have been entered under the composer's name, but under that of the arranger, to secure a copyright. To avoid any such difficulty in future, if the pianoforte-score of an opera should have on the title-page the name of the arranger, as well as that of the composer, let both be entered.

With respect to translations, section 6 of 15 Vic., c. 12, has been repealed, and a short Act (38 Vic., c. 12) has been passed to provide for the extension of the period by which authorised translation may now be secured for five years *after such translation has been published* or publicly represented. See also sec. 11 of 15 Vic., c. 12, where it states that French translations are to be protected without any further Order in Council.

The act of 15 Vic., c. 12 applies also to copyright in prints taken by lithography, or by any other mechanical process by which prints or impresssions of drawings or designs are capable of being multiplied.

Reciprocal protection is given to works first published in the British Dominions if entered after the same manner in the offices of foreign Governments appointed by them.

But if the right of translation is reserved, it must be so stated on a conspicuous part of the work to which protection is required in any foreign country where international convention is mutual. In the case of Wood *v.* Boosey, it appears somewhat anomalous that the courts should have decided that the omission of Brissler's name in the entry should have invalidated the copyright, when the re-entry of the work—as in the case of Low *v.* Routledge—would have set the matter right, if (as by the 14th sec. of 5 and 6 Vic., c. 45) the judges have power to order that an entry may be varied upon application.—(See sec. 13.)

CHAPTER XXII.

AN ACT TO AMEND THE LAW RELATING TO INTERNATIONAL COPYRIGHT.—(38 Vic., c. 12.)

Whereas by an Act passed in the fifteenth year of the reign of Her present Majesty, chapter twelve, intituled "An Act to enable Her Majesty to carry into effect a convention with France on the subject of copyright; to extend and explain the International Copyright Acts; and to explain the Acts relating to copyright in engravings," it is enacted, that "Her Majesty may, by Order in Council, direct that authors of dramatic pieces which are, after a future time, to be specified in such order, first publicly represented in any foreign country, to be named in such order, their executors, administrators, and assigns, shall, subject to the provisions thereinafter mentioned or referred to, be empowered to prevent the representation in the British Dominions of any translation of such dramatic pieces not authorised by them, for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorised translations of such dramatic pieces are first published and publicly represented:"

And whereas by the same Act it is further enacted, "that, subject to any provisions or qualifications contained in such order, and to the provisions in the said Act contained or referred

to, the laws and enactments for the time being in force for ensuring to the author of any dramatic piece first publicly represented in the British Dominions the sole liberty of representing the same shall be applied for the purpose of preventing the representation of any translations of the dramatic pieces to which such order extends, which are not sanctioned by the authors thereof:"

And whereas by the sixth section of the said Act it is provided, that "nothing in the said Act contained shall be so construed as to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country:"

And whereas it is expedient to alter or amend the last-mentioned provision under certain circumstances:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; viz.,

1. In any case in which, by virtue of the enactments hereinbefore recited, any Order in Council has been or may hereafter be made for the purpose of extending protection to the translations of dramatic pieces first publicly represented in any foreign country, it shall be lawful for Her Majesty by Order in Council to direct that the sixth section of the said Act shall not apply to the dramatic pieces to which protection is so extended; and thereupon the said recited Act shall take effect with respect to such dramatic pieces and to the translations thereof as if the said sixth section of the said Act were hereby repealed.

CHAPTER XXII.

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.—(25 & 26 Vic., c. 68.)

Whereas by law, as now established, the author 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:

I. 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.

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.

3. All copyright under this Act shall be deemed personal or moveable estate, and shall be assignable at law, and every assignment thereof, and every licence to use or copy by any means or process the design or work which shall be the subject of such copyright, shall be made by some note or memorandum in writing, to be signed by the proprietor of the copyright, or by his agent appointed for that purpose in writing.

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 coypright, 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.

5. The several enactments in the said Act of the sixth year of Her present Majesty contained, with relation to keeping the register book thereby required, and the inspection thereof, the searches therein, and the delivery of certified and stamped copies thereof, the reception of such copies in evidence, the making of false entries in the said book, and the production in evidence of papers falsely purporting to be copies of entries in the said book, the application to the courts and judges by persons aggrieved by entries in the said book, and the expunging and varying such entries, shall apply to the book or books to be kept by virtue of this Act, and to the entries and assignments of copyright and proprietorship therein under this Act, in such and the same manner as if such enactments were here expressly enacted in relation thereto, save and except that the forms of entry prescribed by the said Act of the sixth year of Her present Majesty may be varied to meet the circumstances of the case, and that the sum to be demanded by the officer of the said Company of Stationers for making any entry required by this Act shall be one shilling only.

6. If the author of any painting, drawing, or photograph in which there shall be subsisting copyright, after having sold or disposed of such copyright, or if any other person, not being the proprietor for the time being of copyright in any painting, drawing, or photograph, shall, without the consent of such proprietor, repeat, copy, colourably imitate, or otherwise multiply for sale, hire, exhibition, or distribution, or cause or procure to be repeated, copied, colourably imitated, or otherwise multiplied for sale, hire, exhibition, or distribution, any such work or the design thereof, or, knowing that any such repetition, copy, or other imitation has been unlawfully made, shall import into any part of the United Kingdom, or sell, publish, let to hire, exhibit,

or distribute, or offer for sale, hire, exhibition, or distribution, or cause or procure to be imported, sold, published, let to hire, distributed, or offered for sale, hire, exhibition, or distribution, any *repetition, copy, or imitation of the said work, or of the* design thereof, made without such consent as aforesaid, such person for every such offence shall forfeit to the proprietor of the copyright for the time being a sum not exceeding ten pounds; and all such repetitions, copies, and imitations made without such consent as aforesaid, and all negatives of photographs made for the purpose of obtaining such copies, shall be forfeited to the proprietor of the copyright.

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

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

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

Thirdly, no person shall fraudulently utter, dispose of, or put off, or cause to be uttered or disposed of, any copy or colourable imitation of any painting, drawing, or photograph, or negative of a photograph, whether there shall be subsisting copyright therein or not, as having been made or executed by the author or maker of the original work from which such copy or imitation shall have been taken :

Fourthly, where the author or maker of any painting, drawing, or photograph, or negative of a photograph, made either before or after the passing of this Act, shall have sold or otherwise parted with the possession of such work, if any alteration shall afterwards be made therein by any other person, by addition or otherwise, no person shall be at liberty, during the life of the author or maker of such

work, without his consent, to make or knowingly to sell or publish or offer for sale, such work or any copies of such work so altered as aforesaid, or of any part thereof, as or for the unaltered work of such author or maker:

Every offender under this section shall, upon conviction, forfeit to the person aggrieved a sum not exceeding ten pounds, or not exceeding double the full price, if any, at which all such copies, engravings, imitations, or altered works shall have been sold or offered for sale; and all such copies, engravings, imitations, or altered works shall be forfeited to the person, or the assigns or legal representatives of the person whose name, initials, or monogram shall be so fraudulently signed or affixed thereto, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid: Provided always, that the penalties imposed by this section shall not be incurred unless the person whose name, initials, or monogram shall be so fraudulently signed or affixed, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid, shall have been living at or within twenty years next before the time when the offence may have been committed.

8. All pecuniary penalties which shall be incurred, and all such unlawful copies, imitations, and all other effects and things as shall have been forfeited by offenders, pursuant to this Act, and pursuant to any Act for the protection of copyright engravings, may be recovered by the person hereinbefore and in any such Act as aforesaid empowered to recover the same respectively, and hereinafter called the complaint 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 Scotland, by action before the Court of Session in ordinary form, or by summary action before the sheriff of the county where the offence may be committed or the offender resides, who, upon proof of the offence or offences, either by confession of the party offending, or by the oath or affirmation of one

or more credible witnesses, shall convict the offender, and find him liable to the penalty or penalties aforesaid, as also in expenses; and it shall be lawful for the sheriff, in pronouncing such judgment for the penalty or penalties and costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding: Provided always, that it shall be lawful to the sheriff, in the event of his dismissing the action and assoilzieing the defender, to find the complainer liable in expenses, and any judgment so to be pronounced by the sheriff, in such summary application shall be final and conclusive, and not subject to review by advocation, suspension, reduction, or otherwise.

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 proceeeings therein respectively, as to such court or judge may seem fit.

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

bibited as aforesaid, then such goods may be detained by the officers of Her Majesty's Customs.

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.

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.

STATUTORY REQUIREMENTS AND PENALTIES OF ACT 25 & 26 VIC., c. 68.

Before the passing of this act artists of paintings, drawings, and photographs had no security in law against copies being made of such works, and no copyright therein. It was deemed expedient therefore to protect such works from being copied without the consent of the proprietors thereof.

Sec. 1 enacts that any person selling or disposing of a painting, drawing, or negative of a photograph, or executing such work for a good and valuable consideration shall not retain the copyright of the same unless it be expressly reserved by him in writing at or before the time of sale, signed by the assignee, or by an agent duly authorised by him to enter into an engagement so to do.*

Sec. 2 enacts that any person may copy or use any work in which there is no copyright, or may represent any scene or object, notwithstanding that there may be a copyright in some representation of such scene.

Sec. 3.—All assignment of, or licences to copy, any copyright works must be in writing.

Sec. 4.—No person shall have the benefits, or sue for the penalties of this Act, unless registration be made at Stationers' Hall before suing.

Sec. 5.—Registration may be made on payment of one shilling.

Sec. 6.—Persons having pirated copies in their possession for sale or hire are liable to prosecution and penalties.

Sec. 7 enacts that fraudulent signatures or colourable copies, either by drawing or photography, are subject to prosecution, and all pirated copies shall be forfeited to the proprietors, with the negatives of photographs, &c.

Sec. 8.—Actions may be brought for piracies in England, Ireland, or Scotland.

Sec. 10.—Copies or imitations made in foreign countries may not be imported into any part of the United Kingdom, except with the consent of the proprietor.

Sec. 11.—The author may not copy or sell any copies of his work after he has sold the original, without the consent of the proprietor.

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* An engraver or photographer who engraves a copyright or takes a photograph therefrom should have a written permission to do so from the proprietor, or in case of any dispute on the subject, he may lose the reward of his labour.

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