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NEW YORK AND LONDON

THE

QUESTION OF COPYRIGHT

COMPRISING THE TEXT OF THE COPYRIGHT LAW OF THE UNITED STATES, A SUMMARY OF THE COPYRIGHT LAWS AT PRESENT IN FORCE IN THE CHIEF COUNTRIES OF THE WORLD

TOGETHER WITH

A REPORT OF THE LEGISLATION NOW PENDING IN GREAT BRITAIN, A SKETCH OF THE CONTEST IN THE UNITED STATES, 1837–1891, IN BEHALF OF INTERNATIONAL COPYRIGHT, AND CERTAIN PAPERS ON THE DEVELOPMENT OF THE CONCEPTION OF LITERARY PROPERTY, AND ON THE RESULTS OF THE AMERICAN ACT OF 1891

COMPILED BY

GEO. HAVEN PUTNAM, A.M.

SECRETARY OF THE AMERICAN PUBLISHERS' COPYRIGHT LEAGUE

SECOND EDITION, REVISED, AND WITH ADDITIONAL MATERIAL

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PREFACE TO SECOND EDITION.

THE original edition of this volume was prepared for the press very hurriedly, immediately after the passage of the Act of 1891, for the purpose of putting into shape, for convenient reference, the text of the new law, with an analysis of its provisions, and of presenting with this a brief record of the international copyright movement in this country, and a sketch of the development throughout the world of the conception of literary property. Five years have passed since the United States, through this law of 1891, adopted the policy which had for a number of years been accepted by nearly all the other literature-producing states of the world, a policy which assumed that the producers of intellectual property were entitled to the protection given by law to all other producers, and to the enjoyment of the fruits of their labors, irrespective of political boundaries. The American recognition of this principle was coupled with certain conditions which, while they had no logical connection with authors' rights, were believed, by the political party that in 1891 controlled the national policy, to be called for by the exceptional industrial conditions of our country.

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It was, on the other hand, the opinion of those who, in 1891, were carrying on the contest (begun nearly half a century before) in behalf of the rights of authors, American as well as foreign, and of what they held to be the honor of the nation, that these hampering conditions and restrictions would doubtless be removed in a few years' time. There is as yet, it must be admitted, no progress to be recorded in this direction, and it is evident that the date when the United States is to come into full literary fellowship with other civilized states by accepting the unrestricted copyright of the Convention of Berne, is to be postponed beyond the original expectation. Such an advance to a logical and civilized policy in regard to literary property must, however, certainly be secured in the not very remote future, and in any case the most difficult step forward was taken when we expressed our willingness to acknowledge, even with illogical conditions, the property rights of aliens, and in so doing, were able to secure recognition on the other side of the Atlantic (and on much more favorable terms) for the similar rights of Americans.

I have presented in a later chapter my impressions concerning the general results of the legislation of 1891, and in regard to its effects upon the interests of both the readers and the producers of books. It is in order to admit that the Act has on the whole worked with less friction and with less considerable difficulty than had been anticipated by those who were responsible for its provisions as first drafted, and who were in a position to realize how seriously

the purpose and the consistency of character of the measure had been imperilled by certain hastily considered "amendments" crowded into the bill, during the last days of the contest, by both the friends and opponents of copyright.

A summary of the copyright cases which have been brought before the courts since July, 1891, and the issues of which have turned upon the international provisions of the law that went into effect, is given in one of the following chapters. The list is not a considerable one, and the Act has thus far not only withstood the various attacks made upon its general purpose, but has received, in the details thus far tested, the substantial support of the courts. Certain suits which are at this date (January, 1896) still pending, will probably be more important than those already decided, in determining the purport of its several provisions.

I have given the record of the Covert amendment, which was adopted in 1895, and which is the only change that has been made in the law since March, 1891. This amendment secured a correction that was very justly called for by the newspaper publishers, who, under the original Act, had been exposed to oppressive penalties (amounting sometimes to blackmail) in connection with the reproduction of photographs and of popular art designs. I have also noted the attempt made under the Hicks bill, of the same year, which was very properly defeated, to undermine the protection given by the Act to European artists.

The most serious and most legitimate criticisms of the law have come from the authors of France, Ger-

many, and Italy, who have found that, under the requirements of American manufacture and of simultaneous publication, the difficulties were almost insuperable in the way of securing American copyright for books which required to be translated before they were available for American readers. In Germany, the disappointment and annoyance at what are held to be the inequitable restrictions of the American statute have been so considerable that steps have been taken, on the part of the authors and publishers, to secure the abrogation of the convention entered into in 1893 between Germany and the United States. The defenders of the convention have thus far succeeded in preventing it from being set aside, but they do not feel at all assured that they will be able to maintain it for an indefinite period unless some indications may come from this side of the Atlantic that we look forward to removing the special difficulties complained of. The disappointment and the criticism on the part of the authors of France are hardly less bitter, and I understand that it is only the fact that certain substantial advantages are secured under the law to foreign artists and designers, and the expectation that our people can not long remain satisfied, while granting literary copyright in form to refuse it in fact, that prevent organized attacks, not only in Paris, but in Rome, upon the present international arrangement. These complaints impress me as well founded, and they give ground for a feeling of mortification on the part of Americans who have at heart the reputation of their country for good faith and for fair dealing.

The several points to be kept in view in connection with future modifications of our copyright Act are in my judgment as follows:

First. The extension of the term of copyright, with a view to securing for the producers of intellectual property the control of their productions during their own lifetime and of preserving for their heirs the enjoyment of the results from these productions during a reasonable term after the death of the producer. Under the present conditions, it is quite possible for an author to be exposed, during his own lifetime, to the competition of unauthorized editions of his earlier works. In connection with such unauthorized editions, he has not only the annoyance of the interference with the sales of the editions issued by his own publishers, but (what may often constitute a more serious grievance) the mortification of seeing reproduced crude youthful productions which he had intended to cancel, or unrevised and incomplete versions of compositions to which in later years he had given a final literary form.

Such an extension of term is required to secure for an author the privilege that is under our laws conceded to all other workers or producers, of being able to labor for the advantage of his children and grandchildren. The justice of such larger measure of protection for literary property and of encouragement for literary workers has been fully recognized by every country in Europe excepting Great Britain, and the British law is much more liberal to the rights of authors than is our own. The British Act will itself also doubtless in the near future be modified

in accordance with the bill now pending, so that the term of copyright will be extended to correspond with that of Germany, which covers the life of the author and thirty years thereafter.

Second. Steps should be taken as promptly as practicable to remove the special grievance now existing on the part of European authors whose works require to be translated. France, Germany, Italy, and Spain have extended to American authors the privileges possessed by their native writers, while the United States has given to the authors of these countries no privileges which are really equivalent. It may not be practicable for a number of years, in connection with the continued approval given by the majority of our citizens to the so-called protective system, to remove from our copyright Act the condition of manufacturing within the United States. It will also probably be necessary to retain in the Act, in connection with the manufacturing provision, the condition of simultaneous publication. The Act should, however, provide that an exception to this requirement for simultaneous publication should be made in the case of a work originally issued in a foreign language. Such a work could be registered for copyright in regular course, with a title-page in English, and with two copies of the original text submitted for purposes of identification as preliminary deposits; with the provision that, within a specific term (say twelve months) after the date of such registration, publication be made of an English version, an edition of which should be printed, according to the manufacturing condition, from "type set

within the United States." If, within that date, no edition should be produced, the producers of which had complied with the conditions of the American Act, the right to reproduce the work in English might then fall into the public domain. A provision to such effect, while by no means sufficient to do full justice to European authors, would secure to such of those authors as really had an American reading public awaiting their books, the substantial advantages of American copyright. I do not see any other way in which foreign authors can obtain the benefits intended by the Act as long as the manufacturing condition and the provision for simultaneous publication are retained. Such a provision would be in line with the arrangements now in force between the European states (under the Berne convention) covering the similar requirements for translated works.

Third. A substantial improvement is called for, in connection with the system for the entry of copyrights and the registration of titles, and for the preservation for use later in the courts if required, of authoritative evidence that the requirements of the law have been complied with.

The Acts of 1870 and 1891 make adequate provision for the registration of articles entered for copyright, the most important of which articles, in connection with the possible necessity of future reference to the registry, being undoubtedly books. It has, however, been found impracticable, with the facilities existing in the office of the Librarian of Congress, as that office is now organized, to give

adequate and prompt attention to the business connected with copyrights. The library business of the Librarian has during the last ten years increased enormously, and the work of supervising effectively the entry of copyrights calls for the establishment of a registry of copyrights which shall not be a division of the Library of Congress, but shall constitute an independent Bureau. The producers of books, works of art, music, designs and other articles entitled to copyright, contribute each year in the form of copyright fees a very considerable sum, estimated at from $35,000 to $40,000. In addition to this money payment, they are called upon to deposit copies of the articles copyrighted. In the case of books, two copies of which must be deposited for the National Library, the value of the volumes (aggregating for 1895 over 10,000) thus delivered by the publishers, constitutes in itself a large annual tax. This tax is paid for the support of an effective system of copyright entry and for the maintenance of a registry for titles which shall always be available for ready reference.

At the present time the producers and owners of literary property are not securing for this payment adequate consideration. It is therefore a ground for satisfaction that the steps have now been taken to institute such a Bureau of copyrights as is required. In December, 1895, a bill was introduced in the House by Mr. Bankhead, and a second bill with nearly identical provisions was introduced in the Senate by Senator Morrill, under the provisions of which the office of Register of Copyrights is insti-

tuted. With this register are to be appointed an assistant register and a clerk. An appropriation of $7500 is to be made to cover the salaries of the three. The register is to be appointed by the President, subject to the approval of the Senate, and the assistant register, under one bill, by the Secretary of the Treasury, and under the other, by the President. The general purpose of these two bills is to be commended. It is my opinion, however, that a larger appropriation should be made for the salaries and also that the register should have placed in his own hands the appointment of the assistant and the clerk.

Fourth. A further consideration will be required for the provisions of the Act having to do with property in the right of productions. The case of Werckmeister *vs.* Pierce and Bushnell, referred to in another chapter, and one or two other similar issues that have arisen, indicate that the wording of the sections providing regulations for the entry of the copyright of works of art is not sufficiently explicit, and that Transatlantic artists may occasionally fail to secure for their productions the protection which it was the purpose of the Act to provide.

I venture to repeat a suggestion which I have more than once had occasion to put into print, that the framing of a satisfactory copyright Act which shall have for its purpose an equitable and adequate protection for the producers of intellectual property, and which shall be so worded as to carry out that purpose effectively, should be entrusted to a commission of experts. Such a commission should

comprise representatives of the several interests to be considered, producers of works of literature, producers of works of art, publishers of books, and publishers of art works. The commission should also include at least one skilled copyright lawyer, and it may be in order to add some representative of the general public who would have no direct property interest in the results of such a bill as may be framed. All existing copyright systems of the world excepting that of the United States have been the work of such commissions of experts. The members of these commissions have had authority to summon witnesses and to take testimony, and after having devoted sufficient time to the mastery of the details of a subject which is of necessity complex and which certainly calls for expert training and expert experience, they have presented their conclusions in the form of a report containing the specifications of the legislation recommended. The copyright laws of the States of Europe have, without an exception, been based upon such recommendations. The Government of the United States stands alone in having relied for its copyright legislation solely upon the conclusions that could be arrived at by Congressional committees. However intelligent the members of such committees might be, and however conscientious the interest given by these Congressmen, or by some among them, to the subject, experience has shown that it is not practicable to secure wise and trustworthy copyright legislation in this manner. Whenever we may be able to overcome that prejudice which declines to take advantage of

the experience and the example of the States of Europe in connection with the solution of problems and questions similar to our own, we shall doubtless decide to try the experiment of instituting a commission of experts for the reforming of our copyright law.

G. H. P.

NEW YORK, *February*, 1896.

PREFACE TO THE FIRST EDITION.

IN connection with the recent enactment by Congress of a Copyright Law securing American Copyright for aliens, the subject of the status of literary property and of the rights of the producers of literature in the United States and throughout the world is attracting at this time special attention. I have judged, therefore, that a volume presenting, in convenient form for reference, a summary of the more important of the Copyright Laws and International Conventions now in force, and indicating the bearing of these laws on the interests of writers and their readers, might prove of some service to the public. With the summary of existing legislation, I have included a brief abstract of certain measures now under consideration in England, some one of which is likely, before long, to replace the present British law.

The compilation lays no claim to completeness, but is planned simply as a selection of the more important and pertinent of the recent enactments and of some of the comments upon them.

I am indebted to the courtesy of Mr. Brander Matthews for the permission to include in the volume his valuable papers on "The Evolution of Copyright," and "Copyright and Prices"—papers which were prepared for use in the copyright cam-

paign and which proved of very practical service. Mr. Bowker, who is an old-time worker in the copyright cause, has also kindly permitted the use of three pertinent articles from his pen, which were first printed in the valuable work on *The Law and Literature of Copyright*, prepared by himself and Mr. Solberg, a volume which contains the most comprehensive bibliography of the subject with which I am acquainted.

I have thought it worth while, also, to reprint several papers of my own, which appeared to have some bearing on the history or on the status of copyright, and which also were, for the most part, written for "campaign" purposes.

The report submitted by Mr. Simonds on behalf of the House Committee on Patents presents a very comprehensive and succinct summary of the grounds on which the demand for an International Copyright Bill was based, and it is probably the most complete and forcible of the many reports presented to Congress on the subject. This report appeared, therefore, to belong very properly in the collection.

In bringing together statements and records from a number of sources, it was impracticable to avoid a few repetitions; but in a volume which lays no claim to literary form, but has been planned simply as a compilation of facts and information, a certain amount of repetition will, I trust, not be considered a very grave defect.

An examination of the copyright legislation of Europe makes clear that the United States, notwithstanding the important step in advance it has,

after such long delays, just taken, is still, in its recognition of the claims of literary workers, very much behind the other nations of the civilized world.

The conditional measure for securing American copyright for aliens (and, under reciprocity, foreign copyright for Americans), a measure which is the result of fifty-three years of effort on the part of individual workers and of successive Copyright Committees and Leagues, brings this country to the point reached by France in 1810, and by Great Britain and the states of Germany in 1836–1837.

Under the International Copyright arrangements which went into effect in Europe in the earlier years of the century, copyright was conceded to works by foreign authors only when such works had been manufactured within the territory of the country granting the copyright. As late as 1831, for instance, Lord St. Leonards stated, in the case of Jeffreys *vs.* Boosey, that it had never been the intention of the English law to extend a copyright protection over works not manufactured within British territory.

The new American act, which makes American manufacture a first condition of American copyright for aliens, brings us, therefore, to what has usually, in other countries, been the first stage in the development of International Copyright—a stage which was reached in Europe more than half a century ago.

What is probably the final stage was attained in Europe in 1887, when the provisions of the Berne Convention went into effect. Under this conven-

tion, by fulfilling the requirements of their domestic copyright laws, authors can now at once secure, without further conditions or formalities, copyright for their productions in all the states belonging to the International Union.

The states which, in accepting this convention (the report of which will be found printed in this volume), organized themselves into the International Copyright Union, comprised, in addition to nearly all the countries of Europe, Tunis and Liberia as representatives of Africa, together with a single representative of the literary civilization of the western hemisphere, the little republic of Hayti.

It is not probable that another half century of effort will be required to bring public opinion in the American republic up to the standard of international justice already attained by Tunis, Liberia, and Hayti.

Under this standard, it is recognized that literary producers are entitled to the full control of their productions, irrespective of political boundaries and without the limitations of irrelevant conditions.

The annual production of American literature should certainly be not a little furthered, both as to its quantity and its importance, by the stimulus of the new Copyright Act. During the past few years American writers have been securing growing circles of readers in England and on the Continent, and a material increase can now be looked for in the European demand for American books—a demand which, in the absence of restrictions, will be met by the export of plates as well as of editions. The

improvement and the cheapening of American methods of typesetting and electrotyping, and, in fact, of all the processes of book manufacture, will, I anticipate, at no distant date, remove from the minds of the men engaged in this manufacture the fear that they are not in a position to compete to advantage with the book-making trades of Europe, and that an International Copyright, without manufacturing conditions, might bring about a transfer to England and to Germany of a large part of the business of American book-making. It was this apprehension on the part of the American printers, and the trades associated with them, that caused the restrictions in the present act to be inserted. It is my belief, however, that the trades in question will before long recognize that there is no adequate ground for such an apprehension, and that, admitting the importance of preventing any obstacles from being placed in the way of the exporting of American books and American plates, they will themselves take action to secure the elimination of these restrictions.

When this has been brought about, there should be nothing further to prevent the United States from entering the International Copyright Union, and thus completing, so far as the literature-producing and literature-consuming nations of the world are concerned, the abolition of political boundaries for literary property.

While the recognition by our country of the claims of foreign authors has been so tardy, its legislation for domestic copyright has also been based

upon a narrower conception of the property rights of authors than that accepted by the legislators of Europe. The law of 1870 (given in full in this volume), which is in this respect unchanged by the Act of 1891, gives to a literary production a first term of copyright of twenty-eight years, and an extension of such term for fourteen years further only if at the expiration of the first term the author or the author's widow or children be living. If the author, dying before the expiration of the first term, leave neither widow nor children, the copyright of his work is limited to twenty-eight years. It was for this reason that Washington Irving was unable to insure for his nieces (his adopted children) the provision which they needed, and which a continued copyright in their uncle's works would have secured for them.

In England, the present law gives a copyright term of forty-two years, or for the life of the author and for seven years thereafter, whichever term may be the longer; and the amended law now proposed extends the term for thirty years after the death of the author.

This latter is the term provided in the law of the German Empire, while in Russia and in France the copyright endures for the life of the author and for fifty years thereafter.

The steady tendency of legislation has been towards an increase of the term of copyright and a recognition of the right of a literary producer to work for his grandchildren as well as for his children; and the desirability of bringing the American term into accord with that in force in Germany and pro-

posed in England, namely, the life of the author and thirty years thereafter, is now a fair subject for consideration.

Since the framing of the American Act of 1870, not a few questions have arisen in connection with new processes of reproduction of works of art, etc., which are not adequately provided for in that act; and the criticism is often heard from American artists that the copyright protection for their designs is inadequate.

The American act of the present year, providing copyright for aliens, can hardly be accepted as final legislation, and some of its provisions will, doubtless, at no distant date, after they have had the practical test of experience, call for further consideration.

It seems to me that in order to secure consistent, enduring, and satisfactory legislation, that will fairly meet all the requirements and will not bring about needless business perplexities necessitating for their solution frequent appeals to the courts, it will be wise to follow the precedent of Germany, France, and England, and to arrange for the appointment of a commission of experts to make a thorough investigation of the whole subject of copyright, literary, musical, and artistic, domestic and international. The report of such a commission should form a much more satisfactory basis for trustworthy legislation than could be secured in any other way. A subject like copyright is evidently not one which can safely be intrusted to the average congressional committees, especially if the bills framed in such committees are to have injected into them after-

wards the "amendments" of eleventh-hour experts of the Senate or the House, men who, having looked into the matter over night, feel assured that they know all about it.

The action of the Senate in February, 1891, on the Platt-Simonds Bill, is a fair example of the kind of amateur and haphazard legislation referred to.

Under the lead of the principal republican and democratic opponents of the Copyright Bill, an amendment was offered and was actually passed by the Senate, which had the effect of abolishing domestic copyright; and it was not until several days later, when this unlooked-for result of senatorial wisdom had been pointed out by outside critics, that the amendment was rescinded.[1]

If this volume may serve to direct public attention to the advisability of the appointment of a copyright commission through whose labors the risks of such haphazard copyright legislation may at least be minimized, an important purpose of its publication will have been accomplished.

G. H. P.

NEW YORK, *March* 28, 1891.

[1] The Sherman amendment, as originally framed, authorized the importation, irrespective of the permission of the author, of foreign editions of works, whether by foreign or American authors, which had secured American copyright.

The amendment was passed February 14, 1891, by a vote of 25 to 24, and was rescinded February 17, by a vote of 31 to 29. Its mover was Senator Sherman of Ohio, and he was actively supported by Senators Daniels of Virginia, Hale of Maine, Gorman of Maryland, and other experienced legislators.

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THE QUESTION OF COPYRIGHT

THE QUESTION OF COPYRIGHT.

I.

THE LAW OF COPYRIGHT IN THE UNITED STATES.

Text of the Statutes in force July 1, 1895.[1]

SECTION 4948. All records and other things relating to copyrights and required by law to be preserved, shall be under the control of the Librarian of Congress, and kept and preserved in the Library of Congress; and the Librarian of Congress shall have the immediate care and supervision thereof, and, under the supervision of the Joint Committee of Congress on the Library, shall perform all acts and duties required by law touching copyrights.

SEC. 4949. The seal provided for the office of the Librarian of Congress shall be the seal thereof, and

[1] *From the Revised Statutes of the United States, in force December* 1, 1873, *as amended by the Acts of June* 18, 1874, *August* 1, 1882, *March* 3, 1891, *and March* 2, 1895.

by it all records and papers issued from the office, and to be used in evidence shall be authenticated.

SEC. 4950. The Librarian of Congress shall give a bond, with sureties, to the Treasurer of the United States, in the sum of five thousand dollars, with the condition that he will render to the proper officers of the Treasury a true account of all moneys received by virtue of his office.

SEC. 4951. The Librarian of Congress shall make an annual report to Congress of the number and description of copyright publications for which entries have been made during the year.

SEC. 4952. The author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statuary, and of models or designs intended to be perfected as works of the fine arts, and the executors, administrators, or assigns of any such person, shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and, in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others. And authors or their assigns shall have exclusive right to dramatize or translate any of their works, for which copyright shall have been obtained under the laws of the United States.

SEC. 4953. Copyrights shall be granted for the term of twenty-eight years from the time of recording the title thereof, in the manner hereinafter directed.

SEC. 4954. The author, inventor, or designer, if he be still living, or his widow or children, if he be dead, shall have the same exclusive right continued for the further term of fourteen years, upon recording the title of the work or description of the article so secured a second time, and complying with all other regulations in regard to original copyrights, within six months before the expiration of the first term. And such person shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more newspapers, printed in the United States, for the space of four weeks.

SEC. 4955. Copyrights shall be assignable in law by any instrument of writing, and such assignment shall be recorded in the office of the Librarian of Congress within sixty days after its execution; in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice.

SEC. 4956. No person shall be entitled to a copyright unless he shall, on or before the day of publication, in this or any foreign country, deliver at the office of the Librarian of Congress, or deposit in the mail within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or chromo, or a description of the painting, drawing, statue, statuary, or a model or design, for a work of the fine arts, for which he desires a copyright; nor unless he shall

also, not later than the day of the publication thereof, in this or any foreign, country, deliver at the office of the Librarian of Congress, at Washington, District of Columbia, or deposit in the mail, within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, two copies of such copyright book, map, chart, dramatic or musical composition, engraving, chromo, cut, print, or photograph, or in case of a painting, drawing, statue, statuary, model, or design for a work of the fine arts, a photograph of the same: *Provided*, That in the case of a book, photograph, chromo, or lithograph, the two copies of the same required to be delivered or deposited as above, shall be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives, or drawings on stone made within the limits of the United States, or from transfers made therefrom. During the existence of such copyright the importation into the United States of any book, chromo, lithograph, or photograph, so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set, negatives, or drawings on stone made within the limits of the United States, shall be, and it is hereby prohibited, except in the cases specified in paragraphs 512 to 516, inclusive, in section two of the act entitled,[1] an act to reduce the revenue and equalize the duties on imports and for

[1] NOTE.—These paragraphs of the Tariff act permit free importation of books, etc., more than twenty years old, books in foreign languages, publications imported by the Government, or for societies, colleges, etc., and libraries which have been in use one or more years, brought from abroad by persons or families and not for sale.

other purposes, approved October 1, 1890; and except in the case of persons purchasing for use and not for sale, who import, subject to the duty thereon, not more than two copies of such book at any one time; and, except in the case of newspapers and magazines, not containing in whole or in part matter copyrighted under the provisions of this act, unauthorized by the author, which are hereby exempted from prohibition of importation:

Provided, nevertheless, That in the case of books in foreign languages, of which only translations in English are copyrighted, the prohibition of importation shall apply only to the translation of the same, and the importation of the books in the original language shall be permitted.

SEC. 4957. The Librarian of Congress shall record the name of such copyright book, or other article, forthwith in a book to be kept for that purpose, in the words following: "Library of Congress, to wit: Be it remembered that on the —— day of —— A. B., of —— hath deposited in this office the title of a book, (map, chart, or otherwise, as the case may be, or description of the article,) the title or description of which is in the following words, to wit: (here insert the title or description,) the right whereof he claims as author, (originator, or proprietor, as the case may be,) in conformity with the laws of the United States respecting copyrights. C. D., Library of Congress." And he shall give a copy of the title or description under the seal of the Librarian of Congress, to the proprietor, whenever he shall require it.

SEC. 4958. The Librarian of Congress shall receive from the persons to whom the services designated are rendered, the following fees: 1. For recording the title or description of any copyright book or other article, fifty cents. 2. For every copy under seal of such record actually given to the person claiming the copyright, or his assigns, fifty cents. 3. For recording and certifying any instrument of writing for the assignment of a copyright, one dollar. 5. For every copy of an assignment, one dollar. All fees so received shall be paid into the Treasury of the United States: *Provided*, That the charge for recording the title or description of any article entered for copyright, the production of a person not a citizen or resident of the United States, shall be one dollar, to be paid as above into the Treasury of the United States, to defray the expenses of lists of copyrighted articles as hereinafter provided for.

And it is hereby made the duty of the Librarian of Congress to furnish to the Secretary of the Treasury copies of the entries of titles of all books and other articles wherein the copyright had been completed by the deposit of two copies of such book printed from type set within the limits of the United States, in accordance with the provisions of this act, and by the deposit of two copies of such other article made or produced in the United States; and the Secretary of the Treasury is hereby directed to prepare and print, at intervals of not more than a week, catalogues of such title-entries for distribution to the collectors of customs of the United States and to the postmasters of all post offices receiving foreign mails, and

such weekly lists, as they are issued, shall be furnished to all parties desiring them, at a sum not exceeding five dollars per annum; and the Secretary and the Postmaster General are hereby empowered and required to make and enforce such rules and regulations as shall prevent the importation into the United States, except upon the conditions above specified, of all articles prohibited by this act.

SEC. 4959. The proprietor of every copyright book or other article shall deliver at the office of the Librarian of Congress, or deposit in the mail, addressed to the Librarian of Congress, at Washington, District of Columbia, a copy of every subsequent edition wherein any substantial changes shall be made: *Provided, however*, That the alterations, revisions, and additions made to books by foreign authors, heretofore published, of which new editions shall appear subsequently to the taking effect of this act, shall be held and deemed capable of being copyrighted as above provided for in this act, unless they form a part of the series in course of publication at the time this act shall take effect.

SEC. 4960. For every failure on the part of the proprietor of any copyright to deliver, or deposit in the mail, either of the published copies, or description, or photograph, required by Sections 4956 and 4959, the proprietor of the copyright shall be liable to a penalty of twenty-five dollars, to be recovered by the Librarian of Congress, in the name of the United States, in an action in the nature of an action of debt, in any district court of the United States within the jurisdiction of which the delinquent may reside or be found.

SEC. 4961. The postmaster to whom such copyright book, title, or other article is delivered, shall, if requested, give a receipt therefor; and when so delivered he shall mail it to its destination.

SEC. 4962. No person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published, on the title-page, or the page immediately following, if it be a book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some visible portion thereof, or of the substance on which the same shall be mounted, the following words, viz.: "Entered according to act of Congress, in the year ——, by A. B., in the office of the Librarian of Congress, at Washington;" or, at his option, the word "Copyright," together with the year the copyright was entered, and the name of the party by whom it was taken out, thus: "Copyright, 18—, by A. B."

SEC. 4963. Every person who shall insert or impress such notice, or words of the same purport, in or upon any book, map, chart, dramatic or musical composition, print, cut, engraving, or photograph, or other article, for which he has not obtained a copyright, shall be liable to a penalty of one hundred dollars, recoverable one-half for the person who shall sue for such penalty, and one-half to the use of the United States.

SEC. 4964. Every person who, after the recording

of the title of any book and the depositing of two copies of such book as provided by this act, shall, contrary to the provisions of this act, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in the presence of two or more witnesses, print, publish, dramatize, translate, or import, or, knowing the same to be so printed, published, dramatized, translated, or imported, shall sell or expose to sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction.

SEC. 4965. If any person, after the recording of the title of any map, chart, dramatic or musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts as provided by this act, shall, within the term limited, contrary to the provisions of this act, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish, dramatize, translate, or import, either in whole or in part, or by varying the main design, with intent to evade the law, or knowing the same to be so printed, published, dramatized, translated, or imported, shall sell or expose to sale any copy of such map or other article, as aforesaid, he shall forfeit to the proprietor all the plates on which the

same shall be copied, and every sheet thereof, either copied or printed, and shall further forfeit one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported, or exposed for sale; and in case of a painting, statue, or statuary, he shall forfeit ten dollars for every copy of the same in his possession, or by him sold or exposed for sale; one-half thereof to the proprietor and the other half to the use of the United States. *Provided, however*, That in case of any such infringement of the copyright of a photograph made from any object not a work of fine arts, the sum to be recovered in any action brought under the provisions of this section shall be not less than one hundred dollars, nor more than five thousand dollars, and, *Provided further*, That in case of any such infringement of the copyright of a painting, drawing, statue, engraving, etching, print, or model or design for a work of the fine arts or of a photograph of a work of the fine arts, the sum to be recovered in any action brought through the provisions of this section shall be not less than two hundred and fifty dollars, and not more than ten thousand dollars. One-half of all the foregoing penalties shall go to the proprietors of the copyright and the other half to the use of the United States.[1]

SEC. 4966. Any person publicly performing or representing any dramatic composition for which a copyright has been obtained, without the consent of the proprietor thereof, or his heirs or assigns, shall

[1] This is the provision of the act of March, 1891, as amended by the Covert act of March, 1895.

be liable for damages therefor; such damages in all cases to be assessed at such sum, not less than one hundred dollars for the first, and fifty dollars for every subsequent performance, as to the court shall appear to be just.

SEC. 4967. Every person who shall print or publish any manuscript whatever, without the consent of the author or proprietor first obtained, shall be liable to the author or proprietor for all damages occasioned by such injury.

SEC. 4968. No action shall be maintained in any case of forfeiture or penalty under the copyright laws, unless the same is commenced within two years after the cause of action has arisen.

SEC. 4969. In all actions arising under the laws respecting copyrights the defendant may plead the general issue, and give the special matter in evidence.

SEC. 4970. The circuit courts, and district courts having the jurisdiction of circuit courts, shall have power, upon bill in equity, filed by any party aggrieved, to grant injunctions to prevent the violation of any right secured by the laws respecting copyrights, according to the course and principles of courts of equity, on such terms as the court may deem reasonable.

SEC. —. [Approved June 18, 1874, to take effect August 1, 1874.] In the construction of this act the words "engraving," "cut," and "print," shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but

may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the supervision and control of the entry or registry of such prints or labels, in conformity with the regulations provided by law as to copyright of prints, except that there shall be paid for recording the title of any print or label, not a trade-mark, six dollars, which shall cover the expense of furnishing a copy of the record, under the seal of the Commissioner of Patents, to the party entering the same.

SEC. —. [Approved August 1, 1882.] That manufacturers of designs for molded decorative articles, tiles, plaques, or articles of pottery or metal, subject to copyright, may put the copyright mark prescribed by section forty-nine hundred and sixty-two of the Revised Statutes, and acts additional thereto, upon the back or bottom of such articles, or in such other place upon them as it has heretofore been usual for manufacturers of such articles to employ for the placing of manufacturers', merchants', and trade-marks thereon.

SEC. 11. [Approved March 3, 1891, to take effect July 1, 1891.] That for the purpose of this act each volume of a book in two or more volumes, when such volumes are published separately, and the first one shall not have been issued before this act shall take effect, and each number of a periodical shall be considered an independent publication, subject to the form of copyrighting as above.

SEC. 12. That this act shall go into effect on the first day of July, Anno Domini eighteen hundred and ninety-one.

SEC. 13. [Approved March 3, 1891, to take effect July 1, 1891.] That this act shall only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as to its own citizens; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States of America may at its pleasure become a party to such agreement. The existence of either of the conditions aforesaid shall be determined by the President of the United States, by proclamation made from time to time as the purposes of this act may require.

Directions for Securing Copyrights.

Under the Revised Acts of Congress, including the Provisions for Foreign Copyright, by Act of March 3, 1891.

1. A *printed* copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or chromo, or a *description* of the painting, drawing, statue, statuary, or model or design for a work of the fine arts, for which copyright is desired, must be delivered to the Librarian of Congress or deposited in the mail, within the United States, *prepaid*, addressed *Librarian of Congress, Washington, D. C.* This may be done on or before day of publication in this or any foreign country.

Printed title required.

The *printed title* required may be a copy of the title-page of such publications as have title-pages. *In other cases the title must be printed expressly for copyright entry*, with name of claimant of copyright. The style of type is immaterial, and the print of a typewriter will be accepted. But a separate title is required for each entry, and *each* title must be printed on paper as large as commercial note. The title of a *periodical* must include the date and number; and each number of the periodical requires a separate entry of copyright.

What style of print.

Blank forms of application furnished to applicants.

Applications.

2. The legal fee for *recording* each copyright claim is 50 cents, and for a *copy* of this record (or certificate of copyright under seal of the office) an additional fee of 50 cents is required, making $1, if certificate is wanted, which will be mailed as soon as reached in the records.

Copyright fees.

No money is to be placed in any package of books, music, or other publications. A bank check, to order, avoids all risk.

For publications which are the production of persons not citizens or residents of the United States, the fee for recording title is $1, and 50 cents additional for a copy of the record. Certificates covering more than one entry in one certificate are not issued.

Bank checks, money orders, and currency only taken for fees. No postage stamps received.

Two copies required.

3. Not later than the day of publication in this country or abroad, two complete copies of the best edition of each book or

other article must be delivered, or deposited in the mail within the United States, addressed *Librarian of Congress, Washington, D. C.* to perfect the copyright.

The freight or postage must be prepaid, or the publications inclosed in parcels covered by printed Penalty Labels, furnished by the Librarian, in which case they will come FREE by mail (*not express*), without limit of weight, according to rulings of the Post-Office Department. Books must be printed from type set in the United States, or from plates made therefrom; photographs from negatives made in the United States; chromos and lithographs from drawings on stone or transfers therefrom made in the United States.

Free by mail.

To be of American manufacture.

Without the deposit of copies above required the copyright is void, and a penalty of $25 is incurred. No copy is required to be deposited elsewhere.

Penalty.

The law requires one copy of each new edition, wherein any substantial changes are made, to be deposited with the Librarian of Congress.

New editions.

4. No copyright is valid unless notice is given by inserting in every copy published, on the title-page or the page following, if it be a book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or designs intended to be perfected as a work of the fine arts, by inscribing upon some portion thereof, or on

Notice of copyright to be given by imprint.

the substance on which the same is mounted, the following words, viz.: "*Entered according to act of Congress, in the year* ——, *by* ———, *in the office of the Librarian of Congress, at Washington,*" or at the option of the person entering the copyright, the words: "*Copyright, 18*—, *by* ———."

Claimant's name to be printed.

The law imposes a penalty of $100 upon any person who has not obtained copyright who shall insert the notice, "*Entered according to act of Congress,*" or "*Copyright,*" or words of the same import, in or upon any book or other article.

Penalty for false claim.

5. The copyright law secures to authors and their assigns the exclusive right to translate or to dramatize any of their works; no notice or record is required to enforce this right.

Translations and dramas.

6. The original term of a copyright runs for twenty-eight years. *Within six months before* the end of that time, the author or designer, or his widow or children, may secure a renewal for the further term of fourteen years, making forty-two years in all. Applications for renewal must be accompanied by a printed title and fee; and by explicit statement of ownership, in the case of the author or of relationship, in the case of his heirs, and must state definitely the date and place of entry of the original copyright. Within two months from date of renewal the record thereof must be advertised in an American newspaper for four weeks.

Duration of copyright.

Renewals.

7. The time of publication is not limited by any

law or regulation, but the courts have held that it should take place "within a reasonable time." A copyright may be secured for a projected as well as for a completed work. Time of publication.
But the law provides for no *caveat*, or notice of interference—only for actual entry of title.

8. Copyrights are assignable by any instrument of writing. Such assignment to be valid, is to be recorded in the office of the Librarian of Congress within sixty days from execution. The fee for this record and certificate is one dollar, and for a certified copy of any record of assignment one dollar. Assignments.

9. A copy of the record (or duplicate certificate) of any copyright entry will be furnished, under seal of the office, at the rate of fifty cents each. Copies or duplicate certificates.

10. In the case of books published in more than one volume, or of periodicals published in numbers, or of engravings, photographs, or other articles published with variations, a copyright must be entered for each volume or part of a book, or number of a periodical, or variety, as to style, title, or inscription, of any other article. To *complete* the copyright on a book published serially in a periodical, two copies of each serial part as well as of the completed work (if published separately), should be deposited. Serials or separate publications.

11. To secure copyright for a painting, statue, or model or design intended to be perfected as a work of the fine arts, a definite title and description must accompany the appli- Copyright for works of art.

cation for copyright, and a mounted photograph of the same, as large as "cabinet size," mailed to the Librarian of Congress not later than the day of publication of the work or design.

Fine arts.

The fine arts, for copyright purposes, include only painting and sculpture, and articles of merely ornamental and decorative art should be sent to the Patent Office, as subjects for Design Patents.

No labels or names copyright.

12. Copyrights can not be granted upon trade-marks, nor upon names of companies, libraries, or articles, nor upon an idea or device, nor upon prints or labels intended to be used for any article of manufacture. If protection for such names or labels is desired, application must be made to the Patent Office, where they are registered, if admitted, at a fee of $6 for labels, and $25 for trade-marks.

Foreign or International copyright.

13. The provisions as to copyright entry in the United States by foreign authors, etc., by act of Congress approved March 3, 1891 (which took effect July 1, 1891), are the same as the foregoing, except as to productions of persons not citizens or residents, which must

Fees.

cover return postages, and are $1 for entry, or $1.50 for entry and certificate of entry (equivalent to *4s.* 5*d.* or 6*s.* 7*d.*). All publications must be delivered to the Librarian at Washington free of charge. The free penalty labels can not be used outside of the United States.

The right of citizens or subjects of a foreign nation to copyright in the United States extends by

Presidential proclamations to Great Britain, France, Germany, Italy, Spain, Portugal, Belgium, Denmark, and Switzerland; and Americans can secure copyright in those countries. For this, direct arrangements must be made abroad. The Librarian of Congress can not take charge of any foreign copyright business.[1]

14. Every applicant for a copyright should state distinctly the full name and residence of the claimant, whether book or other publication, and whether the right is claimed as author, designer, or proprietor. No affidavit or witness to the application is required. Full name of proprietor required.

OFFICE OF THE LIBRARIAN OF CONGRESS,
Washington, 1895.

Foreign States with which the United States is in Copyright Relations.

THE provisions of the Act of 1891 having to do with International Copyright, are (January, 1896) in force with the following States:

Belgium, France, Great Britain, Switzerland,	By Proclamation of the President, July 4, 1891.

[1] American authors, artists, and composers who desire to secure for their productions the protection of copyright in the States with which the United States has entered into copyright relations, must fulfil the requirements of the Statutes of those States. The provisions of these Statutes are given in a later chapter of this volume. —*Editor*.

Germany, by Treaty, March 8, 1892.
Italy, by Proclamation, Oct. 31, 1892.
Denmark, by Proclamation, May 8, 1893.
Portugal, by Proclamation, July 20, 1895.
Spain, by Proclamation, July 15, 1895.
Mexico, by Proclamation, Feb. 27, 1896.

Amendments to the Copyright Act Proposed Since July, 1891.

1. *The Hicks Bill.*—In September, 1894, an amendment to the Copyright Act was introduced by Representative Hicks, of Pennsylvania, which had for its purpose the application of the manufacturing requirement to engravings and etchings; under the Hicks provision, art productions of this class were to be "printed from plates engraved or etched within the limits of the United States." A second division of the Hicks Bill excepted from the works the contents of which were to be protected by copyright "daily or weekly newspapers devoted in whole or in part to the news of the day."

The purpose of the first provision was stated to be the protection of newspapers against disproportioned damages in connection with the reproduction of photographs or of popular works of art, which were the work of alien designers. Its results would have been the undermining of copyright in foreign works of art, the protection of which constituted practically the only advantage secured by the states of Europe (other than England) under the American Act of 1891. The alleged purpose of the second provision (which was presented at the instance of

the smaller papers) was to prevent what they called "a monopoly of news." The result would have been to destroy the copyright property in any literary or art productions published not only in the daily papers, but in such journals as *Harper's Weekly* or *Frank Leslie's*, which are in part devoted to "news of the day." Strong protests were made against the bill by European artists and art publishers, and by the publishers of literary illustrated weeklies and their contributors. Concerted action was taken, on behalf of all the copyright interests assailed by the Authors' and Publishers' Copyright Leagues, and the bill was killed in Committee.

2. *The Covert Amendment.*—In January, 1895, Representative Covert of New York, introduced a bill which had for its purpose the relief of the newspapers from excessive penalties in connection with the infringement of art designs, photographs, etc. This bill as first worded would have constituted a serious impairment of the protection of copyright property.

After consultation between the representatives of the Authors' and Publishers' Copyright Leagues and those of the newspaper publishers, the Covert amendment was modified. The original draft provided that the total sum to be "recovered for any one infringement should not exceed double the value of the printing, drawing, object or thing infringed upon, copied, issued, or edited in violation of law." As finally worded the amendment read:

"Provided, however, that in the case of any such

infringement of the copyright of a photograph made from an object not a work of the fine arts, the sum to be recovered in any action brought under the provisions of this section shall be not less than $100, nor more than $5000, and Provided further, In case of any such infringement of the copyright of a printing, drawing, statue, engraving, etching, print, or model, or design not a work of the fine arts, the sum to be recovered in any action brought through the provisions of this section shall not be less than $250 and not more than $10,000."

The act was passed in March, 1895, becoming part of the copyright law, and constituting the first amendment to the international copyright provisions.

3. *The Cummings' Amendment, in re Stage-right.*—In February, 1896, Mr. Amos Cummings, of New York, introduced in the House of Representatives a bill which had for its purpose the more thorough protection of the rights of dramatic authors. These authors and their assigns, the managers who are interested with them in the copyright protection of plays, had for some years found occasion to complain of the inadequacy of the protection accorded to their property under the existing methods of the Federal Courts. Under the existing law, an injunction granted by one Federal Court is preventive only within the judicial circuit of that Court. There are within the territory of the United States nine of these Judicial Circuits. If an injunction be granted, for instance, by the United States Court in the City of New York, restraining the piratical performance

of a play, such injunction has force only within the judicial circuit of New York City. The pirate may produce the play in Philadelphia, Boston, or anywhere else outside of that circuit, and the only way to reach him is to secure another injunction from the court of the circuit within which the latter injunction is accorded. Even then, the offender is still at liberty to repeat his operations in a third circuit, and so on for the entire series of nine. The text of the Cummings' Bill, which will probably become law by the time the printing of this volume is completed, is as follows:

A Bill to Amend Title Sixty, Chapter Three, of the Revised Statutes, relating to copyrights.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section forty-nine hundred and sixty-six of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

SEC. 4966. Any person publicly performing or representing any dramatic or operatic composition for which a copyright has been obtained, without the consent of the proprietor of said dramatic or operatic composition or of his heirs or assigns, shall be liable for damages therefor, such damages in all cases to be assessed at such sum, not less than one hundred dollars for the first and fifty dollars for every subsequent performance, as to the court shall appear to be just; and if it be determined that such unlawful performing and representation was wilful and for profit, in addition thereto, such person or persons shall be guilty of a misdemeanor and liable to imprisonment for a period not exceeding one year. Any injunction that may be granted by any circuit court of the United States, or by any judge thereof, restraining and enjoining the performance or representation of any such dramatic or operatic composition may be served on the parties against whom such injunction may be granted anywhere in the United States, and shall be operative and may be enforced by proceedings to punish for contempt or otherwise by any other circuit

court or judge in the United States; but the defendants in said action, or any or either of them, may make a motion in any other circuit in which he or they may be engaged in performing or representing said dramatic or operatic composition to dissolve or set aside the said injunction upon such reasonable notice to the plaintiff as the circuit court or the judge before whom said motion shall be made shall deem proper; service of said motion to be made on the plaintiff in person or on his attorneys in the action. The circuit courts or judges thereof shall have jurisdiction to enforce said injunction and to hear and determine a motion to dissolve the same, as herein provided, as fully as if the action were pending or brought in the circuit in which said motion is made.

The clerk of the court, or judge granting the injunction, shall, when required so to do by the court hearing the application to dissolve or enforce said injunction, transmit without delay to said court a certified copy of all the papers on which the said injunction was granted that are on file in his office.

4. *The Treloar Bill.*—In February, 1896, Mr. Treloar of Missouri introduced in the House of Representatives a Bill the general purpose of which was specified as the "revision of the copyright law."

Mr. Treloar had incorporated in his measure (with some changes) the plan for the organization of a Bureau of Copyrights which should be distinct from the Library of Congress. He had also included the substance of The Cummings' Bill then pending in the House, the purpose of which was to secure a more adequate protection for the rights of dramatic authors. The original features of his Bill can be summarized as follows:

1. The extension of the first term of copyright from twenty-eight to forty years and of the second term (to be secured by the author if living and otherwise by his widow or children) from fourteen

to twenty years, making the total term sixty years instead of forty-two; 2. The restriction to citizens of the United States of the privilege of securing copyright, (which privilege, under all acts prior to that of 1891, had been conceded to residents without regard to citizenship, and which, under the Act of 1891, had been extended to citizens of other countries whose government extended similar copyright privileges to American citizens); 3. The addition to the list of articles which, in order to secure the privileges of copyright in the United States, must be wholly manufactured within the limits of the United States, of musical compositions and of reproductions of works of art in the form of engravings, cuts, or prints; 4. The limitation to $5000 of the total penalty to be collected for the infringement of the copyright of a literary production.

The clause in regard to the instituting of a Bureau of Copyrights, provided for a chief of such Bureau to be entitled a commissioner (in the Bankhead and Morrill Bills he was to be styled register) and for a staff of no less than thirty-eight assistants. (The Bankhead and Morrill Bills made provision for but three assistants.) The total expense of the Bureau on the scheme proposed would amount to not less than $50,000, while the Bankhead and Morrill Bills estimated that the annual cost of such Bureau need not exceed $7500. The Treloar estimate was doubtless very much in excess of the actual business requirements of such a Bureau, while the Bankhead provision was decidedly inadequate. The annual receipts from the copyright fees amounted (in

1895) to something over $35,000. It was the calculation of good judges that the work of the copyright Bureau ought to be performed efficiently for a sum not exceeding $20,000, with provision for such gradual increase of the clerical force as the normal development of the business would necessitate.

The Bill was referred in due course to the House Committee on Patents. The Authors' and Publishers' American Leagues promptly expressed their entire disapproval of its chief provisions. In the resolutions adopted in these Leagues, it was pointed out that the Bill would, if it became law, bring about the revocation of the copyright granted to foreign producers of works of art, and would add very materially to the difficulties in the way of securing copyright for foreign works of literature, if it did not entirely nullify the copyright privileges of foreign authors. It was further contended that the limitation to $5000 of the damages to be secured for the infringement of literary property, a penalty which had heretofore been left proportionate to the actual extent of the damage caused, was inequitable and was contrary to all precedents of existing copyright law.

The unnecessary outlay planned for the maintenance of the Bureau of Copyright constituted a distinctive though less important objection to the Bill. The extention of the term of copyright, while desirable in itself, was not to be considered as an offset to the serious defects above specified. It was, further, a subject which was not to be passed upon hastily, but which called for mature consideration in connec-

tion with the experience of foreign States and with the conclusions arrived at in these States.

At the time this chapter is going through the press, the Treloar Bill is still under consideration in Committee, but there is supposed to be no possible prospect of its securing a majority in either the House or the Senate, while in the event of the measure being passed by Congress, it is assumed that it will certainly meet with the disapproval of the Executive.

II.

SUMMARY OF COPYRIGHT LEGISLATION IN THE UNITED STATES.

By R. R. Bowker.

THE Constitution of the United States authorized Congress "to promote the progress of science and useful arts by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." Previous to its adoption, in 1787, the nation had no power to act, but on Madison's motion, Congress, in May, 1783, recommended the States to pass acts securing copyright for fourteen years. Connecticut, in January, 1783, and Massachusetts, in March, 1783, had already provided copyright for twenty-one years. Virginia, in 1785, New York and New Jersey, in 1786, also passed copyright acts, and other States were considering them—thanks to the vigorous copyright crusade of Noah Webster, who travelled from capital to capital—when the United States Statute of 1790 made them unnecessary. This act followed the precedent of the English act of 1710, and gave to authors who were citizens or residents, their heirs and assigns, copyrights in books, maps, and charts for fourteen years, with renewal for fourteen years more, if the author were living at expi-

ration of the first term. A printed title must be deposited before publication in the clerk's office of the local United States District Court; notice must be printed four times in a newspaper within two months after publication; a copy must be deposited with the United States Secretary of State within six months after publication; the penalties were forfeiture and a fine of fifty cents for each sheet found, half to go to the copyright owner, half to the United States; a remedy was provided against unauthorized publication of manuscripts.

This original and fundamental act was followed by others—in 1802, requiring copyright record to be printed on or next the title-page, and including designs, engravings, and etchings; in 1819, giving United States Circuit Courts original jurisdiction in copyright cases; in 1831 (a consolidation of previous acts), including musical compositions, extending the term to twenty-eight years, with renewal for fourteen years to author, widow, or children, doing away with the newspaper notice except for renewals, and providing for the deposit of a copy with the district clerk (for transmission to the Secretary of State) within three months after publication; in 1834, requiring record of assignment in the court of original entry; in 1846 (the act establishing the Smithsonian Institution), requiring one copy to be delivered to that, and one to the Library of Congress; in 1856, securing to dramatists the right of performance; in 1859, repealing the provision of 1846 for the deposit of copies, and making the Interior Department instead of the State De-

partment the copyright custodian; in 1861, providing for appeal in all copyright cases to the Supreme Court; in 1865, one act again requiring deposit with the Library of Congress, within one month from publication, another including photographs and negatives; in 1867, providing $25 penalty for failure to deposit. This makes twelve acts bearing on copyright up to 1870, when a general act took the place of all, including "paintings, drawings, chromos, statues, statuary, and models or designs intended to be perfected as works of the fine arts." This did away with the local District Court system of registry, and made the Librarian of Congress the copyright officer, with whom printed title must be filed before, and two copies deposited within ten days after, publication. In 1873–74 the copyright act was included in the Revised Statutes as Sections 4948 to 4971 (also see §§ 629 and 699), and in 1874 an amendatory act made legal a short form of record, "Copyright, 18—, by A. B.," and relegated labels to the Patent Office.

The act of 1790 received an interpretation, in 1834, in the case of Wheaton *vs.* Peters (rival law reports), at the bar of the United States Supreme Court, which placed copyright in the United States exactly in the *status* it held in England after the decision of the House of Lords in 1774. The court referred directly to that decision as the ruling precedent, and declared that by the statute of 1790 Congress did not affirm an existing right, but created a right. It stated also that there was no common law of the United States, and that (English) common law as to copyright had not been adopted in

Pennsylvania, where the case arose. So late as 1880, in Putnam *vs.* Pollard, claim was made that this ruling decision did not apply in New York, which, in its statute of 1786, expressly "*provided*, that nothing in this act shall extend to, affect, prejudice, or confirm the rights which any person may have to the printing or publishing of any books or pamphlets at common law, in cases not mentioned in this act." But the New York Supreme Court decided that the precedent of Wheaton *vs.* Peters nevertheless held.

As in the English case of Donaldsons *vs.* Beckett, the decision in the American ruling case came from a divided court. The opinion was handed down by Justice McLean, three other judges agreeing, Justices Thompson and Baldwin dissenting, a seventh judge being absent. The opinions of the dissenting judges (see Drone, p. 43 *et seq.*) constitute one of the strongest statements ever made of natural rights in literary property, in opposition to the ruling that the right is solely the creature of the statute. "An author's right," says Justice Thompson, "ought to be esteemed an inviolable right established in sound reason and abstract morality."

The application of copyright law, unlike that regarding patents, is solely a question of the courts. The Librarian of Congress is simply an officer of record, and makes no decisions, as is well stated in his general circular in reply to queries:

"I have to advise you that no question concerning the validity of a copyright can be determined under our laws by any other authority than a United States Court. This office has no discretion or author-

ity to refuse any application for a copyright coming within the provisions of the law, and all questions as to priority or infringement are purely judicial questions, with which the undersigned has nothing to do.

"A certificate of copyright is *prima facie* evidence of an exclusive title, and is highly valuable as the foundation of a legal claim to the property involved in the publication. As no claim to exclusive property in the contents of a printed book or other article can be enforced under the common law, Congress has very properly provided the guarantees of such property which are embodied in the 'Act to revise, consolidate, and amend the statutes relating to patents and copyrights,' approved July 8, 1870. If you obtain a copyright under the provisions of this act, you can claim damages from any person infringing your rights by printing or selling the same article; but upon all questions as to what constitutes an infringement, or what measure of damages can be recovered, all parties are left to their proper remedy in the courts of the United States."

The many perplexities that arise under our complicated and unsatisfactory law, as it stands at present, suggest the need here, as in England, of a thorough remodeling of our copyright system.

December, 1885.

III.

HENRY CLAY'S REPORT IN FAVOR OF INTERNATIONAL COPYRIGHT.

DURING the second session of the Twenty-fourth Congress, on February 16, 1837, Henry Clay in the Senate made the following report, submitted with Senate bill No. 223:

The select committee to which was referred the address of certain British, and the petition of certain American, authors, has, according to order, had the same under consideration, and begs leave now to report:

1. That, by the act of Congress of 1831, being the law now in force regulating copyrights, the benefits of the act are restricted to citizens or residents of the United States; so that no foreigner, residing abroad, can secure a copyright in the United States for any work of which he is the author, however important or valuable it may be. The object of the address and petition, therefore, is to remove this restriction as to British authors, and to allow them to enjoy the benefits of our law.

2. That authors and inventors have, according to the practice among civilized nations, a property in the respective productions of their genius is incontestable; and that this property should be protected

as effectually as any other property is, by law, follows as a legitimate consequence. Authors and inventors are among the greatest benefactors of mankind. They are often dependent, exclusively, upon their own mental labors for the means of subsistence; and are frequently, from the nature of their pursuits, or the constitutions of their minds, incapable of applying that provident care to worldly affairs which other classes of society are in the habit of bestowing. These considerations give additional strength to their just title to the protection of the law.

3. It being established that literary property is entitled to legal protection, it results that this protection ought to be afforded wherever the property is situated. A British merchant brings or transmits to the United States a bale of merchandise, and the moment it comes within the jurisdiction of our laws, they throw around it effectual security. But if the work of a British author is brought to the United States, it may be appropriated by any resident here, and republished without any compensation whatever being made to the author. We should be all shocked if the law tolerated the least invasion of the rights of property in the case of the merchandise, whilst those which justly belong to the works of authors are exposed to daily violation, without the possibility of their invoking the aid of the laws.

4. The committee thinks that this distinction in the condition of the two descriptions of property is not just, and that it ought to be remedied by some

safe and cautious amendment of the law. Already the principle has been adopted, in the patent laws, of extending their benefits to foreign inventions or improvements. It is but carrying out the same principle to extend the benefits of our copyright laws to foreign authors. In relation to the subjects of Great Britain and France, it will be but a measure of reciprocal justice; for, in both of those countries, our authors may enjoy that protection of their laws for literary property which is denied to their subjects here.

5. Entertaining these views, the committee has been anxious to devise some measure which, without too great a disturbance of interests, or affecting too seriously arrangements which have grown out of the present state of things, may, without hazard, be subjected to the test of practical experience. Of the works which have heretofore issued from the foreign press, many have been already republished in the United States; others are in a process of republication, and some probably have been stereotyped. A copyright law which should embrace any of these works might injuriously affect American publishers, and lead to collision and litigation between them and foreign authors.

6. Acting, then, on the principles of prudence and caution, by which the committee has thought it best to be governed, the bill which the committee intends proposing provides that the protection which it secures shall extend to those works only which shall be published after its passage. It is also limited to the subjects of Great Britain and France;

among other reasons, because the committee has information that, by their laws, American authors can obtain there protection for their productions, but they have no information that such is the case in any other foreign country. But, in principle, the committee perceives no objection to considering the republic of letters as one great community, and adopting a system of protection for literary property which should be common to all parts of it. The bill also provides that an American edition of the foreign work, for which an American copyright has been obtained, shall be published within reasonable time.

7. If the bill should pass, its operation in this country would be to leave the public, without any charge for copyright, in the undisturbed possession of all scientific and literary works published prior to its passage—in other words, the great mass of the science and literature of the world; and to entitle the British and French author only to the benefit of copyright in respect to works which may be published subsequent to the passage of the law.

8. The committee cannot anticipate any reasonable or just objection to a measure thus guarded and restricted. It may, indeed, be contended and it is possible that the new work, when charged with the expense incident to the copyright, may come into the hands of the purchaser at a small advance beyond what would be its price if there were no such charge; but this is by no means certain. It is, on the contrary, highly probable that, when the American publisher has adequate time to issue carefully an edition of the foreign work, without

incurring the extraordinary expense which he now has to sustain to make a hurried publication of it, and to guard himself against dangerous competition, he will be able to bring it into the market as cheaply as if the bill were not to pass. But, if that should not prove to be the case, and if the American reader should have to pay a few cents to compensate the author for composing a work by which he is instructed and profited, would it not be just in itself? Has any reader a right to the use, without remuneration, of intellectual productions which have not yet been brought into existence, but lie buried in the mind of genius? The committee thinks not; and its members believe that no American citizen would not feel it quite as unjust to appropriate to himself their future publications, without any consideration being paid to their foreign proprietors, as he would to take the bale of merchandise, in the case stated, without paying for it; and he would the more readily make this trifling contribution, when it secured to him, instead of the imperfect and slovenly book now often issued, a neat and valuable work, worthy of preservation.

9. With respect to the constitutional power to pass the proposed bill, the committee entertains no doubt, and Congress, as before stated, has acted on it. The Constitution authorizes Congress "to promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." There is no limitation of the power to natives or residents of this country. Such

a limitation would have been hostile to the object of the power granted. That object was to *promote* the progress of science and useful arts. They belong to no particular country, but to mankind generally. And it cannot be doubted that the stimulus which it was intended to give to mind and genius—in other words, the promotion of the progress of science and the arts—will be increased by the motives which the bill offers to the inhabitants of Great Britain and France.

10. The committee concludes by asking leave to introduce the bill which accompanies this report.

The following bill accompanied the report:

A BILL to amend the act entitled "An Act to amend the several acts respecting copyright."

Be it enacted, etc., That the provisions of the act to amend the several acts respecting copyrights, which was passed on the third day of February, eighteen hundred and thirty-one, shall be extended to, and the benefits thereof may be enjoyed by, any subject or resident of the United Kingdom of Great Britain and Ireland, or of France, in the same manner as if they were citizens or residents of the United States, upon depositing a printed copy of the title of the book, or other work for which a copyright is desired, in the clerk's office of the district court of any district in the United States, and complying with the other requirements of the said act: *Provided*, That this act shall not apply to any of the works enumerated in the aforesaid act, which shall have been etched or engraved, or printed and published, prior to the passage of this

act: *And provided, also,* That, unless an edition of the work for which it is intended to secure the copyright shall be printed and published in the United States simultaneously with its issue in the foreign country, or within one month after depositing as aforesaid the title thereof in the clerk's office of the district court, the benefits of copyright hereby allowed shall not be enjoyed as to such work.

IV.

THE CONTEST FOR INTERNATIONAL COPYRIGHT.

By Geo. Haven Putnam.

THE history of the movement in this country in behalf of International Copyright is still to be written. I can present here only a brief summary of the more noteworthy of the earlier events in this history, accompanied by a more detailed statement of the work done during the past three years by the Copyright Leagues.

In 1837, Henry Clay presented to Congress a petition of British authors asking for American copyright. The petition was referred to a select committee, which included, in addition to Clay, Webster, Buchanan, and Ewing. The report submitted by the committee, favoring the petition, was written by Clay, and is given in this volume.

Between 1837, the date of rendering his report, and 1842, the bill drafted by Clay on the lines of his report was presented in the Senate five times. [illegible] one vote upon it was, however, secured in [illegible] when it was ordered to lie upon the table. The bill was in substantial accord with that just passed, in requiring American manufacture for the books securing copyright. Between 1837 and 1842 numer-

ous petitions favoring International Copyright were presented to Congress, which were noteworthy as containing the signatures of nearly all the leading authors of the country.

During those same five years, 1837–1842, the first International Copyright conventions were being framed between certain of the European states, the earliest being that between Prussia and Wurtemberg.

In nearly all these earlier interstate arrangements, it was made a condition that the work should be printed within the territory of the country granting the copyright protection to a foreign author.

In 1838, after the passing of the first International Copyright Act in Great Britain, Lord Palmerston invited the American Government to co-operate in establishing a Copyright Convention between the two countries.

In 1840, George P. Putnam issued in pamphlet form an argument in behalf of International Copyright, and in the same year a somewhat similar argument was printed by Cornelius Matthews.

In 1843, Mr. Putnam presented to Congress a memorial, drafted by himself, and signed by ninety-seven publishers and printers, in which it was stated that the absence of an international copyright was "alike injurious to the business of publishing and to the best interests of the people at large."

In 1848, a memorial was presented to Congress, signed by W. C. Bryant, John Jay, George P. Putnam, and others, asking for a copyright measure very similar in principle to that which has just been enacted. The memorial was ordered printed, and

was referred to a select committee, from which no report was made.

In 1853, Charles Sumner, then Chairman of the Senate Committee on Foreign Affairs, interested himself in the subject, and reported to the Senate a treaty drafted by Mr. Everett, then Secretary of State, and himself, to secure copyright with Great Britain; but he was not able to obtain a vote upon it.

In 1853, certain publishing houses in New York including Charles Scribner, D. Appleton & Co., C. S. Francis, Mason Bros., and George P. Putnam, addressed a letter to Mr. Everett, Secretary of State, favoring a Copyright Convention with Great Britain, and suggesting a copyright arrangement substantially identical in its conditions with that secured under the present Act.

In 1858, Mr. Edward Jay Morris of Pennsylvania introduced an International Copyright Bill containing similar provisions, but the bill was never reported from committee.

In 1868, the American Copyright Association was formed, at a meeting held in response to a circular letter, headed "Justice to Authors and Artists." This letter was issued by a committee composed of George P. Putnam, Dr. S. Irenaeus Prime, Henry Ivison, and James Parton. Of this association W. C. Bryant was made President, George William Curtis, Vice-President, and E. C. Stedman, Secretary.

In 1867, Mr. Samuel M. Arnell of Tennessee secured the passage of a resolution in the House of

Representatives, ordering the joint Library Committee to inquire into the subject of International Copyright and to report. Such a report was presented in 1868 to the House by Mr. J. D. Baldwin of Massachusetts, together with a bill based upon a draft submitted from the Copyright Association of New York, by W. C. Bryant and George P. Putnam, securing copyright to foreign authors, with the condition that their books should be manufactured in this country. The bill was referred to the joint Committee on the Library, from which it never emerged.

In 1870, the so-called Clarendon Treaty was proposed through Mr. Thornton, the British Minister at Washington. The proposed treaty gave to the authors and artists of each country the privilege of copyright in the other by registering the work within three months of the original publication.

In 1871, Mr. Cox introduced a Copyright Bill practically identical in its provisions with the previous bill of Mr. Baldwin. This was the first bill that reached the stage of discussion in the Committee of the Whole.

In 1872, a bill was drafted by Mr. W. H. Appleton, which provided that the American edition of the foreign work securing American copyright should be manufactured in this country, and that the American registry of copyright should be made within one month of the date of the original publication. In the same year the draft of a bill was submitted by Mr. John P. Morton of Louisville, under which any American publisher was to be at liberty to reprint the work of a foreign author, on

the condition of making payment to such author of a ten per cent. royalty. Later in the year a similar measure was introduced by Mr. Beck and Mr. Sherman, providing that the royalty should be five per cent. Both these bills were referred to the Library Committee.

In 1873, Senator Lot M. Morrill of Maine reported, on behalf of the Library Committee, adversely to the consideration by Congress of any International Copyright Bill, on the ground that "there was no unanimity of opinion among those interested in the measure."

In 1874, Mr. Henry B. Banning of Ohio introduced in the House the sixth International Copyright Bill, which gave copyright to foreign authors on the simple condition of reciprocity. It was referred to the Committee on Patents, where it remained.

In 1878, the project for a Copyright Convention, or treaty, was submitted by Messrs. Harper & Brothers to Mr. Evarts, then Secretary of State; *and in 1880 the draft of a Convention, substantially identical with the suggestions of Messrs. Harper*, was submitted by Mr. Lowell to Lord Granville.

In 1883 the American Copyright League was organized, mainly on the lines of a plan drafted in 1882, by Edward Eggleston and R. W. Gilder. Mr. George Parsons Lathrop was made Secretary, and an active campaign was begun in arousing and educating public opinion on the subject.

In 1882, Mr. Robinson of New York presented a

bill giving consideration to the whole subject of copyright, domestic and international. It was referred to the Committee on Patents, where it was buried.

In 1883, the eighth Copyright Bill was introduced by Mr. Patrick A. Collins of Massachusetts. This also was buried in the Committee on Patents.

In 1884, the ninth International Copyright Bill was introduced into the House by Mr. Dorsheimer of New York. This provided simply for the extension to foreign authors of the privileges enjoyed by the citizens or residents of the United States.

This bill was approved by the Copyright League, and was favorably reported to the House from the Committee on the Judiciary, to which it had been referred. It reached the stage of being discussed in the House, but a resolution to fix a day for its final consideration was defeated.

In the same year a bill was introduced in the House by Mr. English, dealing with International Copyright in dramatic compositions. It was referred to the Judiciary Committee, which took no action.

In 1885, Mr. Lowell accepted the Presidency of the Copyright League, and Mr. Stedman was made its Vice-President. In the same year, at the instance of the League, Senator Hawley of Connecticut introduced his Copyright Bill (the text of which is given in this volume), which was substantially identical with that of Mr. Dorsheimer. The bill was referred to the Senate Committee on Pat-

cnts. It was introduced in the House by Randolph Tucker of Virginia, and was, like its predecessors, referred to the Committee on the Judiciary.

In 1884 and in 1885 the annual messages of Presidents Arthur and Cleveland contained earnest recommendations for the enactment of some measure of International Copyright.

January 21, 1886, the twelfth International Copyright Bill was brought before the Senate by Jonathan Chace of Rhode Island, and was referred to the Committee on Patents.

As Mr. Solberg points out in his clearly presented record of the fight for copyright, the introduction of the Chace Bill marked a distinct epoch in the history of the struggle for International Copyright. The long work of education through the public press, the distribution of pamphlets and missionary addresses, was at last bearing fruit, and in 1886 it was not so much a question whether there should be or should not be an International Copyright, but simply what form the law should take.

The Senate Committee on Patents gave a careful consideration to the two measures then before them, the Hawley Bill and the Chace Bill, and took testimony concerning them in four public hearings. On May 21, 1886, the committee presented a report recommending the passage of the Chace Bill, but no further action was secured in the Forty-ninth Congress. Senator Chace was, however, a more persistent champion than the cause of copyright had previously been fortunate enough to secure, and on December 12, 1887, in the first session of the Fif-

tieth Congress, he reintroduced his bill, which was again referred to the Committee on Patents.

In November, 1887, the American Copyright League (which was composed, in the main, of the authors of the country) voted to its Executive Committee full discretion to secure the enactment of such measure of International Copyright as might, in the judgment of the committee, be found equitable and practicable. Armed with this authority, the Executive Committee decided to use its efforts to secure the passage of the Chace Bill, the only measure for which any adequate support in Congress could be depended upon. Of this committee Edward Eggleston was Chairman, George Walton Green, Secretary, and R. U. Johnson, Treasurer.

In December, 1887, the organization was effected of the American Publishers' Copyright League, with William H. Appleton as President, A. C. McClurg as Vice-President, Charles Scribner as Treasurer, and Geo. Haven Putnam as Secretary. The Executive Committee of this league was instructed to co-operate with the American authors in securing an International Copyright.

A Conference Committe, was at once formed of the executive committees of the two leagues, and every subsequent step in the campaign, until the passage of the bill in 1891, was taken by this Conference Committee. Mr. Putnam acted as Secretary of the Conference Committee until November, 1889, when he was obliged to give up the post on the ground of ill-health, and from that time until

the passage of the bill, in March, 1891, the secretary's work for the Conference Committee was most ably carried on by Mr. R. U. Johnson, who had become Secretary of the Authors' League.

He divided with Mr. Putnam the task of preparing the documents, but he took upon himself the chief burden of the correspondence and of the arduous work in Washington.

Various sojourns were made in Washington by Mr. Putnam, in connection particularly with the shaping of evidence for the committees. The most important service in the capital, however, was probably that rendered by Edward Eggleston, who devoted a number of weeks to bringing personal influence to bear upon doubtful Representatives and stubborn Senators. Dr. Eggleston's humorous castigation of Senator Beck of Kentucky (who was inclined to characterize copyright as a "pernicious monopoly") will be remembered as one of the refreshing incidents of the campaign. President Cleveland took a keen interest in the copyright measure, and was not a little disappointed that it did not become law in time to be classed with the things accomplished under his administration. I may, I trust, be pardoned for referring also to the valuable service rendered (in connection more particularly with the social opinion of the capital) by the graceful personal influence of Mrs. Cleveland, who was cordially and intelligently interested in the cause.

The Copyright Association of Boston had been formed in December, 1887, at the instance of Mr. Houghton, Mr. Estes, President Eliot, President

Walker, and other of the leading citizens of Boston having to do with literature.

Mr. Estes was made Secretary, and under his active direction the association promptly made its influence felt, and succeeded in arousing interest in the question with the public and among the Congressmen of New England. The Boston association was represented in the Conference Committee by Mr. Houghton and Mr. Estes, and in addition to its local work it took its full share of the responsibilities of the general campaign.

The Boston association was fortunate enough to secure the services, as Counsel, of Mr. Samuel J. Elder, one of the leaders of the Massachusetts Bar, who had given special attention to the law of copyright and was a recognized authority on the subject. Mr. Elder took an active part in the meetings of the General Committee in New York at the time when the preliminary drafts of the act were being worked over, and he also assisted at several of the consultations which were held in Washington with Senator Chace, and his legal experience and thorough knowledge of the requirements to be provided for rendered his co-operation particularly valuable. These services of the Counsel from New England were, like those of the secretaries and the other working members of the Leagues, rendered without compensation and as a personal contribution to the cause.

A Copyright League was also organized in Chicago, with General McClurg as President, the influence of which throughout the northwest proved very valuable. Auxiliary leagues were also formed in St. Louis, Cincinnati, Minneapolis, Denver, Buf-

falo, Colorado Springs, and other places, and a large amount of "missionary" work for copyright was done throughout the country. The Rev. Henry S. Van Dyke of New York took the lead in the work of interesting ministers in the moral phase of the question, and his own address on the "National Sin of Piracy" was widely circulated. Archdeacon A. Mackay Smith of New York did some effective writing in behalf of the bill in the *Churchman* and elsewhere, and by means as well of the pulpits as of the more intelligent of the journals, International Copyright was made a question of the day throughout the country.

A noteworthy feature in the authors' share of the campaign was the holding of "authors' readings" at meetings called for the purpose in New York, Brooklyn, Washington, Boston, Chicago, and elsewhere, at which the leading authors of the country read selections from their own writings. The "readings" were well attended and served as an effective advertisement of the copyright cause, while the admission fees helped to defray some of the missionary expenses of the campaign. Among the authors who co-operated in these readings were Lowell, Curtis, Eggleston, Stedman, Stoddard, Gilder, Stockton, Bunner, Cable, Page, Hawthorne, "Mark Twain," J. W. Riley, "Uncle Remus," Mrs. Elliott, and others.

Testimony before the Committees of the Senate and the House was given on behalf of the bill by a number of representatives of the two leagues, including, among the authors, E. C. Stedman, Edward Eggleston, R. U. Johnson, R. W. Gilder, "Mark

Twain," and R. R. Bowker, and among the publishers, W. W. Appleton, H. O. Houghton, Chas. Scribner, Dana Estes, and G. H. Putnam.

Mr. Kennedy, Mr. Welsh, and other representatives of the Typographical Unions of Boston, New York, and Philadelphia, were also heard. Arguments in opposition to the bill were presented by Mr. Gardiner Hubbard, a lawyer of Washington, who said that he spoke simply for himself, and by Messrs. Arnoux, Ritch & Woodford, a law firm of New York, representing certain clients whose names they were unwilling to disclose. After two years of service on behalf of these anonymous clients, they finally stated, under pressure from the Chairman of the House Committee on the Judiciary, that they were opposing the bill in the interest of Mr. Ignatius Kohler of Philadelphia, Mr. Kohler being a German publisher of modest business standing. The committee did not feel that it had been candidly dealt with by the counsel, and this feeling doubtless helped to secure their favorable report for the bill.

The first draft of the bill which was submitted to Senator Chace by the authors and the publishers provided that foreign books securing American copyright must be printed in the United States, but permitted the importation of *clichés* of the type or of duplicates of the plates used in printing the original editions.

It was contended that for certain classes of books the necessity of doing the type-setting twice instead of dividing its cost between an English and an American edition would involve a wasteful expense,

the burden of which would have to be shared between the readers, the authors, and the publishers. On the other hand, the Typographical Unions insisted that a provision for American type-setting was essential for their trade interests, and that unless such a provision were inserted they would be under the necessity of opposing the bill. It was the opinion of Senator Chace, and of other of the congressional friends of copyright, that the co-operation of the unions would be very important, while their influence against the bill in committee and through their friends in the House would probably be sufficiently powerful to prevent its passage, at least at any early date.

It was, therefore, decided by the authors and publishers of the two leagues to meet the views of the typographers on this point, and, in utilizing their co-operation to associate with the Conference Committee a representative of the National Typographical Union. Mr. Boselly was the first typographical representative; he was later succeeded by Mr. Dumars, who had also succeeded him as the President of the New York union. The most active and important work for the bill on behalf of the Typographical Unions was, however, done by Mr. Kennedy, of the Washington union, whose services in Washington proved most valuable.

The negotiations with the Unions were carried on in Philadelphia by Mr. C. Febiger, and in New York by Mr. Eggleston and Mr. Putnam.

The National Association of Typothetæ, or employing printers, was represented in the Conference

Committee by Mr. Theodore L. De Vinne, through whose influence and arguments, at two of the annual meetings of the Typothetæ, resolutions were secured in support of the bill.

The second bill introduced by Senator Chace contained the clause, drafted at the instance of the typographers, providing that the foreign book securing American copyright must be printed from type set within the United States. It also provided for the prohibition of the importation of all foreign editions of works copyrighted in this country.

For the wording of these provisions of the bill Henry C. Lea of Philadelphia was chiefly responsible. Mr. Lea, himself an author of distinction, had had long experience as a publisher. He was a strong believer in the principle of international copyright, but he was equally clear in his conviction that it would be contrary to the interests of the community to permit any injury to the business of the American book-making trades, or to transfer to English publishers any control of the American book-market. He contended, therefore, that the total American manufacture of the books copyrighted must be made an essential condition of the concession of American copyright to foreign authors. His contention, backed up by the printers, was finally accepted by the authors, and the "type-setting" and "non-importation" clauses were inserted in the bill.

The Chace bill, thus modified, was introduced in the House March 19, 1888, by W. C. P. Breckinridge of Kentucky, and referred to the Judiciary Com-

mittee, and by the committee favorably reported to the House April 21.

On April 23 the bill was called up for consideration in the Senate, and after a discussion which took portions of several days, it was passed May 9, 1888, by a vote of 34 to 10.

The leaders in its support were Senators Chace, Hawley, Hoar, Frye, and Platt, while its most active opponents were Senators Beck of Kentucky, Daniels of Virginia, George of Mississippi, and Reagan of Texas.

In the House the bill was not in as favorable a position on the calendar, while the long discussion of tariff questions in connection with the Mills Bill had seriously blocked the progress of business. Notwithstanding, therefore, the prestige of the success of the measure in the Senate, it did not prove practicable during the session to bring it to a vote in the House. The difficulty may, also, have been somewhat increased by the fact that the bill had originated in the Senate, which was strongly Republican, while the conduct of business in the House was in the hands of a Democratic majority.

The campaign for the Copyright Bill in the Fifty-first Congress was initiated at a breakfast given in New York on the 7th of December, 1889, by advocates of International Copyright, to the Comte de Kératry, in compliment to himself and to the French literary and artistic associations of which he was the representative.

In the Fifty-first Congress the bill was promptly introduced in the Senate December 4, 1889, by Sen-

ator O. H. Platt of Connecticut (Senator Chace having in the meantime resigned his seat), and was again referred to the Committee on Patents. A duplicate of the bill was, on January 6, 1890, introduced in the House by W. C. P. Breckinridge of Kentucky, its old-time supporter, and found its way in regular course to the Committee on the Judiciary, From this committee it was favorably reported on January 21, 1890. For the purpose of securing a double chance for the bill, Mr. Butterworth of Ohio, an earnest friend of copyright, also introduced the bill, and had it referred to the Committee on Patents, of which he was chairman. The result showed that if it had not been for this piece of foresight the bill could hardly have succeeded in the Fifty-first Congress. In this Congress the majority in the House, as well as in the Senate, was Republican, and it was, therefore, essential to place the bill under Republican leadership.

Fortunately, in connection with this necessity, two active friends had been found for the measure on the Republican side of the House—Mr. G. E. Adams of Chicago, and Mr. W. E. Simonds of New Haven.

The former presented to the House on the 15th of February, a forcible report in favor of the bill, together with a new printing of the bill itself, giving the full wording of the sections of the Revised Statutes, as they would appear when the new provisions had been inserted.

On February 18, Mr. Simonds submitted a favorable report from the Committee on Patents,

accompanied by a bill which was a duplicate of that of Mr. Adams, with the addition, however, of what is known as the Reciprocity clause. On February 21, Senator Platt obtained leave to substitute the text of the Adams bill for his Senate bill.

On the 1st of May, the Adams Judiciary Committee Bill was reached on the calendar of the House, and after a vigorous discussion, extending over two days, the third reading was refused by a vote of 126 to 98. The opposing vote was largely Democratic, but it was led by a Republican, Judge Lewis E. Payson of Illinois, while on the Democratic side Mr. Breckinridge of Kentucky was, as heretofore, active in support of the bill; and he was ably assisted on his side of the House by W. L. Wilson of West Virginia, Ashbel P. Fitch of New York, and others, and among the Republicans, by Mr. Lodge, Mr. Stewart of Vermont, Mr. Simonds, and others. Not discouraged by this adverse vote, Mr. Simonds, having added a reciprocity clause to his bill, again introduced it on the 16th of May, and had it referred to the Committee on Patents, and on June 10 it was again reported from that committee. The report, which was written by Mr. Simonds, was most comprehensive and forcible, and it has been included in this volume.

Early in the second session, Mr. Simonds succeeded in getting a day fixed for his bill, and on December 3 the bill was passed by a vote of 139 to 96.

The result was partly due to skilful parliamentary management, and to the personal influence brought

to bear upon more or less indifferent members and upon members who had previously misapprehended the subject, by Representatives who had made a careful study of it, like Mr. Lodge of Massachusetts, Mr. Simonds, and others.

A good share of the credit for the noteworthy change in the opinion of the House may, however, justly be claimed for the active "missionary" work which had been kept up by the league during the summer throughout the country, and especially in the constituencies of doubtful members, by means of the distribution of tracts and arguments, the preparation of material for the leaders of local newspapers, and also by reaching the personal correspondents of authors and the friends of authors.

The higher grade journals throughout the country gave a hearty support to the bill, and the aid of the *Times*, *Tribune*, and *Post*, of New York, the *Sun* of Baltimore, the *Times* and *Ledger* of Philadelphia, and the *Commercial* of Cincinnati, was especially valuable. The members of the book trade were kept thoroughly informed and educated on the subject by an able series of papers in the *Publishers' Weekly*.

The bill, as passed in the House, was considered in the Senate in a discussion extending over portions of six days.

A similar measure (the Chace Bill) having before received the approval of a majority of the Senators, it was at first thought that the success of this bill in the Senate was assured. On the strength of the record of the Chace Bill, the secretary of the Joint Committee obtained for the bill the second place on

the calendar of the prescribed business for the session, without which advantage it would probably not have been reached. New obstacles had, however, developed, including the political prejudices engendered by the preceding election, and the fight of two years before had to be fought over again on new lines, although with the great aid of the important work previously accomplished.

Certain of the senators who had previously voted for the bill and who had expressed themselves as friendly to its principles, found themselves now interested in proposing various amendments, some of which were inconsistent with the main purpose and with the existing provisions of the bill, and all of which were promptly taken advantage of by the opponents as affording opportunities for killing the bill by delays.

The amendment which brought out the largest amount of discussion was that offered by Senator Sherman, which has already been referred to in this volume (in the analysis immediately following the text of the Act).

This amendment authorized the importation of foreign editions of books by foreign authors securing American copyright. The supporters of the bill contended that such an authorization would be incompatible with the manufacturing provisions of the bill, which made American manufacture of all the editions issued in this country an essential condition of American copyright. It became apparent after the first conferences that the House would not recede from this view, and the amendment, after being twice passed by the Senate, was finally abandoned.

A modification was, however, finally made in the Conference Committee in the provision of the bill permitting the importation of copies of authorized foreign editions of works copyrighted in the United States, in quantities not to exceed two copies in any one invoice. This provision, as originally worded, made the written consent of the owner of the copyright a condition of the importation of these two copies. The Conference Committee eliminated the consent of the author. This concession undoubtedly helped to secure the final vote in the Senate, accepting the bill without the Sherman amendment, as it removed the objection that readers preferring European editions ought not to be prevented from securing these (in duly authorized issues) for their own libraries.

A fourth amendment, to the consideration of which a good deal of time was also given in the Senate, was presented by Senator Frye, in the interest of American lithographers and chromo-manufacturers.

As first worded, it provided that foreign artists and designers could secure American copyright for their art productions or designs only when the reproductions of these had been manufactured in the United States. This Frye amendment was vigorously opposed by the artists throughout the country and by all who were interested in having justice done to foreign artists, and petitions against it came in from New York, Boston, Philadelphia, Chicago, and elsewhere. The friends of the bill pointed out that it would in the larger number of cases be absolutely impracticable for foreign artists to arrange to have the reproductions of their works of art

manufactured in the United States, as this would necessitate the importation of the original—an importation entailing, in addition to other serious disadvantages, outlays for freight and duty.

The amendment would, therefore, have the result of nullifying the American copyright of foreign artists, which it had been the intention of the bill to secure. This Frye amendment passed the Senate on the 17th of February by a vote of 41 to 24. The secretary of the Joint Committee, who had spent six weeks of the session in Washington, in active canvass for the bill, took immediate steps to organize an opposition to this amendment, both in Congress and throughout the country.

As a result of the protests that came in to the Senate from art associations, artists, art students, from educational centres, and from many of the leading journals, the action of the Senate was on the 19th of February, reversed by a vote of 33 to 31. Among those who were active in bringing public opinion to bear upon Congress in this matter were R. W. Gilder, Dana Estes, and G. H. Putnam. In its final form the bill provided for the American manufacture only of such art reproductions as took the form of lithographs, photographs, and chromos; and left the foreign artist, therefore, in a position to secure, irrespective of place of manufacture, American copyright for reproductions in the form of engravings (on steel or on copper) and photogravures.

An amendment proposed by Senator Ingalls, and finally accepted, with some modifications, by the Conference Committee, permitted the importation

of foreign newspapers and magazines containing material that had been copyrighted in the United States, provided the publication in such periodicals had been authorized by the author.

The most active supporters of the bill in the Senate were Senator Platt, whose patience, parliamentary skill, and tact were unwearying, and Senator Hoar, Evarts, Hawley, Wolcott, Aldrich, and Dixon.

The most persistent and unwearying opponent was Senator Daniels of Virginia, who was supported in his opposition by Senators Sherman, Hale, Pasco, Vance, Reagan, and Plumb.

Mr. Daniels took up a considerable portion of the time allotted to the bill during the several days of the debate, and at one time it looked as if he would succeed, in connection with the crowded condition of the calendar, in killing it by "talking out the time." While criticising severely the protectionist provision of the bill, he voted for the Frye amendment, which constituted an important addition to these provisions, and he voted for every amendment which seemed likely to make delays. The bill, with the several Senate amendments, passed the Senate on the 19th of February, by the decisive vote of 36 to 14, 38 members being absent.

On the 1st of March the House decided, by a vote of 128 to 64, not to concur with the Senate amendments. The friends of the measure voted with the majority, having already assured themselves that it would not be practicable to pass the bill in the House with the amendments.

On the 3d of March Mr. Simonds reported to the

House that the Conference Report had agreed upon certain of the amendments, with some modifications, but had disagreed upon the Sherman amendment. He secured, by a vote of 139 to 90, authority for another conference. On the evening of the same day the Senate refused, by a vote of 33 to 28, to recede from the Sherman amendment, but also ordered another conference.

The result of this second conference, which took place after one o'clock on the night of the 3d, was a report to the Senate by a majority of its committee, in favor of receding from the Sherman amendment. The change in the opinion of the Senate Committee had been brought about by a change in the position of Senator Hiscock, who had become convinced that if an International Copyright Law was to be enacted by the Fifty-first Congress, the Sherman amendment must be abandoned. His associates on the committee were Senator Platt, who had from the outset opposed the amendment, and Senator Gray of Delaware, who favored it. The report of the second Conference Committee was accepted by the House, by a vote of 127 to 82, the House having accepted from the Senate the Frye amendment (as modified), the Ingalls amendment, and an amendment proposed by Senator Edmunds, giving to the President, in place of the Attorney-General, the responsibility of declaring when reciprocity had been arranged for with any foreign state, and the provisions of the act had, therefore, come into force with such state.

The successful steering of the bill through the House in the several votes required during the

night of the 3d of March was largely the work of Henry Cabot Lodge, and was not a little furthered by the friendly co-operation of Speaker Reed.

At half-past two in the morning of March 4 the Senate assented to the final report of its Conference Committee, by a vote of 27 to 19 (with 40 senators absent), and the bill was passed.

A motion to reconsider was, however, immediately made by Mr. Pasco of Florida, and, although the bill had in the meantime been signed by the Vice-President, it was not permitted to be sent to the President until a quorum could be secured to vote upon Mr. Pasco's motion. This was accomplished at half-past ten in the morning of March 4, within an hour of the close of the Fifty-first Congress, when the motion to reconsider was defeated by the vote of 29 to 21, with 36 absentees.

The greater number of the Senators had been up through a large part of the night, and the friends of the bill were rallied to resist this last assault only by means of an urgent "whip" delivered in person by Mr. Johnson, Mr. Appleton, and Mr. Scribner, who, acting on behalf of the Copyright Leagues, had, in company with Mr. Platt, Mr. Lodge, and other friends of the bill, kept a continuous vigil over its varying fortunes during the long hours of the night session.

The bill was promptly signed by the President, and thus, after a struggle extending over fifty-three years, the United States put itself on record as accepting the principle of International Copyright.

NEW YORK, *April* 2, 1891.

V.

THE HAWLEY BILL.

INTRODUCED into the Senate, January, 1885, by Senator J. R. Hawley of Connecticut, but never reported from the Committee on Patents to which it was referred.

Be it enacted, etc.

I. The citizens of foreign states and countries, of which the laws, treaties, or conventions confer or shall hereafter confer upon citizens of the United States rights of copyright equal to those accorded to their own citizens, shall have in the United States rights of copyright equal to those enjoyed by citizens of the United States.

II. This act shall not apply to any book or other subject of copyright published before the date hereof.

III. The laws now in force in regard to copyright shall be applicable to the copyright hereby created, except so far as the said laws are hereinafter amended or repealed.

IV. Section 4971 of the Revised Statutes of the United States is hereby repealed. Section 4954 is amended by striking out the words "and a citizen of the United States or resident therein." Section 4967 is amended by striking out the words "if such author or proprietor is a citizen of the United States or resident therein."

V. The proclamation of the President of the United States that such equality of rights exists in any country shall be conclusive proof of such equality.

VI.

AN ANALYSIS OF A SCHEME FOR INTERNATIONAL COPYRIGHT, SUGGESTED BY MR. R. PEARSALL-SMITH.

Reprinted, with some additions, from the *New York Evening Post.*

PUBLIC attention has recently been directed to a new scheme for international copyright which has been presented in the *Nineteenth Century* by Mr. R. Pearsall-Smith, of Philadelphia, under the title of "An Olive Branch from America." Mr. Smith proposes:

(1) That any American publisher shall be at liberty to print editions of the works of a foreign author under the condition of paying to such author a royalty of ten per cent. of the retail price.

(2) That this royalty shall be paid by the purchase from the author, in advance of the publication of the American edition, of stamps representing the above rate, as many stamps being bought as there are copies printed in the edition, and each copy of the book that is placed in the market by the publisher bearing one of these stamps conspicuously affixed.

The plan contains some further suggestions as to the penalties for the sale or purchase of an unstamped book, but the above are the essential provisions, and the only ones at present calling for consideration.

Mr. Smith does not speak as an author, and it is evident that he has no adequate knowledge of the conditions under which is carried on the business of publishing and distributing books. It seems desirable, however, to give present consideration to the practicability of his suggestions, as well because he has seen fit to present them to the British public with a certain assumption of speaking for the American community, and has secured for them the quasi approval of certain English authors, such as Tennyson, Gladstone, Matthew Arnold and others, as because at this time, when those who have for many years been working on behalf of international copyright are again hopeful of securing favorable attention from Congress, it is important that public and legislative opinion should not be confused with crude and visionary schemes.

The question of international or of domestic copyright is, it is claimed, and with justice, in the main a matter between the authors and the public, and in shaping legislation the rights of authors and the interests of the public are the essential things to be considered. It is in order, nevertheless, for publishers to claim a hearing in connection with the provisions of copyright legislation, not because the interests of their small group ought to be in any degree offset against those of the community, but because their experience gives them the knowledge (possessed by no other class) of the conditions under which the proposed laws must do their work, and legislation put into shape without the benefit of this technical knowledge may easily fail of its purpose as

well in protecting the authors as in serving the real interests of the community.

The measure of permitting a foreign book to be reprinted by all dealers who will contract to pay the author a specified royalty, is, of course, not original with Mr. Smith. It was suggested in 1872 by John P. Morton, John Elderkin, and others, in connection with the attempt then made to secure international copyright. In 1877, at the time the British Copyright Commission was engaged in revising the act for domestic copyright, the proposal was made by Mr. Farrer (now Sir Thomas Farrer) that a similar provision should apply to domestic publishing, and that for the purpose of securing cheap books for the people, all dealers should have the privilege of publishing editions of an author's works, who would agree to pay to the author a copyright, to be fixed by law, which would secure him "a fair profit for his labor." Herbert Spencer, in his testimony before the Commission, objected that:

(1) This would be a direct interference with the laws of trade under which the author, like any producer, had the right to select his own agents and make his own bargains.

(2) No legislature was competent to determine what was "a fair rate of profit for an author."

(3) No average royalty could be determined which could give a fair recompense for the different amounts and kinds of labor given to the production of different classes of books.

(4) If the legislature has the right to fix the profit of the author, it has an equal right to determine

that of his associate in the publication, the publisher; and if of the publisher, then also of the printer, binder, and paper-maker, who all have an interest in the undertaking. Such a right of control would apply with equal force to manufacturers of other articles of importance to the community, and would not be in accordance with the present theories of the proper functions of government.

(5) If books are to be cheapened by such a measure, it must be at the expense of some portion of the profits now going to the authors and publishers; the assumption is that book producers and distributers do not understand their business, but require to be instructed by the state how to carry it on, and that the publishing business alone needs to have its returns regulated by law.

(6) The prices of the best books would in many cases, instead of being lessened, be higher than at present, because the publishers would require to insure themselves against the risk of rival editions, and because they would make their first editions smaller, and the first cost would have to be divided among a less number of copies. Such reductions of prices as would be made would be on the flimsier and more popular literature, and even on this could not be lasting.

(7) For enterprises of the most lasting importance to the public, the publishers require to be assured of returns from the largest market possible, and without such security, enterprises of this character could not be undertaken at all.

(8) Open competition of this kind would in the

end result in crushing out the smaller publishers, and in concentrating the business in the hands of a few houses whose purses had been long enough to carry through the long and unprofitable contests that would certainly be the first effect of such legislation.

Every one of these objections adduced against the plan of open publishing for domestic works, applies with equal force to the plan of legalizing such open republishing for foreign works, and there are some further considerations which Mr. Spencer did not mention.

A British author could hardly obtain much satisfaction from an arrangement which, while preventing him from placing his American business in the hands of a publishing house selected by himself, and of whose responsibility he could assure himself, threw open the use of his property to any dealers who might choose to scramble for it. The author could exercise no control over the style, shape, accuracy, or completeness of his American edition, the character of the illustrations contained in his books, or the appropriateness of the association that might be given to his writings (in series or in volumes) with the works of other writers. If the author were tenacious as to the collection of the royalties to which he would become entitled, he would in many cases be able to enforce his claims (even under the proposed "stamp act") only through troublesome supervision and probably through vexatious lawsuits, the expenses of which might easily exceed his receipts. The benefit to

the public would be no more apparent. Any gain in the cheapness of the editions produced would be more than offset by their unsatisfactoriness. They would in the majority of cases be untrustworthy as to accuracy or completeness, and be hastily and flimsily manufactured. Scientific works could, as Mr. Huxley points out, have their value materially impaired by presenting illustrations which were only travesties of the author's original designs, and such inadequate and misleading illustrations would assuredly find place in the competing editions of the more "enterprising" reprinters.

A certain class of British authors would have the further ground for objection that the provision requiring payment in advance of copyright on the first edition would not infrequently have the effect of preventing any American edition of their books from being undertaken. There is always considerable risk in reprinting a first book by a foreign author, and the writers of first books are as a rule sufficiently desirous to bring their productions to the attention of the American public to be very willing to permit the payment of compensation to the author to be left contingent upon there being any profits from the sales.

A great many ventures, desirable in themselves, and that would be of service to the public, no publisher could, under such an arrangement, afford to undertake at all, as, if they proved successful, unscrupulous neighbors would, through rival editions, reap the benefit of his initiative, his literary judgment, and his advertising. For works of this class,

reprints of which were not ventured upon, American buyers would of course be obliged to depend upon the more costly foreign editions.

It is also the case that a certain class of publications, of which the "International Science Series" and the "Story of the Nations Series" are examples, are the undertakings of the publisher. They are in a sense the creation of the publisher, as they would not have come into existence at all except for the publisher's initiative and planning; and the volumes in them are usually written at the publisher's suggestion. The commercial value of such a series depends in part upon the value of the individual volumes, but largely, also, upon the planning and editorial management of the undertaking as a whole; and a considerable part of the sale of any one of these volumes is to be credited to its connection with the series. In any such series, certain of the volumes, which are necessary and important to give completeness to the general plan, are, from the nature of their special subjects, less likely than the others to secure remunerative sale; and any deficiencies accruing from the publication of these have to be made up from the sale of the more popular volumes.

Under any "open publishing" scheme, however, the competing "reprinters" would pick out for their competing editions the more salable books, securing on these the advantage of the initiative, the editorial skill, and the advertising of the original publisher, and, in part at least, also, of the prestige of the series. The curtailing or destroying altogether of

the profits on these more popular volumes would, of course, lessen to a corresponding extent the ability of the original publisher to carry to completeness the plan of his series by including in it subjects which, however important for certain readers or certain students, were not calculated to secure a remunerative sale. Upon this class of readers the plan of "open publishing" would therefore bring loss and deprivation as surely as upon the publishers.

Responsible publishers, who fulfill strictly their engagements with authors, and whose aim it is to present effectively to the public complete and decently printed books, must naturally object to a measure which would put the business of reprinting on the basis of a cut-throat competition, and which would give such material advantages to the more unscrupulous dealers who were oblivious of their obligations either to the authors or the public.

I take the position that there is an impertinence in the suggestion of the government's undertaking to decide either for the author at what rate he should be paid, or for the publisher by what machinery the payments should be made. It is also absurd to assume that it would be either proper or practicable to make the rate of payment the same for all grades of authors and for all classes of books; while there is no more propriety in having the government supervise the business of the publisher by such a "bell-punch" device, than there would be in instituting similar government supervision for any other classes of business in which trust interests are involved.

With reference to this plan for legalized open reprinting, the experienced publisher, W. H. Appleton, wrote in 1872:

"The first demand of property is for security, . . . and to publish a book in any real sense—that is, not merely to print it, but to make it well and widely known, requires much effort and larger expenditure, and these will not be invested in a property which is liable to be destroyed at any moment. Legal protection would put an end to evil practices, make property secure, business more legitimate, and give a new vigor to enterprise; nor can a policy which is unjust to the author, and works viciously in the book-trade be the best for the public. The publisher can neither afford to make the book so thoroughly known, nor can he put it at so low a price as if he could count upon a permanent and undisturbed control of its sales. Many valuable books are not reprinted at all, and therefore are to be had only at English prices, for the same reason, that publishers are cautious about risking their capital in unprotected property."

The arguments in favor of this plan of legalizing open reprinting of foreign works would apply of course with equal reasonableness to the legalizing of open reprinting of domestic books, and to the depriving of American, as well as foreign, writers of their rights of contract, and of the control of the property interests in their productions. Such a system would make of home copyright, and of any copyright, a farce and an absurdity.

None of the objections above presented could, of course, be obviated in any way by the only new suggestion in Mr. Smith's scheme, namely, the collection of the author's royalties by means of stamps, an idea which has possibly been suggested by the use of stamps at different times by the government to collect the taxes on beer sold in barrels, and on patent medicines sold in bottles.

The supervision of the manufacture and sale of these articles is, however, a simple matter compared with what would be necessary for the control of the manufacture and sale of books; but for the proper care of the government interests a large force of expensive inspectors has always been required. I doubt whether the probable return to foreign authors from their American sales would warrant them in the expenditure required to keep up a force of officials adequate to supervise bookselling throughout the continent.

In each large brewery, for instance, a revenue inspector is always stationed to keep a check on the numbers of barrels produced and on the proper use of the excise stamps for these. Under Mr. Smith's scheme, it would be in order for "literature inspectors" (paid by the foreign authors) to be stationed in the office of each American publisher to check off his reprints.

Responsible publishers would assuredly be averse to investing any considerable sums in the purchase from abroad of supplies of the proposed stamps which could so easily be counterfeited by irresponsible dealers as well in Canada as in the States. The publication or the reprinting of any book is more or less of a lottery (instead of being, as is so often delusively calculated, an undertaking in which the only problem is the division of the profits). Under this scheme the publisher would be obliged to add to the manufacturing outlay at risk, an investment in an advance purchase of as many stamps as he believed would be required for the first edition.

If he overestimated the sales it would often not be an easy matter to return the surplus stamps and get back the money paid for them, while if the immediate demand exceeded the estimate, it could easily happen that sales would be delayed and lost because of the necessity of waiting for the importation of a further supply of the stamps.

It is, of course, also the case that under the conditions of bookselling in this country, books are in many cases sent out to dealers with the privilege of returning, once or twice a year, unsold copies. The getting back of these copies from points between Oregon and Texas is a business that often requires months, and the adjustment of the credit for stamps on these returned copies, and on the copies given to the press, or the copies (of scientific and educational works) given to instructors, would constitute another complication for the bothered publishers.

American authors could justly object to this scheme of open reprinting, first, because if offset with a reciprocal measure of "protection" for American works abroad, it would expose them to all the disadvantages above set forth of lack of power to select their agents, lack of control of the printing and publishing of their books, expense and difficulty of enforcing their collections, and certainty of loss through the use of forged stamps; and, second, because the business of reprinting in this country would be left in the present condition of "scramble" and cut-throat competition, and the difficulty in the way of securing favorable consideration or remunerative sale for American books (particularly in light

literature), while the market is full of "cheap and nasty" reprints, more or less incomplete, of similar foreign works, would be practically as great as at present.

International copyright is demanded, as it seems almost a truism to say, by every consideration of national honor, and of the highest national advantage, and it is assuredly full time that the United States of America placed itself on as high a plane of international ethics as that now reached by the African States of Liberia and Tunis, which have recently united in the Copyright Convention formulated at Berne.

If, however, Congress will bring about the arrangement for the necessary recognition and protection of literary property, the authors and publishers can safely be left to adjust between themselves all business details, such as rates of compensation and methods of payment, which details are properly matters of private contract.

G. H. P.

NEW YORK, *Nov.* 21*st*, 1877.

VII.

INTERNATIONAL COPYRIGHT.

Report of the Hon. W. E. Simonds, of Connecticut, from the House Committee on Patents, June 10, 1890.

MR. SIMONDS, from the Committee on Patents, submitted the following report (to accompany H. R. 10881):

The Committee on Patents, to whom was referred the bill (H. R. 10254) "To amend title sixty, chapter three, of the Revised Statutes of the United States relating to copyright," respectfully report that they have had the same under consideration. They recommend that said bill be tabled and that the accompanying substitute bill be passed. In this connection they submit comments as follows:

THE PROPOSITION OF THE BILL.

The proposition of the bill is simply to permit foreigners to take American copyright on the same basis as American citizens, in three cases: first, when the nation of the foreigner permits copyright to American citizens on substantially the same basis as its own citizens; second, when the nation of the foreigner gives to American citizens copyright privileges similar to those provided for in this bill;

third, when the nation of the foreigner is a party to an international agreement providing for reciprocity in copyright, by the terms of which agreement the United States can become a party thereto at its pleasure.

A subsidiary but important proposition of the bill is that all books copyrighted under the proposed act shall be printed from type set within the United States, or from plates made therefrom. The following is from the testimony of J. L. Kennedy, given before the House Judiciary Committee, January 30, 1890, in behalf of the International Typographical Union:

Mr. OATES. Why do the printers favor this bill?

Mr. KENNEDY. For several reasons. The first and principal reason is the selfish one. How rare is the human action that has not selfishness for its motive force! Its effect as a law will be given to greatly stimulate book printing in the United States. A vast amount of printing that naturally belongs here (because it is executed principally for this market), and now done on the other side, will come home to us. Indeed, it has been conspicuously stated in the *London Times* that if this bill becomes a law the literary and book publishing centre of the English world will move westward from London and take up its abode in the city of New York. That would be a spectacle which every patriotic American might contemplate with complacency and pride.

The Englishman who writes books for the money he can get out of them, as well as the fame—and I think it fair to presume that the great majority of authors are actuated by both of those motives—will recognize that here is the richest market, and he will not think it a hardship to comply with the provisions of this proposed law in view of the substantial benefit it is to him, and the printers do not consider it a hardship to require of him that he shall leave upon our shores so much of his profits at least as will pay for his printing. The American author who goes abroad in search of a cheaper publishing market, sending his shell-plates over here to be mounted and

to have his presswork done, or else sending the printed sheets home to be bound here, thus evading the heavier duty on bound books, will also be compelled to patronize home industry for his mechanical work. In short, it is not difficult for printers to see that such a law will confer inestimable benefits upon their own and allied trades.

THE TERM OF COPYRIGHT.

Under the existing law of the United States copyright is granted for twenty-eight years, with the right of extension for fourteen more; in all, forty-two years. The bill proposes no change in that respect. The term of copyright in other countries is as follows:

Mexico, in perpetuity.
Guatemala, in perpetuity.
Venezuela, in perpetuity.
Colombia, author's life and eighty years after.
Spain, author's life and eighty years after.
Belgium, author's life and fifty years after.
Ecuador, author's life and fifty years after.
Norway, author's life and fifty years after.
Peru, author's life and fifty years after.
Russia, author's life and fifty years after.
Tunis, author's life and fifty years after.
Italy, author's life and forty years after; to be eighty years in any event. (See later chapter in this volume.)
France, author's life and fifty years after.
Germany, author's life and thirty years after.
Austria, author's life and thirty years after.
Switzerland, author's life and thirty years after.
Hayti, author's life, widow's life, children's lives, and twenty years after.
Brazil, author's life and ten years after.
Sweden, author's life and ten years after.
Roumania, author's life and ten years after.
Great Britain, author's life and seven years after; to be forty-two years in any event.

Japan, author's life and five years after.
South Africa, author's life; fifty years in any event.
Bolivia, author's life.
Denmark, fifty years.
Holland, fifty years.

The verdict of the world declares for a longer term of copyright than that granted by the United States of America. (*La Propriété Littéraire et Artistique*, Paris, 1889.)

LIBERALITY TO FOREIGNERS.

Without reference to international agreements, every one of the twenty-six countries above named permits foreigners to take copyright on the same basis as its own citizens except Great Britain. That country permits foreigners to take copyright on the same basis as its own citizens, provided the foreigner is at the time of publication anywhere within the British dominions, which expression includes British colonies and possessions of every sort.

An alien friend temporarily residing in the British dominions, and consequently owing a temporary allegiance, is entitled to copyright in any work which he publishes here whilst so residing, however short his period of residence may be. (Short's *Law of Copyright*, p. 12.)

By Acts of Parliament the queen is empowered to provide for copyright of an international character as to any nation which will reciprocate. From conditions herein pointed out it is clear that the queen is thus empowered solely with reference to hoped-for relations with the United States of America.

The United States alone refuses copyright to foreigners, and, alone among the nations of the earth,

refuses reciprocity in copyright. (*La Propriété Littéraire et Artistique*, before cited.)

INTERNATIONAL COPYRIGHT AGREEMENTS.

First and last there have been signed about a hundred international agreements providing for reciprocity in copyright, the general nature of which is illustrated by the following quotation of Article II. of the agreement made at the Berne International Copyright Convention of September 9, 1886:

> Authors within the jurisdiction of one of the countries of this Union, or their heirs, shall enjoy in the other countries for their works, whether they are or are not published in one of these countries, the rights which the respective laws of these countries now accord, or shall subsequently accord, to their own countrymen.

The international copyright agreements of France are: With Holland, July 25, 1840; Portugal, April 12, 1851; Great Britain, November 3, 1851; Belgium, August 22, 1852; Spain, November 15, 1853; Luxemburg, July 6, 1856; Russia, April 6, 1861; Italy, June 29, 1862; Prussia, August 2, 1862; Switzerland, June 30, 1864; Hanseatic Cities, March 4, 1865; Bavaria, March 24, 1865; Frankfort-on-the-Main, April 18, 1865; Wurtemburg, April 24, 1865; Baden, May 12, 1865; Saxony, May 26, 1865; Mecklenburg-Schwerin, June 9, 1865; Hesse, June 14, 1865; Hanover, July 19, 1865; Monaco, November 9, 1865; Luxemburg, December 16, 1865; Great Britain, August 11, 1865; Salvador, June 2, 1880; German Empire, April 19, 1883; Sweden and Norway, February 15, 1884; Italy, July 9, 1884; Portugal, July 11, 1886;

Mexico, November 27, 1886; Bolivia, September 8, 1887.

The following named countries have signed international copyright agreements in number as follows: German Empire, six (the German states had signed many prior to 1871, when the empire was created); Belgium, six; Bolivia, six; Ecuador, one; Spain, seven; Great Britain, nineteen; Italy, ten; Luxemburg, two; Mexico, one; Monaco, one; Holland, three; Portugal, four; Russia, two; Salvador, one; Sweden and Norway, two; Switzerland, five.

The agreement made at the Berne Convention of September 9, 1886, was signed by Great Britain, France, Germany, Spain, Holland, Italy, Switzerland, Hayti, Liberia, and Tunis. January 11, 1889, the following seven South American Governments signed the draft of the agreement made at the Montevideo International Copyright Convention: the Argentine Republic, Bolivia, Brazil, Chili, Paraguay, Peru, and Uruguay. The United States of America, standing substantially alone in that regard among the civilized nations of the earth, has never entered into an international agreement for the protection of copyright.

We were represented at the Berne Convention of 1886 by the Hon. Boyd Winchester, who reported strongly in favor of the United States giving its adhesion to the Berne agreement; but our Government has refrained from doing so, for the express reason that Congress is dealing with the subject from time to time. The transactions in this regard

are given in Executive Document No. 354 (Forty-ninth Congress, first session), and Executive Document No. 37 (Forty-ninth Congress, second session). The recent International American Congress, held in the city of Washington, reported the following resolution:

Whereas the International American Conference is of the opinion that the treaties on literary and artistic property, on patents and on trade-marks, celebrated by the South American Congress of Montevideo, fully guaranty and protect the rights of property which are the subject of the provisions therein contained:

Resolved, That the conference recommend, both to those Governments of America which accept the proposition of holding the Congress, but could not participate in its deliberations, and to those not invited thereto but who are represented in this conference, that they give their adhesion to the said treaties.

JOSÉ S. DECOUD,
Delegate from Paraguay.
ANDREW CARNEGIE,
Delegate from United States.
CLIMACO CALDERÓN,
Delegate from Colombia.

The United States of America must give in its adhesion to international copyright or stand as the literary Ishmael of the civilized world.

THE AUTHOR'S NATURAL RIGHT.

The passage of the proposed act is demanded by so-called practical reasons, referred to hereinafter, which do not deal specially with the right and wrong of the matter, but if no such "practical" reasons existed it is a sufficient reason for its passage that an author has a natural exclusive right to the thing having a value in exchange which he produces

by the labor of his brain and hand. No one denies and every one admits that all men have certain natural rights which exist independently of all written statutes.

The common law of England—inherited and adopted to a great extent by the several American States—is built upon and developed out of the natural rights of men. Our Declaration of Independence names some of these natural rights, calling them self-evident, as the basis and foundation of our right to national existence, to wit, life, liberty, and the pursuit of happiness.

An equally self-evident natural right is the right of property, the right to exclusively possess whatever in the nature of property a man rightfully acquires. Civilized and uncivilized people alike recognize this right. No form of society, no matter how rude, no matter how cultivated, is possible without the recognition of this right of property. Whatever has value in exchange is, when possessed, property. The visible expression of an author's mental conception, written or printed, has value in exchange, and is therefore property in the full sense of the word. No better title to an article of property can be imagined than that which is rooted in the creation of the article; creation gives the strongest possible title. The author holds his property by this first, best, and highest of all titles.

The principle is as old as the property itself, that what a man creates by his own labor, out of his own materials, is his own to enjoy to the exclusion of all others. (*Drone on Copyright*, p. 4.)

The monopoly of authors and inventors rests on the general senti-

ment underlying all civilized law, that a man should be protected in the enjoyment of the fruits of his own labor. (Copyright article, *Encyclopædia Britannica.*)

The right of an author to the production of his mind is acknowledged everywhere. It is a prevailing feeling, and none can doubt it, that a man's book is his book—his property. (Daniel Webster, 6 *Peters' Reports*, 653.)

The author cannot enjoy the value in exchange of his property if others reproduce the visible expression of his mental conception without his permission. To do so is to appropriate his valuable thing without giving value in exchange. The author's right is incorporeal, but it is not a small thing because incorporeal. Milton's *Paradise Lost*, Hawthorne's *Scarlet Letter*, and Shakespeare's *Hamlet* suffice for evidence on that point. It is not a unique kind of property because incorporeal. The major part of the wealth of the world is incorporeal. H. D. Macleod, in his article on copyright in the *Political Encyclopedia*, says: "it is probable that nineteen-twentieths of existing wealth is in this form;" the franchises of ferries, railways, telegraph and telephone companies, patents, trade-marks, good-will, shares in incorporated companies, and annuities of all sorts are familiar instances of incorporeal property.

The courts of the several States, as well as the United States Supreme Court, admit the author's natural exclusive right to his intellectual property, in that they are unanimous in holding that the author has a natural, exclusive, and perpetual right in the visible expression of his mental conception so long as it is expressed in written words.

Two principles are settled in English and American jurisprudence: At common law the owner of an unpublished literary composition has an absolute property therein. (*Drone on Copyright*, p. 101.)

When a man, before uninformed in the matter, comes to understand that the author has an admitted natural and exclusive right to the visible expression of his mental conception when that conception is expressed in *written* words, his common sense forbids him to entertain the notion that he loses such right by expressing the conception in *printed* words. The admission of the right as to *written* words settles the question.

It is sometimes attempted to stigmatize copyright as *monopoly*, and writers of loose and careless habit sometimes speak of copyright as monopoly. It is no more monopoly than is the ordinary ownership of a horse or a piece of land. Blackstone says that a monopoly is—

A license or privilege . . . whereby the subject in general is restrained from that liberty of manufacturing or trading which he had before.

The law dictionaries define it in the same way. A monopoly takes away from the public the enjoyment of something which the public before possessed. Neither copyright nor patent does this, for neither can be applied to anything which is not *new*; neither can be applied to anything which the public before possessed. The author and inventor must produce something new in order to be entitled to copyright or patent. Notwithstanding this allusion to patents, the mistake should not be made of supposing that patents and copyrights stand on the

same basis as to natural exclusive right, for they do not; the difference between them, in this regard, is radical.

A patent covers the idea or principle of an invention; copyright does not cover the author's idea, but only the language in which he clothes the idea; hence arises a radical difference which it is not now necessary to discuss.

THE COMMON-LAW RIGHT.

As has been already remarked, the common law of England, inherited and adopted, to a great extent, by the several American States, is built upon and developed out of the natural rights of man.

The common law of England always recognized the natural, exclusive right of an author to the written and printed expression of his mental conception from the time when printing was introduced into England by Caxton, in 1474. From 1474 to 1710 the common-law right was more or less interfered with at times by Crown grants in the nature of genuine monopoly, including decrees of the Star Chamber.

April 10, 1710, the Statute of Anne, so-called, was passed. It gave authors of works then existing the sole right of printing the same for twenty-one years and no longer. It gave to authors of works not then printed, and to their assigns, the sole right for fourteen years, and if the author was then alive he had the right to a prolongation for fourteen years more. In the copyright article of the *Political Encyclopedia*, Macleod correctly says:

It is quite impossible to read this act without seeing that it distinctly recognizes copyright as existing already, and independently of the act. All they did was to enact certain statutory penalties for its infringement. But that, by a well-known rule of law, in no way affected proceedings at common law. We have seen that the courts of law never raised the slightest doubt as to the existence of copyright at common law. We shall now see how the court of chancery regarded it. As the act gave twenty-one years for old copies from April 10, 1710, no question on copyright at common law could arise before 1731. In 1735, Sir Joseph Jekyll granted an injunction in the case of Eyre *vs.* Walker, to restrain the defendant from printing *The Whole Duty of Man*, the first assignment of which had been made in December, 1657, being seventy-eight years before. In the same year, Lord Talbot, in the case of Motte *vs.* Falkner, granted an injunction restraining the defendant from printing Nelson's *Festivals and Fasts*, printed in 1703, during the life of the author, who died in 1714. In 1739 Lord Hardwicke, in the case of Tonson and another *vs.* Walker, otherwise Stanton, granted an injunction restraining the defendant from printing Milton's *Paradise Lost*, the copyright of which was assigned in 1667, or seventy-two years before. In 1752 Lord Hardwicke, in the case of Tonson *vs.* Walker and Merchant, granted an injunction, restraining the defendants from printing Milton's *Paradise* or *Life* or *Notes*. All this time there had never been any solemn decision by the King's Bench as to the existence of copyright at common law, or as to how it was affected by the statute of Anne. But the court of chancery never granted an injunction unless the legal right was clear and undisputed. If there had been any doubt about it they would have sent it to be argued in a court of common law.

In 1769 the question came before the Court of King's Bench (the court of last resort, the House of Lords excepted) in the case of Millar *vs.* Taylor (4 Burr., 2303). It was held—three judges in the affirmative to one in the negative—that the common-law right existed. In 1774 the question again came before the Court of King's Bench in the case of Beckett *vs.* Donaldson (4 Burr., 2408), and

it was again decreed that the common-law right existed. The case was immediately appealed to the House of Lords and there the eleven judges gave their opinions as follows on the following points:

(1) Whether at common law an author of any book or literary composition had the sole right of first printing and publishing the same for sale, and might bring an action against any person who printed, published, and sold the same without his consent? On this question there were eight judges in the affirmative and three in the negative.

(2) If the author had such right originally, did the law take it away upon his printing and publishing such book or literary composition, and might any person afterward reprint and sell for his own benefit such book or literary composition against the will of the author? This question was answered in the affirmative by four judges and in the negative by seven.

(3) If such action would have lain at common law is it taken away by the statute of 8 Anne, and is an author by the said statute precluded from every remedy, except on the foundation of the said statute and on the terms of the conditions prescribed thereby? Six of the judges to five decided that the remedy must be under the statute.

(4) Whether the author of any literary composition and his assigns had the sole right of printing and publishing the same in perpetuity by the common law? Which question was decided in favor of the author by seven judges to four.

(5) Whether this right is any way impeached, restrained, or taken away by the statute of 8 Anne? Six to five judges decided that the right is taken away by the statute.

This decision is squarely to the effect that the common-law right was in full force up to the passage of the Statute of Anne, April 10, 1710. There was a clear preponderance of judges to this effect, but it was also decided—six judges to five—that the Statute of Anne took away the common-law right.

Lord Mansfield, as one of the judges of the Court of King's Bench, had decided that the Statute of Anne had not taken away the common-law right; as a peer, he refrained from voting through motives of delicacy; had he voted in the House of Lords the decision of the Court of King's Bench that the Statute of Anne had not taken away the common-law right would have stood unreversed. That the common law of England had always recognized the author's natural right was fully established by these decisions. To show that the common law gave copyright is to establish the natural right, for the common law is built upon and developed out of natural right.

COPYRIGHT IN THE CONSTITUTION.

The clause of the Constitution of the United States of America which authorizes the grant of copyright is to be found in Article I., section 8:

> The Congress shall have power . . . to promote the progress of science and the useful arts by securing, for limited times, to authors and inventors, the exclusive rights to their respective writings and discoveries; . . . also to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.

The object stated in the grant is "to promote the progress of science and the useful arts." The statement of the object has nothing to do with the question whether the Constitution recognizes the author's natural rights. The use of the word *secure* instead of *give* or *grant* is some recognition of the natural right. This Constitution was formed in

1787, just thirteen years after the House of Lords had expressly recognized the natural right.

The well-informed men who framed the Constitution could not have been ignorant of that decision of the House of Lords, for that was a famous decision of widespread interest and notoriety. They were framing a grant of *delegated* powers to the General Government. They knew that such of the States as fully adopted the common law adopted with it the recognition of the author's natural right. It seemed to them expedient to give to the General Government the supreme power in the premises "for limited times." They did not intend to affirm or deny the natural right.

The natural inference from the language used, in the light of the surrounding facts, is that they knew of the natural right, the common-law right; that they did not choose to meddle with it, but did deem it expedient to give the General Government supreme power in the premises "for limited times."

Possibly they might have thought that a natural right necessarily means a perpetual right; and the United States Supreme Court in dealing with the question, as referred to hereinafter, may have been troubled by the same idea. Natural right does not necessarily mean perpetual right. In all forms of society, all kinds of property are held under such conditions and limitations as society deems reasonable.

Under the right of eminent domain, governments take private property for public use upon suitable remuneration, when public necessity and con-

venience demand it. In some cases private property is taken for public use without compensation, notably when a man's building is torn down to prevent the spread of a conflagration. The disposition of property by last will and testament is regulated by law. In England the lands cannot be alienated from the eldest son. In not to exceed a term of one hundred years the entire value of almost every specific piece of property is taken from the owner by the public in the form of taxes, in return for the protection and security which society gives.

It is entirely reasonable that the law should bring a copyright to an end at the expiration of a term of years—this, especially, in view of the fact that it is not usual to tax copyrights from year to year. It cannot be reasonably maintained that the premise of natural right necessarily leads to the conclusion of perpetuity.

COMMON-LAW RIGHT IN THE UNITED STATES.

It is universally conceded that wherever the common law exists in the several American States, it is derived from and is identical with the English common law. It has been shown, beyond question, that English common law recognizes the author's natural right. It follows as a necessary conclusion that the American common law, wherever it exists, gives copyright, and recognizes the author's natural right.

Connecticut passed a copyright law in January, 1783; Massachusetts, in March, 1783; Virginia, in 1785, and New York, in 1786. They all recognize

the pre-existing common-law right, the exclusive natural right. It has been supposed that the United States Supreme Court decided that the common law does not give copyright in the United States, in the case of Wheaton *vs.* Peters (8 *Peters' Reports*, 591), decided in A.D. 1834. Such is not the fact. The opinion in that case decided only two points connected with this question, to wit: (1) that the United States, as a nation, has no common law, and (2) that as to Pennsylvania, where the controversy in question arose, there was no proof that the common law had been adopted. This is what the United States Supreme Court said in that case:

> It is clear there can be no common law of the United States. The Federal Government is composed of twenty-four sovereign and independent States; each of which may have its local usages, customs, and common law. There is no principle which pervades the Union and has the authority of law that is not embodied in the Constitution or laws of the Union. The common law could be made a part of our Federal system only by legislative adoption.
>
> It is insisted that our ancestors, when they migrated to this country, brought with them the English common law as a part of their heritage.
>
> That this was the case to a limited extent is admitted. No one will contend that the common law, as it existed in England, has ever been in force in all its provisions in any State in this Union. It was adopted so far only as its principles were suited to the condition of the colonies; and from this circumstance we see what is common law in one State is not so considered in another. The judicial decisions, the usages and customs of the respective States, must determine how far the common law has been introduced and sanctioned in each.
>
> In the argument it was insisted that no presumption could be drawn against the existence of the common law as to copyrights in

Pennsylvania, from the fact of its never having been asserted until the commencement of this suit.

It may be true, in general, that the failure to assert any particular right may afford no evidence of the non-existence of such right. But the present case may well form an exception to this rule.

If the common law, in all its provisions, has not been introduced into Pennsylvania, to what extent has it been adopted? Must not this court have some evidence on this subject? If no right, such as is set up by the complainants, has heretofore been asserted, no custom or usage established, no judicial decision been given, can the conclusion be justified that, by the common law of Pennsylvania, an author has a perpetual property in the copyright of his works? (8 *Peters*, 658.)

Mr. Drone, in his book on copyright, says all that is necessary to be said about this remarkable decision wherein the dissenting opinion has easily the best of the argument:

The judgment of the court, as has been seen, was based on two grounds: (1) That the common law of England did not prevail in the United States. (2) That in England it had been decided that the common-law property in published works had been taken away by statute. The first position rested on a foundation of sand, which has since been swept away. "The whole structure of our present jurisdiction," said Mr. Justice Thompson in his dissenting opinion, "stands upon the original foundation of the common law." The doctrine is now well settled in this country that a complete property in unpublished works is secured by the common law. This was admitted by the Supreme Court in Wheaton *vs.* Peters. It has since been repeatedly affirmed by the same tribunal, by the circuit court of the United States, and by every State court in which the question has been raised. If the common law thus prevails in the United States with reference to unpublished productions, there is no principle, independently of the statute, by which it can be held not to prevail in the case of published works. (*Drone on Copyright*, 47.)

In right reason and sound logic the common law

does exist in the United States, and that existence is conclusive of the existence of the natural right.

THE WRONG TO AMERICAN AUTHORS.

The Constitution authorizes copyrights in order "to promote the progress of science and the useful arts," primarily within the United States. Our present procedure is a hinderance to the "progress of science and the useful arts" in the United States in more ways than one.

One way in which our present practice hinders the progress of science and the useful arts within our borders is by the repression of the development of American intellectual life, by the repression of the home production of literary works through subjecting native authors to a kind of competition to which no other class of American workers is subjected, a kind of competition which is ruinous and destructive.

American authors are subjected to untrammeled competition with English authors who do not receive a farthing for their labor. All stories compete with all other stories so far as the demand of the story-reading public is concerned; and the story-reading public of America comprises many millions of people. An American publisher can, within the pale of the law, appropriate and publish an English story without remuneration to the English writer. It is well and widely known that some American publishers do this on a large scale. Since such American publishers pay nothing to the English authors whose stories they appropriate and pub-

lish, other American publishers cannot afford to pay American authors for writing stories except in those comparatively rare cases where the American author has already acquired an established reputation.

The new American author has no chance worthy of the name for getting a start, and the sale of the works of American authors of established reputation is to a degree prevented by this competition, in which everything is against the American author. It is not to the point to refer to persons engaged in other kinds of business, the profession of law for instance, and to say that competition exists there as everywhere else, that the bright men succeed and the dullards fail. The parallel is wholly wanting. If American lawyers had to compete not only with each other, but also with a numerous class of lawyers receiving nothing for their labor, the parallel would be complete, and the American lawyer would need no extended argument to convince him of the unfairness of the arrangement. The American people in general have no adequate idea of the extent of this mischief. Mr. Henry Holt, a well-known New York city publisher, said upon this point before the Senate Committee on Patents in 1886:

> The effect of this state of affairs on the opportunities of American authors to get into print or stay in print is very disastrous. I have unused manuscripts in my safe and have lately sent back manuscripts which ought to have been published, but I was afraid to undertake the publication; the market will not support them. I lately published, I think, the most important American work of fiction with a single exception that I ever published. The critics received it with praise. I had to write the author the other day that it had been a financial failure. She is a poor girl of great talent.

Her old parents are living, and she has to support them and an old family servant.

At the same hearing Mr. Dana Estes, of the well-known Boston firm of Estes, Lauriat & Co., said:

It has been said by some gentlemen that the flood of British reprints has a discouraging effect upon American authorship. I will add my mite to that statement. For two years past, though I belong to a publishing house that emits nearly $1,000,000 worth of books per year, I have absolutely refused to entertain the idea of publishing an American manuscript. I have returned many scores, if not hundreds, of manuscripts of American authors, unopened even, simply from the fact that it is impossible to make the books of most American authors pay, unless they are first published and acquire recognition through the columns of the magazines. Were it not for that one saving opportunity of the great American magazines which are now the leading ones of the world and have an international reputation and circulation, American authorship would be at a still lower ebb than it is at present. Take, for instance, an author of eminent genius who has just arisen. I refer to Charles Egbert Craddock—Miss Murfree. Had her manuscript been offered to any one of half a dozen American publishers it is probable it would have been refused. She got an entering wedge by having her articles published in a magazine and sprang into a world-wide reputation at once. How many of these "mute inglorious Miltons" there are in the manuscripts, tons of manuscripts, scattered about the country, I do not know, but I venture to say there are a good many.

Sir Henry Maine said of the American people in his book on *Popular Government* that their "neglect to exercise their power for the advantage of foreign writers has condemned the whole American community to a literary servitude unparalleled in the history of thought."

The mischief that is being wrought upon American intellectual life of the literary sort, in this man-

ner, is very great. It is none the less real because it cannot be accurately stated in dollars and cents.

ENGLISH MARKET FOR AMERICAN AUTHORS.

American authors of established reputation would be largely benefited by any sort of international copyright with England. English publishers now appropriate the stories of American writers as American publishers appropriate the stories of English authors. Reciprocity in copyright would give the English market to American authors.

VITIATED EDUCATION OF AMERICANS.

The proposition that the story-reading public of America comprises many millions of people, and that the major part are youth, is easy of acceptance. That they are having offered to them an exhaustless stream of English stories written by authors of no special repute, is equally plain. That these stories deal with kings and queens, orders of nobility, an established church, a standing army, monarchical institutions generally, and with English manners, scenes, customs, and social usages is almost a matter of necessity. Probably a large portion of these stories deal with some tale of seduction.

The good stories of England were long since exhausted by the American reprinters, and as a consequence we are having poured out upon us an unstinted flood of printed stuff, often nasty, still oftener weak and silly, and always foreign in tone, sentiment, and description. In the aggregate these

stories constitute a powerful means of undesirable education, as well as of vitiation of American taste; and this force is exerted more largely than otherwise upon minds and morals which are in the plastic and formative stage. It is entirely true that many of the cheap American reprints are not stories and that many of the reprinted English stories are good stories, but these are an exception to the general rule, and such exceptions constitute a small percentage of the whole; the healthy part bears about the same ratio to the unhealthy that the nutritive element in a glass of strong beer bears to the baleful part. Mr. Henry Holt, the New York publisher already mentioned, said upon this point before the Senate committee in 1886:

> It is a vastly important subject, this subject of the prosperity of American authors. It is a subject that reaches to the foundation of our civilization. It is the question whether we are to continue to have an American literature—for, as you all know, American literature is languishing even now—the question whether outside of the daily and periodical press we are to derive our ways of thinking, our ideal of life and politics, from alien, unsympathetic sources. But this is not the whole question. It is rapidly becoming a question whether, with a few rare exceptions, we are going to have any serious books at all.

Thought, morals, and education are the secret springs of natural life. We are allowing them to be contaminated at their sources.

BARRING OUT GOOD LITERATURE.

Another of the ways in which our present practice hinders the "progress of science and the useful

arts" in the United States is by barring out the really useful literature of England, a thoroughly healthy mental and moral pabulum. As regards works on law, theology, medicine, governmental science, political economy, physical science, art, biography, history, travel, language, education, and the like, England is probably more prolific in eminently useful books, in proportion to her population, than any other country in the world. Unlike many of her stories, these have no special tone which is foreign to American institutions. It would be a great practical blessing for the American people if the great mass of these publications were promptly reproduced in America. They are, however, precisely the kind of books which will never be reprinted here, except to a very small extent, without the protection of copyright.

Almost every such work, separately considered, appeals to a limited class only. The republication of one of them involves, as a rule, a very considerable outlay. If reprinted at all, it must be in the shape of books well printed on good paper, well bound, and fit for preservation in a library. No publisher dare undertake the necessary outlay—the publication of a book always being an experiment, financially—unless he is sure he can have the whole limited field to himself. One effect which may confidently be expected from the passage of such a bill as is now proposed is the republication here of the great volume of English books of the class now under discussion which are now sealed books to the great mass of the American people.

CHEAPENING THE PRICE OF BOOKS.

Still another way in which our present practice hinders the "progress of science and the useful arts" in the United States is by preventing the cheapening of the prices of good and desirable books. By "good and desirable books" is meant all manner of books, except the very cheap paper covered or no-covered reprints of English stories.

International copyright between Great Britain and the United States will open the American book market to English authors and English publishers. This can mean nothing less than the addition of an enormous mass of competition to the existing competition in American book publishing. This added competition must, in the nature of things, cheapen the price of all books, those of American origin and those of English origin alike. It is the sure effect of competition to reduce prices. It will never be possible to take a backward step in international copyright after the American public once feels this effect of such a law as is now proposed.

The ordinary mode of attempting to show that we get books cheaper because of the absence of international copyright is to exhibit a list of English books published at a high price and a parallel list of cheap American reprints of the same. It is quite as easy to exhibit a list of English books published at a high price and a parallel list of cheap English reprints of the same. It is also quite as easy to exhibit a list of American books published at a

comparatively high price and a parallel list of cheap American reprints of the same.

Many English books are first published at a high price to be bought almost solely by the English circulating libraries, and when the freshness is worn off excellent shilling editions of the same appear at the English railway book-stalls. American books which prove to be a success are likewise reproduced subsequently in the cheapest form consistent with good paper and good print. The exhibition of a list of English books published at a high price and a parallel list of cheap American reprints of the same, for the purpose of showing that the absence of international copyright gives us cheap books, if done with full knowledge is an attempt at deceit.

That "the selling price of a book depends, not on the copyright, but on the extent of the market that can be assured for it," is a trade maxim settled beyond dispute. A very desirable and certain result of international copyright is stated as follows, in the words of George Haven Putnam, the well-known American publisher:

> An international copyright will render practicable a large number of international undertakings which cannot be ventured upon without the assured control of several markets. The volumes for these international series will be secured from the leading writers of the world—American, English, and Continental—and the compensation paid to these writers, together with the cost of the production of illustrations, maps, tables, etc., will be divided among the several editions. The lower the proportion of this first outlay to be charged to the American edition, the lower the price at which this can be furnished; and as the publisher secures the most satisfactory returns from large sales to a wider circle, the lower the price at which it will be furnished. It would, perhaps, not be quite correct to say that

these international series would be cheaper than at present, for there are, as yet, but few examples of them, but it is the case that, by means of such series (only adequately possible under international copyright), American readers will secure the best literature of contemporary writers at far lower prices than can ever otherwise be practicable.

France and Germany are thoroughly under the operation of international copyright, and books are much cheaper there than in the United States; the fact is not accounted for by the difference in labor cost, for the one occupation of the printer is precisely the occupation wherein labor cost is most nearly the same here and abroad.

This one inevitable result of international copyright, the cheapening of the great mass of all real books, easily outweighs the sole objection which it is possible to maintain against international copyright, to wit, that it will increase by a few cents the prices of the cheapest reprints of English stories.

THE CHEAP REPRINTS.

It is admitted that the proposed act, or any other of a similar nature, will raise the price of the very cheap reprints of English stories *yet to be written* a few cents apiece. A pamphlet of that sort now costing twenty cents will then cost twenty-five cents. Of the additional price, two cents will go to the author, and three cents will go into better paper, better print, and better binding. For the five cents of increased cost, an American story will be furnished oftener than an English story; an American author will get pay for his labor, and the

reader will get a book that is one hundred per cent. better than the old one in paper, print, and binding.

E. P. Roe's *Barriers Burned Away*, Amelia E. Barr's *Bow of Orange Ribbon*, Miss Green's *The Leavenworth Case*, and Mrs. Prentice's *Stepping Heavenward*, all American copyrighted books, well printed on good paper, well bound in paper covers, and selling at twenty-five cents apiece, are fair samples of what will take place along the whole line of American fiction if this bill becomes a law. This law will have no effect on the literature of the past.

PATENT INSIDES.

It is sometimes urged that country newspapers will, if such a bill as this becomes a law, be cut off from culling from foreign newspapers and periodicals. Such an effect is not possible; it is not practically possible to copyright foreign newspapers and periodicals under the proposed law; it requires that the two copies to be deposited with the Librarian of Congress on or before the day of publication shall be printed from type set in this country, or from plates made therefrom; that provision practically cuts off foreign newspapers and periodicals from American copyright, and our newspapers will remain free to cull from them at pleasure.

ADVOCATES OF INTERNATIONAL COPYRIGHT.

In 1837 a Senate committee composed of Clay, Webster, Buchanan, Preston, and Ewing, of Ohio,

made a report upon international copyright containing the following language:

That authors and inventors have, according to the practice among civilized nations, a property in the respective productions of their genius is incontestable, and that this property should be protected as effectually as any other property is by law, follows as a legitimate consequence. Authors and inventors are among the greatest benefactors of mankind. They are often dependent exclusively upon their own mental labors for the means of subsistence, and are frequently from the nature of their pursuits, or the constitution of their minds, incapable of applying that provident care to worldly affairs which other classes of society are in the habit of bestowing. These considerations give additional strength to their just title to the protection of the law.

It being established that literary property is entitled to legal protection, it results that this protection ought to be afforded wherever the property is situated. A British merchant brings or transmits to the United States a bale of merchandise, and the moment it comes within the jurisdiction of our laws they throw around it effectual security. But if the work of a British author is brought to the United States it may be appropriated by any resident here and republished without any compensation whatever being made to the author. We should be all shocked if the law tolerated the least invasion of the rights of property in the case of the merchandise, whilst those which justly belong to the works of authors are exposed to daily violation without the possibility of their invoking the aid of the laws.

The committee think that this distinction in the condition of the two descriptions of property is not just, and that it ought to be remedied by some safe and cautious amendment of the law.

Now follows the expressions of some of the persons and organizations who are asking for international copyright to-day. The list includes: (1) President Harrison; (2) Ex-President Cleveland; (3) 144 leading American authors; (4) Western authors; (5) Southern authors; (6) American musical com-

posers; (7) 60 colleges; (8) Leading educators; (9) 200 leading librarians; (10) The American Publishers' Copyright League; (11) The American newspaper publishers; (12) The International Typographical Union; (13) American employing printers; (14) The Electric Club of New York; (15) The Chicago Copyright League; (16) The International Copyright Association, of New England; (17) Cardinal Gibbons; (18) Dr. Weir Mitchell; (19) George Ticknor Curtis; (20) Gladstone; (21) The American magazines unanimously; (22) 281 leading newspapers.

PRESIDENT HARRISON'S RECOMMENDATION.

President Benjamin Harrison, in his message to Congress, December 3, 1889, wrote as follows:

The subject of an international copyright has been frequently commended to the attention of Congress by my predecessors. The enactment of such a law would be eminently wise and just.

EX-PRESIDENT GROVER CLEVELAND FAVORS THE BILL.

NEW YORK, *December* 6, 1889.

MY DEAR MR. JOHNSON: I hope that I need not assure you how much I regret my inability to be with you and other friends and advocates of international copyright in this hour. It seems to me very strange that a movement having so much to recommend it to the favor of just and honest men should languish in the hands of our law-makers. It is not pleasant to have forced upon one the reflection that perhaps the fact that it is simply just and fair is to its present disadvantage. And yet I believe, and I know you and the others engaged in the cause believe, that ultimately and with continued effort, the friends of this reform will see their hopes realized.

Then it will be a great satisfaction to know and feel that success was achieved by force of fairness, justice, and morality.

GROVER CLEVELAND.

Mr. R. U. JOHNSON, *Secretary.*

PETITION OF AUTHORS.

The undersigned American citizens, who earn their living in whole or in part by their pen, and who are put at disadvantage in their own country by the publication of foreign books without payment to the author, so that American books are undersold in the American market, to the detriment of American literature, urge the passage by Congress of an International Copyright Law, which will protect the rights of authors, and will enable American writers to ask from foreign nations the justice we shall then no longer deny on our own part.

[Signed by 144 of the leading American authors, as follows:]

Henry Abbey.
Lyman Abbott.
Charles Kendall Adams.
Henry C. Adams.
Herbert B. Adams.
Oscar Fay Adams.
Louisa May Alcott.
Thomas Bailey Aldrich.
Edward Atkinson.
Leonard W. Bacon.
Hubert H. Bancroft.
Charles Barnard.
Amelia E. Barr.
Henry Ward Beecher.
Edward Bellamy.
William Henry Bishop.
Hjalmar H. Boyesen.
R. R. Bowker.
Francis F. Browne.
Oliver B. Bunce.
H. C. Bunner.
Frances Hodgson Burnett.
Edwin Lassetter Bynner.
G. W. Cable.
Lizzie W. Champney.
S. L. Clemens (Mark Twain).
Titus Munson Coan.
Robert Collyer.
Clarence Cook.
George Willis Cooke.
J. Esten Cooke.
A. Cleveland Coxe.

George William Curtis.
Charles De Kay.
Eugene L. Didier.
John Dimitry.
Nathan Haskell Dole.
Maurice Francis Egan.
Edward Eggleston.
George Cary Eggleston.
Richard T. Ely.
Edgar Fawcett.
Charles Gayarré.
Richard Watson Gilder.
Arthur Gilman.
James R. Gilmore (Edmund Kirke).
Washington Gladden.
Parke Godwin.
Robert Grant.
F. V. Greene.
Edward Greey.
William Elliot Griffis.
Hattie Tyng Griswold.
W. M. Griswold.
Louise Imogen Guiney.
John Habberton.
Edward E. Hale.
J. Hall.
William A. Hammond.
Marion Harland.
Joel Chandler Harris.
Miriam Coles Harris.
Wm. T. Harris.
James A. Harrison.
J. M. Hart.
Bret Harte.
Thos. Wentworth Higginson.
Edward S. Holden.
Oliver Wendell Holmes.
James K. Hosmer.
W. D. Howells.
Ernest Ingersoll.
Helen Jackson (H. H.).
Sara O. Jewett.
Rossiter Johnson.
Ellen Olney Kirk.
Thos. W. Knox.
Martha J. Lamb.
George Parsons Lathrop.
Henry Cabot Lodge.
Benson J. Lossing.
J. R. Lowell.
Hamilton W. Mabie.
James McCosh.
John Bach McMaster.
Albert Mathews.
Brander Matthews.
Edwin D. Mead.
Donald G. Mitchell.
T. T. Munger.
Anna Katharine Green.
George Walton Green.
Harry Harland (Sidney Luska).
John Hay.
Henry F. Keenan.
Simon Newcomb.
R. Heber Newton.
Charles Ledyard Norton.
Grace A. Oliver.
John Boyle O'Reilly.
Francis Parkman.
James Parton.
P. Y. Pember.
Thomas S. Perry.
Ben Perley Poore.
David L. Proudfit.
Isaac L. Rice.
Charles F. Richardson.
E. P. Roe.
J. T. Rothrock.
Philip Schaff.
James Schouler.

Horace E. Scudder.
Eugene Schuyler.
Isaac Sharpless.
Albert Shaw.
George William Sheldon.
E. V. Smalley.
Ainsworth R. Spofford.
Edmund C. Stedman.
Frederic J. Stimson.
Frank R. Stockton.
R. H. Stoddard.
Maurice Thompson.
Moses Coit Tyler.
Francis H. Underwood.
William Hayes Ward.
Susan Hayes Ward.
Chas. Dudley Warner.
David A. Wells.
Horace White.
William D. Whitney.
John G. Whittier.
Constance Fenimore Woolson.
John Burroughs.
Rose Elizabeth Cleveland.
Mary Mapes Dodge.
Henry George.
W. Hamilton Gibson.
Mary N. Murfree (Charles Egbert Craddock).
Harriet Prescott Spofford.
Walt Whitman.
Adeline D. T. Whitney.
George Bancroft.

WESTERN AUTHORS FAVOR THE BILL.

The following resolution was adopted by the Western Association of Writers, in convention, June, 1886, and was re-adopted in 1889–90:

Resolved, That this convention earnestly presents to the consideration and urges the importance, justice, and feasibility of International Copyright upon our members of Congress and United States Senators; and that we hold the establishment of just and permanent relations with England and other friendly nations upon the subject of copyright to be a necessity to the best success of American authorship.

In addition to this resolution, the members of the association petitioned Congress for the passage of the bill.

In an address, dated February 28, 1890, the executive committee of the association says:

A good international copyright law, so long hoped for from Congress, will insure protection to foreign authors in our own land and

to American authors in foreign lands. It will do more. It will place the books of American writers on an equal footing financially with those of their foreign contemporaries, will tend to increase the sale of American books, and will encourage the greatest mental activity of American thinkers. From this may be expected the greatest benefit to our republican government. For American books embodying American ideas will then gain, probably, at least as wide a hearing as foreign books clothing foreign ideas.

PETITION OF SOUTHERN AUTHORS.

To the Honorable the Members of the House of Representatives from the Southern States:

The undersigned, writers connected with Southern literature or journalism, respectfully invoke your hearty aid in behalf of the Chace-Breckinridge International Copyright bill, now on the calendar of the House of Representatives. We believe this bill to be both just in principle and necessary to the normal development of American literature, and that, instead of increasing the price of books, as has been feared, it will tend to the opposite effect by reason of the larger editions which publishers, thus secured in their legitimate market, will be enabled to put forth. Since it cannot be retroactive, it will in no way affect the price of any volume which shall have been printed up to the date at which it will go into operation. In other words, the present literature of the world will be open to as cheap republication after the passage of the bill as before. We particularly desire to call your attention to the revival of literary activity in the South. No portion of the country is more interested in the fullest security of literary property, for in no portion will the development of literature be more greatly aided by this bill. Its passage will remove from our country the national disgrace of tolerating literary piracy.

Signed by Thomas Nelson Page, Amélie Rives Chanler, Joel Chandler Harris, Frances Hodgson Burnett, Mary N. Murfree, Charles H. Jones, George W. Cable, Rachael J. Philbrick, Col. Richard M. Johnston, Marion Harland, F. H. Richardson, Will Wallace Harney, Charles H. Smith, William H. Hayne, Augusta Evans Wilson, Elizabeth Bisland, R. T. W. Duke, Jr., James A. Harrison, M. G. McClelland, A. C. Gordon, Charles Washington Coleman, Jr., Frances Cour-

tenay Baylor, Constance Cary Harrison, M. Elliot Seawell, H. S. Edwards, Clifford Lanier, Marion A. Baker, Page M. Baker, Grace King, William Miller Owen, Robert Burns Wilson, James Lane Allen, George William Brown, B. L. Gildersleeve, and eighty other writers of note in the South.

AMERICAN COMPOSERS FAVOR THE BILL.

As may be seen from the following extracts from many expressions published in the *Century Magazine*, American musicians strongly favor an international copyright bill:

As to an international copyright law, I should hail it with joy. At this stage of the world's progress such a legal protection should be everywhere recognized as an author's inalienable right.

DUDLEY BUCK.

The absence of an international copyright law is working directly to the grave injury of our native composers.

JULIUS EICHBERG.

Justice and expediency alike demand an international copyright, and every educated person in the country should ask for it.

ARTHUR FOOTE.

It seems to me that there is no honorable defence for our present thievish attitude on the subject of international copyright.

B. J. LANG.

Let us have an international copyright law by all means, and the sooner the better.

LOUIS MAAS.

It seems to me that the arguments in favor of international copyright, as regards works of literature, apply with equal force to musical compositions.

WILLIAM MASON.

The present state of the law is an inducement to swindling, and is degrading to us as a nation. An international copyright law that

would compel American publishers to pay foreign composers for their works might also prove an encouragement to home talent by giving our own composers an equal chance with others.

THEODORE THOMAS.

I am most decidedly in favor of an international copyright law, by which musical composers and authors in other arts and sciences will be protected against the outrageous doings of many publishers in America and in Europe.

CARL ZERRAHN.

There must be an international copyright, and that without delay, or American music will sink into oblivion.

EUGENE THAYER.

THE VOICE OF THE COLLEGES.

The following colleges, through their representative officers, petitioned Congress in favor of the Chace-Breckinridge bill:

Adelbert, Cleveland, Ohio.
A. & M. College of Texas, College Station, Texas.
Amity College, College Springs, Iowa.
Beloit, Beloit, Wis.
Bethel, Russellville, Ky.
Bowdoin, Brunswick, Me.
Buchtel College, Akron, Ohio.
Carleton College, Northfield, Minn.
Central Tennessee College, Nashville, Tenn.
Central Wesleyan College, Warrington, Me.
Christian University, Canton, Wis.
Dartmouth, Hanover, N. H.
Davidson, Davidson, N. C.
Doane College, Crete, Nebr.
Duray College, Springfield, Miss.
Franklin & Marshall College, Lancaster, Pa.
Franklin College, Franklin, Ind.
Frederick College, Frederick, Md.
Haverford, Haverford, Pa.
Heidelberg, Tiffin, Ohio.

Hobart College, Geneva, N. Y.
Maryland Agricultural College, College Station, Md.
Indiana University, Bloomington, Ind.
Johns Hopkins, Baltimore, Md.
Kentucky State University, Lawrence, Ky.
King College, Bristol, Tenn.
Lawrence University, Appleton, Wis.
Lebanon Valley College, Lebanon, Pa.
Milton College, Wisconsin.
Mississippi College, Clinton, Miss.
Muskingum College, New Concord, Ohio.
Northwestern University, Naperville, Ill.
Northwestern University, Scranton, Ill.
Ohio University, Athens, Ohio.
Ohio State University, Columbus, Ohio.
Otterbein University, Westerville, Ohio.
Princeton College, Princeton, N. J.
Racine College, Racine, Wis.
Rensselaer Polytechnic Institute, Troy, N. Y.
Richmond College, Richmond, Va.
Ripon, Ripon, Wis.
Rochester University, Rochester, N. Y.
Rutgers College, New Brunswick, N. J.
South Carolina, Columbia, S. C.
State Normal School, Emporia, Kan.
State University, Iowa City, Iowa.
Trinity College, Trinity College, North Carolina.
Tulane University, New Orleans, La.
University of California, Berkeley, Cal.
University of Dakota, Grand Forks, Dak.
University of Denver, Denver, Col.
University of Georgia, Athens, Ga.
University of Mississippi, Oxford, Miss.
University of Missouri, Columbia, Mo.
Upper Iowa University, Fayette, Iowa.
Vanderbilt University, Nashville, Tenn.
Vassar, Poughkeepsie, N. Y.
Wells College, Aurora, N. Y.
Wesleyan University, Middletown, Conn.
Western University of Pennsylvania, Allegheny, Pa.

The faculties of many other colleges are known to favor the bill.

SUPPORT FROM LEADING EDUCATORS.

At the meeting of the superintendents of the National Educational Association, held in New York city February 19, 1890, the following resolution, on motion of William E. Sheldon, chairman of the committee on copyright, was unanimously adopted:

Resolved, That the members of the department of superintendence of the National Educational Association hereby record our sympathy with American authors in the effort they are now making to obtain from Congress an international copyright law; and we cannot too strongly express our sense of the necessity of such a measure, both as an obligation of justice and as a stimulus to American literature and to the spread of American ideas abroad.

In addition to this general resolution the following petition was signed:

The Honorable the Senators and Representatives of the Congress of the United States:

The undersigned, officers and members of the National Educational Association, respectfully petition you to support the international copyright bill now pending in both Houses of Congress, believing that the proposed law would stimulate American literature; would promote the sciences and useful arts; would raise the standard of reading and give it a better and more national character, and would be in the interest of the whole people.

W. T. Harris, Commissioner of Education, Washington, D. C.; John Eaton, ex-Commissioner of Education of the United States; L. W. Day, Superintendent of Instruction, Cleveland, O.; W. B. Powell, Superintendent of Schools, Washington, D. C.; James MacAlister, Superintendent of Public Schools, Philadelphia; Wm. M. Griffin, Cook County Normal

School, Chicago; L. H. Jones, Superintendent of Schools, Indianapolis, Ind.; Richard G. Boone, Professor of Pedagogics, Indiana University, Bloomington, Ind.; A. S. Draper, Superintendent of Public Instruction, State of New York; Edwin C. Hewett, President State Normal University, Normal, Ill.; E. E. White, ex-President Purdue University; Geo. Howland, Superintendent of Schools, Chicago, Ill.; J. M. Greenwood, Superintendent of Schools, Kansas City, Mo.; Aaron Gove, Superintendent of Schools, Denver, Col.; W. H. Bartholomew, State Board of Education of Kentucky; J. A. B. Lovett, editor *Teacher at Work*, Huntsville, Ala.; Edwin P. Seaver, Superintendent of Public Schools, Boston, Mass.; T. J. Morgan, Commissioner Indian Affairs, Washington, D. C.; Chas. R. Skinner, Deputy Superintendent of Public Instruction, State of New York; Henry A. Wise, Superintendent of Instruction, Baltimore, Md.; Alex. Forbes, Chicago, Ill.; J. A. Shawan, Superintendent of Schools, Columbus, O.; George P. Brown, editor *Public School Journal*, Bloomington, Ill.; John Hancock, State Commissioner of Common Schools, Ohio; M. A. Newell, State Superintendent of Public Instruction, Maryland; John MacDonald, *Western School Journal*, Topeka, Kan.; John M. Bloss, Superintendent of Schools, Topeka, Kan.; George B. Lane, State Superintendent of Public Instruction, Nebraska, and about sixty others.

In addition to the above lists, petitions in favor of the bill from 467 superintendents and teachers in Indiana, Missouri, Idaho, Wisconsin, Illinois, Iowa, Kansas, Nebraska, and Minnesota have been received and forwarded to Congress:

PETITION FROM LIBRARIANS.

The undersigned, librarians in public, college, and circulating libraries, etc., respectfully request the passage of the pending international copyright bill, believing, from our practical knowledge of the reading public, that the proposed law would stimulate American

literature, would promote the sciences and the useful arts, would raise the standard of reading and give it a better and a more national tone, and would be in the interest of the whole people.

Signed by Mr. A. R. Spofford and two hundred of the leading librarians of the country, representing thirty States—the custodians of the nation's literary treasures, and to a considerable extent the guides of the people's reading. Among these are librarians of public and circulating libraries of the cities of New York, Philadelphia, Brooklyn, Chicago, St. Louis, Boston, Indianapolis, Columbus, Detroit, San Francisco, Buffalo, Albany, St. Paul, Providence, Grand Rapids, Kalamazoo, Rockford, Ill.; Springfield, Ohio; Macon, Ga., and many other cities.

RESOLUTIONS OF THE AMERICAN PUBLISHERS' COPYRIGHT LEAGUE, ADOPTED JANUARY 21, 1888.

Resolved, That the Chace copyright bill, with the amendments now recommended by your executive committee, appears fairly to meet the several requirements of American writers, readers, manufacturers, and sellers of books, domestic and foreign, and has the approval of this league; and our executive committee is hereby instructed to take such action as it may find requisite to secure the passage of the bill with these amendments.

Resolved, That, recognizing from the history of previous attempts, and from the statement of the present obstacles, the difficulty of securing any legislation on international copyright (an undertaking in which such a variety of interests are involved, and in connection with which such diverse views are being pressed upon Congress), our executive committee is hereby authorized, in the event of its proving impracticable to secure the adoption of the bill in the precise form in which it is now recommended to them, to support on behalf of the league this bill, or a bill on the general lines of this bill, with such modifications as may prove requisite to secure the necessary Congressional support: *Provided, always*, That no modifications be accepted that fail to provide for the printing in this country of foreign books securing American copyright.

The league, which cordially indorses the pending bill, embraces the following publishing houses:

Amer. Publishing Co. (Frank E. Bliss, president), Hartford, Conn.
Armstrong, A. C., & Son, 714 Broadway, New York.
Alden, John B., 393 Pearl street, New York.
Appleton, D., & Co., 1 and 3 Bond street, New York.
Barnes. A. S., & Co., 111 William street, New York.
Baker & Taylor Co., The, 9 Bond street, New York.
Bowker, R. R., 330 Pearl street, New York.
Bugbee, David & Co., Bangor, Me.
Carter & Bros., Robert, 530 Broadway, New York.
Cushings & Bailey, Baltimore, Md.
Century Company, 33 East 17th street, New York.
Clarke & Co., Robert, Cincinnati, Ohio.
Crowell, T. Y., & Co., 13 Astor Place. New York.
Clark & Maynard, 771 Broadway, New York.
Dutton & Co., E. P., 21 West 23d street, New York.
Ditson, Oliver & Co., Boston, Mass.
Dodd, Mead & Co., 755 Broadway, New York.
Dillingham, G. W., 31 West 23d street, New York.
Estes & Laurint, Boston, Mass.
Fords, Howard & Hulbert, 30 Lafayette Place, New York.
Flexner & Staadeker, Louisville, Ky.
Gebbie & Co., Philadelphia, Pa.
Ginn & Co., 743 Broadway, New York.
Harper & Bros., Franklin Square, New York.
Hubbard Bros., Philadelphia, Pa.
Holbrook, M. L., 25 Bond street, New York.
Holt, Henry, & Co., 27 West 23d street, New York.
Houghton, Mifflin & Co., Boston, Mass.
International Copyright Association, Boston.
Ivison, Blakeman & Co., 753 Broadway, New York.
Kirchner & Co., Geo., 17 Union Square, New York.
Lovell Co., John W., 14 Vesey street, New York.
Lothrop & Co., D., Boston, Mass.
Lippincott Co., The J. B., Philadelphia, Pa.
Little, Brown & Co., Boston, Mass.
Lee & Shepard, Boston, Mass.
Lockwood, Geo. R., & Son, 812 Broadway, New York.
Little, J. J., & Co., 10 Astor Place, New York.
Munro, Geo., 17 Vandewater street, New York.
McClurg & Co., A. C., Chicago, Ill.

Nims & Knight, Troy, N. Y.
Pomeroy, Mark M., 234 Broadway, New York.
Putnam's Sons, G. P., 27 and 29 West 23d street, New York.
Phillips & Hunt, Fifth ave. and 20th street, New York.
Pott & Co., Jas., 14 Astor Place, New York.
Putnam, Davis & Co., Worcester, Mass.
Roberts Bros., Boston, Mass.
Randolph, A. D. F., & Co., 38 West 23d street, New York.
Rand, McNally & Co., Chicago, Ill.
Stokes & Bros., F. A., 182 Fifth ave., New York.
Scribner's Sons, Chas., 743 Broadway, New York.
Street & Smith, 31 Rose street, New York.
Sheldon & Co., 724 Broadway, New York.
St. Paul Book & Stationery Co., St. Paul, Minn.
Ticknor & Co., Boston, Mass.
Taintor Bros. & Co., 18 Astor Place, New York.
Trow Printing & Bookbinding Co., New York.
Van Antwerp, Bragg & Co., Cincinnati, Ohio.
Van Nostrand, D., estate of, 23 Murray street, New York.
Webster, Chas. L., & Co., 3 East 14th street, New York.
Whittaker, Thos., 2 Bible House, New York.
Wood & Co., Wm., 56 Lafayette Place, New York.
Wiley, John, & Sons, 15 Astor Place, New York.
White & Allen, 94 Wall street, New York.
Young, E. & J. B., & Co., 6 Cooper Union, New York.

AMERICAN NEWSPAPER PUBLISHERS.

The American Newspaper Publishers' Association, in convention February 13, 1890, adopted the following resolution:

Resolved, That the American Newspaper Publishers' Association is in hearty sympathy with the efforts now being made by American authors to obtain from Congress a fuller security for literary property, and we believe the proposed International Copyright Bill to be in the interest of the national honor and welfare.

THE PRINTERS' UNIONS.

At the Denver session of the International Typo-

graphical Union, in June, 1889, the following preambles and resolution were adopted:

Whereas the measure known as the "Chace International Copyright Bill" failed to become a law through lack of consideration in the House of Representatives of the Fiftieth Congress; and

Whereas said bill will be reintroduced in both houses of the Fifty-first Congress and put upon its passage at an early date; and

Whereas said bill contains a clause which guarantees absolutely that all books copyrighted in this country shall be printed from type set within the limits of the United States: Therefore,

Resolved, That the International Typographical Union heartily indorses the "Chace International Copyright Bill," and urges it as a duty upon subordinate unions and union printers everywhere to use all honorable means to further the passage of said bill.

In accordance with this resolution, over two hundred local unions, representing all sections of the country and comprising 40,000 members, have strongly indorsed the pending bill, and have urged its passage upon members of Congress, through a committee consisting of John L. Kennedy, De Witt C. Chadwick, and H. S. Sutton.

THE EMPLOYING PRINTERS OF THE UNITED STATES.

At the third annual meeting of the United Typothetæ of America, held at St. Louis, Mo., October 8, 9, and 10, 1889, the following resolution was presented to the convention from the committee on copyright, consisting of Messrs. Theodore L. De Vinne, W. J. Gilbert, and P. F. Pettibone, and was adopted:

Resolved, That the association appoint a delegate to the next meeting of the American Copyright League, to be held in New York city, and that we here record our approval of the general principle

of international copyright, and especially of the provision that all books copyrighted shall be printed in the United States.

THE STRONGEST PATENT CLUB IN THE COUNTRY.

NEW YORK, *February* 20, 1890.

Resolved, That the Electric Club of New York is in hearty sympathy with the present efforts of American authors, publishers, employing printers, and workmen in the printing trades to obtain from Congress a just recognition of the rights of intellectual property, and it hails with satisfaction the prospect of an early passage of the International Copyright Bill.

ACTION OF THE CHICAGO COPYRIGHT LEAGUE.

CHICAGO, *February* 25, 1890.

Resolved, That this meeting unanimously indorses the efforts of Congressman George E. Adams of Chicago toward securing the enactment of the Chace-Breckinridge international copyright bill in the United States House of Representatives, and urges upon Congress the necessity for the immediate passage of said bill.

Among the supporters of this resolution were A. C. McClurg, Franklin McVeagh, Joseph Kirkland, David Swing, C. L. Hutchinson, Hobart C. Taylor, Franklin H. Head, William F. Poole, Marshall Field, Edward G. Mason, Slason Thompson, and many others.

THE INTERNATIONAL COPYRIGHT ASSOCIATION OF NEW ENGLAND.

The bill was indorsed as follows at the last annual meeting of this association, composed of authors, publishers, paper-makers, printers, book-binders, educators, jurists, professional men, merchants, bankers, and others, including Charles Francis Adams,

Nathan Appleton, Edward Atkinson, George Bancroft, Edwin Booth, Samuel Bowles, Jonathan Chace, James Freeman Clarke, Richard H. Dana, Bancroft C. Davis, Samuel Adams Drake, Charles W. Eliot, William Endicott, Jr., O. B. Frothingham, Joseph R. Hawley, George F. Hoar, Oliver Wendell Holmes, John D. Long, Henry Cabot Lodge, Frederick Law Olmsted, Henry L. Pierce, Noah Porter, Frederick O. Prince, Alexander H. Rice, John C. Ropes, Francis A. Walker, and hundreds of others.

Resolved, That this association approves the bill granting copyright to foreign authors and artists now before Congress, and warmly urges its prompt passage, in the interest of the principles of equity and justice and to the end that our own authors and artists may receive a proper recognition and reward for their works.

The Washington, D. C., association and leading citizens of St. Louis have indorsed the bill in similar terms.

CARDINAL GIBBONS ON COPYRIGHT.

Cardinal Gibbons has written the following letter:

MY DEAR SIR: I desire to say that I am in entire sympathy with those distinguished authors in the earnest efforts they are making to secure from Congress an international copyright law.

Intellectual labor is the highest and noblest occupation of man, and there is no work to the fruit of which a man has a higher claim than to the fruit of mental labor. Many authors have reason to complain in almost the words of the Gospel: "We have labored and others have entered into our labors."

It seems to me eminently just that adequate protection should be

afforded to authors, so as to secure them against what is conceived to be a manifest violation of their rights.

I am, my dear sir, yours faithfully,

JAMES, CARD. GIBBONS.

February 15, 1890.

ROBERT U. JOHNSON, Esq.,
Secretary American Copyright League.

AN AUTHORITATIVE VOICE FROM THE MEDICAL PROFESSION.

January 20, 1890.

DEAR SIR: Perhaps few persons, certainly none in the medical profession of this country, could show a record which would better prove the need of an international copyright than could I. I once pointed out to a member of Congress in my library, a copy of one of my books translated into French, two translations of the same in German, one in Russian, and another work of mine translated into French. For none of these had I ever received a cent. It is true that two of these translations were authorized by me when my consent was asked, but, of course, it would not have been given without some financial return to me if the law had been otherwise than it is, since any one could at will take the book and translate it without the slightest references to the wishes of the author. A great many American medical books have been translated into the European languages with or without the assent of the authors, but I have never heard that for any of these did our authors ever receive a penny. My own case is, I fancy, the strongest, and I have no objection to your printing this statement if it will further the purposes of the League.

Yours, very truly,

WEIR MITCHELL.

Secretary of Copyright League,
New York City.

THE OPINION OF A DISTINGUISHED CONSTITUTIONAL LAWYER.

Hon. George Ticknor Curtis, one of the earliest and ablest advocates of an international copyright

law, has written the following letter in support of the pending bill:

114 EAST THIRTIETH STREET,
New York, April 18, 1890.

DEAR SIR: . . . It seems to me, as an American author and a citizen of the United States, in common with many other American authors and citizens, that our wishes ought to receive careful attention at the hands of Congress. It is no longer possible to deny the justice and expediency of an international copyright law, such as is proposed in the pending bill. While it will benefit foreign, and especially English, authors, to American authors it is certain to operate as a measure that will secure to them fruits of their labors which they are entitled to enjoy. I have myself failed to receive revenue from publications that ought to have yielded me revenue in England as well as in this country; publications of which English publishers have availed themselves without making me the slightest remuneration. This wrong can be corrected by Congress for American authors in regard to future publication without the slightest disadvantage to readers, publishers, bookmakers, or printers, by passing the pending bill.

I may not have personal influence with those who are to decide this great measure of right and justice, but I feel that I have reason to do everything I can in its favor.

Very truly, your obedient servant,

GEORGE TICKNOR CURTIS.

ROBERT U. JOHNSON, Esq.,
Secretary American Copyright League.

MR. GLADSTONE'S ATTITUDE.

Mr. Gladstone having been quoted by the opponents of the international copyright bill, not only as a partisan of the royalty or stamp copyright scheme, which the friends of the bill strongly oppose, but also as an opponent of the bill itself, the secretary of the American Copyright League recently addressed him a letter of inquiry on the subject, to which the subjoined reply has been received:

HOUSE OF COMMONS LIBRARY, *March* 25, 1890.

MY DEAR SIR: I set so high a value upon the recognition by the United States of the principle of international copyright, a principle which has been now almost universally adopted in Europe, that although I regret some of the provisions of the bill now before Congress, I cannot refuse to express my sympathy with the efforts which American authors have so perseveringly made to procure legal protection for the rights of foreign authors, and my hope that these efforts may be speedily crowned with success. Imperfect as the present bill is, it will, if I rightly read its provisions, place both American and non-American authors in a more equitable position than they have hitherto occupied.

It is quite erroneous to suppose that I have formed any opinion in favor of the royalty scheme as against this bill.

I remain, my dear sir, faithfully yours,

W. E. GLADSTONE.

R. U. JOHNSON, Esq.,
Secretary American Copyright League.

THE MAGAZINES UNANIMOUS.

In response to a circular inquiry addressed to forty leading monthly periodicals, the following authorized the use of their names as strongly in favor of the pending bill. Not one unfavorable reply was received:

Atlantic Monthly.
Andover Review.
Art Amateur.
American Journal of Education.
Arena.
Book-Buyer.
Belford's Magazine.
Book Chat.
Century Magazine.
Cosmopolitan.
Current Literature.
"Dixie."
Dial.
Forum.
Magazine of American History.
Godey's Lady's Book.
Home-Maker.
Hall's Journal of Health.
Hamilton Review.
Harper's Magazine.
Lippincott's Magazine.
Lend a Hand.
Lookout and New England Magazine.
Northwest Magazine.
New England Magazine.

New Englander and Yale Review.
No Name Magazine.
North American Review.
Our Country Home.
Outing.
Political Science Quarterly.
Frank Leslie's Weekly.
Popular Science Monthly.
St. Louis Magazine.
Scribner's Magazine.
St. Nicholas.
Statesman.
Writer.

THE VOICE OF THE PRESS.

Following is a partial list of the American newspapers and weekly periodicals which have given the proposed copyright legislation cordial support. Very many others are also known to favor it:

Boston Beacon.
Boston Congregationalist.
Boston Advertiser.
Boston Journal.
Boston Journal of Education.
Boston Herald.
Boston National Journalist.
Boston Pilot.
Boston Post.
Boston Transcript.
Boston Traveller.
Zion's Herald (Boston).
New Haven (Conn.) News.
American Bookseller (New York).
American Economist (New York).
American Hebrew (New York).
Bradstreet's (New York).
Christian Union (New York).
Critic (New York).
Current Literature (New York).
Electrical World (New York).
Dramatic Mirror (New York).
Epoch (New York).
Evangelist (New York).
Examiner (New York).
Financier (New York).
Harper's Weekly (New York).
Home Journal (New York).
Independent (New York).
Life (New York).
Nation (New York).
Observer (New York).
Publishers' Weekly (New York).
Puck (New York).
Judge (New York).
Voice (New York).
Witness (New York).
New York Commercial Advertiser.
New York Courrier des Etats-Unis.
New York Evening Post.
New York Evening Telegram
New York Herald.
New York Morning Journal.
New York Mail and Express.
New York Press.
New York Star.
New York Times.

New York Tribune.
New York World.
Scranton (Pa.) Times.
Pottsville (Pa.) Evening Chronicle.
Bridgeport (Conn.) Standard.
Jersey City (N. J.) Evening Journal.
Newburyport (Mass.) Herald.
Springfield (Mass.) Republican.
Peoria (Ill.) Journal.
Newark (N. J.) Morning Press.
Dayton (Ohio) Herald.
Chattanooga (Tenn.) Republican.
Columbus (Ohio) Sunday Morning News.
Springfield (Mo.) Dailyand Weekly Herald.
New York Financial Times.
Watkins (N. Y.) Herald.
Chicago National Journalist.
Brookville (Ind.) American.
Leoti (Kansas) Western Farmer.
Buffalo Courier.
Albany (N. Y.) Times.
Cincinnati (Ohio) Post.
Springfield (Ill.) Journal.
Milwaukee (Wis.) Evening Wisconsin.
Burlington (Iowa) Hawk-Eye.
Lakewood (N. J.) Times and Journal.
Memphis (Tenn.) Commercial.
Washington (D. C) National View.
Boston Courier.
Portland (Me.) Transcript.
Boston Commonwealth.
Buffalo Mercantile Review.
Dayton (Ohio) Journal.
New York Electrical Review.
Cambridge (Mass.) Press.
Greenfield (Mass.) Gazette and Courier.
Buffalo Milling World.
Buffalo Lumber World.
Buffalo Iron Industry Gazette.
New York Family Story Paper.
New York Golden Hours.
New Hampshire (Keene, N. H.) Sentinel.
Binghamton (N. Y.) Republican.
Jamestown (N. Y.) Journal.
Greensburg (Pa.) Press.
Des Moines (Iowa) Iowa State Register.
Cambridge (Mass.) Tribune.
Cambridge (Mass.) Chronicle.
Columbus (Ga.) Inquirer.
Boston Youths' Companion.
Rochester (N. Y.) Union and Advertiser.
Newark (N. J.) Sunday Call.
Memphis (Tenn.) Sunday Times.
Brooklyn Standard Union.
Kingston (N. Y.) Freeman.
Little Falls (N. Y.) Times.
Rochester Post-Express.
American Rural Home (Rochester.)
Erie (Pa.) Herald.
Erie (Pa.) Morning Dispatch.
Friends' Intelligencer and Journal (Philadelphia).
Golden Days (Philadelphia).
National Baptist (Philadelphia).
Telephone (Philadelphia).
Philadelphia Inquirer.
Philadelphia North American.
Philadelphia Press.
Philadelphia Public Ledger.
Watertown (N. Y.) Times.
Williamsport (Pa.) Sun.

Pittsburgh (Pa.) Commercial Gazette.
New Bedford (Mass.) Daily Mercury.
New London (Conn.) Morning Telegraph.
Newark (N. J) Daily Advertiser.
Lowell (Mass.) Daily Courier.
Baltimore (Md.) Sun.
Paterson (N. J.) Press.
Wilmington (Del.) Every Evening.
Haverhill (Mass.) Gazette.
Bridgeport (Conn.) Farmer.
Harrisburg (Pa.) Morning Call.
Pittsfield (Mass.) Evening Journal.
Waterbury (Conn.) American.
Utica (N. Y.) Daily Press.
Philadelphia Record.
Omaha (Nebr.) Republican.
Buffalo Tidings.
Baltimore Telegram.
Winona (Minn) Daily Republican.
Davenport (Iowa) Democrat.
Mandan (N. Dak.) Pioneer.
Hartford (Conn) Courant.
Willimantic (Conn.) Journal.
New Haven (Conn.) Register.
Our Youth (New York).
New Orleans (La) Daily City Item.
St. Joseph (Mo.) Daily News.
Redfield (S. Dak.) Observer.
Belfast (Me.) Republican Journal.
Portsmouth (N. H.) Daily Progress.
Portland (Me) Sunday Times.
Providence (R. I.) Telegram.
Hudson (N. Y) Daily Register.
Omaha (Nebr.) Bee.
Pittsburgh (Pa.) Dispatch.
Wilkesbarre (Pa.) Record.
Public Opinion (Washington, D.C.).
Kate Field's Washington.
Washington (D. C.) Critic.
Washington (D. C.) Evening Star.
Richmond Times.
West Point (Va.) Virginian.
Danville (Va.) Times.
Wheeling (W. Va.) Letter.
Charleston (S. C.) News and Courier.
Charleston (S. C.) World.
Columbia (S. C.) Register.
Atlanta (Ga.) Constitution.
Augusta (Ga.) Chronicle.
Macon (Ga.) Telegraph.
New Orleans Times-Democrat.
Dallas (Tex.) Christian Advocate.
Fort Worth (Tex.) Gazette.
Houston (Tex.) Post.
Louisville Courier-Journal.
National Publisher and Printer (Louisville).
Memphis (Tenn.) Avalanche.
Cumberland Presbyterian (Nashville).
Gospel Advocate (Nashville).
Western Christian Advocate (St. Louis).
St. Louis Republican.
Cleveland Leader.
Baptist Journal and Register (Cincinnati).
Cincinnati Commercial Gazette.
Jackson (Ohio) Herald.
Indianapolis Journal.
Indianapolis Sentinel.
America (Chicago).
Christian Worker (Chicago).
Chicago Journal.
Chicago Journal of Commerce.

Chicago News.
Chicago Standard.
Chicago Times.
Chicago Indicator.
Chicago Evening Mail.
Chicago Occident.
Galena (Ill.) Press.
Harvard (Ill.) Independent.
Clearwater (Minn.) Sun-Wave.
Duluth (Minn.) Tribune.
Minneapolis Journal.
Minneapolis Tribune.
St. Paul Pioneer Press.
Cedar Rapids (Iowa) Republican.
Des Moines (Iowa) Leader.
Burlington (Kansas) Republican.
Wichita Eagle.
Denver (Colo.) Republican.
Denver (Colo.) Times.
Banning (Cal.) Herald.
Oakland (Cal.) Tribune.
Sacramento (Cal.) Record-Union.
San Francisco News Letter.
Seattle (Wash.) Journal.
Seattle (Wash.) Post Intelligencer.
Troy (N. Y.) Observer.
Philadelphia (Pa) Taggarts' Times.
Detroit (Mich.) Journal.
Chelsea (Mass.) Gazette.
Springfield (Mass.) New England Homestead.
Springfield (Mass.) Farm and Home.
Springfield (Mass.) Springfield Homestead.
New York American Agriculturist.
Newton (Mass.) Journal.
The Banner Weekly (New York).
Syracuse (N. Y.) Standard.
Norwalk (Conn.) Hour.
Red Wing (Minn.) Republican.
Wilmington (Del.) Sunday Star.
Bradford (Pa.) Era.
Pittsburgh (Pa.) Post.
Wall Street (N. Y.) Daily News.
Hartford (Conn.) Evening Post.
Cape Cod (Yarmouthport, Mass.) Item.
Birmingham (Ala.) Age-Herald.
Deadwood (S. Dak.) Pioneer.
Syracuse (N. Y.) Herald.
Vicksburg (Miss.) Post.
Duluth (Minn.) Herald.
Mt. Joy (Pa.) Herald.
Merchants and Manufacturers' Journal (Baltimore).
Salt Lake Herald.
Sioux Falls (S. Dak.) Argus-Leader.
Munsey's Weekly (New York).
Portland (Me.) Press.
Portland (Me.) Express.
Staunton (Va.) Spectator.
Tarboro (N. C.) Southerner.
Bloomington (Ill.) Leader.
New Albany (Ind.) Ledger.
Kentucky State Journal (Newport, Ky.).
Bismarck (N. Dak.) Tribune.
Chicago Citizen.
Lafayette (Ind.) Sunday Times.
Wilson (N. C.) Advance.
Arkansaw Traveler (Chicago).
Spirit of the Valley (Harrisonburgh, Va.).
Paris (Texas) News.
St. Louis (Mo.) Age of Steel.
St. Louis (Mo.) Critic.
Anniston (Ala.) Hot Blast.
Henderson (Ky.) Gleaner.

Colorado Springs Gazette.
Leadville (Colo.) Evening Chronicle.
Leadville (Colo.) Herald-Democrat.
Buffalo Christian Advocate.
Topeka (Kans.) Lance.
Spokane Falls (Wash.) Review.
Rhode Island Democrat (Providence, R. I.).
Christian Intelligencer (New York).
Weekly Union and Catholic Times (New York).
Woman's Journal (Boston).
Northern Christian Advocate (Syracuse, N. Y.).
The Churchman (New York).
Cincinnati Journal and Messenger.
Troy (N. Y.) Catholic Weekly.
Racine (Wis.) Slavic.
Winston (N. C.) Western Sentinel.
Boston Morning Star.
Notre Dame (Ind.) Ave Maria.
Virginia City (Nev.) Evening Chronicle.
New London (Conn.) Day.
St. Louis (Mo.) Spectator.
Prescott (Arizona) Journal-Miner.

RECAPITULATION.

The intelligent voice of the whole country asks for the passage of a measure substantially the same as this; authors, publishers, printers, musical composers, colleges, educators, librarians, newspapers, and magazines join in the prayer. Clay and Webster favored such a thing in the past; Gladstone, Harrison, Cleveland, and Cardinal Gibbons favor it to-day. Our term of copyright is shorter than that sanctioned by the verdict of the civilized world.

Substantially all the world, except Great Britain and the United States, treat foreigner and citizens alike in the matter of copyright; Great Britain permits copyright to foreigners on the same basis as citizens, if the foreigner be at the time of publication on British soil; the Queen is empowered by law to establish reciprocity with us if we will permit it, and we stand alone in rejecting and refusing overtures. A hundred international copyright agree-

ments have been signed; the name of the United States is in no one of them.

It is shown that an author has a natural exclusive right to his intellectual productions: that the common law of England always recognized that right, and that the common law of America necessarily recognizes that right; that our present procedure represses authorship by putting the products of the labor of American authors into untrammeled competition with the products of English labor, for which nothing is paid; that our present procedure deprives American authors of the advantages of the British market; that our present procedure vitiates the education and tastes of American youth; that our present procedure bars our people from the benefits of the good literature of England, and that our present procedure prevents the cheapening of good and desirable books in the United States. It cannot be possible that the American Congress will, with full knowledge, permit the present procedure to continue.

VIII.

THE PLATT-SIMONDS COPYRIGHT ACT, OF MARCH, 1891.

An Act to amend Title Sixty, Chapter Three, of the Revised Statutes of the United States, Relating to Copyrights.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section forty-nine hundred and fifty-two of the Revised Statutes be, and the same is hereby, amended so as to read as follows :

"SEC. 4952. [1] The author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, and the executors, administrators, or assigns of any such person shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same ; and, in case of dramatic composition, of publicly performing or representing it or causing it to be performed or represented by others ; and authors or their assigns shall have exclusive right to dramatize *and* translate *any of* their works *for which copyright shall have been obtained under the laws of the United States.*"

SEC. 2. That section forty-nine hundred and fifty-four of the Revised Statutes be, and the same is hereby, amended so as to read as follows :

"SEC. 4954. The author, inventor, or designer, if he be still living,[2] or his widow or children, if he be dead, shall have the same exclusive right continued for the further term of fourteen years,

[1] *Omits :* "Any citizen of the United States or resident therein, who shall be"

[2] *Omits :* "And a citizen of the United States or resident therein,"

upon recording the title of the work or description of the article so secured *a second time, and complying with all other regulations* in regard to original copyrights, within six months before the expiration of the first term; and such persons shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more newspapers printed in the United States for the space of four weeks."

SEC. 3. That section forty-nine hundred and fifty-six of the Revised Statutes of the United States be, and the same is hereby, amended so that it shall read as follows:

"SEC. 4956. No person shall be entitled to a copyright unless he shall, *on or* before *the day of* publication *in this or any foreign country*, deliver at the office of the Librarian of Congress, or deposit in the mail *within the United States*, addressed to the Librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or chromo, or a description of the painting, drawing, statue, statuary, or a model or design for a work of the fine arts for which he desires a copyright, nor unless he shall also, *not later than the day of the publication thereof in this or any foreign country*, deliver at the office of the Librarian of Congress, at Washington, District of Columbia, or deposit in the mail *within the United States*, addressed to the Librarian of Congress, at Washington, District of Columbia, two copies of such copyright book, *map, chart, dramatic or musical composition, engraving, chromo, cut, print or photograph,*[1] or in case of a painting, drawing, statue, statuary, model, or design for a work of the fine arts, a photograph of the same: *Provided, That in the case of a book, photograph, chromo, or lithograph, the two copies of the same required to be delivered or deposited as above shall be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives, or drawings on stone made within the limits of the United States, or from transfers made therefrom. During the existence of such copyright the importation into the United States of any book, chromo, lithograph, or photograph, so copyrighted, or any edition or editions thereof, or any plates of the same not made from type set, negatives, or drawings on stone made within the limits of the United States, shall be, and it is hereby, prohibited, except in the cases specified in paragraphs 512 to 516 inclusive, in section 2 of the act entitled*

[1] These words replace the words "or other article,"

'An act to reduce the revenue and equalize the duties on imports and for other purposes,' approved Oct. 1, 1890; and except in the case of persons purchasing for use and not for sale, who import subject to the duty thereon, not more than two copies of such book at any one time; and except in the case of newspapers and magazines, not containing in whole or in part matter copyrighted under the provisions of this act, unauthorized by the author, which are hereby exempted from prohibition of importation: Provided, nevertheless, That in the case of books in foreign languages, of which only translations in English are copyrighted, the prohibition of importation shall apply only to the translation of the same, and the importation of the books in the original language shall be permitted."

SEC. 4. That section forty-nine hundred and fifty-eight of the Revised Statutes be, and the same is hereby, amended so that it will read as follows:

"SEC. 4958. The Librarian of Congress shall receive from the persons to whom the services designated are rendered the following fees:

"First. For recording the title or description of any copyright book or other article, fifty cents.

"Second. For every copy under seal of such record actually given to the person claiming the copyright, or his assigns, fifty cents.

"Third. For recording and certifying any instrument of writing for the assignment of a copyright, one dollar.

"Fourth. For every copy of an assignment, one dollar.

"All fees so received shall be paid into the Treasury of the United States: *Provided, That the charge for recording the title or description of any article entered for copyright, the production of a person not a citizen or resident of the United States, shall be one dollar, to be paid as above into the Treasury of the United States, to defray the expenses of lists of copyrighted articles as hereinafter provided for.*

"*And it is hereby made the duty of the Librarian of Congress to furnish to the Secretary of the Treasury copies of the entries of titles of all books and other articles wherein the copyright has been completed by the deposit of two copies of such book printed from type set within the limits of the United States, in accordance with the provisions of this act and by the deposit of two copies of such other article made or produced in the United States; and the Secretary of the Treasury is hereby directed to prepare and print, at intervals of not more than a week, catalogues of such title-entries for distribution to*

the collectors of customs of the United States and to the postmasters of all post-offices receiving foreign mails, and such weekly lists, as they are issued, shall be furnished to all parties desiring them, at a sum not exceeding five dollars per annum; and the Secretary and the Postmaster-General are hereby empowered and required to make and enforce such rules and regulations as shall prevent the importation into the United States, except upon the conditions above specified, of all articles prohibited by this act."

SEC. 5. That section forty-nine hundred and fifty-nine of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"SEC. 4959. The proprietor of every copyright book or other article shall deliver at the office of the Librarian of Congress, or deposit in the mail, addressed to the Librarian of Congress, at Washington, District of Columbia,[1] a copy of every subsequent edition wherein any substantial changes shall be made: *Provided, however, That the alterations, revisions, and additions made to books by foreign authors, heretofore published, of which new editions shall appear subsequently to the taking effect of this act, shall be held and deemed capable of being copyrighted as above provided for in this act, unless they form a part of the series in course of publication at the time this act shall take effect.*"

SEC. 6. That section forty-nine hundred and sixty-three of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"SEC. 4963. Every person who shall insert or impress such notice, or words of the same purport, in or upon any book, map, chart, dramatic, or musical composition, print, cut, engraving, or photograph, or other article, for which he has not obtained a copyright, shall be liable to a penalty of one hundred dollars, recoverable one-half for the person who shall sue for such penalty and one-half to the use of the United States."

SEC. 7. That section forty-nine hundred and sixty-four of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"SEC. 4964. Every person, who after the recording of the title

[1] *Omits:* "within ten days after its publication, two complete printed copies thereof, of the best edition issued, or description or photograph of such article as hereinbefore required, and"

of any book and the depositing of two copies of such book, as provided by this act, shall, *contrary to the provisions of this act*, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, *dramatize*, *translate*, or import, or knowing the same to be so printed, published, *dramatized*, *translated*, or imported, shall sell or expose to sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction."

SEC. 8. That section forty-nine hundred and sixty-five of the Revised Statutes be, and the same is hereby, so amended as to read as follows:

"SEC. 4965. If any person, after the recording of the title of any map, chart, *dramatic* or musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts, as provided by this *act*, shall within the term limited, *contrary to the provisions of this act*, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish, *dramatize*, *translate*, or import, either in whole or in part, or by varying the main design with intent to evade the law, or, knowing the same to be so printed, published, *dramatized*, *translated*, or imported, shall sell or expose to sale any copy of such map or other article as aforesaid, he shall forfeit to the proprietor all the plates on which the same shall be copied and every sheet thereof, either copied or printed, and shall further forfeit one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported, or exposed for sale, and in case of a painting, statue, or statuary, he shall forfeit ten dollars for every copy of the same in his possession, or by him sold or exposed for sale; one-half thereof to the proprietor and the other half to the use of the United States."

SEC. 9. That section forty-nine hundred and sixty-seven of the Revised Statutes be, and the same is hereby, amended so as to read as follows:

"SEC. 4967. Every person who shall print or publish any manuscript whatever without the consent of the author or proprietor first

obtained,[1] shall be liable to the author or proprietor for all damages occasioned by such injury."

SEC. 10. That section forty-nine hundred and seventy-one of the Revised Statutes be, and the same is hereby, repealed.[2]

SEC. 11. *That for the purpose of this act each volume of a book in two or more volumes, when such volumes are published separately and the first one shall not have been issued before this act shall take effect, and each number of a periodical shall be considered an independent publication, subject to the form of copyrighting as above.*

SEC. 12. *That this act shall go into effect on the first day of July, anno Domini eighteen hundred and ninety-one.*

SEC. 13. *That this act shall only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits to citizens of the United States of America the benefit of copyright on substantially the same basis as its own citizens; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States of America may, at its pleasure, become a party to such agreement. The existence of either of the conditions aforesaid shall be determined by the President of the United States by proclamation made from time to time as the purposes of this act may require.*

The following are the sections of the Tariff act bearing on the bill;

512. Books, engravings, photographs, bound or unbound, etchings, maps, and charts, which shall have been printed and bound or manufactured more than twenty years at the date of the importation.

513. Books and pamphlets printed exclusively in languages other than English; also books and music in raised print, used exclusively by the blind.

514. Books, engravings, photographs, etchings, bound or un-

[1] *Omits:* "if such author or proprietor is a citizen of the United States, or resident therein,"

[2] SEC. 4971 is as follows: "Nothing in this chapter shall be construed to prohibit the printing, publishing, importation, or sale of any book, map, chart, dramatic or musical composition, print, cut, engraving, or photograph, written, composed or made by any person not a citizen of the United States nor resident therein."

bound, maps and charts imported by authority or for the use of the United States, or for the use of the Library of Congress.

515. Books, maps, lithographic prints and charts especially imported, not more than two copies in any one invoice in good faith, for the use of any society incorporated for educational, philosophical, literary, or religious purposes, or for the encouragement of the fine arts, or for the use or by order of any college, academy, school, or seminary of learning in the United States, subject to such regulations as the Secretary of the Treasury shall prescribe.

516. Books, or libraries, or parts of libraries and other household effects of persons or families from foreign countries, if actually used by them not less than one year, and not intended for any other person or persons, nor for sale.

(In the text as above given, the changes from the existing law are printed in italics, and the omissions are specified in the foot-notes.)

NOTE.—Section 4953 of the Revised Statutes, which prescribes twenty-eight years as the first term of copyright, being left unchanged, is not given in the present act. For its wording, see text of the Act of 1870, p. 108.

IX.

ANALYSIS OF THE PROVISIONS OF THE COPYRIGHT LAW OF 1891.

THE purport of the Chace-Breckinridge-Adams-Simonds-Platt Copyright Act may be briefly summarized as follows:

A.—Works of Literature.

1. Copyright is granted to authors, whether resident or non-resident, for a term of twenty-eight years. A further term of fourteen years (making forty-two years in all) is granted to the author if at the expiration of the first term he is still living, or to his widow or children if he be dead. Unless the author survive the first term or leave widow or children, the copyright is limited to twenty-eight years.

2. It is made a condition of such copyright for all authors, whether resident or non-resident, that all the editions of the works so copyrighted must be entirely manufactured within the United States; the term including the setting of the type, as well as the printing and binding of the books.

This provision was instituted in the new act at the instance of the Typographical Unions, and was insisted upon by them as essential. The Unions were

under the apprehension that if international copyright should be established without such condition of American manufacture, a large portion of the book manufacturing now done in this country would be transferred across the Atlantic, to the injury of American type-setters and printers, and of the other trades employed in the making of books.

3. For a non-resident author, the further condition is attached to his American copyright that the country of which he is a citizen shall concede to American authors copyright privileges substantially equal to those conceded by such foreign state to its own authors.

4. It is also made a condition (applying to both resident and non-resident authors) that the book securing American copyright shall be published in the United States not later than the date of its publication in any other country. Under the British act now in force, the works of British authors must, in order to preserve their British copyright, be published in Great Britain not later than the date of their publication in any other country. It will, therefore, be necessary for English authors to make arrangements with their English and American publishers for a simultaneous date of publication for both sides of the Atlantic.

With the present facilities for the manifolding and typewriting of manuscripts, for the transmitting across the Atlantic in a week's time advance proofs or advance sheets, and for making final arrangements by cable, there need be, for the great majority of books likely to be reprinted, no material

difficulties in the way of securing this simultaneous publication.

The provision was believed by many to be an essential part of the condition that all editions of books securing an American copyright must be manufactured in this country. It was argued that, if a term of twelve months or of six months were to be allowed to a foreign author within which to complete arrangements for his American editions, the importation of the foreign editions during such term must be either prohibited or permitted. In the former case, American readers might, for an indefinite period, be prevented from securing any copies at all of new English books, a delay which would certainly bring about popular indignation. In the second case, the American market could be to some extent supplied with English editions before any American editions were in readiness, and by the time the English author was ready to sell his American copyright, he would find that such copyright possessed very little market value.

The status of the foreign book during such interregnum must in any case be an anomalous one, and would be likely to cause complications.

The assertion has been made that the provision for simultaneous publication was inserted by the publishers with the malicious purpose of preventing the less known British authors, who might not be in a position to make advance arrangements for their American editions, from securing under the act any American copyright.

It is evident, however, that the publishers who were interested in framing the bill were not actuated by any such Machiavellian intentions. It had been made clear that international copyright was expected to prove a business advantage to all the legitimate publishers engaged in reprinting English books, for the simple reason that larger profits could be secured by controlling the market for authorized editions (even when these were sold at the lowest popular prices) than by dividing the market with a number of unauthorized editions. This being the case, it was of course to the interest of the publishers to secure the protection of American copyright for as many foreign works as possible, and the throwing over of any books to the unauthorized reprinters would entail loss upon publishers as well as upon authors.

It was, however, the belief of the publishers, in accepting this provision with the other typographical conditions, that there need be no difficulty in arranging to protect the works of new authors as well as those of the well-known writers.

It seems probable, also, taking into account all the considerations, that the provision for simultaneous publication is unavoidable as long as the other restrictions in the act are retained. When these can be spared, the International Copyright Law of the United States can properly be brought under the provisions of the Berne Convention.

5. The regulations previously in force for making the entries of copyright are continued, and two copies of the book, together with one copy of its

printed title-page, are to be delivered, on or before the day of publication, at the office of the Librarian of Congress, together with a fee for the entry of the title, such fee being, in the case of an American author, fifty cents, and in the case of a foreign author one dollar.

6. While the importation, during the existence of the American copyright, of *editions* of the books so copyrighted, whether the authors of the same be American or foreign, is prohibited, the importation of such books is permitted to the extent of not to exceed two copies in any one invoice, said copies being certified to be "for use and not for sale." Buyers of foreign books which have secured an American copyright, who may prefer for their libraries the foreign editions of such books, are, under this provision, enabled to import, either direct or through an importer, not to exceed two copies of such editions. This provision apparently permits the importation (not exceeding two copies in any one shipment) of unauthorized as well as of authorized foreign editions of books which have been copyrighted in the United States.

7. Foreign periodicals of which there are no American editions "printed from type set in the United States," cannot secure for their contents an American copyright. The importation of such periodicals is left unrestricted, except for such numbers as may contain unauthorized reprints of material which has already in some other form secured an American copyright.

An English author who copyrights and publishes

in the United States a volume, some chapters of which have previously been printed in an English magazine, will probably not be in a position to prevent the reprinting in the United States of an unauthorized issue of the material contained in such chapters. For this portion of his volume no American copyright can, under the present act, be secured. In case all the chapters in the volume have already appeared in a foreign periodical, its American copyright has probably been forfeited.

8. For the purpose of enforcing the prohibition of the importation of editions of books securing American copyright, weekly lists of the books of which the copyright has been completed are to be furnished by the Librarian of Congress to the Secretary of the Treasury, and by the Secretary to the various customs officers concerned.

The non-importation provision makes the status of books by foreign authors, which have secured an American copyright, practically identical with that heretofore in force for copyrighted American works, the importation of foreign editions of which has of necessity always been prohibited. The whole theory of copyright rests on the exclusive control by the author of a specific territory. An author to whom, under domestic or international law, such a control has been conceded, has something to sell for which he can convey a clear title, and for which, therefore, he is in a position to secure a price representing the full market value of his production. An author who can convey to his publisher, in place of an exclusive territory, only the right to compete

with an indefinite number of other publishers of the same work, has no real "copyright" to sell, and the compensation that he can secure will be of necessity comparatively inconsiderable.

The so-called Sherman amendment, which was discussed at some length during the consideration of the present act, authorized the importation of foreign editions of works by foreign authors securing American copyright. It was finally rejected on the several grounds: that it was incompatible with the other sections of the act, which provided for the American manufacture of all books securing American copyright; that it was inconsistent with the purpose of the act to place on a uniform status all books copyrighted here, whether of American or foreign origin; and that it was inconsistent with the essential condition of "copyright," which stands for an exclusive right to the "copy" for a specific territory and for a specific term. The opponents of the amendment cited, as an instance of territorial copyright, the case of the authorized Tauchnitz and Asher editions of the books of British authors, which, while copyright on the continent, would, if imported into Great Britain, be infringements, and the importations of which into Great Britain had, therefore, always been prohibited.

The Sherman amendment, in its original form, authorized the importation of foreign editions of books by American as well as by foreign authors, and did not even stipulate for the permission of the authors; and in this form it would of necessity have rendered null and void domestic as well as inter-

national copyright. While such a result was doubtless not the intention of the mover, Senator Sherman of Ohio, or of Senators Hale, Plumb, Carlisle, Daniels and the others who supported him, this original amendment was actually carried in the Senate by a vote of 25 to 24. It was rescinded three days later, after its actual purport had been made clear by outside criticism. In its corrected shape, in which it authorized the importation of foreign editions of books by foreign authors only, it was finally defeated by the vote of 21 to 28. The whole episode was a noteworthy instance of slovenly and hap-hazard legislation.

9. The foreign author possesses under the act the same control over translations of his books as has previously been possessed by the American author, and such translations can hereafter be issued only under his authorization. This provision gives, namely, to German and French authors the control of the issue in this country of English versions of their books, and to English authors a similar control, not only over a reprint in English, but over one made, for instance, in German. There is, however, no prohibition of the importation of an edition of a book printed in a language other than that in which it has secured its American copyright.

B.—Works of Art.

Foreign artists and designers are accorded the same term or terms of copyright as those given to foreign authors (and to domestic artists).

The condition of American manufacture is attached to the copyright of reproductions in the

form of chromos, lithographs, or photographs. American manufacture was, however, not made a condition of the more artistic forms of reproductions, and foreign artists are, therefore, now in a position to control the American copyright of engravings or photogravures of their productions, whether these engravings, etc., are "manufactured" in Europe or in the United States. This provision is held by the artists and art publishers of France, who have in the past years suffered severely from American "appropriations" of their productions, to be of special importance.

C.—Music.

Musical compositions by foreign composers are accorded the same terms of American copyright as those given to American compositions, and for productions of this class American manufacture is not made a condition of the copyright.

The condition of reciprocity applies to the copyright of both music and art.

The act goes into effect July 1st, 1891, but its provisions become actually operative between the United States and any foreign state only when the president has made announcement, by proclamation, that the necessary conditions of reciprocity have been fulfilled by such state.

The above suggestions concerning the purpose and probable operation of the provisions of the new act are submitted with all deference to the opinions of better authorities, and will very probably be subject to correction in one respect or another after

the act has come into effect. It is very probable that some questions will arise which cannot be definitely settled without the interpretation of the courts.

G. H. P.

March 25, 1891.

X.

EXTRACTS FROM THE SPEECHES OF SENATORS PLATT AND EVARTS, IN THE COPYRIGHT DEBATE IN THE SENATE.

February 10, 1891.—MR. PLATT, in calling up the Copyright Bill, said: "Mr. President, I do not wish to take the time of the Senate in any lengthy explanation of this bill. We have now waited fifty-three years for this moment, when an international copyright law could be enacted. Fifty-three years ago, Henry Clay made a report which, in the estimation of thoughtful men, thoroughly demonstrated not only the expediency, but the duty of extending the right of copyright to foreigners by the passage of an international copyright law.

"I will simply say that the bill proceeds upon one broad fundamental principle, and that is that what a man fashions by his brain, his genius, his imagination, or his ingenuity is property, just as much as what he fashions by his hands, or acquires by manual or other labor; and that, being property, it should be property the world over, and should be recognized as such. If an American writes a book, the right to publish that book should be recognized as property not only in this country, as it now is under the Constitution, but as property everywhere. If a citizen of another country writes a book, the

right to publish that book should be as much property in this country as in his own country.

"That is the broad principle on which this bill rests—the protection of property, for which governments are instituted. The principle has been recognized in the case of patents, and not a little of the growth and prosperity of the country is due to the fact of the recognition by this government, that a foreigner who invents a new machine or discovers a new process shall be entitled to secure a patent for the same in this country.

"The Constitution puts authors first, in saying that Congress may secure to them exclusive rights; it puts them before inventors; but the legislation of the country has extended the provisions of the Constitution in the matter of inventions very much further than it has in the matter of authorship, and those who come in under the generic term of authors.

"I believe myself no measure before this Congress is so calculated to enhance not only the intellectual, but the material growth of this country, as this copyright bill, and I trust it will pass without amendment.

"As I said, we have waited fifty-three years for this opportunity, and this opportunity may be wholly lost if at this time amendments should be pressed in the Senate.

"I do not know that I should call this a perfect bill, but it is a bill which has had long consideration by committees of the Senate and of the House of Representatives. It comes to us from the House,

and now is our opportunity to obtain the passage of such a law. If there is anything in it which needs further examination, which would call for further legislation, the way for the people who desire international copyright to obtain it is to pass this bill while we have the opportunity to pass it, and to establish the principle of copyright in this country for aliens, and copyright in Europe for Americans. Then, if the provisions of the act may be found to need modification, you can trust to the future that justice will be done." . . .

February 14.—Mr. Platt said (replying to Mr. Allison and Mr. Sherman):

. . . "The fundamental idea of a copyright is the exclusive right to vend, and the prohibition against importation from a foreign nation is necessary to the enjoyment of that right. It is the right to vend within the country where the copyright is granted that gives value to the work of the author. . . .

"I was saying that the very essence of copyright is the privilege of controlling the market. That is the only way in which it can be reached; it is the only way in which the right can be vindicated; it is the only way in which a man's property in the work of his brain, or his imagination, or his genius, can be assured. I am sorry to say that I apprehend a good deal of this contention arises from the lack of a desire to protect a man in that species of property; and I am afraid the idea, so prevalent, and so increasing in the country in these days, that property rights generally are not so very sacred, has to

some extent affected the consideration of this subject.

"Of course the right is exclusive. It is exclusive in this country under our laws, and it is exclusive in every country which has copyright of any kind, national or international. The man who has a copyright in England, and also in Germany, cannot import his books from Germany into England, or his engravings from Germany into England, unless he be the proprietor in England of the copyright; nor can the English proprietor of the copyright export his books, his engravings, or whatever be the subject of his copyright into Germany unless he is the proprietor of the copyright in both countries.

"There, of course, the consent of the proprietor is not required; but without the consent of the proprietor of the copyright, whether he be the publisher himself, or whether the person to whom the author has transferred his right is the publisher, exportation and importation are prohibited. The right is exclusive, and it must be. It is in the essential nature and characteristic of the property that it should be thus protected. Why should not a man's property in his work be protected? Why should anybody want to import from a foreign country a work when the United States has given to the person of this country its sole market for the work?

"Mr. President, I insist that geographical divisions ought not in any way to affect the question of copyright. Having once laid the foundation, that it rests upon the essential and inherent right of a

man to be protected in his property, it does not make any difference whether the owner of it be an American or a foreigner. If the author or the artist in this country, being an American citizen, is entitled to be protected in the reproduction of his work in this country, there is nothing in the fact that a sea divides us from another country which would warrant us in saying that our country should have a right to appropriate the work of the foreign author or of the foreign artist. It is appropriation that people are after when they seek to limit copyright to a single country, and to the citizens of a single country." . . .

February 10.—Mr. Evarts said, referring more particularly to the Sherman amendment: "Mr. President, I rise for the purpose of speaking to the amendments proposed, but I will submit a few observations brought out by the treatment given to this subject by the Senator from Ohio (Mr. Sherman).

"The Senator seems to misconceive the nature of copyright or patent protection.

"We perfectly understand it in our application under our Constitution and our laws to the copyrights and the patent rights which we grant here to our citizens. It has nothing to do with the question whether there should or should not be any profit or tax of importation or otherwise, or any excise upon printing books which may fall under this or that interest of Congress in its revenue system. So it is in regard to any foreign patent or any foreign author.

"The sole question for us is what we shall do concerning something which is the essential nature

of copyright and patent protection, namely, monopoly. It does not touch the question whether there shall be taxation here or there on the general property of the country, or on general importations into the country. It is this one direct proposition, as correctly expressed in the Constitution as the most careful phrase that could be adopted. It is to encourage these advantages to the world, that is, this world of ours, in this country, so that we can draw into the service of the community what is, as originated, the private possession of inventors and writers.

"It is a monopoly with them before they make their composition or invention open, and it is simply a contract which has been thought wise for the public welfare that we shall say to the author or inventor, 'for a limited period you shall have a monopoly under certain conditions of public use while your monopoly exists, and afterwards it shall be free.'

"So no confusion of ideas should be introduced into this debate, based on the fact that we are now proposing to make the same treaty of monopoly with a foreign author that we make habitually with our own authors. We have led the way, in regard to patent rights, by which we have drawn into the advantage of this country patent inventions upon the principle of monopoly equivalent to our own; and the question then as to whether we should be at liberty to import also the manufactured inventions on a duty or because one would like to have an article that was made by a Sheffield manufacturer

instead of by a Lowell manufacturer is wholly outside of the question of monopoly.

"It has no proper application to the case. It is an invasion of the principle. If you do not wish to give a monopoly then do not give it, but do not say with one word, 'we give you a monopoly, provided, however, that such monopoly can be evaded by the importation of manufactures produced abroad.'"

PUBLISHERS AND THE COPYRIGHT BILL.

The passage on the last day of Congress of the International Copyright Bill was preceded by an interesting debate in the Senate over the report of the Conference Committee. Apropos of the charges that the bill contained undue restrictions by reason of "the greed of the publishers," it is interesting to read the remarks on this point of Senator Platt and of Senator Hiscock, who were both members of the Senate Conference Committee.

According to the report of the debate in the *Congressional Record*, Senator Platt said:

"I think the Senator from Delaware hardly does the publishers of this country justice in the statement which he has just made. I think, so far as the publishers are concerned, they would be willing, and have been willing, to accept a good many modifications of the bill; but the people who do the work, the printers, have insisted, and I think with a great deal of justice, that if we are going to allow to a foreigner the exclusive market for his work we ought at least to couple with it a provision that the

work shall be done in this country, inasmuch as, practically, if an American goes abroad to obtain a copyright in a foreign country the work on his book will be done in that country."

Senator Hiscock said (also in reply to Senator Gray):

"The Senator certainly should not insinuate in any way, or charge that as against the proposition we have been pressed by the publishers, or that they have thronged the lobby in opposition to it. I say to him that in my opinion that the proposition (*i. e.*, the Sherman amendment) will be entirely acceptable to the publishers. [illegible] there is an interest that is entitled to [illegible] on this great question, the printers; [illegible] been heard. In their judgment a [illegible] o pass here, the effect of which mig[illegible]ler the publication of books, either o[illegible]y or of foreign authors to be sold here, to England, Germany, France, or the islands of the sea. The arguments which they have urged against it, the necessities which they have urged, were controlling upon the House conferees, and I do not hesitate to say that they have controlled my action in this matter. Do not lay it, therefore, to the publishers; they may be eliminated; and place the blame, the fault, if there is any, precisely where it belongs. I do not believe it to be a fault, or that they are to blame for it."

This evidence from the two men who were best acquainted with the facts shows clearly the real attitude of the publishers in relation to the bill.

THE VOTE IN THE HOUSE OF REPRESENTATIVES, DECEMBER 3, 1890, BY WHICH THE COPYRIGHT BILL WAS PASSED.

Yeas.	*Nays.*
Adams.	Abbott.
Allen, Mich.	Atkinson, Pa.
Andrew.	Barnes.
Arnold.	Bergen.
Atkinson, W. Va.	Bland.
Baker.	Blount.
Banks.	Breckinridge, Ark.
Bartine.	Brewer.
Bayne.	Brickner.
Beckwith.	Brookshire.
Belden.	Brown, Ind.
Belknap.	Buchanan, Va.
Bingham.	Candler, Ga.
Boothman.	Cannon.
Boutelle.	Clements.
Breckinridge, Ky.	Cobb.
Brosius.	Cooper, Ind.
Brunner.	Crisp.
Buchanan, N. J.	De Lano.
Burrows.	Dibble.
Burton.	Dockery.
Butterworth.	Dolliver.
Bynum.	Edmunds.
Caldwell.	Enloe.
Campbell.	Finley.
Carter.	Flick.
Caswell.	Forman.
Cheadle.	Forney.

Yeas.	*Nays.*
Cheatham.	Fowler.
Chipman.	Gest.
Clancy.	Goodnight.
Clark, Wyo.	Hare.
Cogswell.	Hatch.
Coleman.	Haugen.
Comstock.	Hays, Iowa.
Cooper, Ohio.	Haynes.
Covert.	Heard.
Craig.	Henderson, Ill.
Culbertson, Pa.	Henderson, Iowa.
Cummings.	Henderson, N. C.
Cutcheon.	Herbert.
Dalzell.	Holman.
Dargan.	Hooker.
Darlington.	Kelley.
Dingley.	Kerr, Iowa
Dorsey.	Kilgore.
Dunnell.	Lacey.
Dunphy.	Lane.
Evans.	Lanham.
Farquhar.	Lester, Va.
Fitch.	Mansur.
Flower.	Martin, Ind.
Geissenhainer.	Martin, Texas.
Gibson.	McClellan.
Greenhalge.	McCreary.
Grout.	McMillan.
Hansbrough.	McRae.
Harmer.	Mills.
Hemphill.	Montgomery.
Hermann.	Moore, Texas.
Houk.	Morrill.
Ketcham.	Norton.
Kinsey.	Oates.
La Follette.	O'Ferrall.
Laidlaw.	O'Neill, Ind.
Langston.	Owens, Ohio.
Lansing.	Paynter.

Yeas.

Lawler.
Laws.
Lee.
Lester, Ga.
Lodge.
Magner.
Maish.
McAdoo.
McCarthy.
McComas.
McDuffie.
McKenna.
McKinley.
Miles.
Miller.
Moffitt.
Moore, N. H.
Morey.
Morrow.
Morse.
Mudd.
Mutchler.
O'Donnell.
O'Neil, Mass.
O'Neil, Pa.
Osborne.
Owen, Ind.
Payne.
Penington.
Post.
Price.
Quackenbush.
nn.
.dall.
cilly.
Reyburn.
Rusk.
Russell.
Sawyer.

Nays.

Payson.
Peel.
Perkins.
Perry.
Peters.
Pierce.
Ray.
Reed, Iowa.
Richardson.
Rockwell.
Rogers.
Sayers.
Skinner.
Smith, Ill.
Smith, W. Va.
Springer.
Stewart, Texas.
Stone, Ky.
Sweney.
Taylor, Ohio.
Thomas.
Turner, Ga.
Wheeler, Ala.
Whitelaw.
Whiting.
Wike.
Williams, Ill.
Wilson, Mo.

Republicans 25, Democrats 70, in all 95.

Yeas.

Scull.
Sherman.
Shively.
Simonds.
Smyser.
Snider.
Spinola.
Spooner.
Stephenson.
Stewart, Vt.
Stivers.
Stone, Pa.
Sweet.
Tarsney.
Taylor, Tenn.
Taylor, Ohio.
Townsend, Colo.
Townsend, Pa.
Tracey.
Tucker.
Vandever.
Van Schaick.
Vaux.
Waddill.
Wade.
Walker.
Wallace, N. Y.
Wiley.
Willcox.
Williams, Ohio.
Wilson, Wash.
Wilson, W. Va.
Yoder.

Republicans 96, Democrats 43,
in all 139.

VOTE IN THE SENATE MARCH 4, 1891, BY WHICH THE COPYRIGHT BILL WAS PASSED.

(AT 2 O'CLOCK IN THE MORNING.)

Yeas.	*Nays.*
Aldrich.	Bate.
Allen.	Berry.
Chandler.	Call.
Dawes.	Carlisle.
Dixon.	Casey.
Dolph.	Coke.
Edmunds.	Cullom.
Farwell.	Daniel.
Frye.	Faulkner.
Hawley.	Gorman.
Hiscock.	Gray.
Hoar.	Ingalls.
Jones of Nevada.	Kenna.
McMillan.	Morgan.
Morrill.	Pettigrew.
Pasco.[1]	Plumb.
Pierce.	Ransom.
Platt.	Sherman.
Sawyer.	Walthall.
Shoup.	Republicans 6, Democrats 13,
Spooner.	in all 19.
Stanford.	
Stewart.	

[1] Voted first with the opponents: then changed his vote for the purpose of moving reconsideration.

Yeas.

Warren.
Washburn.
Wilson of Iowa.
Wolcott.

Republicans 26, Democrats 1,
in all 27.

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XI.

RESULTS OF THE COPYRIGHT LAW.

Reprinted from the *Forum* for January, 1894.

THE Copyright Act which became law March 4, 1891, and the provisions of which went into effect July 1st of the same year, did not constitute a new statute, but comprised simply amendments to certain sections of the statute relating to copyright, which had been in force since July, 1870.[1]

It is not practicable to state with precision what the effects of the law have been during the three years of its operation, as there is a lack of trustworthy statistics concerning literary or publishing conditions either for the period prior to the act or for the present time. In arriving at any approximate estimate of these effects, it is in order, I judge, to consider: first, the results secured by authors,

[1] The most important changes in the law (omitting from present consideration a few matters of technical detail) were as follows. First: Its provisions, previously limited to the works of authors (under which term I include for convenience artists and composers) who were "residents of the United States," were extended to cover the productions of non-residents on condition that such non-resident author was a resident of a country which should concede to American authors similar privileges. Second: All editions of the works copy-

American or foreign; second, the results for American readers; and, third, the effect on American publishing conditions.

The most important results of the new copyright policy are naturally to be looked for in the literary relations between the United States and Great Britain, relations which the supporters of international copyright naturally had particularly in view.

Before the Copyright Act, the more reputable of the English publishers who were not willing to "appropriate" American books were deterred from arranging for authorized editions by the certainty that, if the books found favor with the English public, "piracy" editions would promptly appear. The appearance of many American titles in the lists of the leading English publishers, and the increased importance of the publishing done by American firms through their branch houses in London, are evidence that satisfactory arrangements with American authors are now being made, and that there must be a substantial increase in the returns from their English editions. It is probable, nevertheless, that these English returns are less considerable than were hoped for. Certain authors who have assumed

righted must be entirely manufactured in the United States. This provision imposed a new restriction upon American authors, who had previously been at liberty to have their books manufactured on either side of the Atlantic. Third: The book, to secure American copyright, must be published in the United States not later than the date of its publication in any other country. The provisions of the act became operative between the United States and any foreign state only when the President had made announcement, by proclamation, that the necessary conditions of reciprocity had been fulfilled by such State.

that the lack of international copyright was the only obstacle that prevented a transatlantic success have learned that there are other difficulties in the way. The English public is conservative. Scholarly readers are not easily convinced of the scholarly trustworthiness or importance of works "from the States," while in light literature, and particularly in fiction, the supply from English pens is more than sufficient to meet the demand. It is further the case that for the last two years, and particularly during the year 1893, there has been a continual depression in the book-trade of Great Britain, and the English booksellers have been less willing and less able to invest in "new and experimental lines of literature," to which class, in their opinion, books by transatlantic writers would necessarily belong. The sales in England of authorized editions of "average" American books have therefore increased less rapidly than was hoped. There has, however, been a steady growth in these sales, and it may be confidently predicted that the near future will witness a more rapid development. The gains, on the other hand, in the case of authors who can command a public, have doubtless been very substantial. American authors whose names have become known in England are beginning also to secure some receipts from Paris, Leipsic, Berlin, and Stuttgart, but for some time to come such Continental receipts can hardly be considerable.

American publishers are now in a position to give to American fiction a larger measure of favorable attention than was possible when such volumes had

to compete with English stories that had not been paid for; and the removal of this disturbing factor must have proved a definite advantage to American novelists, and especially to the newer writers. This advantage has, however, been lessened or delayed by the fact that during the last year large stocks of "remainders" of the novels issued by the "reprinting" firms that have become bankrupt have been crowded upon the book-stands and offered at nominal prices.[1] The disappointment of English authors with the results of the copyright law has been keener than that of their American brethren, because their expectations were so much larger. During the half-century in which international copyright has been talked about, many statements had been put into print and talked over in English literary circles, setting forth the enormous circulation secured in "the States" for unauthorized editions of English books, and particularly of English fiction; and large estimates were arrived at as to the great fortunes that were being made out of these editions by the piratical publishers. The writers whose names were known on this side of the Atlantic, and who, after arranging for authorized American editions, had received the honor of being pirated, convinced themselves—not unnaturally—that, when this piratical competition was removed, the payments from their authorized publishers could be very greatly increased. The authors who had secured neither the

[1] Since the writing of this article, the competition of the increasing group of ten cent and five cent magazines is exerting a serious influence on the circulation of fiction in book form. March, 1896.

tangible advantage of an authorized edition nor the empty compliment of a piratical one, felt in many cases equally assured that it was only the lack of copyright protection which prevented American publishers from paying large sums for the privilege of introducing their books to the American public. With both groups of authors the phrase "the millions of American readers" was likely to be used. I have myself heard the phrase "the sixty-five millions of American readers." It was inevitable that the results should bring disappointment to such glowing expectations. As Mrs. Todgers plaintively remarked of her trials in keeping a London boarding-house: "A joint won't yield—a whole animal would n't yield—the amount of gravy the young gentlemen expect each day at dinner."

There has been, nevertheless, a substantial advance. The authors of the first rank (using the term simply for commercial importance) have certainly very largely increased the receipts from their American sales, while for authors of the second grade there has doubtless also been a satisfactory gain. I think it probable—though on such a point exact statistics are unobtainable—that in one division of literature, that of third-class or lower grade fiction, there has been a decrease in the supply taken from England for American readers. There never had been any natural demand in America for English fiction of this class, and it had been purveyed or "appropriated" chiefly in order to supply material for the weekly issues of the cheap "libraries." The lessening of the supply of this class of literary provender

may be classed as one of the direct gains from international copyright.

English authors have to-day the satisfaction that they are able to place their books before their American readers with a correct and complete text. Before the amended Copyright Law, English books had to be reprinted on what might be called a "scramble system." It was often not practicable to give to the printing of the authorized editions sufficent time and supervision to ensure a correct typography, while the unauthorized issues were not infrequently—either through carelessness or for the sake of reducing the amount and the cost of the material—seriously garbled. The transatlantic author, who was then helpless to protect himself, can now, of course, arrange to give at his leisure an "author's reading" to his proofs.

The copyright law has, in my opinion, secured substantial advantages for American book-buyers. In one class of literature only have the prices increased. The cheapest issues of current new fiction sell at forty cents or fifty cents, in place of fifteen cents or twenty-five cents. It is to be borne in mind, however, that these prices do not stand for the same amount or for the same quality of material. The fifteen-cent "quarto" of the "libraries," hastily and often carelessly printed, was an offence to the eye and probably not infrequently an injury to the sight. It was not, in the proper sense of the term, a book, and could not be preserved as one. It was usually bought for railroad reading, notwithstanding the unsuitableness of its typography for such a pur-

pose, and was often thrown away at the end of the journey. The decently printed half-dollar novel of to-day gives much better value for its cost, and may be preserved to be of service to many readers.

It is the case also that the fifteen-cent and twenty-five cent "libraries" were not crushed out by the copyright law, but for some time before the passage of the law were rapidly coming to an end, as, even with the aid of pirated material, they could not be published at a profit. A large number of new concerns, impressed with the belief that money was to be made in the publishing of pirated fiction, had gone into the "reprint" business shortly before the passage of the Copyright Act. Their cut-throat competition speedily destroyed the very inconsiderable possibility of profit in the business. Books available for reprinting became exhausted, so that it was difficult to secure enough of material to keep up the weekly issues required to secure periodical postage rates, and, as one result, the stuff used for the weekly issues became more and more "rubbishy." Even before the act, there had been not a few failures among these "reprint" publishers. There have been more important failures since, and the "bargain" departments in the dry-goods shops are still working off the remainders of the bankrupt stock, much of it, like many other "bargains," dear at any price.

Except in this class of cheap fiction, there has been with copyrighted foreign books a steady tendency to lower prices. Before, it was the frequent practice of the publisher of a higher-grade book (knowing that if it secured for itself a preliminary

success, he would have to contend later with piratical competition) to secure for his first edition the highest price that the market would bear. In the cases in which there was no second edition, this high price remained the only price to the readers who had to have the book. Now, the American edition of such a work is planned at once for the widest possible market, and to this end is issued at a popular price. The publisher knows that, when he can control the market, a wide sale at the low price demanded by the requirements of American readers secures in the end the most remunerative results. The prices, therefore, of literature other than fiction—that is, of history, biography, science, and the like—are lower than before. On this point I will cite the testimony of Mr. Spofford, the Librarian of Congress, who is in a position to know:

"The first great benefit of international copyright has been the gradual decline in the price of standard foreign works. Before the passage of the act,—when, for instance, an English publishing house could not be protected in its editions of important medical and scientific works by foreign authors,—the only course to pursue was to charge a very high selling-price for a limited market, which rarely extended beyond Great Britain. Works of this class are now, however, planned to secure a market on both sides of the Atlantic, and the result is much larger sales at popular prices. This brings a substantial advantage to the more scholarly readers of the community, who are able to secure, at lower prices than heretofore, editions of scientific works which have been carefully printed to meet their own special requirements. The dread that the bill would create publishing monopolies proves to have been entirely unfounded. One of the most noteworthy results of the law, from the American standpoint, has been the cleansing effect upon the character of reprinted fiction. By far the larger proportion of the cheap novels of an undesirable character with which the market has been flooded during the past

fifteen years were the work of English or French authors. A group of publishing houses in the United States, which made a specialty of cheap books, vied with each other in the business of appropriating English and Continental trash, and printed this under villainous covers, in type ugly enough to risk a serious increase of ophthalmia among American readers."

There is a noteworthy increase in the number of international undertakings, works, or series, the contributions to which are written by the best authorities on special subjects, the writers for which are secured from this country, from England, or from the Continent, wherever the best men happen to be. Such international publications existed before the copyright, but were then carried on at a special disadvantage. Now, the editorial work can be done with proper deliberation, and the publishers can afford to pay the best writers for the best work. The cost of the authorship (and of the illustrations, if any are required) being divided between two or more markets, publishers are able to give to the readers, at a moderate price, the best material in a satisfactory and attractive form. Publications of this class often require several years for their preparation, and two years is not a long enough period to enable this phase of the results of copyright to be fairly tested. With an adequate protection of property in literary productions, irrespective of political boundaries, we can confidently expect in the near future a large development of such international undertakings,—a development which will prove of direct service to both writers and readers and to the work of higher education.

While the artists of the Continent, whose creations, reproduced in the form of engravings or photogravures, are available for sale in the United States, are deriving from the law, if not as large returns as were at first hoped for, yet substantial advantage, the Continental authors have been very seriously disappointed, and seem to have legitimate grounds for their disappointment and for their criticism. These authors complain that they have been invited to a "barmecide feast," and that they have "thanked us for nothing." The condition that the work, to be protected by American copyright, must be manufactured in this country and that the American edition must be published not later than the edition in the country of origin, causes inconvenience and difficulty to the authors of England; but it is practically prohibitory in the cases of works originally issued in a foreign language. It is almost impossible for a French or German author to arrange to issue his book in this country (either in the original or in a translation) simultaneously with its publication abroad. The resetting in the original language, for such limited sales as could be looked for here, would be unduly expensive, while time is required for the preparation of a satisfactory translation. As a result of this restriction, but few French or German authors have been able to secure the protection of the act, and the French Society of Authors, to whose initiative and efforts were chiefly due the international copyright system now in force throughout Europe, has found occasion to criticise very sharply the procedure of the Ameri-

cans in granting literary copyright in form while withholding it in fact.

While the Copyright Act is defective as well in its bearing upon the interests of Continental authors as in sundry other respects, and ought in my judgment certainly to be amended, I am of opinion that it would be unwise at this time to make any effort to secure such amendments. The public opinion which creates and directs legislative opinion is not yet sufficiently assured in its recognition of the rights of literary producers, to be trusted to take an active or intelligent interest in securing more satisfactory protection for such producers. There would be grave risk that, if the copyright question were reopened in the present Congress, we might, in place of developing or improving the copyright system, take a step backward, and lose the partial measure of international copyright that it has taken the efforts of half a century to secure.

The provision establishing international copyright is only a clause in the general Copyright Act, and the whole act ought before many years to be carefully revised. Work of this kind, instead of being referred at the outset to a Congressional committee whose interest in the subject or ability to consider it intelligently could not with certainty be depended upon, ought to be entrusted to a Commission of experts selected for the purpose, which should be instructed to take evidence and to submit a report to serve as a basis for legislation. This is the system that has been pursued with the copyright legislation of England, France, Germany, and Italy, and is what

might be termed the scientific method of arriving at satisfactory legislation on subjects of intricacy or complexity.

Among the recommendations that would be placed before such a Commission would be one for the lengthening of the term of copyright. The present term (twenty-eight years, with a right of renewal to an author, to his widow, or to his children, for fourteen years) is shorter than that of any civilized country. The British term is forty-two years, or the life of the author and seven years, whichever term be the longer; the German, the life of the author and thirty years; the French, the life of the author and fifty years. The amended British law now pending in Parliament (the Monkswell bill) accepts the German term, the life of the author and thirty years. Under the American law, an author may see his earlier productions pirated during his own lifetime, as happened to Longfellow, and, more recently, to Donald G. Mitchell.

By the time an amended copyright bill is in shape for consideration, it is probable that the typographical unions will have convinced themselves that they do not require the aid of the "manufacturing" provision forbidding the importation of foreign type or plates for copyrighted books. Such a provision has no logical connection with copyright, but belongs rather with the prohibitory division of a tariff act, such as that which now forbids, as equally dangerous and undesirable, the importation of obscene literature and of ships. When, with a developed public opinion and a more robust condition of mind on the

part of the typographers, the conclusion has been reached that the manufacturing condition can be spared from the Copyright Act, the United States will be free to unite with the other civilized nations of the world in accepting the world-wide copyright of the Berne Convention.

G. H. P.

XII.

CASES AND DECISIONS SINCE THE ACT OF 1891, THE ISSUES OF WHICH HAVE INVOLVED QUESTIONS OF INTERNATIONAL COPYRIGHT.[1]

Fraudulent Reproduction of Works of Art.

U. S. Circuit Court, New York City. Townsend, Judge.

Fishel, Adler & Schwarz vs. *Lueckel, Unger & Co.*

In *re* reproduction, by photogravure, of certain works of art, which had been duly copyrighted in Washington. The reproductions omitted the tint, title, and platemark. They were stamped "made in Germany," and were exported for sale in Europe.

Judgment for plaintiffs for $750, amount of alleged profits. Photographic negatives to be delivered to plaintiffs. Perpetual injunction granted. (Dec., 1892).

Copyright Requirements for a Work of Art Originating Abroad.

U. S. Circuit Court, of Mass. in Boston. Putnam, Judge.

Werckmeister (on behalf of the Photographische Gesellschaft of Berlin) vs. *Pierce and Bushnell of New Bedford.*

The plaintiffs were the owners of the exclusive rights of reproduction of the design of a painting by G. Naujok, a resident of Ger-

[1] For information concerning the cases here cited, I desire to express my acknowledgments to the following counsel, who are regarded as authorities in questions of copyright law: Samuel J. Elder of Boston, and Rowland Cox, D. G. Thompson, Roger Foster, A. T. Gurlitz, Everett P. Wheeler, and Arthur von Briesen, of New York.

many, entitled "Die Heilige Cecilia." They entered for copyright in Washington the design of this painting, filing with the entry a reproduction in photograph. The defendants were offering for sale unauthorized reproductions (taken by a photographic process) of the same work. Judgment in favor of plaintiffs. Injunction granted August, 1893. In September, 1894, this decision was, on appeal, affirmed.

January, 1896, the above decision was reversed by the U. S. Circuit Court of Appeals for the first circuit of Mass., opinion of Judges Colt and Nelson, Judge Webb dissenting. The injunction against original defendants was under this decision dissolved, the copyright claimed by them being adjudged invalid.

The conclusion presented in the dissenting opinion of Judge Webb is worded as follows: "I cannot concur with either the reasoning or the conclusions of the majority of the Court, but am of the opinion that the judgment of the Circuit Court (Judge Putnam's) should be affirmed."

The case turned, 1st, upon the requirement of the Act for the inscription upon the original design (in this case an oil painting) of the notice required by law, and 2d, upon the question whether the plaintiff ought not to have based his claim for copyright upon the photograph produced by him, which he could properly have entered for copyright, and have limited his claim to the control of such photographs, in place of setting up a claim to control the design of the painting, concerning which the copyright requirements had not been fulfilled: and 3d. Whether the public exhibition of the painting constituted a publication in the sense of the law.

The court held that the failure to place on the painting the notice of copyright constituted a fatal defect to the American copyright, even though said painting had not been brought to the country, the painting itself being the original design for which copyright was claimed; and held, further, that the public exhibition of the painting constituted a publication.

The affirmative points decided under the several decisions above presented are stated by the plaintiff to be as follows:

1. That the right to reproduce photographic copies from paintings painted abroad by foreigners could be assigned to the "Photographische Gesellschaft," of Berlin,

2. That it was proper and legal for the photographic reproductions of such paintings to be marked "Copyright, 1892, by Photographische Gesellschaft,"

3. That the "Photographische Gesellschaft," as the owner of the copyright upon such painting, is protected against all unauthorized reproductions of the same in any form,

4. That it was not necessary for the "Photographische Gesellschaft" photographs to be printed from negatives or transfers made within the limits of the United States.

The case will be appealed to the Supreme Court. If this highest authority should confirm the decision arrived at by the majority of the Massachusetts Circuit Court, it will put very serious difficulties in the way of securing American copyright for works of art originating abroad,—and will give ground for fresh attacks upon the Act of 1891, on the part of Germany, France, and Italy.

The Britannica Cases.

The Britannica Cases, 1879–1893.

The first of the series of cases which had to do with the unauthorized issues of the ninth edition of the "Encyclopædia Britannica" was initiated twelve years before the enactment of the International Copyright Act, and the latest of the series, while decided in 1893, was not based in any way upon the provisions of that Act. These cases involved, however, certain issues that could be described as international, and as the final decision was arrived at within the term specified for this chapter, I think it in order to present a summary of the series.

The first case, that of *Black et al.* vs. *Stoddart*, had been initiated in 1879, in the U. S. Circuit Court for the Eastern Dist. of Penna. The plaintiffs, A. and C. Black, of Edinburgh, were the publishers of the "Encyclopædia Britannica," the ninth edition of which was at that time in course of publication.

This edition was imported into the United States by Little, Brown & Co., of Boston, who acted as agents for the publishers. The defendants, J. M. Stoddart & Co., of Philadelphia, had undertaken the production of an unauthorized reprint, and of this reprint they had issued the first seven or eight volumes. There was no ground under which the owners of the work or their American agents

could claim American copyright in the material contained in these earlier volumes. Before the publication of the set had progressed beyond the seventh volume, the Blacks arranged with Charles Scribner's Sons, of New York, to publish a cheaper edition of the "Encyclopædia" from duplicate sets of plates which were sent from Edinburgh for the purpose. It was the intention, in planning this popular edition, to render unprofitable the competition of such unauthorized reprints as that of the Stoddarts, and also to secure a wider sale for the work than could be looked for for the higher-priced imported volumes. With the view to making certain divisions of the material more valuable for the requirements of American readers, articles from American contributors were secured for the tenth volume and for certain succeeding volumes. For the purpose of testing the practicability of protecting the volume as an entirety, that is to say, of preventing a literal reprint, two or three of the American contributions to the tenth volume were issued in pamphlet form as separate publications, which were duly entered for copyright.

Plaintiffs sought an injunction to restrain the defendants from including these copyrighted articles in their reprint of the tenth volume. Judge Butler, in denying the injunction, rather went out of his way (as if for the purpose of foreshadowing the opinion of the court on the main issue, and thus of discouraging the further prosecution of the suit) to characterize the proceedings as an attempt on the part of aliens to interfere with a legitimate American industry. The plaintiffs were discouraged at this attitude of the court and were unwilling to authorize their American representatives to continue the suit. The Stoddart edition of the "Encyclopædia" was completed, but it was itself interfered with by the competition of one or two still cheaper reprints, for one of which the plates were reproduced by the new photographic process. The Stoddart undertaking proved in the end unremunerative, and the publishers failed.

In 1889, two suits were brought in the U. S. Circuit Court for the Southern District of New York, by Black *et al.* against the Henry G. Allen Co.

One of these suits was brought upon an article by Francis A. Walker, entitled "United States, Part III, Political Geography and Statistics," which had been duly copyrighted; and the other upon an article by Alexander Johnston, entitled "United States, Part I, History and Constitution," which also had been duly copyrighted and had been published in separate form. These articles were later included

in the twenty-third volume of the "Cyclopedia." The defendants interposed demurrers to these bills of complaint. The demurrers came on for argument before Judge Shipman, who decided that the copyright of these two articles was valid and that the defendants' demurrers should be overruled and the defendants compelled to answer the bills. On the issues raised by such demurrers, the Judge says: "There is no vital difference in regard to the infringement of an author's copyright whether it be printed in a separate volume or in connection with authorized material. If the author has a valid copyright, it is valid against any unpermitted reprint of his books; and the fact that his book is bound up in a volume with fifty other books, each of which is open to the public, is immaterial."

Judge Shipman further held that while a non-resident foreigner was not (in 1889) within our copyright law, he could take and hold by assignment a copyright granted to one of our citizens.

2. That a copyright can be assigned not only as a whole, but in sub-divisions, and that the copyright may become the individual property of joint owners.

3. That there is no vital difference in regard to the infringement of an author's copyright whether it be printed in a separate volume or in connection with material which belongs to the public domain.

4. That the fact that these American articles had been prepared for the volume for the purpose of securing for the work some measure of protection against appropriation, could not constitute any ground for refusing to the plaintiffs the benefit of such remedies as they are entitled to under the law.

Another suit by *Black et al.* vs. *Isaac K. Funk et al.* was brought in June, 1890, in the U. S. Circuit Court for the Southern District of New York, upon the Walker article.

This suit, and the two suits against the Henry G. Allen Co., were argued together at final hearing, upon full proofs, before Judge Townsend, who rendered his decision in April, 1893, in favor of the plaintiffs.

The cases turned upon the appropriation on the part of the defendants, for use in their unauthorized edition of the "Encyclopædia," of certain material of which Walker and Johnston were the authors. This material had been duly copyrighted, and the Johnston article had been issued in book form, and had, later, been included by Black, under assignment from the authors, in the twenty-third volume of the ninth edition of the "Encyclopædia." This volume

contained other copyrighted American material which had in like manner been appropriated by the defendants, but these two articles were selected as a convenient test of the question of the practicability of protecting the volume through the including of American articles. The main issues in the cases were as follows :

The right of the authors to assign their copyright to an alien.

The precise fulfilment of the provisions of the law in regard to the depositing, within ten days of publication, two copies of the volume containing the articles.

The difference between the titles of the articles as originally entered for copyright, and the titles as printed in the "Encyclopædia."

The legality of a copyright remaining vested in one party while another party holds under contract or assignment a beneficial interest in it.

The validity of the copyright of a single article, bound up in a volume the bulk of which is *publici juris*, against any authorized reprint of the entire work.

These several points were decided by the court in favor of the plaintiffs, and an injunction was granted. The decision followed closely upon the lines of the previous decision, rendered by Judge Shipman (in 1890), overruling the demurrers of the defendants in the Allen cases.

In 1890, suit was brought by *Black et al.* vs. *Samuel W. Ehrich et al.* in the U. S. Circuit Court for the southern district of N. Y. Defendants, constituting the firm of Ehrich Brothers, of New York, were, in conjunction with R. S. Peale and Co., of Chicago, circulating a reprint of the "Britannica," which had been prepared from plates produced in *fac-simile* by a photographic process. The Peale reproduction omitted the copyrighted American articles. The contention of the plaintiffs rested therefore not on an infringement of copyright, but on an infringement of trade-mark. The defendants called their work the "Encyclopædia Britannica," "an exact reproduction of the Edinburgh edition of 1890." Their book was advertised at $1.50 per volume, the price of the authorized work being $5.00 per volume. The court held that the plaintiffs' contention was not well founded and an injunction was accordingly denied.

I have omitted from the above summary a number of the points and decided which were more or less technical or which, on other grounds, were less important. The decisions on the main issues and on the essential points, and the attitude and utterances of the judges

before whom these later cases were brought, give ground for the conclusion that during the fourteen years between 1879 and 1893, there had been a development of public opinion and of the opinion of the courts in the direction of a more assured and more extended recognition of the property rights of literary producers and their assigns. The passage of the Act of 1891 and the discussions in regard to copyright which preceded that Act are undoubtedly to be credited with a large share in this education of the opinion of the public and of the courts.

The Protection of Lectures.

U. S. Circuit Court, Phila. Dallas, Judge.

Drummond, Henry, vs. *Altemus & Co.*

In *re* Lectures of plaintiff entitled "The Ascent of Man." Lectures delivered in Boston; announcement made in due course that lecturer "reserved all publication rights." Lecturer was under contract with his authorized publishers, Jas. Pott & Son, of New York, to issue the material (when revised) in book form. Defendant published an unauthorized edition of a book under the same title, made up from incomplete and fragmentary newspaper reports of the lectures. Plaintiff, a British subject, temporarily resident in the United States, claimed protection under the provisions of copyright protecting lecturers, and also under the common law protecting unpublished material.

Injunction granted (January, 1894):—The Court took the ground that "the subject of copyright" was "not directly involved." The volume printed by the defendant did not present the lectures correctly, but with omissions and additions which materially altered their purport. This constituted a personal wrong to the author, and incidentally a fraud upon the purchasers. If the defendant had confined his action to reprinting only that portion of the lectures which had appeared in the British Weekly, and his volume had correctly described its contents, the plaintiff would have been without remedy. The complainant's right to restrain the present publication has, however been fully made out.

Does the Requirement of the U. S. Law Concerning the Printing of the Notice of Copyright Apply to the Foreign as Well as to the American Editions?

U. S. Circuit Court of New Jersey.

Haggard (Rider), of London, and Longmans, Green & Co., of London, & New York, vs. *The Waverly Publishing Company.*

In regard to Haggard's "Nada the Lily." Plaintiffs were the author and the authorized publishers of said book, which had been duly copyrighted under the Act of 1891. The action was brought (in April, 1894), to restrain the publication of an unauthorized edition issued by the defendants. The defence was based in substance on two contentions:

1st. That the Act of 1891 was unconstitutional, because it gave to the President a discretionary or judicial power, not within the constitutional functions of an Executive, to determine the status of copyright law in foreign states, and to concede (or to withhold) copyright relations with such states.

2nd. That the U. S. Act of 1870 (which in this respect was not modified by that of 1891), required the printing of the United States copyright notice in all editions and in all copies issued of a work claiming U. S. copyright:—that the plaintiffs had not ventured to contend that such notice had been printed in all the editions issued of "Nada the Lily," and had submitted with their complaint and as evidence of this copyright entry, only copies of certain editions printed in the United States: that, as a matter of fact, editions had been printed in Melbourne and elsewhere which did not contain this entry of U. S. copyright, and that a copy of one of these editions had been utilized for the printing of the American edition issued by the defendant.

The Court sustained on this point, in substance, the contention of the plaintiffs, overruling the demurrer of the defendants. Leave was given to the plaintiffs to amend their bill of complaint so as to plead that while in the foreign editions of "Nada" the United States copyright notice had been omitted, the fact of such omission, in editions issued outside of the territory of the United States, and by parties not amenable to the authority of the United States, could not

invalidate the protection of American copyright for editions issued within the United States, and for which the requirement of the law had been complied with. The judge admitted that he regarded the question as "a close one," which could be decided finally only upon a full hearing of the case on its merits. The preliminary injunction was denied, for the purpose apparently of securing a decision on the main question at issue. It is understood that the case will be carried to the Supreme Court. The defendant's contention in regard to the unconstitutionality of the Act will, I understand, probably be dropped. The issue raised in regard to the requirement of the printing of the United States copyright entry in all the editions issued of a book claiming American copyright, is evidently one of far-reaching importance. If the failure to secure such entry in all editions, whether authorized or unauthorized, issued in countries which may not even be in copyright relations with the United States, is to invalidate American copyright, there is of course no copyright protection under the Act of 1891, either for foreign authors or for Americans, and there has in fact been no defensible copyright for American authors under the Act of 1870.

The decision of the Supreme Court in the "Nada" case will therefore be awaited with interest.

The Control of a Copyrighted Title.

U. S. Circuit Court.

Harper vs. *Ranous*.

67 Fed. Rep. 904.
In *re* title of "Trilby."
Plaintiffs are the owners, under assignment from the author, Du Maurier, of the copyright, for the United States, of the book "Trilby." Defendants utilize this title for a dramatic performance which does not present scenes from the story nor borrow its material. Plaintiffs attempt to prevent this use of their title. The Court held that the copyright protects the name only in conjunction with the book, and not the name alone, and refused to enjoin the performance. (May, 1894.)

Musical Compositions and the Manufacturing Requirement.

U. S. Circuit Court, Dist. of Mass., Boston. Colt, Judge.

Littleton, on behalf of Novello, Ewer & Co. of London,
vs. *The Oliver Ditson Company of Boston.*

In regard to the music composed for "Lead Kindly Light," and to certain other musical compositions. Music printed in London and published simultaneously in London and New York; entered for copyright in Washington. Case decided in June, 1894, by Judge Colt, who granted an injunction in favor of plaintiff. The chief question at issue in the suit was whether music compositions originating in Europe, must, in order to secure copyright in the United States, be printed from type set up or from plates engraved in the States. This involved the question whether the definition of a "book" within the meaning of the manufacturing clause included a musical composition in sheet form. Both of these questions were decided by Judge Colt in the negative.

It was admitted that the music was published in book form, and had been printed from lithographic stones not produced in the United States; but the contention was upheld that musical publications were not included in the list of articles specified in Sect. 3 of the Act ("book, photograph, chromo, or lithograph") required to be manufactured in this country.

62 Fed. Rep. 597, Oct., 1894.

Affirmed in Court of Appeals, April, 1895. 67 Fed. Rep. 905.

Copyright of a Musical Composition.—What Constitutes Publication?

Carte vs. *Duff.*

25 Fed. 183.

Carte, an alien, purchased from Gilbert & Sullivan, British subjects, their right of public representation in the United States of the comic opera "The Mikado, or The Town of Titipu," of which Gilbert

was the author of the literary parts, and Sullivan the author of the musical parts. They employed one Tracy, a citizen of the United States, to come to London and prepare a piano-forte arrangement from the original orchestral score, with a view to copying the same in the United States. After Tracy made the piano arrangement, proceedings were taken to copyright it as a new and original composition in the United States; and Carte purchased of Gilbert, Sullivan, and Tracy the title to such copyright. After the recording in the Library of Congress of the title of this arrangement, the libretto and vocal score of the opera and piano-forte arrangement of Tracy were published and sold in England, with the consent of Gilbert & Sullivan. The orchestral score was never published, but was kept by Gilbert and Sullivan for their own use and for that of licencees to perform the opera. Duff purchased in England a copy of the libretto, vocal score, and piano-forte arrangement, and procured a skilful musician to make an independent orchestration from the vocal and the piano score, and was about to produce the opera in New York City, with the words and voice parts substantially the same as those of the original and with scenery, costumes, and stage business in imitation of the original, and with the orchestration which he had procured to be made, and without claiming that he employed the orchestration of the original opera. Carte sought to enjoin the public representations proposed by Duff.

Held, that the publication of the libretto and vocal score of the opera in England with the consent of the authors was a dedication of their playright, or of the entire dramatic property in the opera to the public, notwithstanding their retention of the orchestral score in the manuscript, and that the public representation in the United States could, therefore, not be enjoined.

Carte vs. *Evans*.

27 Fed. 861.

The title as filed was: "Piano-forte arrangement of the comic opera, "The Mikado, or the Town of Titipu," by W. S. Gilbert and Sir Arthur Sullivan, by George L. Tracy."

The title as published was: "Vocal Score of the Mikado, or the Town of Titipu." An arrangement for the piano-forte, by George L. Tracy (Boston, U. S. A.) of the above-named opera by W. S. Gilbert and Arthur Sullivan.

Held, that the variance did not prejudice the title.

Burden of Proof concerning American Manufacture.

U. S. Circuit Court, Eastern Div. Eastern Judicial District. Adams, Judge.

Osgood vs. *A. S. Aloe Instrument Co.*

69 Fed. Rep. 291.

This case decided merely a question of pleading, viz. : that the fact that the copyright is invalid because the books were not printed from plates made in this country is a matter of affirmative defence, and should be set up and proved by the alleged infringing party. Incidentally, the case decided that the two copies of the copyrighted work deposited in Washington need not contain the copyright notice, but that this notice must contain the name of the copyrighting party (June, 1895).

The Control of a Title as Trade Mark connected with Copyrighted Material.

U. S. Circuit Court, Southern District of New York.

Mac Laren Cases.

Dodd, Mead & Co. of New York have instituted suits against the publishers and the distributors of unauthorized editions of volumes of sketches by the author John Watson, who writes under the name of Ian Mac Laren. These suits have at this time of writing (February, 1896) not been sufficiently advanced to be matters of record. It is understood, however, that the contention of the plaintiffs will be based on copyright and also on trade-mark. The volumes complained of contain certain sketches, which were collected, arranged, revised, and completed by the author to constitute a continuous and integral book, and for this copyright is claimed. The author had, moreover, selected for his American volumes distinctive titles, ("Beside the Bonnie Brier Bush" "A Doctor of the Old School") and he also claims protection for the body of material associated with these titles, that is, for the volume as put together by him and for the titles as of trade-marks placed upon the material.

It is the further contention of the plaintiffs that the volumes printed

by the defendants contain incomplete and incorrect material which being sold under the titles associated by the public with the authorized and complete book, is calculated (and intended) to deceive or mislead the public.

Later. (March 1896). Since the above paragraph was put into type, a decree has been secured in the U. S. District Court for the Southern District of New York (Judge Lacombe), against the defendants in one of the above suits, sustaining in substance the contention of the complainants.

XIII.

ABSTRACT OF THE COPYRIGHT LAW OF GREAT BRITAIN.

THE following are the dates and titles of the laws constituting the existing copyright law of Great Britain:

DOMESTIC COPYRIGHT.

8 Geo. 2. c. 13. An Act for the encouragement of the arts of designing, engraving, and etching historical and other prints by vesting the properties thereof in the inventors and engravers during the time therein mentioned.

7 Geo. 3. c. 38. An Act to amend and render more effectual an Act made in the eighth year of the reign of King George the Second for encouragement of the arts of designing, engraving, and etching historical and other prints; and for vesting in and securing to Jane Hogarth, widow, the property in certain prints.

15 Geo. 3. c. 53. An Act for enabling the two universities in England, the four universities in Scotland, and the several colleges of Eton, Westminster, and Winchester, to hold in perpetuity their copyright in books given or bequeathed to the said universities and colleges for the advancement of useful learning and other purposes of education; and for amending so much of an Act of the eighth year of the reign of Queen Anne as relates to the delivery of books to the warehouse keeper of the Stationers' Company for the use of the several libraries therein mentioned.

17 Geo. 3. c. 57. An Act for more effectually securing the property of prints to inventors and engravers by enabling them to sue for and recover penalties in certain cases.

54 Geo. 3. c. 56. An Act to amend and render more effectual an Act of His present Majesty for encouraging the art of making new

models and casts of busts and other things therein mentioned, and for giving further encouragement to such arts.

3 Will. 4. c. 15. An Act to amend the laws relating to dramatic literary property.

5 & 6 Will. 4. c. 65. An Act for preventing the publication of lectures without consent.

6 & 7 Will. 4. c. 59. An Act to extend the protection of copyright in prints and engravings to Ireland.

5 & 6 Vict. c. 45. An Act to amend the law of copyright.

25 & 26 Vict. c. 68. An Act for amending the law relating to copyright in works of the fine arts, and for repressing the commission of fraud in the production and sale of such works.

38 & 39 Vict. c. 53, *in part*. An Act to give effect to an Act of the Parliament of the Dominion of Canada respecting copyright. Section 4 only repealed.

INTERNATIONAL COPYRIGHT.

7 & 8 Vict. c. 12. An Act to amend the law relating to international copyright.

15 & 16 Vict. c. 12, *in part*. 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. *Repeal not to extend to section* 14.

38 Vict. c. 12. An Act to amend the law relating to international copyright.

The following is the Digest of these laws, prepared by Sir James Stephen, Q.C., and presented in the Report of the Royal Copyright Commission, 1878, as the most authoritative statement of British copyright law:

ARTICLE 1.

Copyright in Private Documents.

The author or owner of any literary composition or work of art has a right, so long as it remains unpublished, to prevent the publication of any copy of it by any other person.

ARTICLE 2.

Effects of Limited Publication of Private Documents.

The publication of any such thing as is mentioned in the last article for a special and limited purpose, under any contract, or upon any trust express or implied, does not authorize the person to whom such thing is published to copy or reproduce it, except to the extent and for the purposes for which it has been lent or intrusted to him.

ARTICLE 3.

Letters.

A person who writes and sends a letter to another retains his copyright in such letter, except in so far as the particular circumstances of the case may give a right to publish such letter to the person addressed, or to his representatives, but the property in the material on which the letter is written passes to the person to whom it is sent, so as to entitle him to destroy or transfer it.

ARTICLE 4.

No other Copyright except by Statute.

There is (probably) no copyright after publication in any of the things mentioned in Article 1, except such copyright as is given by the express words of the statutes hereinafter referred to.

Publication in this article means in reference to books (as defined in the next article) publication for sale. It is doubtful whether in relation to works of art it has any other meaning. There is (it seems) no copyright in dramatic performances except by statute.

ARTICLE 5.

Book defined—Law of Copyright in Books.

In this chapter the word "book" means and includes every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan, separately published.

The word "copyright" means the sole and exclusive liberty of printing, or otherwise multiplying copies of any subject to which the word is applied.

When a book is published in the lifetime of its author, the copyright therein is the personal property of the author and his assigns

from the date of such publication, for whichever may be the longer of the two following terms, that is to say:

(1) A term of 42 years from publication.

(2) The life of the author, and a term of 7 years, beginning from his death.

If the publication takes place after the author's death, the proprietor of the author's manuscript and his nssigns have copyright in his book for a term of 42 years from its first publication.

If one person employs and pays another to write a book on the terms that the copyright therein shall belong to the employer, the employer has the same copyright therein as if he had been the author.

If the publisher or proprietor of any encyclopædia, review, magazine, or periodical work, or work published in parts or series, employs and pays persons to compose any volume, part, essay, article, or portion thereof, on the terms that the copyright therein shall belong to such publisher or proprietor, such publisher or proprietor has upon publication the same rights as if he were the author of the whole work (with the following exceptions):

1. After 28 years from the first publication of any essay, article, or portion in any review, magazine, or other periodical work of a like nature [not being an encyclopædia], the right of publishing the same in a separate form reverts to the author for the remainder of the term for which his copyright would have endured if the same had been originally published by him elsewhere.
2. During the said term of 28 years the publisher or proprietor may not publish any such essay, article, or portion, separately or singly, without the consent of the author or his assigns.

The author of any such magazine as aforesaid may, by contract with any such publisher or proprietor, reserve the right of publishing any work, his composition, in a separate form, and if he does so he is entitled to copyright in such composition when so published for the same term as if such publication were the first publication, but without prejudice to the right of the publisher or proprietor to publish the same as part of such periodical work.

In order to provide against the suppression of books of importance to the public, the Judicial Committee of the Privy Council are empowered, on complaint that the proprietor of the copyright in any book after the death of its author has refused to republish or 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 think fit, and the complainant may publish such book accordingly.

The whole of this article is subject to the limitations contained in the subsequent articles of this chapter.

It applies—

(*a*) To all books published after 1st July, 1842.

(*b*) To all books published before that day in which copyright was then subsisting, unless such copyright was vested in any publisher or other person who acquired it for any consideration other than that of natural love or affection, in which case such copyright endures for the term then provided for by law, unless the author, if living on that day, or if he were then dead his personal representative, and (in either case) the proprietor of the copyright, registered before the expiration of the term of copyright to which they were then entitled, consent to accept the benefits of the Act 5 & 6 Vict. c. 45 in a form provided in a schedule therein.

Article 6.

Who may obtain Copyright in Books.

In order that copyright in a published book may be obtained under the provisions of Article 5, the book must in all cases be published in the United Kingdom. The author or other person seeking to entitle himself to copyright may be either—

(*a*) A natural born or naturalized subject of the Queen, in which case his place of residence at the time of the publication of the book is immaterial; or

(*b*) A person who at the time of the publication of the book in which copyright is to be obtained owes local and temporary allegiance to Her Majesty by residing at that time in some part of Her Majesty's dominions.

It is probable, but not certain, that an alien friend who publishes a book in the United Kingdom while resident out of Her Majesty's dominions, acquires copyright throughout Her Majesty's dominions by such publication.

Article 7.

Previous and Contemporary Publication out of the United Kingdom.

No copyright in a book published in the United Kingdom can be obtained under Article 5, if the book has been previously published by the author in any foreign country, but the contemporaneous publication of a book in a foreign country and in the United Kingdom does not prevent the author from obtaining copyright in the United Kingdom.

It is uncertain whether an author obtains copyright by publishing a book in the United Kingdom, after a previous publication thereof in parts of Her Majesty's dominions out of the United Kingdom.

It is uncertain whether an author acquires copyright under Article 5 in any part of Her Majesty's dominions out of the United Kingdom (apart from any local law as to copyright which may be in force there) by the publication of a book in such part of Her Majesty's dominions.

Article 8.

No Copyright in immoral Publications.

No copyright can exist in anything in which copyright would otherwise exist if it is immoral, irreligious, seditious, or libelous, or if it professes to be what it is not, in such a manner as to be a fraud upon the purchasers thereof.

Article 9.

What is Infringement of Copyright in a Book, and what not—Fair Use of Books.

The owner of the copyright in a book is not entitled to prevent other persons from publishing the matter contained in it if they invent or collect it independently, nor to prevent them from making a fair use of its contents in the composition of other books.

The question, what is a fair use of a book, depends upon the circumstances of each particular case, but the following ways of using a book have been decided to be fair :

(*a*) Using the information or the ideas contained in it without copying its words or imitating them so as to produce what is substantially a copy.

(*b*) Making extracts (even if they are not acknowledged as such)

appearing, under all the circumstances of the case, reasonable in quality, number, and length, regard being had to the object with which the extracts are made and to the subjects to which they relate.

(*c*) Using one book on a given subject as a guide to authorities afterward independently consulted by the author of another book on the same subject.

(*d*) Using one book on a given subject for the purpose of checking the results independently arrived at by the author of another book on the same subject.

An abridgment may be an original work if it is produced by a fair use of the original or originals from which it is abridged, but the republication of a considerable part of a book is an infringement of the copyright existing in it, although it may be called an abridgment, and although the order in which the republished parts are arranged may be altered.

ARTICLE 10.

Crown Copyright.

It is said that Her Majesty and her successors have the right of granting by patent from time to time to their printers an exclusive right to print the text of the authorized version of the Bible, of the Book of Common Prayer, and possibly the text of Acts of Parliament.

ARTICLE 11.

University Copyright.

The Universities of Oxford, Cambridge, Edinburgh, Glasgow, St. Andrew's, and Aberdeen, each college or house of learning at the universities of Oxford and Cambridge, Trinity College, Dublin, and the colleges of Eton, Westminster, and Winchester, have forever the sole liberty of printing and reprinting all such books as have been or hereafter may be bequeathed or given to them, or in trust for them by the authors thereof, or by their representatives, unless they were given or bequeathed for any limited term.

ARTICLE 12.

How such Right forfeited.

The exclusive right mentioned in the last article lasts so long only as the books or copies belonging to the said universities or colleges

are printed only at their own printing presses within the said universities or colleges respectively, and for their sole benefit and advantage.

If any university or college delegates, grants, leases, or sells its copyright or exclusive right of printing books granted by 15 Geo. 3. c. 53, or any part thereof, or allows or authorizes any person to print or reprint the same, the privilege granted by the said Act becomes void and of no effect, but the universities or colleges may sell the copyrights bequeathed to them as for the terms secured to authors by the 8 Anne c. 19.

ARTICLE 13.

Term of Copyright in Dramatic Pieces.

The author, or the assignee of the author, of any tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment, or musical composition not printed and published by such author or assignee, has, as his own property, the sole liberty of representing or causing to be represented or performed, any such dramatic piece or musical composition at any place of dramatic entertainment whatever in Her Majesty's dominions (possibly in perpetuity, but more probably for) whichever is the longer of the two following terms, viz.—

(1) Forty-two years from the first public representation of such dramatic piece or musical composition.

(2) The life of the author and a further term of seven years beginning from his death.

The singing of a single song of a dramatic character in a dramatic manner may amount to a dramatic entertainment within the meaning of this article.

Any place at which a dramatic entertainment is given [? for profit] on any particular occasion is a place of dramatic entertainment within the meaning of this article.

ARTICLE 14.

Condition of Copyright in Dramatic Pieces.

The exclusive right of representing or performing a dramatic piece or musical composition cannot be gained if such dramatic piece or musical composition has been printed and published as a book before the first representation thereof.

Or, if it has been publicly represented or caused to be represented by the author or his assigns in any place out of Her Majesty's dominions before it was publicly represented in them, except under the International Copyright Act.

ARTICLE 15.

Copyright in and Representation of Dramas.

Copyright in a book containing or consisting of a dramatic piece or musical composition is a right distinct from the right to represent such dramatic piece or musical composition on the stage, and no assignment of the copyright of any such book conveys to the assignee the right of representing or performing such dramatic piece or musical composition unless an entry of such assignment is made in the registry book mentioned in Article 23, expressing the intention of the parties that such right should pass.

ARTICLE 16.

Representation of a Drama no Infringement of Copyright.

A dramatic piece or musical composition published as a book may (it seems probable) be publicly represented without the consent of the author or his assigns.

ARTICLE 17.

Dramatization of Novels.

The public representation of a dramatic piece constructed out of a novel is not an infringement of the copyright of the author of the novel or his assigns, but the printing and publication as a book of such dramatic piece so represented may be such an infringement.

If two persons independently of each other convert a novel into a dramatic piece, each has an exclusive right of representing his own dramatic piece, though one of them may be the author of the novel so dealt with and though the two pieces may have parts in common.

ARTICLE 18.

Infringement of Copyright in a Musical Composition.

Copyright in a musical composition is infringed when a substantial portion of the music in which copyright exists is reproduced either without any alteration or with such alterations as are required to

adapt it to a different purpose or instrument, the alterations being of such a character that the substantial identity between the original and the altered version can be recognized by the ear.

ARTICLE 19.

Copyright in Lectures.

The author of any lecture, or his assign, has by statute the sole right of publishing any lecture, of the delivery of which notice in writing has been given to two justices living within five miles from the place where such lecture is delivered two days at least before it is delivered, unless such lecture is delivered in any university, public school, or college, or on any public foundation, or by any person in virtue of or according to any gift, endowment, or foundation.

The author of any lecture has [probably] at common law the same right as by statute, without giving such notice as is required by statute, but he cannot recover the penalties provided by the Act and specified in Article 35, for an infringement of his copyright.

ARTICLE 20.

Copyright in Sculpture.

Every person who makes or causes to be made any new and original sculpture, or model, or copy, or cast, . . . [1] has the sole right therein for the term of 14 years from first putting forth or publishing the same, provided that the proprietor causes his name, with the date, to be put on every such thing before it is published. If the proprietor be living at the end of the term of 14 years, his right returns to him for a further term of 14 years, unless he has divested himself thereof.

ARTICLE 21.

Copyright in Paintings and Photographs.

The author, being a British subject or resident within the dominions of Her Majesty, of any original painting, drawing or photograph, not having been sold before the 29th July, 1862, has the sole

[1] Here is a reference to a note, scheduling the usual subjects of sculpture, but explaining that the section of the law here concerned "is a miracle of intricacy and verbosity" and involves much doubt.

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 or of any size, whether made in the Queen's dominions or not, for the term of his life and seven years after his death, but this right does not affect the right of any other person to represent any scene or object represented by any such painting.

If any painting or drawing, or the negative of any photograph, hereinbefore mentioned, is made by the author for or on behalf of any other person for a good or valuable consideration, such person is entitled to copyright therein.

If any such thing is, after the 29th July, 1862, for any such consideration transferred for the first time by the owner to any other person, the owner may, by an agreement in writing signed at or before the time of such transfer by the transferee, reserve the copyright to himself, or he may, by an agreement in writing signed by himself or by his agent duly authorized, transfer the copyright to such transferee. (If no such agreement in writing is made, the copyright in such painting ceases to exist.)

Article 22.

Copyright in Engravings.

Every one has for 28 years from the first publishing thereof the sole right and liberty of multiplying, by any means whatever, copies of any print of whatever subject which he has—

(*a*) Invented or designed, graved, etched, or worked in mezzotinto or chiaro-oscuro ; or which he has—

(*b*) From his own work, design, or invention, caused or procured to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro ; or which he has—

(*c*) Engraved, etched, or worked in mezzotinto or chiaro-oscuro, or caused to be engraved, etched, or worked from any picture, drawing, model, or sculpture, either ancient or modern :

Provided that such prints are truly engraved with the name of the proprietor on each plate and printed on every print.

Prints taken by lithography and other mechanical processes are now upon the same footing as engravings.

Article 23.

The Registration of Books.

A book of registry must be kept at Stationers' Hall, in which the proprietor of copyright in any book, or of the right of representation of any dramatic piece or musical composition, whether in manuscript or otherwise, may upon the payment of a fee of 5*s*. enter in the register the particulars stated in the form given in the foot-note.[1]

The proprietor of the copyright in any encyclopædia, review, magazine, or periodical work, or other work published in a series, is entitled to all the benefit of registration on entering in the book of registry the title of such work, the time of publishing the first volume or part, and the name and place of abode of the proprietor and publisher when the publisher is not also the proprietor.

Every such registered proprietor may assign his interest or any portion of his interest by making an entry in the said book of such assignment in the form given in the foot-note.[2]

Licenses affecting any such copyright may also be registered in the said register.

Any person aggrieved by any such entry may apply to the High Court, or any judge thereof, to have such entry expunged or varied, and the court may make such order for that purpose as it thinks just.

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[1] (*a*) Original Entry of Proprietorship of Copyright of a Book.

Time of making the Entries.	Title of the Book.	Name of the Publisher and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.

[2] (*b*) Form of Entry of Assignment of Copyright in any Book previously registered.

Date of Entry.	Title of Book. Set out the Title and refer to the Page of the Registry Book in which the Original Entry of the Copyright thereof is made.	Assignor of Copyright.	Assignee of Copyright.

It is a misdemeanor to make or cause to be made any false entry in such book wilfully.

The officer in charge of the book is bound to give sealed and certified copies of the entries contained therein on payment of a fee of 5*s*., and such copies are *primâ facie* proof of the matters alleged therein.

The fee for the registration of university copyrights and for copies of them is 6*d*., and they may be inspected without fee.

Article 24

Effect of Registration in case of Books.

No proprietor of copyright in any book can take any proceedings in respect of any infringement of his copyright unless he has, before commencing such proceedings, caused an entry to be made in the said register under the last article.

The omission to make such entry does not affect the copyright in any book, but only the right to sue or proceed in respect of the infringement thereof.

Article 25.

Registration in respect of Dramatic Copyright.

The remedies which the proprietor of the sole liberty of representing any dramatic piece has under Article 32 are not prejudiced by an omission to make any entry respecting such exclusive right in the said register.

Article 26.

Registration of Copyright in Paintings, etc.

A book entitled the Register of Proprietors of Copyright in Paintings, Drawings, and Photographs, must be kept at the Hall of the Stationers' Company.

A memorandum of every copyright to which any person is entitled under Article 21, and of every subsequent assignment of any such copyright, must be entered therein ; such memorandum must contain a statement of :

(*a*) The date of such agreement or assignment ;
(*b*) The names of the parties thereto ;
(*c*) The name and place of abode of the person in whom such

copyright is vested by virtue thereof, and of the author of the work ;

(*d*) A short description of the nature and subject of such work, and, if the person registering so desires, a sketch, outline, or photograph of the work in addition thereto.

No proprietor of any such copyright is entitled to the benefit of 25 & 26 Vict. c. 68 until such registration, and no action can be maintained, nor any penalty be recovered, in respect of anything done before registration ; but it is not essential to the validity of a registered assignment that previous assignments should be registered.

The three paragraphs of Article 23, relating to the correction of errors in the register, the making of false entries, and the giving of certificates, apply also to the book in this article mentioned.

ARTICLE 27.

Penalties for infringing Copyright in Books.

Every one is liable to an action who, in any part of the British dominions—

(*a*) Prints or causes to be printed, either for sale or exportation, any book in which there is subsisting copyright, without the consent in writing of the proprietor ;

(*b*) Imports for sale or hire any such book so having been unlawfully printed from parts beyond the sea ;

(*c*) Knowingly sells, publishes, or exposes to sale or hire, or causes to be sold, published, or exposed to sale or hire, or has in his possession for sale or hire any book so unlawfully printed or imported.

The action must be brought in a Court of Record and within twelve months after the offence.

ARTICLE 28.

Special Penalty for unlawfully importing Copyright Books.

The following consequences are incurred by every one, except the proprietor of the copyright of any book, or some person authorized by him, who imports or brings, or causes to be imported or brought [for sale or hire], into the United Kingdom, or into any other part of the British dominions, any printed book in which there is copyright,

first composed, written, or printed [and published] in any part of the United Kingdom, and reprinted in any country or place out of the British dominions ;

Or, who knowingly sells, publishes, or exposes to sale, or lets to hire, or has in his possession for sale or hire any such book, that is to say :

(*a*) Every such book is forfeited, and must be seized by every officer of Customs or Excise, and in that case must be destroyed by such officer.

(*b*) The person so offending must, upon conviction before two justices, be fined 10*l.* for every such offence, and double the value of every copy of any such book in respect of which he commits any such offence.

Provided that if the Legislature or proper legislative authorities in any British possession pass an Act or make an Ordinance, which, in the opinion of Her Majesty, is sufficient for the purpose of securing to British authors reasonable protection within such possessions, Her Majesty may approve of such Act, and issue an Order in Council declaring that so long as the provisions of such Act remain in force, the prohibition hereinbefore contained shall be suspended so far as regards such colony.

ARTICLE 29.

Pirated Copies forfeited to Registered Owner.

All copies of any book in which there is a duly registered copyright unlawfully printed or imported without the consent in writing under his hand of the registered proprietor of the copyright are deemed to be the property of the registered proprietor of such copyright, and he may sue for and recover the same, with damages for the detention thereof, from any person who detains them after a demand thereof in writing.

ARTICLE 30.

Copies of Books to be delivered for Public Libraries, and Penalties for Non-delivery.

A copy of the first edition and of every subsequent edition containing additions and alterations of every book published in any part of the British dominions must be delivered at the British Museum

between 10 A. M. and 4 P. M. on some week-day, other than Ash Wednesday, Good Friday, or Christmas Day, within a month after its publication, if it is published in London, within three months if it is published in the United Kingdom elsewhere than in London, and within twelve months if it is published in any other part of the British dominions.

It may be delivered to any person authorized by the Trustees of the British Museum to receive it, and such person must give a receipt in writing therefor.

Copies of every edition of every book published must, if demanded, be delivered to an officer of the Stationers' Company for each of the following libraries: the Bodleian Library, the Cambridge University Library, the Advocates Library at Edinburgh, and the Library of Trinity College, Dublin.

The demand, in writing, must be left at the place of abode of the publisher, within twelve months after the publication of the book, and the copies must be delivered within one month after such demand, either to the Stationers' Company or to the said libraries, or to any one authorized to receive the copies on their behalf.

The copy for the British Museum must be bound, stitched, or sewed together, and upon the best paper on which the book is printed.

The copies for the other libraries mentioned must be upon the paper of which the largest number of copies of the book or edition are printed for sale, in the like condition as the copies prepared for sale by the publisher.

The copies must in each case include all maps and prints belonging thereto.

Any publisher making default in such delivery as is hereinbefore mentioned, is liable to a maximum penalty of 5*l.* and the value of the copy not delivered. This penalty may be recovered upon summary proceeding before two justices of the peace, or a stipendiary magistrate, at the suit of the librarian, or other officer properly authorized, of the library concerned.

ARTICLE 31.

Penalty for Offences against University Copyright.

Every one incurs the penalties hereinafter mentioned who does any of the following things with any book of which the copyright is

vested in any university or college under Article 11; (that is to say,)

(*a*) Who prints, reprints, or imports, or causes to be printed, reprinted, or imported any such book.

(*b*) Knowing the same to be so printed or reprinted, sells, publishes, or exposes to sale, or causes to be sold, published, or exposed to sale, any such book.

The penalties for the said offences are:

(*a*) The forfeiture of every sheet being part of such book to the university or college to which the copyright of such book belongs, which university or college must forthwith cancel and make waste paper of them.

(*b*) One penny for every sheet found in the custody of such person printing or printed, published or exposed to sale, half to go to the Queen, and half to the informer.

None of the penalties aforesaid can be incurred—

Unless the title to the copyright of the book in respect of which the offence was committed was registered either before 24th June, 1775, or within two months after the time when the bequest or gift of the copyright of any book came to the knowledge of the vice-chancellor of any university or the head of any college or house of learning;

Or unless the clerk of the Stationers' Company, being duly required to make the entry, refuses to do so, and the university advertises such refusal in the *Gazette*, in which case the clerk incurs a penalty of 20*l.* to the proprietors of the copyright.

The penalty must be sued for in the High Court.

ARTICLE 32.

Penalty for performing Dramatic Pieces.

Every person who, without the consent in writing of the author or other proprietor first obtained, represents or causes to be represented at any place of dramatic entertainment in the British dominions any dramatic piece or musical composition is liable to pay to the author or proprietor for every such representation an amount not less than 40*s.*, or the full amount of the benefit or advantage arising from

such representation, or the injury or loss sustained by the plaintiff therefrom, whichever may be the greater damages.

The penalty may be recovered in any court having jurisdiction in such cases.

ARTICLE 33.

Penalty for Infringement of Copyright in Works of Art.

Every one (including the author, when he is not the proprietor) commits an offence who, without the consent of the proprietor of the copyright therein, does any of the following things with regard to any painting, drawing, or photograph in which copyright exists; (that is to say,)

(*a*) Repeats, copies, colorably imitates, or otherwise multiplies, for sale, hire, exhibition, or distribution, any such work; or the design thereof;

(*b*) Causes or procures to be done anything mentioned in (*a*);

(*c*) Sells, publishes, lets to hire, exhibits, or distributes, offers for any such purposes, imports into the United Kingdom any such repetition, copy, or other imitation of any such work or of the design thereof, knowing that it has been unlawfully made;

(*d*) Causes or procures to be done, any of the things mentioned in (*c*);

(*e*) Fraudulently signs or otherwise affixes or fraudulently causes to be signed or otherwise affixed to or upon any painting, drawing, or photograph or the negative thereof, any name, initials, or monogram.

(*f*) Fraudulently sells, publishes, exhibits, or disposes of, or offers 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;

(*g*) Fraudulently utters, disposes of, or puts off, or causes to be uttered or disposed of, any copy or colorable imitation of any painting, drawing, or photograph, or negative of a photograph, whether there is subsisting copyright therein or not, as having been made or executed by the author or makers of the original work from which such copy or imitation has been taken;

(*h*) Makes or knowingly sells, publishes, or offers for sale, any painting, drawing, or photograph which after being sold or parted with by the author or maker thereof, has been altered by any other person by addition or otherwise, or any copy of such work so altered, or of any part thereof, as the unaltered work of such author or maker during his life and without his consent.

Every one who commits any of the offences (*a*), (*b*), (*c*), or (*d*), forfeits to the proprietor of the copyright for the time being a sum not exceeding 10*l*., 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.

Every one who commits any of the offences (*e*), (*f*), (*g*), or (*h*) forfeits to the person aggrieved a sum not exceeding 10*l*., or double the price, if any, at which all such copies, engravings, imitations, or altered works were held or offered for sale, and all such copies, engravings, imitations, and altered works are forfeited to the person whose name, initials, or monogram is fraudulently signed or affixed, or to whom such spurious or altered work is fraudulently or falsely ascribed; provided that none of the last-mentioned penalties are incurred unless the person to whom such spurious or altered work is so fraudulently ascribed, or whose initials, name, or monogram is so fraudulently or falsely ascribed, was living at or within 20 years next before the time when the offence was committed.

The penalties hereinbefore specified are cumulative, and the person aggrieved by any of the acts before mentioned may recover damages in addition to such penalties, and may in any case recover and enforce the delivery to him of the things specified, and recover damages for their retention or conversion.

The penalties may be recovered either by action or before two justices or a stipendiary magistrate.

ARTICLE 34.

Importation of pirated Works of Art prohibited.

The importation into the United Kingdom of repetitions, copies, or imitations of paintings, drawings, or photographs wherein, or in the design whereof, there is an existing copyright under 25 & 26 Vict. c. 68, or of the design thereof, or of the negatives of photo-

graphs, is absolutely prohibited, except by the consent of the proprietor of the copyright or his agent authorized in writing.

ARTICLE 35.

Penalty for pirating Lectures.

Every person commits an offence who, having obtained or made a copy of any lecture, prints or otherwise copies and publishes the same, or causes it to be so dealt with without the leave of the author or his assigns;

Or, who, knowing it to have been printed or copied or published without such consent, sells, publishes, or exposes it to sale or causes it to be so dealt with;

Every person who commits such offence forfeits such printed or copied lectures, together with one penny for every sheet thereof found in his custody, half to the Queen and half to the informer.

The printing and publishing of any lecture in any newspaper without leave is an offence within the meaning of this article.

This section does not apply to the publication of lectures which have been printed and published as books at the time of such publication.

The penalty must be sued for in the High Court.

ARTICLE 36.

Penalty for pirating Sculptures.

Every person is liable to an action for damages who makes or imports, or causes to be made or imported, or exposed to sale, or otherwise disposed, anything of which the copyright is protected by the 54 Geo. c. 56.

This article does not apply to any person who purchases the right or property of anything protected by the said Act of the proprietor by a deed in writing, signed by him with his own hand in the presence of and attested by two credible witnesses.

ARTICLE 37.

Penalty for pirating Prints and Engravings.

Every person commits an offence who, without the consent of the proprietor in writing, signed by him and attested by two witnesses—

(*a*) In any manner copies and sells, or causes or procures to be copied and sold, in whole or in part, any copyright print; or

(*b*) Prints, reprints, or imports for sale any such print, or causes or procures any such print to be so dealt with; or

(*c*) Knowing the same to be so printed or reprinted without the consent of the proprietors publishes, sells, exposes to sale, or otherwise disposes of any such print, or causes or procures it to be so dealt with.

Every person committing any such offence is liable to an action for damages in respect thereof, and forfeits to the proprietor, who must forthwith cancel and destroy the same, the plate on which any such print is copied, and every sheet being part of such print, or whereon such print is copied, and also five shillings for every sheet found in his custody in respect of which any such offence is committed, half to the Queen and half to the informer.

The penalty must be sued for in the High Court within six months after the offence.

ARTICLE 38.

International Copyright may be granted in certain Cases.

Copyright in books, dramatic pieces and musical compositions, paintings, drawings, and photographs, sculptures, engravings, and prints, first published in foreign countries, may be granted to the authors of such works, in the manner, to the extent, and on the terms hereinafter mentioned, if what Her Majesty regards as due protection has been secured by the foreign country in which such works are first published for the benefit of persons interested in similar works first published in Her Majesty's dominions.

ARTICLE 39.

Orders in Council as to International Copyright.

Her Majesty may by Order in Council (stating as the ground for issuing the same that such protection as aforesaid has been secured as aforesaid) direct that the authors of all or any of the things mentioned in the last Article, being first published in any such foreign country as is mentioned in that Article, shall have copyright therein in Her Majesty's dominions for a term, to be specified in the Order,

not exceeding the term of copyright which authors of things of the same kind first published in the United Kingdom are entitled to by law at the date of the Order.

The terms so to be specified and the terms for registration and delivery of copies of books as hereinafter mentioned may be different for works first published in different foreign countries, and for different classes of such works.

ARTICLE 40.

Term of International Copyright.

The authors of the works specified in the Order are entitled to copyright therein as follows—

Under 5 & 6 Vict. c. 45, and the other Acts relating to copyright in books, except the sections relating to the deposit of copies in certain libraries, if the works specified in the Order are books;

Under the Engraving Copyright Acts, the Sculpture Copyright Acts, or the Paintings Copyright Act respectively, if the works specified in the Order are prints, engravings, articles of sculpture, pictures, drawings, or photographs;

Under the Dramatic Copyright Acts, provided that such copyright does not extend to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country, if the works specified in the Order are dramatic pieces or musical compositions, unless the Order directs that it shall extend to them.

Subject in each case to such limitations as to the duration of the right as may be specified in the Order, and subject also to the provisions hereinafter contained.

ARTICLE 41.

No Work Copyright without Registration.

No author of any such work as is referred to in this chapter is entitled to any benefit under the provisions contained in it, unless such work is registered, and a copy of the first edition and of every subsequent edition containing additions or alterations, but of no other editions of it, is delivered at the Hall of the Stationers' Company,

within a time to be specified in the Order of Council, and in the manner prescribed in the schedule in the footnote hereto.'

The three paragraphs preceding the last paragraph of Article 23 apply to such entries.

The copy so delivered must within one month of its delivery be deposited in the British Museum by the officer of the Stationers' Company.

ARTICLE 42.

No International Copyright in Newspaper Articles.

Articles of political discussion published in any newspaper, or

[1] SCHEDULE.

The register must show, if the work is—				
A book.....	The title.....	Name and place of abode of author (unless the book is anonymous, 7 & 8 Vict. c. 12. s. 7).	Name and place of abode of proprietor of copyright.	Time and place of first publication.
Dramatic piece or musical composition printed.	Do.....	Do.....	Do.....	Do. and time and place of first representation or performance.
Dramatic piece or musical composition in MS.	Do.....	Do.....	Do.....	Do.
Print.....	Do.....	Do. of inventor, designer, or engraver.	Do.....	Do. First publication in foreign country.
Sculpture.....	Descriptive title	Do, of maker.....	Do.....	Do.
Painting, Drawing, or photograph.	Short description of nature and subject of work, and a sketch outline or photograph thereof, if the person registering pleases.	Name and abode of author.	Do.	

periodical, in any foreign country may, if the source from which the same are taken is acknowledged, be republished or translated in any newspaper or periodical in this country, notwithstanding anything hereinbefore or hereinafter contained.

Articles on other subjects so published may be dealt with in the same manner on the same condition, 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 such publication is to be regarded as a book within the meaning of Article 5.

ARTICLE 43.

Translations of Foreign Books.

Her Majesty may, by Order in Council, direct that the authors of books published, and of dramatic pieces first publicly represented, in the foreign countries referred to in Article 38, may, for a period not exceeding five years from the publication of an authorized translation thereof, prevent the publication in the British dominions of any unauthorized translation thereof, and, in the case of dramatic pieces, the public representation of any such translation.

Upon the publication of such Order the law in force for the time being for preventing the infringement of copyright, and the sole right of representing dramatic pieces, in the British dominions applies to the prevention of the publication of such unauthorized translation.

Provided that no such Order prevents fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country.

But Her Majesty may by Order in Council direct that this proviso shall not apply to the dramatic pieces protected under the original Order in Council.

If a book is published in parts, each part is regarded, for the purposes of this article, as a separate book.

ARTICLE 44.

Conditions of International Copyright in Translations.

No author, and no personal representative of any author, is entitled to the benefit of the provisions of the last preceding article unless he complies with the following requisitions :

(*a.*) The original work from which the translation is to be made must be registered, and a copy thereof deposited in the United Kingdom, in the manner required for original works by the said International Copyright Act, within three calendar months of its first publication in the foreign country :

(*b.*) 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 :

(*c.*) 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 :

(*d.*) 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 :

(*e.*) In the case of books published in parts, each part of the original work must be registered and deposited in this country, in the manner required by the said International Copyright Act, within three months after the first publication thereof in the foreign country :

(*f.*) 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 :

(*g.*) The above requisitions apply to articles originally published in newspapers or periodicals, if the same be afterward published in a separate form, but not to such articles as originally published.

ARTICLE 45.

Importation of Pirated Works.

The importation into any part of the British dominions of copies of any work of literature or art, the copyright in which is protected

by the provisions of this chapter, and of unauthorized translations thereof, is absolutely prohibited, unless the registered proprietor of the copyright therein, or his agent authorized in writing, consents, and the provisions of Article 28 apply to the importation of such copies into any part of the British dominions.[1]

[1] Since the preparation by Sir James Stephen of this digest, the provisions in the above articles referring to International Copyright have been modified by the acceptance on the part of Great Britain of the provisions of the Convention of Berne. This Convention was declared to be in force between Great Britain and the other States which were parties to it, by an order in Council dated December 5th, 1887.

The text of the Convention is given later in this volume.

EDITOR.

XIV.

EXTRACT FROM THE REPORT OF THE BRITISH COMMISSION APPOINTED IN *1878* BY THE QUEEN, FOR THE INVESTIGATION OF THE SUBJECT OF COPYRIGHT.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

WE, Your Majesty's Commissioners, appointed to make inquiry with regard to the laws and regulations relating to Home, Colonial, and International Copyright, humbly submit to Your Majesty this our Report—

1. We deem it expedient to consider the Home, Colonial, and International divisions of the subject, in the order in which they are mentioned in Your Majesty's Commission, and thus first to notice

HOME COPYRIGHT.

2. The first object to which we directed our attention in relation to Home Copyright, was to obtain a clear and systematic view of the law in force upon the subject in this country.

3. We find that it relates to copyright in seven distinct classes of works, namely,—

(1.) Books;
(2.) Musical compositions;
(3.) Dramatic pieces;
(4.) Lectures;
(5.) Engravings and other works of the same kind;
(6.) Paintings, drawings, and photographs; and
(7.) Sculpture.

4. The law as to copyright in designs did not appear to us to fall within the terms of Your Majesty's Commission. It differs in many important particulars from the other matters which we have mentioned, and it has been recently made the subject of legislation.

5. The law of England, as to copyright in the matters above enumerated, consists partly of the provisions of fourteen Acts of Parliament, which relate in whole or in part to different branches of the subject, and partly of common law principles, nowhere stated in any definite or authoritative way, but implied in a considerable number of reported cases scattered over the law reports.

6. Our colleague, Sir James Stephen, has reduced this matter to the form of a Digest, which we have annexed to our Report, and which we believe to be a correct statement of the law as it stands.[1]

7. The first observation which a study of the existing law suggests is that its form, as distinguished from its substance, seems to us bad. The law is wholly destitute of any sort of arrangement, incomplete, often obscure, and even when it is intelligible upon long study, it is in many parts so ill-expressed that no one who does not give such study to it can expect to understand it.

8. The common law principles which lie at the root of the law have never been settled. The well-known cases of Millar *vs.* Taylor, Donaldson *vs.* Becket, and Jeffries *vs.* Boosey, ended in a difference of opinion amongst many of the most eminent judges who have ever sat upon the Bench.

9. The fourteen Acts of Parliament which deal with the subject were passed at different times between 1735 and 1875. They are drawn in different styles, and some are so drawn as to be hardly intelligible. Obscurity of style, however, is only one of the defects of these Acts. Their arrangement is often worse than their style. Of this the Copyright Act of 1842 is a conspicuous instance.

10. The piecemeal way in which the subject has been dealt with affords the only possible explanation of a number of apparently arbitrary distinctions between the provisions made upon matters which would seem to be of the same nature. Thus—

(*a.*) The term of copyright in books, and in printed and published dramatic pieces and music, is the life of the author and seven years after his death, or 42 years from the date of publication, whichever is the longer.

[1] See preceding chapter.

(*b.*) The term of copyright in music not printed and published but publicly performed is doubtful, and may perhaps be perpetual.

(*c.*) The term of copyright in a lecture not printed and published but publicly delivered is wholly uncertain. The term of copyright in a lecture printed and published is the longer of the two periods of 28 years and the life of the author. It may perhaps be doubted whether the term of copyright in a book consisting of a collection of lectures would differ from the term of copyright in other books.

(*d.*) The term of copyright in engravings, etc., is 28 years from publication; in paintings, etc., the artist's life and seven years; in sculpture, 14 years from the first "putting forth or publishing" of the work (an indefinite phrase), 14 years more being given to the sculptor if he is living at the end of the first term.

11. Other singular distinctions exist as to the law relating to registration of copyrights. No system of registration is provided for dramatic copyright, or for copyright in lectures or engravings. Such a system is provided for copyright in books and paintings, but its effect varies. Registration must in either case precede the taking of legal proceedings for an infringement of copyright, but after registration the owner of copyright in a book may, while the owner of copyright in a painting may not, sue the persons who infringed his copyright before registration.

12. The law is not only arbitrary in some points, but is incomplete and obscure in others. The question whether there is such a thing as copyright at common law, apart from statute, has never been decided, and has several times led to litigation. Some sort of copyright has been recognized in newspapers, but it is impossible to say what it is. It has been decided on the one hand that a newspaper is not a "book," within the meaning of the Copyright Act of 1842, and on the other hand that there is some sort of copyright in newspapers, yet the courts have always leaned to the opinion that there is no copyright independent of statute;—at all events they have never positively decided that there is.

13. Upon all these grounds we recommend that the law on this subject should be reduced to an intelligible and systematic form. This may be effected by codifying the law, either in the shape in

which it appears in Sir James Stephen's Digest, or in any other which may be preferred; and our first, and, we think, one of our most important, recommendations is that this should be done. Such a process would, amongst other things, afford an opportunity for making such amendments in the substance of the law as may be required.

14. We now proceed to discuss the subject in detail, following the order of the Digest, and with reference to it. In the margin of the Digest we have, wherever it was practicable, noted the alterations which we recommend, so that it shows both what the law in our opinion is, and what in our opinion it ought to be.

Unpublished Works.

15. With respect to unpublished documents or works of art, we do not suggest any alteration in the law.

Necessity for Copyright.—The Royalty System.

16. With reference to copyright generally, we do not propose to enter upon the history of the Copyright Laws, nor to discuss the various questions that have from time to time been raised in connection with the principle involved in those laws. It is sufficient for the present purpose to refer to the above-mentioned cases of Millar *vs.* Tayler, Donaldson *vs.* Becket, and Jeffries *vs.* Boosey, and to the debates that have taken place in Parliament, in which the arguments on one side and the other are fully set forth. Taking the law as it stands, we entertain no doubt that the interest of authors and of the public alike requires that some specific protection should be afforded by legislation to owners of copyright; and we have arrived at the conclusion that copyright should continue to be treated by law as a proprietary right, and that it is not expedient to substitute a right to a royalty defined by statute, or any other right of a similar kind.

17. We make special reference to a system of royalty, because, in the course of our inquiry, it has been suggested that it would be expedient in the interest of the public, and possibly not disadvantageous to authors, to adopt such a system in lieu of the existing law of copyright; and although the change has hardly been seriously urged upon us as a practical measure, except by one witness, it is of so important a character that we desire to offer a few observations upon it.

18. The royalty system may be briefly described as a system under which the author of a work of literature or art, or his assignee, would not have the exclusive right of publication, but any person would be entitled to copy or republish the work on paying or securing to the

owner a remuneration, taking the form of a royalty or definite sum prescribed by law, payable to the owner for each copy published.

19. The principal reason urged for the adoption of this system is the benefit that it is supposed would arise to the public from the early publication of cheap editions. It is now the usual practice of publishers of the best class of literary works to publish first an expensive edition, then, after a period of greater or less duration, according to the sale of the work, an edition at a medium price, and finally, but often a good many years later, what are called popular editions, at low prices. The advocates of the royalty system say that, if it were adopted, the competition that would arise would compel the original publishers to publish at cheap prices;—that thus the public would be able to procure books at once which, under the present system, are kept beyond their reach by high prices;—and that the advantage to authors would be as great or greater than it now is, since an extended sale might be expected to follow publication at lower prices, and the royalty would be paid them even though their works proved failures in a commercial point of view.

20. The opponents of the system say that it is notorious that where one book pays the publisher for his outlay and risk, many are complete failures and never pay even the cost of publishing;—that, if the royalty system were established, no publisher would take the risk of the first publication, knowing that, if the work proved successful, he would immediately have his reward snatched from his grasp by the numerous publishers who would republish and undersell him;—that it would be impossible for publishers to remunerate authors at the rate they do now;—that authors would lose the fair remuneration they now obtain, and would often be deterred from writing;—and that many works, especially those involving long preparation and large cost to the author or publisher, which would be published under the present system, could never be brought out, on account of the increased risk that would ensue from the royalty system.

21. To meet these objections it has been suggested that there should be a limited period from first publication, and that during such period republication by any person, other than the author and publisher, should not be allowed.

22. We have thus briefly noted some of the arguments for and against the royalty system, but we think it unnecessary to discuss the subject in greater detail, or to point out the practical difficulties which

the introduction of such a scheme would necessarily involve, or how those difficulties might possibly be more or less obviated, because we are unable, after carefully considering the subject, to recommend for adoption this change in the existing law. We venture to add, in confirmation of our view, that while the principle of copyright has been recognized in almost every foreign State, in no one country has the system of royalty been adopted, except in a modified form in Italy, as pointed out in paragraph 39.

The Term of Copyright.—Books.

23. The term of copyright is the next subject to which our attention has been called. We have already used this as an illustration of the anomalies and distinctions which have grown up in the law of copyright. The term of copyright in books is for the life of the author and 7 years after his death, or for 42 years from the date of publication, whichever period may happen to expire last.

24. We purpose for the present to confine our remarks to copyright in books and other literary works comprehended under that term—that is to say, "every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan, separately published."

25. It has been urged against the present regulations for the term of copyright in books—1st. That the period is not long enough :—2dly. That copyrights in works by the same author generally expire at different dates :—3dly. That, owing to the difficulty of verifying the date of publication, it is scarcely possible to ascertain the termination of the copyright. In addition to these objections, others have been stated which it is needless for us to specify in this place.

26. We have already stated that we consider some kind of protection in the nature of copyright desirable ; and it appears to us that the existing terms are not more than sufficient, if indeed they are sufficient, to secure that adequate encouragement and protection to authors which the interests of literature, and therefore of the public, alike demand from the State. We proceed, therefore, to call attention to the three objections above mentioned, to the present duration of copyright.

27. First, the period is said not to be long enough. The chief reasons for this assertion are that many works, and particularly those of permanent value, are frequently but little known or appreciated

for many years after they are published, and that they do not command a sale sufficient to remunerate the authors until a considerable part of the term of copyright has expired. Some works, as, for instance, novels by popular authors, command an extensive sale and bring to the authors a large remuneration at once, but the case is altogether different with others, such as works of history, books of a philosophical or classical character, and volumes of poems. In some instances works of these kinds have been known to produce scarcely any remuneration, until the authors have died and the copyrights have nearly expired. It is also urged that in the case of many authors who make their living by their pens, their families are left without provision shortly after their deaths, unless their works become profitable very soon after they are written.

28. These arguments and others of a like kind, which will be found not only in the evidence we have taken, but in the debates in Parliament, are in our opinion of great weight, but on the other hand we do not lose sight of the public interest, which, it has been urged upon us, would be prejudiced by prolongation of copyright. Greater freedom of trade and competition are said to be desirable, that books may be more abundant in supply and cheaper in price.

29. The second objection to the present duration of copyright is, that copyrights belonging to the same author generally expire at different dates. That it is well founded is manifest, for if an author writes several works, or one work in several volumes, which are published at different times, as is frequently the case, the copyrights will expire forty-two years from the respective dates of publication, unless the author happens to live so long that the period of seven years after his death is beyond forty-two years from the publication of his latest work or volume.

30. Under the present system, moreover, copyright in an earlier edition expires before copyright in the amendments in a later edition of the same work. We have had evidence that in one case the first and uncorrected edition of an important work was republished before the expiration of the copyright in the later and improved editions. But if the alteration in the existing term of copyright, which we suggest hereafter, were adopted, namely, that it should be for the life of the author and a fixed number of years after his death, all the copyrights of the same author would expire at the same date, and it would then be open to any publisher to put out a complete edition of all the author's works, with all the improvements and emendations

which have appeared in the last edition, in a uniform shape and at a uniform price.

31. The third objection to the present duration of copyright is that it is frequently difficult, if not impossible, to ascertain its termination, owing to the fact that the expiration of the period depends upon the time of publication. It is in most cases easy to ascertain the date of a man's death, but frequently impossible to fix with any certainty the date of the publication of a book. Under the present law it is uncertain what constitutes publication; but whatever may be a publication sufficient in law to set the period of copyright running, it generally takes place in such a manner that the precise date is not noted even if known. It is sometimes said that the date printed in the title-page of a book should be considered the date of publication, but books are frequently post-dated, and in many cases bear no date at all. This objection is one which, in our opinion, should be removed.

32. The remedy which suggests itself to us as the most likely to effect all the desired objects is, that instead of the period of copyright being, as at present, a certain number of years from publication, it should last for the life of the author and a fixed number of years after his death.

33. We have been influenced in advising this change in the law by the consideration that it will have the effect of assimilating the term of copyright in books to that of copyright in works of fine art, the duration of which, for reasons to be hereafter stated, is for the life of the author and a certain number of years after his death. And further, as this mode of computing the duration of copyright has been adopted by the great majority of foreign countries, the change in our law may facilitate the making of international copyright arrangements with other States.

34. Before proceeding further on this point we think it right to notice a suggestion that has been made to us, on the assumption that the duration of copyright would continue to be for a fixed period of years. It has been proposed that, instead of the present term of 42 years from publication, the original right should last for 28 years only, but that it should be renewable for a further period of 14 or 28 years by registration by the author or his personal representatives; and this is, we learn, the law in the United States and Canada. The reasons advanced for this proposal are, that if copyrights are sold, publishers, as a rule, will not give more for the whole of the present

term of 42 years than they would if there were only 28 years that they could purchase; that authors could thus, without any pecuniary loss, sell their copyrights for the first period only, and, if their works proved of great and lasting value, would not have finally parted with all their interest, but would be entitled to the second term of 14 years, by which they or their families would receive a due reward for their labors.

35. There is, no doubt, considerable force in the argument, but we would observe that the advantages held out by the change of law would not be secured unless, first, the copyright is sold, and secondly, the author is debarred by law, not only from selling, in the first instance, more than the copyright in the term of 28 years, but even from giving any binding undertaking to secure to the purchaser, either by registration or otherwise, the advantages of the subsequent term of 14 years.

36. Now, whatever may be the practice in the United States and Canada, we are satisfied from the evidence that in this country many authors do not sell their copyrights, and in such cases no advantage would arise from the proposed change. And, with respect to the second point, we are not satisfied that the advantages expected from the scheme counterbalance the disadvantage of interfering by law with freedom of contract.

37. Should our suggestion, that copyright in future should endure for the life of the author and a fixed number of years after his death, be adopted, the proposal to divide the present, or any other fixed term is of course inapplicable.

38. Assuming, therefore, that the duration of copyright is to be for the life of the author and a certain number of years after his death, we have next to consider what the number of years should be. According to the existing law, the period in the case of books is life and 7 years, or 42 years from publication, if that period is the last to expire; and the period for copyright in paintings, drawings, and photographs has been fixed at life and seven years.

39. We find considerable variety in the terms fixed in other countries, but, putting aside the United States, which seem to have adopted our existing term with modifications, we find that the more important nations have adopted terms longer than our own. Thus, the term in France is the life of the author and 50 years; in Belgium, life and 20 years; in Germany, life and 30 years; in Italy, life and 40 years, with a second term of 40 years, during which other persons

than the proprietor may publish a work on payment of a royalty to him; in Russia, life and 50 years; in Spain, life and 50 years; in Portugal, life and 50 years; and in Holland, life and 20 years. These terms are subject to sundry modifications and conditions which it is unnecessary for us to enter into, but while we consider it expedient that the existing term of copyright should be altered, we think that the terms fixed by the nations we have referred to are in some cases excessive and unnecessary.

40. Upon the whole we suggest the term adopted by Germany, viz., life and 30 years, as most suitable for Your Majesty's dominions. We are, however, of opinion that, in the event of an international agreement being concluded, by which a common term is fixed for copyright in all countries, power should be given to Your Majesty to adopt, by Order in Council, in lieu of the above term of life and 30 years, the term fixed by such international arrangement.

41. We further suggest that in the case of posthumous and anonymous works and of encyclopædias, the period should be 30 years from the date of deposit for the use of the British Museum. In the case of anonymous works the author should be allowed, during the period of 30 years, by printing an edition with his name attached, to secure the full term of life and 30 years.

42. Should these suggestions be adopted, we think that it would be desirable that copyrights in existence at the time of the passing of the Act should be extended, subject to a proviso like the one contained in section 4 of the Copyright Act of 1842, guarding against the alteration of existing contracts between authors and publishers. In no case should the duration of existing copyrights be abbreviated.

43. One other point relating to the term of copyright remains, to which we wish to call attention. It has been provided that in the case of encyclopædias, reviews, magazines, periodical works, and works published in a series of books, or parts, for which various persons are employed by the proprietor to write articles,—if the articles are written and paid for on the terms that the copyright therein shall belong to the proprietor of the work, the same rights shall belong to him as to the author of a book, except in one particular, in which particular a difference is made between essays, articles, or portions of reviews, magazines, or other periodical works of a like nature and articles in encyclopædias. In the case of the former (but not of encyclopædias) a right of separate publication of the articles reverts to the author after 28 years for the remainder of the period of copy-

right, and during the 28 years the proprietor of the work cannot publish the articles separately without the consent of the author or his assigns. Authors can, however, by contract reserve to themselves during the 28 years a right of separate publication of the articles they write, in which case the copyright in the separate publication belongs to them, but without prejudice to the rights of the proprietor of the magazine or other periodical. We think some modification in this provision is required as regards the time when the right of separate publication should revert to the authors of the articles, and that three years should be substituted for twenty-eight. As we have reason to believe that proprietors of periodicals have not, as a rule, insisted on the right given them by the existing law, we think there would be no objection to making this provision retroactive.

44. It has been pointed out to us that, under the existing law, the author of an article in a magazine or periodical cannot, until the right of separate publication reverts to him, take proceedings to prevent piracy of his work; so that, unless the proprietor of the magazine or periodical be willing to take such proceedings (which may very likely not be the case when the right of the author is about to revive), the result would practically be to deprive the author of the benefit of the right reserved to him. We recommend, therefore, that during the period before the right of separate publication reverts to the author, he should be entitled, as well as the proprietor of the magazine or periodical, to prevent an unauthorized separate publication.

University Copyright.

45. In connection with the subject of the term of copyright we have to notice the perpetual copyrights possessed by certain universities and schools, which form exceptions to the general law by which copyright is limited to a definite number of years.

46. We find that the Universities of Oxford, Cambridge, Edinburgh, Glasgow, St. Andrews, and Aberdeen, each college or house of learning at the Universities of Oxford and Cambridge, Trinity College, Dublin, and the colleges of Eton, Westminster, and Winchester have forever the sole liberty of printing and reprinting all such books as have been, or hereafter may be bequeathed or given to them, or in trust for them by the authors thereof, or by their representatives, unless they were given or bequeathed for a limited term.

47. To ascertain the value of this exceptional right to the institu-

tions interested, we communicated with the authorities at the Universities of Oxford and Cambridge, and asked the number of copyrights possessed by them in perpetuity under this provision of the law. We found that the University of Oxford possesses six copyrights and that the University of Cambridge has none.

48. This fact shows that the privilege, which is by no means of recent origin, is of very little real value, and as it is undesirable to continue any special and unusual kinds of copyright, we are of opinion that this exceptional privilege should be omitted from the future law. We do not, however, think it would be right to deprive the institutions above named of the copyrights they already possess, without their consent, but should they be retained, we suggest that the universities and other institutions should be placed upon the same footing as regards the protection of their copyrights as other copyright owners, and that the exceptional penalties and remedies given by the Act which was passed in the 15th year of the reign of his late Majesty King George III. should be repealed.

Place of Publication.

49. We now desire to call attention to the place of publication, as it affects the obtaining of copyright in the United Kingdom.

50. And first we have to notice publication in the colonies, as to which it appears the present state of the law is anomalous and unsatisfactory.

51. Copyright in the United Kingdom extends to every part of the British dominions, but if a book be published first in any part of the British dominions other than the United Kingdom, the author cannot obtain copyright, either in the United Kingdom or in any of the colonies, unless there is some local law in the colony of publication under which he can obtain it within the limits of that colony.

52. It is obvious that if by Imperial Law copyright is to be enforced in the colonies, while at the same time first publication in the United Kingdom is a condition of obtaining it, the colonies are not treated on fair and equal terms, and that there is just ground of complaint on the part of colonial authors and publishers.

53. In truth a colonial author is placed even in a worse position than a foreign author who is the subject of a country with which we have an international copyright convention. For example, a French author can publish in France, and subsequently, upon the performance of certain conditions, such as registration, secure himself

against piracy of his work throughout the British Empire, while the colonial author can neither secure his property in the United Kingdom nor France, unless he first publishes in the United Kingdom.

54. Three ways of remedying this inequality present themselves: either, (1) the Imperial Act, and the rights under it, may be limited to the United Kingdom; or, (2) the same rights throughout Your Majesty's dominions may be given to British subjects, whether the work is first published in the United Kingdom or in any colony; or, (3) the benefits of Imperial copyright may be freely thrown open to all authors, without regard to nationality or prior publication elsewhere, who publish within the British dominions.

55. Upon consideration we are not disposed to recommend the first alternative. If the subject had now to be approached for the first time, it might be thought desirable, looking to the existing relations between the greater colonies and the mother country, to confine the right of property in a work to the country where it is first published, leaving the different colonies to legislate on the subject, and the copyright proprietor to secure, should he think fit, copyright in any other part of Your Majesty's dominions, by complying with the requirements of the law of such place.

56. It has been suggested further, that if copyright were thus limited, conventions might be made with the colonies similar to those made with foreign nations, providing in effect that publication in a colony should secure the same right to the proprietor of copyright as publication in the mother country. This would not, however, give a colonial author copyright elsewhere than in the United Kingdom, and in such other colonies as might agree to be bound by such conventions; and it may be questioned whether some of the colonies would not decline to enter into such conventions. The temptation to publish cheap copies of English copyright works without payment to the author would be very great, as it has proved to be in the United States. Upon this point we need only refer to Mr. Morrill's Official Report to the Senate of the United States, which will be found at page 10 of the Parliamentary Paper of July, 1874, upon Colonial Copyright.

57. But we conceive that the existing anomalies may be removed, and the interests of the colonists preserved, without restricting the existing rights of British authors; and we submit further that the subject is one of such importance that it may fairly continue to be treated, in some of its aspects, from an imperial, rather than from a

local point of view, and that the colonies should be dealt with as integral parts of the empire, rather than placed on the footing of foreign nations. It may be added that foreign nations with whom we have made conventions might possibly have ground of complaint, if this limitation of the Imperial Act were made without their assent.

58. We recommend, therefore, generally, that where a work has been first published in any one of Your Majesty's possessions, the proprietor of such work shall be entitled to the same copyright, and to the same benefits, remedies, and privileges in respect of such work, as he would have been entitled to under the existing Imperial Act, if the work had been first published in the United Kingdom.

59. With regard to publication in foreign states the law now is that, except under treaty, no copyright can be obtained if a book has been published in any foreign country before being published in the United Kingdom, but it is doubtful whether contemporaneous publication in this and a foreign country would prevent the acquisition of copyright here.

60. It is a grave question whether it is desirable that the condition requiring first publication in this country should continue, and whether the reason advanced for this condition, namely, that it is advantageous to this country that works should be first published here, outweighs the hardships that may be inflicted upon British authors by preventing them from availing themselves of arrangements which they might otherwise make with foreign or colonial publishers.

61. We have come to the conclusion that a British author, who publishes a work out of the British dominions, should not be prevented thereby from obtaining copyright within them by a subsequent publication therein. Yet we think that such republication ought to take place within three years of the first publication. And we may add, that we think the law should be the same with reference to dramatic pieces and musical compositions first performed out of Your Majesty's dominions, even though they are not printed and published ;—in other words, that first performance in a foreign country should not injure the dramatic right in this country. It has been decided under the 19th section of the International Copyright Act, that the writer of a drama loses his exclusive right to the performance of his drama here in England, if it has been first performed

abroad; that is to say, representation has been held to be a publication. We see no reason why the rule which may be finally determined upon with reference to first publication of books should not apply to first representation of dramatic pieces. The evidence shows how hardly the present law presses upon British dramatic authors.

62. As to aliens, although we would give them the same rights as British subjects if they first publish their works in the British dominions, it is obvious that the same reason does not exist for giving them copyright if they do not bring their books first to our market; and we therefore recommend that aliens, unless domiciled in Your Majesty's dominions, should only be entitled to copyright for works first published in those dominions. It is to be borne in mind that, *even though aliens may be deprived of British copyright by first publication abroad*, they may still obtain it in many cases by means of treaties.

Persons capable of obtaining Copyright.

63. With regard to the persons who are capable of obtaining imperial copyright in Your Majesty's dominions, as distinguished from international copyright under treaty, we find that, according to the existing law, the author in order to obtain copyright must be either—

(*a.*) A natural-born or naturalized subject of Your Majesty, in which case the place of residence at the time of the publication of the book is immaterial; or

(*b.*) A person who, at the time of the publication of the book in which copyright is to be obtained, owes local or temporary allegiance to Your Majesty, by residing at that time in some part of Your Majesty's dominions.

64. Besides these it is probable, but not certain, that an alien friend who first publishes a book in the United Kingdom, even though resident out of Your Majesty's dominions, acquires copyright therein. We think this doubt should be set at rest, and that, subject to our previous recommendation as to place of publication by aliens not domiciled in Your Majesty's dominions, the benefit of the copyright laws should extend to all British subjects and aliens alike.

Immoral, Irreligious, Seditious, and Libelous Works.

65. Our attention has, during the course of our inquiry, been

called to the case of books which are of an immoral, irreligious, seditious, or libelous character. The present law is that no copyright exists in such works, or in any book which professes to be what it is not, in such a manner as to be a fraud upon the purchasers thereof.

66. The difficulty that arises in such cases is, that as the author is deprived of copyright, he cannot stop republication by other persons; and thus, unless there be a prosecution upon public grounds the evil is allowed to extend, instead of being checked by the only person who has any private interest in stopping its extension by others. To grant copyright, however, in such works is out of the question, as this would be to sanction and protect immorality, irreligion, libels, and other matters which it is against the policy of the law to encourage. The subject, however, really belongs more properly to the criminal law than to the law relating to copyright: and we therefore do not make any suggestion with regard to it.

Abridgments of Books.

67. Questions frequently arise, with regard to literary works, as to what is a fair use of the works of other authors in the compilation of books. In the majority of cases these are questions that can only be decided, when they arise, by the proper legal tribunals, and no principle which we can lay down, or which could be defined by the Legislature, could govern all cases that occur. There is one form of use of the works of others, however, to which we wish specially to draw attention, as being capable of some legislative control in a direction we think desirable. We refer to abridgments.

68. At present an abridgment may or may not be an infringement of copyright, according to the use made of the original work and the extent to which the latter is merely copied into the abridgment; but even though an abridgment may be so framed as to escape being a piracy, still it is capable of doing great harm to the author of the original work by interfering with his market; and it is the more likely to interfere with that market and injure the sale of the original work if, as is frequently the case, it bears in its title the name of the original author.

69. We think this should be prevented, and, upon the whole we recommend, that no abridgments of copyright works should be allowed during the term of copyright, without the consent of the owner of the copyright.

Dramatic Pieces and Musical Compositions.

70. Dramatic pieces and musical compositions, though in some respects differing, are yet so similar that we may couple them together for the purposes of this Report.

71. We have carefully considered the statute law now in force with reference to music and the drama; but from the way in which certain Acts of Parliament have been framed and incorporated by reference, considerable doubt arises in our minds on various important points connected with these subjects.

72. It may be convenient, however, before referring to them more particularly, to notice a difference that exists between books and musical and dramatic works. While in books there is only one copyright, in musical and dramatic works there are two, namely, the right of printed publication and the right of public performance.

73. These rights are essentially different and distinct, and we find that many plays and musical pieces are publicly performed without being published in the form of books, and thus the acting or dramatic copyright is in force, while as to literary copyright such plays and pieces retain the character of unpublished manuscripts. Music printed and published becomes a book for the purpose of the literary copyright, and so, we presume, does a play; but it is a question what becomes of the performing copyright on the publication of the work as a book; and there is a further question, whether the performing copyright can be gained at all, if the piece is printed and published as a book before being publicly performed.

74. With regard to the duration of copyright in dramatic pieces, and musical compositions, we recommend that both the performing right and the literary right should be the same as for books.

75. We further propose, in order to avoid the disunion between the literary and the performing rights in musical compositions and dramatic pieces, that the printed publication of such works should give dramatic or performing rights, and that public performance should give literary copyright. For a similar reason it would be desirable that the author of the words of songs, as distinguished from the music, should have no copyright in representation or publication with the music, except by special agreement.

Dramatization of Novels.

76. With reference to the drama, our attention has been directed to a practice, now very common, of taking a novel and turning its

contents into a play for stage purposes, without the consent of the author or owner of the copyright. The same thing may be done with works of other kinds if adapted for the purpose, but inasmuch as novels are more suitable for this practice than other works, the practice has acquired the designation of dramatization of novels. The extent to which novels may be used for this purpose varies. Stories have been written in a form adapted to stage representation almost without change; sometimes certain parts and passages of novels are put bodily into the play, while the bulk of the play is original matter; and at other times the plot of the novel is taken as the basis of a play, the dialogue being altogether original.

77. Whatever may be the precise form of the dramatization, the practice has given rise to much complaint, and considerable loss, both in money and reputation, is alleged to have been inflicted upon novelists. The author's pecuniary injury consists in his failing to obtain the profit he might receive if dramatization could not take place without his consent. He may be injured in reputation if an erroneous impression is given of his book.

78. In addition to these complaints it has been pressed upon us that it is only just that an author should be entitled to the full amount of profit which he can derive from his own creation;—that the product of a man's brain ought to be his own for all purposes;—and that it is unjust, when he has expended his invention and labor in the composition of a story, that another man should be able to reap part of the harvest.

79. On the other hand, it has been argued that the principle of copyright does not prevent the free use of the ideas contained in the original work, though it protects the special form in which those ideas are embodied;—that a change in the existing law would lead to endless litigation;—and that it would work to the disadvantage both of the author and the public. Upon these grounds, or some of them, a bill, introduced by Lord Lyttleton in 1866 and supported by Lord Stanhope, was defeated.

80. We have fully considered all these points, and have come to the conclusion that the right of dramatizing a novel or other work should be reserved to the author. This change would assimilate our law to that of France and the United States, where the author's right in this respect is fully protected.

81. Were this recommendation adopted, a further question would arise, as to the time during which this right should be vested in the

author, and, in the event of his not choosing to dramatize his novel, whether other persons should be debarred from making use of the story he has given to the world. We are disposed to think that the right of dramatization should be co-extensive with the copyright. It has been suggested, in the interest of the public, that a term, say of three or five years, or even more, should be allowed to the author within which he should have the sole right to dramatize his novel, and that it should be then open to any one to dramatize it. The benefit, however, to the public in having a story represented on the stage does not appear to us to be sufficient to outweigh the convenience of making the right of dramatizing uniform in its incidents with other copyright.

Lectures.

82. Lectures are peculiar in their character, and differ from books, inasmuch as, though they are made public by delivery, they have not necessarily a visible form capable of being copied. Nevertheless it has been thought right by the legislature in recent years to afford them the protection of copyright, and, considering the valuable character of many lectures, it is our opinion that such protection should not only be continued, subject to certain changes in the law, but extended. Although lectures are not always capable of being copied, because not reduced to writing, many lectures written for the purpose of delivery are not published, and many are written that the matter of them may be preserved, or that they may be capable of delivery in the same form on other occasions. Moreover, lectures, though not put in writing by the author, may be taken down in shorthand, and thus published or re-delivered by other persons. The present Act of Parliament, which gives copyright in lectures, seems only to contemplate one kind of copyright, namely, that of printed publication, whereas it is obvious that for their entire protection lectures require copyright of two kinds, the one to protect them from printed publication by unauthorized persons, the other to protect them from re-delivery.

83. The present law is that the author of any lecture, or his assignee, may reserve to himself the sole right of publishing it, by giving two days' notice of the intended delivery to two justices of the peace living within five miles from the place where the lecture is to be delivered, unless the lecture is delivered in any university, public school, or college, or on any public foundation, or by any person in virtue of or according to any gift, endowment, or foundation, in

which cases no copyright is given on any condition. If any person obtains a copy of a protected lecture by taking it down, and publishes it without the leave of the author, or sells copies, he is to forfeit the copies, and *1d.* for every sheet found in his custody. This law is designed m' ly to prevent unauthorized publication of lectures by printing, but as has been observed it does not prohibit unauthorized re-delivery.

84. We think that the author's copyright should extend to prevent re-delivery of a lecture without leave as well as publication by printing, though this prohibition, as to re-delivery, should not extend to lectures which have been printed and published. We also recommend that the term of copyright in lectures should be the same as in books, namely, the life of the author and 30 years after his death.

85. In the course of our inquiry it has been remarked that, in the case of popular lectures, it is the practice of newspaper proprietors to send reporters to take notes of the lectures for publication in their newspapers, and that, unless this practice is protected, it will become unlawful. It does not seem to us desirable that this practice should be prevented, but on the other hand the author's copyright should not in any way be prejudiced by his lectures being reported in a newspaper. The author should have some sort of control so as to prevent such publication if he wishes to do so; and we therefore suggest that though the author should have the sole right of publication, he should be presumed to give permission to newspaper proprietors to take notes and report his lecture, unless, before or at the time when the lecture is delivered, he gives notice that he prohibits reporting.

86. By the present law, as above stated, a condition is imposed of giving notice to two justices. Without entering into the origin of this provision we find that it is little known and probably never or very seldom acted upon; so that the statutory copyright is practically never or seldom acquired. We therefore suggest, that this provision should be omitted from any future law.

87. We do not suggest any interference with the exception made in the Act as to lectures delivered in universities and elsewhere, wherein no statutory copyright can be acquired.

Newspapers.

88. Much doubt appears to exist in consequence of several conflicting legal decisions whether there is any copyright in newspapers.

We think it right to draw Your Majesty's attention to the defect, and to suggest that in any future legislation, it may be remedied by defining what parts of a newspaper may be considered copyright, by distinguishing between announcements of facts and communications of a literary character.

Fine Arts.

89. The next subjects for our consideration were the various branches of the fine arts, consisting of engravings and works of that class, paintings, drawings, and photographs, and lastly, sculpture.

90. It might be supposed that the law relating to engravings, etchings, prints, lithographs, paintings, drawings, and photographs would be the same so far as those matters are capable of being regulated by the same law; but such is not the case. Until the 25th and 26th years of Your Majesty's reign, there was no Act of Parliament by which copyright was given for paintings, drawings, and photographs, while engravings, etchings, and prints were protected so long ago as the eighth year of the reign of His late Majesty King George II. Though engravings, etchings, and prints were thus provided for, a doubt arose in process of time whether the Acts then in force would apply to lithographs and other recently invented modes of printing pictures, and it was therefore declared, by an Act passed in the 15th and 16th years of Your Majesty's reign, that the earlier Acts were intended to include prints taken by lithography or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely. It might be questioned whether the language of this Act would not embrace photography, but it seems to have been assumed that it would not, for in the 25th and 26th years of Your Majesty's reign, an Act was passed to give copyright in paintings, drawings, and photographs, and the right thus given was placed on an entirely different footing and made subject to different conditions from those to which engravings, etchings, lithographs, and prints are subject.

91. There is at present great diversity in the law as to the duration of copyright in works of fine art. For engravings and similar works the term is 28 years from publication; for paintings, drawings, and photographs, the life of the artist and seven years; and for sculpture 14 years from the first putting forth or publication of the work, and if the sculptor is living at the end of that time, for a

second term of 14 years. We do not think it desirable that these distinctions should continue.

92. We understand that the reason for making the term in the case of paintings the life of the artist and seven years, was to avoid the necessity of proving the date of publication, which is, it is said, in the case of a painting frequently impossible. There would be equal difficulty, it is reasonable to suppose, in proving the date of publication of sculpture, and we have already shown that it exists, to a minor degree, in the case of all literary works. We think it desirable as far as possible to get rid of this difficulty. By adopting as the term the life of the artist and a certain time after death, the result will be attained.

93. Sculpture, though a branch of the fine arts, is essentially different in many points from paintings, engravings, and works of that class; nevertheless we purpose to deal with them concurrently, so far as the subjects permit.

94. It will have been observed that wherever it is possible to place on the same footing the various subjects of copyright of which we have treated in the earlier part of this Report, we have recommended that the law should be assimilated; we propose that all the subjects of fine art shall be dealt with on the same principle so far as they are capable of that treatment.

95. We therefore propose that the term of copyright for all works of fine art, other than photographs, shall be the same as for books, music, and the drama, namely, the life of the artist and 30 years after his death.

96. We further recommend that it should be open equally to subjects of Your Majesty and aliens to obtain copyright in works of fine art, but aliens, unless domiciled in Your Majesty's dominions, should only be entitled to copyright for works first published in those dominions.

Sculpture.

97. As to sculpture we have had to consider by what acts the sculptor's copyright ought to be deemed to have been infringed. Sculpture may be copied in various ways, not only by sculpture and casting, but by engraving, drawing, and photography; and since the rise of photography, the copying of sculpture by that means has become a considerable business. The question has therefore been brought before us whether copying by other means than sculpture or casting ought not to be considered piracy.

98. A material item in the consideration of this question is the injury likely to be inflicted on the sculptor. The principal witness on this point, Mr. Woolner, R.A., though he thought that the photographing of sculpture would probably operate rather as an advertisement in the sculptor's favor than to his detriment, expressed a wish that the law should give a sculptor protection against copying by means of drawing or engraving; and he was of opinion that incorrect copying by drawing or engraving might be very prejudicial to the sculptor's reputation. But besides this, there is the question whether a sculptor ought not to be entitled to any profit to be made by allowing his works to be photographed or otherwise copied.

99. Upon the whole we are disposed to think that every form of copy, whether by sculpture, modeling, photography, drawing, engraving, or otherwise, should be included in the protection of copyright. It might be provided that the copying of a scene in which a piece of sculpture happened to form an object should not be deemed an infringement, unless the sculpture should be the principal object, or unless the chief purpose of the picture should be to exhibit the sculpture.

100. It was also suggested that copyists of antique works ought to be protected by copyright so far as their own copies are concerned. Many persons spend months in copying ancient statues, and the copies become as valuable to the sculptors as if they were original works. It may be doubted whether the case does not already fall within the Sculpture Act, but we recommend that such doubts should be removed, and, that sculptors who copy from statues in which no copyright exists should have copyright in their own copies. Such copyright should not, of course, extend to prevent other persons making copies of the original work.

Paintings.—Assignment of Copyright on Sale of Pictures.

101. The most difficult question with relation to fine arts which we have had to consider, is to whom the copyright should belong on sale of a painting; whether to the artist or to the purchaser of the picture.

102. The present law on the subject is as follows:—The author of every original painting, drawing, and photograph, and his assigns, have the sole right of copying, engraving, and reproducing it, unless it be sold or made for a good or valuable consideration, in which case the artist cannot retain the copyright, unless it be expressly

reserved to him by agreement in writing, signed by the vendee, or by the person for whom the work was executed; but the copyright, in the absence of such agreement, belongs to the vendee or such other person; but it is also provided that a vendee or assignee cannot get the copyright unless at the time of the sale an agreement in writing signed by the artist or person selling is made to that effect. The result is, that if an artist sells a picture without having the copyright reserved to him by written agreement he loses it, but it does not vest in the purchaser unless there is an agreement signed in his favor. If, therefore, there is no agreement in writing—a very frequent occurrence—the copyright is altogether lost on a sale, but if the picture is painted on commission, instead of being sold after being painted, the copyright in the absence of any agreement vests in the person for whom the picture is painted.

103. We have taken a good deal of evidence with regard to this matter. It appears that the provision as to pictures painted on commission was made to prevent the unauthorized copying of portraits. Some difficulty, however, is said to have arisen in determining whether an order or a purchase is a commission, so as to bring the picture within such provision.

104. With regard to the general question whether the copyright in a picture should in every case remain with the artist unless expressly sold, or whether it should follow the picture unless expressly retained, the artists as a body are unanimous in their desire to have the copyright reserved to them by law.

105. It is true that if under the present law an artist wishes to retain the copyright, he can do so by an express stipulation embodied in an agreement signed by the purchaser. Artists, however, say that this is practically useless, since the purchaser would look upon a proposal for such an agreement as intended to deprive him of part of the value of his purchase. They therefore seldom ask for agreements, preferring that the copyright shall drop. In that case any person who can gain access to a valuable picture may make and sell copies of it in defiance of both artist and owner.

106. It is clearly undesirable that copyrights, which are in many cases of great value, should be in this way left free to piracy. The law, therefore, should distinctly define to whom, in the absence of an agreement, the copyright should belong.

107. In dealing with these questions we have had regard not only to the artist's claims which have been strongly advocated before us,

but also to the interests of the public, and to the consideration whether any distinction should be made between pictures sold after being painted and pictures painted on commission, or between portraits and other pictures.

108. First, as to portraits as distinguished from other pictures. Although artists contend that the copyright in pictures should belong to them notwithstanding a sale, it is admitted by some that an exception to the general rule might be made in the case of portraits, and that copyright in them might properly belong to the purchaser or person giving a commission. The evidence appears to us to prove, first, that the reasons why the copyright in portraits should belong to the person ordering the painting apply equally to other pictures; and, secondly, that it is by no means easy to say what a portrait is. Thus it is open to question whether the word would include the portrait of an animal, a dog, for instance, and if so, whether it would include a number of dogs, or a pack of hounds; or a picture of a house or a room, or any object without life; and further whether it is to include pictures of persons taken in character, not so much for the sake of the portrait of the person, as for the sake of the scene; and, lastly, whether it is to include pictures of persons forming large groups, where the scene is the object of the work, though the pictures of the persons present are portraits.

109. These difficulties lead us on the whole to doubt the expediency of drawing any distinction between portraits and other pictures.

110. Secondly, as to making a distinction between pictures painted on commission and others. We are here met with the difficulty of defining what is a commission; and looking to the evidence upon this point we have arrived at the conclusion that no distinction can practically be made.

111. The only question that remains, therefore, on this branch of our inquiry is, whether the copyright in a picture when sold, should still be vested in the artist, independently of the property in the picture, or whether, unless expressly reserved, it should follow the ownership of the picture.

112. The evidence shows that persons buying pictures do not in general think about the copyright, but that if the subject happens to be mentioned, they are generally under the impression that the copyright is included in the purchase, and are astonished if they are told that it is not. It is said that owing to this fact an artist, however eminent, when he is selling a picture, shrinks from mentioning the

copyright and asking for an agreement to enable him to retain it; he usually prefers that the copyright should be absolutely lost to both parties, as in the absence of any written agreement it would be, under the first section of the Act which was passed in the 25th and 26th years of Your Majesty's reign (c. 68), than that the purchaser should think that he is losing a valuable part of his bargain, and consequently should decline to complete the purchase.

113. The principal reason why artists wish to retain the copyright is to keep control over the engraver and photographer. To artists no doubt this control is a matter of considerable pecuniary value, but they urge that they not only wish to control engraving in order to get the payment from the engraver, but chiefly to prevent inferior engraving, which they consider prejudicial to their reputation. It is admitted that if a picture is sold, the artist would have no power to get it engraved when it is in the possession of the purchaser, except by his consent, and artists are willing that this should continue to be the case; but if this power of preventing engraving is so valuable, it is not easy to see why they should hesitate to explain the law to the purchaser and offer to let him have the copyright if he will preserve the picture from inferior engraving, rather than let the copyright be lost both to artist and purchaser.

114. This difficulty does not, we may observe, arise in sales to publishers, who, as a rule, purchase for the purpose of engraving, and therefore buy the copyright.

115. Upon the whole, then, the majority of us have arrived at the conclusion, that, in the absence of a written agreement to the contrary, the copyright in a picture should belong to the purchaser, or the person for whom it is painted, and follow the ownership of the picture. We may observe that this conclusion, though differing from the Bill of 1862 as originally drawn, and from a draft Bill of 1864, is in accordance with the provisions of the Fine Arts Bill of 1869, which we learn from Mr. Blaine's report was "prepared by direction of the Council of the Society of Arts, Manufactures, and Commerce, in consequence of a memorial having been presented to the Council by a considerable number of the most eminent artists and publishers resident in London." It is further substantially the same as the first section of the existing Act of 1862, except as to the concluding provision in that section, which enacts that the vendee cannot have the copyright unless an agreement to that effect is made in writing. This proviso was apparently added

to the Bill without sufficient consideration, during its progress through Parliament.

116. Upon this part of the case we may here refer to a question that has been brought under our notice, namely, whether an artist who has sold a picture should be allowed, without the consent of the owner, to make replicas of it, or whether, as has been suggested, a distinction should be made between replicas made by the artist and copies made by others than the artist. We are not, however, inclined to recognize any distinction; nor indeed, so far at all events as replicas in the same material are concerned, does it appear to be supported by artists.

117. Though in the preceding paragraphs we have spoken only of paintings, the law is the same as to drawings and photographs; and we think that, whatever changes may be made in the law as to paintings, the same should be made with regard to drawings.

118. Photographs, however, present some difficulty. At the present time they are coupled by Act of Parliament with paintings and drawings, and are subject to the same law, but, as we have before pointed out, we believe this circumstance arose merely from the fact that before the year 1862, when the Act was passed, there was no copyright protection afforded by the law for either of these subjects, and it was then thought right that photographs should be protected as well as other works of art. On consideration, however, it will be seen that photographs are essentially different from paintings and drawings, inasmuch as they more nearly resemble engravings and works of a mechanical nature, by which copies of pictures are multiplied indefinitely.

119. We propose that the term of copyright in photographs should be 30 years from the date of publication, except when originally published as part of a book. In the latter case it should be for the term of copyright in the book.

120. But the point upon which we feel difficulty is, whether the copyright should be assimilated to that in paintings and pass to a purchaser, or whether it should remain with the photographer. When photographs are taken with a view to copies being sold in large numbers, it is practically impossible that the copyright in the negative should pass to each purchaser of a copy, and it must remain with the photographer, or cease to exist. On the other hand the same reasons exist for vesting the copyright of portraits in the purchaser or person for whom they are taken, as in the case of a paint-

ing. Indeed, considering the facility of multiplying copies, and the tendency among photographers to exhibit the portraits of distinguished persons in shop windows, it may be thought that there is even greater reason for giving the persons whose portraits are taken the control over the multiplication of copies than there is in the case of a painting. It therefore becomes a question whether it is not necessary to make that distinction between photographs that are portraits and those that are not, and between photographs taken on commission and those taken otherwise, which we have deprecated in the case of paintings.

121. We suggest that the copyright in a photograph should belong to the proprietor of the negative, but, in the case of photographs taken on commission, we recommend that no copies be sold or exhibited without the sanction of the person who ordered them.

122. The same questions arise with respect to engravings, lithographs, prints, and similar works. These arts, like photography, may be employed for the purpose of issuing a large number of copies of a picture, or merely for the purpose of executing a commission and printing a few copies, of a portrait for instance, for private distribution by the person giving a commission among his friends. We think, therefore, that so far as regards the transfer and vesting of the copyright these arts should be placed upon the same basis as photography.

123. Before leaving the subject of the fine arts, we wish to notice one other matter as to which artists say the law is disadvantageous to them. Before an artist paints a picture, he frequently finds it necessary to make a number of sketches or studies, which, grouped together, make up the picture in its finished state. These works may be studies expressly made for the picture about to be painted, or they may be sketches which have been made at various times, and kept as materials for future pictures. If, after a picture is so composed, the copyright is sold, the artists are afraid that they are prevented from again using or selling the same studies and sketches, as they have been advised that such user or sale would be an infringement of the copyright they have sold.

124. It may be doubted whether this fear is well founded, but as the use of such studies and sketches as we have described could not, in our opinion, result in any real injury to the copyright owner, who has copies of them in his picture in a more or less altered shape, and combined with other independent work, we think the doubt should

be removed, and that the author of any work of fine art, even though he may have parted with the copyright therein, should be allowed to sell or use again his *bonâ fide* sketches and studies for such works and compositions, provided that he does not repeat or colorably imitate the design of the original work. We may observe that a provision to this effect was inserted in the Copyright Bill which was introduced by Lord Westbury in 1869.

Architecture.

125. In the course of our inquiry we received an application from the Royal Institute of British Architects, that a representative of the Institute might bring before us a grievance under which architects considered themselves to suffer. Mr. Charles Barry, the president, attended, and after reading to us a copy of a petition on the subject, which had been presented to the House of Lords in the year 1869, and some other papers which will be found in the evidence, contended that architects were subjected to great injustice and injury through their designs not having the protection of copyright, so as to prevent them being used by other persons than the author for building purposes; and some instances of hardship were given.

126. He suggested that the right to reproduce a building should be reserved to the architect for 20 years, and this whether reproduction were desired on the same scale or a different one, or in whole or in part, and whether by the person who gave the commission or any other; and further that copyright in architectural designs should be reserved to the author from the date of erection of a building or the sale of the design.

127. We are satisfied, as regards the former suggestion, that it would be impracticable to reserve this right to reproduce a building. With regard to the latter suggestion, we may observe that though architectural designs have no protection as designs, they are, in our opinion, protected as drawings by the Fine Arts Act, passed in the 25th and 26th years of Your Majesty's reign, so that they may not be copied on paper; and we think that such protection should be preserved.

Registration of Copyright and Deposit of Copies.

128. In the early part of our Report we referred to the existing law respecting registration. It affords one of the most striking

instances of those anomalies and distinctions which have grown up in the law of copyright, because the various subjects of the copyright law have been dealt with by the legislature at different times, and because there has been no attempt made to bring them into harmony.

129. We would first draw attention to the deposit, or presentation of copies of books to various public libraries.

130. By the present law a copy of the first edition, and of every subsequent edition containing additions and alterations, of every book published in any part of Your Majesty's dominions, must be delivered at the British Museum gratuitously, within a certain time after publication; and in default of such delivery the publisher is subject to penalties. There are four other libraries which have a right, on demand, to receive copies of every edition of every book, but to these special cases we shall hereafter have occasion to refer. No such deposit or presentation is required in the case of musical compositions or dramatic pieces publicly performed, unless printed and published, or in the case of lectures publicly delivered unless printed and published, or in the case of engravings and similar works, or of paintings, drawings, or photographs.

131. In every case for which registration is provided, except that of sculpture, it is effected at the Hall of the Stationers' Company, by an officer of the company called the Registrar of Copyright. Sculpture is not registered at Stationers' Hall, but, under the Copyright in Designs Acts, was, until recently, registered, if at all, by the Registrar of Designs. Since the abolition of the office for registration of designs as a separate paid office, sculpture has been registered under arrangements made by the Commissioners of Patents. We ought here to mention that under the International Copyright Act, to which we shall hereafter more particularly allude, copyright in foreign works is in all cases, including sculpture, registered at Stationers' Hall, and that by the same Act registration is made compulsory for works of those classes which, if British, are not required to be registered, and for which no domestic provision for registration exists.

132. By the present law, registration of books and works included by Act of Parliament in that term, is optional, but no action can be maintained for infringement of copyright until they have been registered. After registration, however, actions will lie for antecedent infringement. The principle of the law, therefore, is, that copyright

attaches upon production and publication, and that registration is only a legal preliminary to the enforcement of the right against a wrongdoer. The law, as will hereafter be seen, differs in regard to other works; but at present we confine our remarks to books.

133. We do not consider this state of the law satisfactory. We find that, as a matter of fact, few books are registered until the copyright has been infringed, and though the words "Entered at Stationers' Hall" are frequently to be seen on the title-pages of books, or on the outer sheets of music, entries are not generally made.

134. Several objections have been urged to this state of things. One is, that if it be the object of registration to define the extent and the duration of a right, as well as to ascertain to whom the right belongs, a law which leaves it open to all concerned to avoid that very definiteness which the law seeks to impose, is clearly unsatisfactory. Under the present system it is impossible to ascertain when the term of copyright in a particular book commenced, and therefore to know when it ends. And lastly, it is rendered uncertain whether an author intends to insist upon his copyright at all.

135. The remedies which have been proposed to us are either the total abolition of registration, or that it should be made compulsory, systematic, and efficient.

136. Those persons who suggest the abolition of registration have argued that it is of no practical utility;—that it cannot, as in the case of shares, ships, or land, be conclusive evidence of title;—that it cannot prove that the book registered was written by the person who registers it, or that it is not a piracy;—and that the owner can assert and prove his right quite as well by extrinsic evidence as by means of a register. Those, on the other hand, who advocate registration, say that it is a useful system, because copyright is a species of incorporeal property, of which some visible evidence of existence is desirable;—that it may on occasions be a matter of public utility to know to whom certain books belong, and that by means of registration the public are enabled to ascertain the fact, and whether copyright in a book does exist. They argue further that another advantage which can and ought to be derived from registration is that the register might be made conclusive evidence of transfer or devolution of title;—and that it would afford to the country a complete list of all literary works brought out in this country. It is also said to be very probable that in the absence of registration

English authors might find it difficult to enforce their rights in other countries. It is admitted to be a convenience to an author to be able, under an international copyright convention, to produce as evidence a copy of the register, instead of being obliged to prove by witnesses his authorship and right.

137. We are satisfied that registration under the present system is practically useless, if not deceptive. Great annoyance is caused to persons who are obliged to resort to the register, whether for the purpose of registering works or of searching for entries, by the mode in which the register is kept. In stating this we do not desire to express any censure upon the gentleman who holds the office of registrar. Our censure is intended to apply to the system in force, and the law which orders, or at least sanctions it. Moreover, in our opinion the fees are unnecessarily high.

138. We have been satisfied by the arguments in favor of registration that it is advisable to insist upon it, and that it should be made more effective and complete. To this end it should be made compulsory.

139. Before we refer to the several modes by which it has been suggested to us that registration may be made compulsory, it will be convenient to call attention to the system of registration now in force.

140. The existing regulations as to registration at Stationers' Hall are contained in the Copyright Act which was passed in the 5th and 6th years of Your Majesty's reign. By that Act a book of registry, wherein may be registered 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, is to be kept at the Hall of the Stationers' Company by an officer appointed by the company for that purpose. The register is to be open at all convenient times for inspection on payment of 1*s.* for every entry searched for or inspected, and certified copies of entries may be obtained on payment of 5*s.*, such copies being made *primâ facie* evidence of certain specified matters in all courts. To make a false entry, or to tender in evidence a fictitious copy, is a misdemeanor. Any proprietor of copyright in a book may enter in the register, in a specified form the title of the book, the time of first publication, the names and places of abode of the publisher and proprietor of the copyright, or of any portion of the copyright: a fee of 5*s.* is payable on registering a book, and on payment of a

similar sum any copyright may be assigned by the proprietor by making an entry of the assignment in the register. In case of error in the register, power is vested in Your Majesty's High Court of Justice to order a correction to be made. With regard to the registrar, he, by the terms of the Act, is appointed by the Stationers' Company. There is no power of dismissal given, but possibly the Company have a power of dismissal for reasonable cause. It seems doubtful whether the appointment is for life, or whether it is annual, but renewed as a matter of course; but for all practical purposes the appointment may be regarded as a life appointment. The remuneration of the registrar is by means of the fees payable for entries, certificates, assignments, and searches for entries of copyrights in the register. These fees wholly belong to the registrar, and the Stationers' Company does not participate in them.

141. In the course of our inquiry we received many complaints of a serious character from a number of witnesses against the present system of registration, and the mode in which the register is managed and the business conducted at Stationers' Hall. Great dissatisfaction has also been expressed at the amount of the fees, but these it will be remembered are fixed by the Act of Parliament. With regard to the complaints relating to the conduct of the registration, we feel bound to say that the registrar (whom we invited to come before us a second time, if he desired to say anything in answer to the charges made by the other witnesses) was able to give satisfactory answers to many of the charges. Among others, complaints were made of the ignorance displayed in the office by the officials there, and their inability to answer questions put to them relating to copyright and registration. These questions, however, in many cases appeared to be of a legal and intricate character, and of such a kind that the registrar and clerks could scarcely be expected to answer them, even if it had been their duty to do so, upon which point we entertain considerable doubt.

142. Complaints were also made of the inconvenience of the Registration Office and the insufficiency of the space. After a careful examination into these points, and a personal inspection of the office by some of Your Majesty's Commissioners, we are satisfied that the building is very inadequate for the purpose of the business conducted there, and that it would become more so upon the introduction of compulsory registration. Nor can there be any doubt that the register itself is capable of considerable improvement.

143. With regard to the insufficiency of the office accommodation, we were informed by the clerk to the Stationers' Company, that should the legislature continue to intrust to them the duty of registration they would be willing in three or four years' time, when some of their property adjacent to the present office will be pulled down, to erect at their own expense suitable offices on an increased scale and with proper accommodation.

144. It is only fair to the Stationers' Company to point out that they have no power under the Act to make any regulations respecting registration. If, therefore, registration be continued at Stationers' Hall, it would appear to be right that some power of control should be vested in the Company by Parliament, and we believe that they are ready to accept that power.

145. In order to provide an improved system of registration in substitution for that now in use, it appears to us that the two acts of registration and deposit of the copy of a book at or for the British Museum should be combined; or, in other words, that, so far as the author is concerned, registration should be complete on the deposit of the copy and on obtaining an official receipt. One advantage of this would be a diminution of labor and expense, and the British Museum would probably receive all copyright books without the labor of hunting for them in booksellers' catalogues and advertisements, as we are informed the officials are obliged to do under the present system. Another advantage would be that the fees to be paid for registration might be materially diminished.

146. The registration should be effected by the registrar appointed for that purpose, whose duty it should be to receive the copy of the book, to register the official receipt, and to give a copy thereof, certified by him, to the person depositing the book. This certified copy should be a substitute for the certificate at present obtained, and it should be *primâ facie* evidence in courts of law of the publication and due registration of the work, and of the title to the copyright of the person named therein.

147. A fee of 1*s*. would in our opinion be ample, if registration be made compulsory, to render the office of registration self-supporting. This is shown by the statistics as to the number of books and other publications received at the British Museum, which will be found in the Appendix to the *Evidence* of Mr. J. Winter Jones. There might also be a fee of 1*s*. for searches. This, besides providing a large revenue, would enable authors to obtain for 1*s*. both registra-

tion and a certificate of registration of copyright, for each of which 5*s.* is now charged.

148. We regard it as a mistake that the appointment of an officer for so important a duty as that of registering rights affecting a vast number of persons, and the evidence of which ought to be under the control of the Government, should be vested in a private society. The registers ought to be placed in such keeping that they may at all times be treated as part of the public records, and the registrar ought to be a person amenable to a Government department. The necessity for this would be increased by the acceptance of our suggestion that registration should be made compulsory. In any case the registry and the registrar should be under Government direction and responsible to Government.

149. Considering that a copy of each book has to be deposited at the British Museum,—that at present the authorities of the Museum have to give receipts for the works deposited and to keep certain registers,—and that it is a part of our plan that the deposit of the book and registration of the copyright should be combined,—it appeared to us that the most appropriate place for the Registry Office would be the British Museum, and that the officers of the registry, whilst under the general control of the trustees of the Museum, should be answerable to Government for the proper discharge of their duties. We, therefore, put ourselves into communication with the trustees, with a view of ascertaining their opinion on the point, but they stated that they deemed it undesirable for the British Museum to undertake the duty, on the ground that registration of copyright is an executive function, and did not come within the sphere of their duties as trustees of the British Museum. A copy of the correspondence will be found in the Appendix and we cannot but express our regret that the trustees declined to accede to our request that one of their body should appear before us. It is probable that a full explanation of our views and a personal discussion might have removed the difficulties which they felt upon this point.

150. If registration of copyright should not be established at the British Museum, it might be either retained at Stationer's Hall, or removed to some Government office established for the purpose. It is proper to state that the Stationers' Company seem desirous of retaining the office, because their Hall has been the place for registration ever since registration was instituted; and further that it has been recognized as the place of registration in several international

conventions. In our opinion, however, the reasons in favo[illegible]ns-ferring registration to a Government office preponderate. [illegible]ther case arrangements will have to be made for transferring to the British Museum the works which are deposited and registered elsewhere.

151. It only remains for us to notice the means by which registration may be most easily rendered compulsory. Three ways have been suggested to us in which this may be done:—1. By making registration on the date of publication a condition of an effective copyright. 2. By inflicting a pecuniary penalty. 3. By giving the owner a direct interest in registering his copyright. With reference to the second suggestion, there is at present a pecu[illegible]for failure to present books to the library of the Briti[illegible]n is urged that it would be found sufficient for the [illegible]ling registration; but to this it is replied that [illegible]expected in such a case as registration of cop[illegible]penalty; and also that a penalty would have to b[illegible]the medium of some Government office; and that, in[illegible]y of the difficulty there would be in finding out books that had not been registered, no Government office would willingly execute the task of suing for penalties. With regard to the presentation of books to the British Museum, the Museum has an interest in procuring the books distinct from the matter of the penalty.

152. With the third suggestion we are inclined to agree; and although we are not disposed to advise the abolition of a penalty for not delivering for the use of the British Museum a copy of every book which has not been delivered and registered at Stationers' Hall, or some Government place of registration, we think that compulsory registration would be sufficiently secured by the third course that has been suggested, namely,—that a copyright owner should not be entitled to take or maintain any proceedings, or to recover any penalty in respect of his copyright until he has registered, and that he should in no case be able to proceed after registration for preceding acts of piracy. This is the present law in the case of paintings, drawings, and photographs, and we see no reason why the same law should not be applied to copyright in every other work that has to be registered.

153. If this plan should be adopted, it becomes a question what should happen after registration with regard to copies made before registration. Were the copyright owner entitled upon registration

to suppress all such copies, the compulsory provisions of the law would to a certain extent be neutralized, because it would be unnecessary for copyright owners to register until their works had been copied. It has been urged, on the other hand, that if an unscrupulous person should, after the expiration of the time allowed for registration, and before registration, publish a large number of copies, the copyright owner would practically lose all the benefit of his copyright if these copies were allowed to be sold and circulated after registration. We think, however, that in practice this would not occur. As a rule, registration would be effected immediately on publication, and before the work could be copied.

154. We therefore recommend that proprietors of copyright should not be entitled to maintain any proceedings in respect of anything made or done before registration, nor in respect of any dealings subsequent to registration with things so made or done before registration. But as this provision might in some cases operate harshly, we think it should not apply if registration is effected within a limited time, say one month, after publication.

155. In making these remarks on the subject of registration, we have referred only to books and works of a similar character, but we intend them equally to apply, with one exception, to dramatic pieces and musical compositions which are publicly performed but are not printed and published. We have suggested that the acts of registration and deposit of a copy of the book should be combined, and it is manifest that there could not conveniently be any deposit of a copy of a work not printed; we propose, therefore, that in these cases it should be sufficient that the title of every drama or musical composition, with the name of the author or composer, and the date and place of its first public performance, should be registered.

156. For the sake of uniformity we are of opinion that it is desirable that the law of registration should, as far as possible, be the same for works of fine art as for books, music, and the drama.

157. It has, however, been strongly urged upon us that compulsory registration in the case of paintings and drawings is practically impossible; and it would seem that the same arguments that are used against compulsory registration in the case of paintings and drawings apply equally to sculpture. There is no doubt a great difficulty in the way of compulsory registration of paintings and draw-

ings. This arises from the fact that the class of pictures to be registered cannot be limited, and that if copyright in an important work is only to be secured by registration, copyright in the smallest sketch or study could only be preserved by the same means. Some difficulty also arises from the fact that paintings, drawings, and sketches are so frequently subjected to alteration that it would be almost impossible to say when a work is finished so as to be capable of registration as a completed work.

158. On these grounds, therefore, we recommend that registration of paintings and drawings should not be insisted on so long as the property in the picture and the copyright are vested in the same person, but that if the copyright be separated by agreement from the property in the picture, there should be compulsory registration, and that the register should show,—

(*a.*) The date of the agreement.
(*b.*) The names of the parties thereto.
(*c.*) The names and places of abode of the artist and of the person in whom the copyright is vested.
(*d.*) A short description of the nature and subject of the work, and, if the person registering so desires, a sketch outline or photograph of the work in addition thereto.

159. With regard to such works as engravings, prints, and photographs, there would not be the same difficulty, and we think that they should be subject to compulsory registration in the same way as books.

Forfeiture of Copies.

160. Before proceeding farther we may notice a provision of the law which we consider of great value as a protection for owners of copyright, and which we consider it desirable to retain. By the Act which was passed in the 5th and 6th years of Your Majesty's reign it is provided that all copies of any book in which there is copyright, unlawfully printed or imported without the consent in writing under his hand of the registered proprietor of the copyright, are to be deemed to be the property of the registered proprietor of such copyright, and he may sue for and recover the same, with damages for the detention thereof, from any person who detains them after a demand thereof in writing. We recommend that this provision, *mutatis mutandis*, should be extended to works of fine art. We

think it would, however, be an improvement to provide that these copies and damages might be summarily recovered by application to a magistrate.

Public Libraries.

161. The subject which we have next to notice is the obligation that now exists to present gratuitously copies of every book published to certain public libraries. This obligation dates from the reign of his Majesty King Charles II., and since that date it has varied from time to time as regards the number of copies required to be presented and the libraries entitled to them, the number of the latter having at one time been as high as eleven. The Act by which the present obligation was imposed is that which was passed in the 5th and 6th years of Your Majesty's reign. By that Act one copy of every book published, and of every second or subsequent edition, if any alterations or additions are contained therein, has to be delivered gratuitously by the publisher at the British Museum, and if a demand be made in writing one copy has also to be delivered gratuitously for the Bodleian Library at Oxford, the public library at Cambridge, the library of the Faculty of Advocates at Edinburgh, and the library of Trinity College, Dublin. Thus authors and publishers have now generally to provide five copies of each work, as well as of second and subsequent editions, at their own cost for public use. A slight difference is made between the cases of the copies given to the British Museum and of those given to the other libraries. In the former the copies have to be of the best kind published. And in the latter the copies are to be upon the paper of which the largest number of copies of the book or edition is printed for sale; and in the former the delivery is obligatory in every instance, while in the latter it is only required if a demand be made. As a matter of fact, however, copies of nearly every work of any importance are presented to all five libraries.

162. Many of the witnesses who have given evidence before us have complained of this obligation as a heavy and unjust tax. The weight of it, however, is hardly felt in the case of low-priced books, or books of large circulation, though the gratuitous presentation of a number of books of even small value involves a double loss to authors and publishers, assuming that the libraries would each buy a copy, were one not to be obtained without payment. The grievance is of course most felt in the case of expensive works. Publishers complain of the injustice of taxing them or the authors for the mainte-

nance of public libraries, and ask why the public, or the bodies to be benefited, should not pay for the books they require.

163. When this complaint was made to us we communicated with the authorities at the libraries other than the British Museum, in order to ascertain the number of books obtained by them under the Act, and the value they attached to their privilege. We obtained replies from which it appears that a large number of the books published are sent to these libraries, and that they are generally sent without any demand being made for their delivery; also that the authorities regard the privilege as one of considerable value, which they are not willing to part with. We have placed a copy of this correspondence in the Appendix to the *Evidence*.

164. Having to decide between the authors and publishers on the one hand, and the libraries on the other, we on the whole consider that the complaint of the authors and publishers is well founded, and we have come to the conclusion that so much of the existing law relative to gratuitous presentation of books to libraries, as requires copies of books to be given to libraries other than that of the British Museum, should be repealed. In making this recommendation we have taken into consideration the facts that the bodies to whom the libraries belong are possessed of considerable means and are well able to purchase any books which they may require; and also that the repeal of the clause giving the privilege, will not deprive the libraries of any property already acquired, but merely of a right to obtain property hereinafter to be created.

165. It will have been seen that we do not propose to interfere with the obligation to deliver at the library of the British Museum a copy of every book published, as it is a part of our scheme that registration should be effected and copyright secured by the deposit of a copy of the work for the public use. To this we think no reasonable objection can be made.

166. We will only add that the importance of securing a national collection of every literary work has been recognized in most of the countries where there are copyright laws. And with a view to make the collection in this country more perfect, we are disposed to think that it would be desirable to require the deposit at the British Museum of a copy of every newspaper published in the United Kingdom. As a matter of fact, such newspapers are, we believe, now deposited there, but a doubt has been raised whether that deposit could be enforced under the existing law.

Music and the Drama.—Penalties.

167. We have next to refer to a provision of the law which has of late occasioned some dissatisfaction, and which, in our opinion, needs revision.

168. By an Act of Parliament which was passed in the third year of the reign of His late Majesty King William IV. (c. 15), it was enacted, with reference to dramatic copyright, that if any person should, during the continuance of the sole liberty of representation and contrary to the right of the author, or his assignee, represent or cause to be represented, without the consent in writing of the proprietor of the copyright first had and obtained, at any place of dramatic entertainment within the British dominions, any dramatic piece, the offender should be liable, for each and every representation, to the payment of an amount not less than 40*s.*, or to the full amount of the benefit or advantage arising from the representation, or the injury or loss sustained by the proprietor of the copyright, whichever should be the greater damages; such sum to be recovered together with double costs of suit by the proprietor. In the 20th section of the Act, which was passed in the 5th and 6th years of Your Majesty's reign (c. 45), it was recited that it was expedient to extend to musical compositions the benefits of the earlier Act, and it was enacted that the provisions of the earlier Act should apply to musical compositions.

169. This provision for the 40*s.* penalty has lately been much abused. Copyrights in favorite songs from operas and in other works have been bought, and powers of attorney have been obtained to act apparently for the owners of the copyright in such works, and to claim immediate payment of 2*l.* for the performance of each song. These songs are frequently selected by ladies and others for singing at penny readings and village or charitable entertainments, and they sing them not for their own gain, but for benevolent objects. In such cases there is manifestly no intention to infringe the rights of any person; the performers are unconscious that they are infringing such rights; and no injury whatever can be inflicted on the proprietors of the copyrights. In many cases of this kind, and under a threat of legal proceedings in default of payment, the penalty has been demanded, and we have reason to believe that the money so demanded has been generally paid. Many instances of this proceeding have been brought to our notice from various parts of the country, and some will be found in the evidence.

170. We have inquired whether the abolition of the right to take proceedings for the performance of these single songs would inflict injury on composers. The opinion seemed to be that though public performance is generally advantageous to composers, since it operates as an advertisement of their works, it is necessary that copyright owners should retain sufficient control to enable them to save their music from inferior or unsuitable performance, which might give the public an unfavorable opinion of their compositions.

171. The amendment in the law which we propose as most likely to preserve control for the composers, and at the same time to check the existing abuse, is that every musical composition should bear on its title-page a note stating whether the right of public performance is reserved, and the name and address of the person to whom application for permission to perform is to be made. The owner of such composition should only be entitled to recover damages for public performance when such a statement has been made; and instead of the minimum penalty of not less than 40*s.* at present recoverable for any infringement of musical copyright by representation, the court should have power to award compensation according to the damage sustained.

172. This abuse of the powers given by the Act does not seem to have arisen in the case of dramatic copyright, nor does it seem likely to arise so long as the present law of licensing places of dramatic performance exists. We do not therefore suggest any alteration in the law so far as it applies to that copyright.

Fine Arts.—Infringement.

173. Two matters relating to infringement of copyright in works of fine art, but particularly of paintings, have been brought to our notice, in which, it is alleged, the law affords an inadequate remedy.

174. First, by the 6th section of the Act which was passed in the 25th and 26th years of Your Majesty's reign (c. 68) it was enacted that if any person should infringe copyright in any painting, drawing, or photograph, he should be liable to a penalty of 10*l.*, and all the piratical copies should be forfeited to the proprietor of the copyright. Artists and engravers, who are frequently proprietors of copyright in paintings and drawings, consider the provision enabling them to seize piratical copies to be of great value, but they say that it is rendered inefficient by the fact that no power is given to enter a house and search for copies. An instance was given to us where, a

conviction for selling piratical copies having been obtained, the magistrate had made an order that the copies should be delivered up, but it was found that the order could not be enforced.

175. The only remedy suggested to meet the evil, is that proposed in the Bill introduced into Parliament in the year 1869, but withdrawn before it became law, and which runs as follows :—

" Upon proof on the oath of one credible person before any justice of the peace, court, sheriff, or other person having jurisdiction in any proceeding under this Act that there is reasonable cause to suspect that any person has in his possession, or in any house, shop, or other place for sale, hire, distribution or public exhibition any copy, repetition or imitation of any work of fine art in which or in the design whereof there shall be subsisting and registered copyright under the Act, and that such copy, repetition, or imitation has been made without the consent in writing of the registered proprietor of such copyright, it shall be lawful for such justice, court, sheriff or other person as aforesaid before whom any such proceeding is taken, and he or they is and are hereby required to grant his or their warrant to search in the daytime such house, shop, or other place, and if any such copy, repetition, or imitation, or any work which may be reasonably suspected to be such shall be found therein, to cause the same to be brought before him or them, or before some other justice of the peace, court, sheriff, or person as aforesaid, and upon proof that any or every such copy, repetition, or imitation was unlawfully made, the same shall thereupon be forfeited and delivered up to the registered proprietor for the time being of the copyright as his property." Though we should be glad to see some remedy adopted, we entertain doubts whether that proposed is not of a more stringent character than the circumstances justify.

176. The other matter relative to copyright in the fine arts, with regard to which it is said the law is defective, arises out of the now very common practice of hawking about the country piratical copies, and particularly piratical photographs of copyright paintings and engravings. This is spoken of as a serious injury to the copyright proprietors, and a practice which the existing law is powerless to stop.

177. At present all penalties and all copies forfeited can be recovered in England and Ireland only by action or by summary proceedings before justices, that is, by summoning the offending person before the justices, and in Scotland by action before the Court of

Session, or by summary action before the sheriff. The complaint made to us is that there is no power to seize piratical copies where they are seen and when they might be taken. The power to proceed by summons is, it is said, generally ineffectual, because persons selling these copies go round from house to house and refuse to give either a name or address, and are altogether lost sight of before a summons can be procured.

178. A remedy by seizure was proposed in the Bill of 1869, and we think that the evil can best be met by the introduction in any future Act of a clause similar to the 15th of that Bill. The 15th clause was as follows :—

"If any person elsewhere than at his own house, shop, or place of business, shall hawk, carry about, offer, utter, distribute, or sell, or keep for sale, hire, or distribution, any unlawful copy, repetition, or colorable imitation of any work of fine art, in which, or in the design whereof, there shall be subsisting and registered copyright under this Act, all such unlawful articles may be seized without warrant by any peace officer, or the proprietor of the copyright, or any person authorized by him, and forthwith taken before any justice of the peace, court, sheriff, or other person having jurisdiction in any proceeding under this Act, and upon proof that such copies, repetitions, or imitations were unlawfully made, they shall be forfeited and delivered up to the registered proprietor for the time being of the copyright as his property."

We think, however, that the words "carry about" might be properly omitted, as the other words are sufficiently large ; and further, that it should not be in the power of the proprietor of the copyright, or any person authorized by him, to seize, but that the clause should run : "without warrant by any peace officer under the orders and responsibility of the proprietor of the copyright or of any person authorized," etc., or to that effect.

179. Besides providing penalties for various acts of infringement of copyright, and for fraudulently marking pictures with the names or marks of artists who are not the authors of them, which penalties we think are sufficient for the purpose, the present law prohibits the importation into the United Kingdom, except with the consent of the proprietor, of all repetitions, copies, or imitations of paintings, drawings or photographs in which there is copyright, which have been made in any foreign state or in any other part of the British dominions than the United Kingdom. We think it is desirable to retain this

prohibition, and that a somewhat similar prohibition might properly be extended to the exportation of unlawful repetitions, copies, and imitations.

180. Whatever powers may be given to search for and seize piratical copies of paintings, and whatever penalties may be established, the same should be extended to sculpture and other works of fine art.

Piracy of Lectures.

181. We have already suggested some alterations in the law with respect to lectures. In case of piracy either by publication or re-delivery without the author's consent, we think there should be penalties recoverable by summary process, and that the author should be capable of recovering damages by action in case of serious injury, and of obtaining an injunction to prevent printed publication or re-delivery. If the piracy is committed by printed publication, we think the author should also have power to seize copies.

COLONIAL COPYRIGHT.

182. We have already shown that in some important respects the state of the present copyright law, as regards the colonies, is anomalous and unsatisfactory, and we have suggested that a remedy may be found by providing that publication in any part of Your Majesty's dominions shall secure copyright throughout those dominions. It is unnecessary to recapitulate our reasons for making this suggestion, and we will only add that the difficulties which may arise in arranging the details of this change in the law, will not, we anticipate, be of a serious character.

183. There remain, however, other questions of some difficulty affecting the general body of readers in the colonies, with which we now proceed to deal.

184. It must be admitted that it is highly desirable that the literature of this country should be placed within easy reach of the colonies, and that with this view the Imperial Act should be modified, so as to meet the requirements of colonial readers.

185. In this country the disadvantage arising from the custom of publishing books in the first instance at a high price, is greatly lessened by the facilities afforded by means of clubs, book societies, and circulating libraries.

186. These means are not available, and indeed are impracticable, owing to the great distances and scattered population, in many of the

colonies, and until the cheaper English editions have been published the colonial reader can only obtain English copyright books by purchasing them at the high publishing prices, increased as those prices necessarily are by the expense of carriage and other charges incidental to the importation of the books from the United Kingdom.

187. Complaints of the operation of the Copyright Act of 1842 were heard soon after it was passed, and from the North American provinces urgent representations were made in favor of admitting into those provinces the cheap United States reprints of English works. In 1846 the Colonial Office and the Board of Trade admitted the justice and force of the considerations which had been pressed upon the Home Government, "as tending to show the injurious effects produced upon our more distant colonists by the operation of the Imperial law of copyright." And in 1847 an Act was passed "To amend the law relating to the protection in the colonies of works entitled to copyright in the United Kingdom."

188. The principle of this Act, commonly known as the Foreign Reprints Act, is to enable the colonies to take advantage of reprints of English copyright books made in foreign states, and at the same time to protect the interests of British authors.

189. It is provided, "that in case the legislature, or proper legislative authorities in any British possession, shall be disposed to make due provision for securing or protecting the rights of British authors in such possession, and shall pass an Act or make an ordinance for that purpose, and shall transmit the same in the proper manner to the Secretary of State, in order that it may be submitted to Her Majesty, and in case Her Majesty shall be of opinion that such Act or ordinance is sufficient for the purpose of securing to British authors reasonable protection within such possession, it shall be lawful for Her Majesty, if she think fit so to do, to express Her royal approval of such Act or ordinance, and thereupon to issue an Order in Council, declaring that so long as the provisions of such Act or ordinance continue in force within such colony, the prohibitions contained in the aforesaid Acts (*i.e.*, the Copyright Act of 1842, and a certain Customs Act), and hereinbefore recited, and any prohibitions contained in the said Acts, or in any other Acts, against the importing, selling, letting out to hire, exposing for sale or hire, or possessing foreign reprints of books first composed, written, printed, or published in the United Kingdom, and entitled to copyright therein shall be suspended so far as regards such colony."

190. Although the Act is general in its terms, the British possessions in North America were specially in view when it was passed, and for the following reason:—Between this country and the United States there was no existing copyright treaty, and it was the practice of the United States publishers to reprint in their own country English works at very cheap rates. These cheap copies, owing to various difficulties in giving practical effect to the provisions of the law prohibiting the importation, were largely introduced into Your Majesty's North American possessions.

191. Certain colonies, among others Canada, made what was at the time accepted by Your Majesty in Council as sufficient provision for securing the rights of British authors, and thus brought themselves under the Act.

192. The provision made by the Canadian legislature was, that American reprints of English copyright works might be imported into the colony on payment of a customs duty of 12½ per cent., which was to be collected by the Canadian Government and paid to the British Government for the benefit of the authors interested. Like provisions were made in other colonies.

193. So far as British authors and owners of copyright are concerned, the Act has proved a complete failure. Foreign reprints of copyright works have been largely introduced into the colonies, and notably American reprints into the Dominion of Canada, but no returns, or returns of an absurdly small amount, have been made to the authors and owners. It appears from official reports that during the ten years ending in 1876, the amount received from the whole of the nineteen colonies which have taken advantage of the Act was only 1,155*l.* 13*s.* 2½*d.*, of which 1,084*l.* 13*s.* 3½*d.* was received from Canada; and that of these colonies, seven paid nothing whatever to the authors, while six now and then paid small sums amounting to a few shillings.

194. These very unsatisfactory results of the Foreign Reprints Act, and the knowledge that the works of British authors, in which there was copyright not only in the United Kingdom but also in the colonies, were openly reprinted in the United States, and imported into Canada without payment of duty, led to complaints from British authors and publishers; and strong efforts were made to obtain the repeal of the Act.

195. A counter-complaint was advanced by the Canadians. They contended that although they might import and sell American re-

prints on paying the duty, they were not allowed to republish British works, and to have the advantage of the trade, the sole benefit of which was, in effect, secured for the Americans. In defence of themselves against the charge of negligence in collecting the duty, they alleged that owing to the vast extent of frontier and other local causes, and also from the neglect of English owners of copyright to give timely notice of copyright works to the local authorities, they had been unable to prevent the introduction of American reprints into the Dominion.

196. The Canadians proposed that they should be allowed to republish the books themselves under licenses from the Governor-General, and that the publishers so licensed should pay an excise duty of 12½ per cent. for the benefit of the authors. It was alleged that by these means the Canadians would be able to undersell the Americans, and so effectually to check smuggling; and further that the British author would be secured his remuneration, as the money would be certain to be collected in the form of an excise duty, though it could not be collected by means of the customs. Objections, however, were made to the proposal, and it was not carried out.

197. These considerations led to the suggestion that republication should be allowed in Canada under the authors' sanction, and copyright granted to the authors in the Dominion; and upon this a question arose whether Canadian editions, which would be probably much cheaper than the English, should be allowed to be imported into the United Kingdom and the other colonies.

198. Matters were in this state when "The Copyright Act of 1875" was passed by the Dominion legislature. The Act was sent over in the form of a Bill reserved for Your Majesty's assent; but as doubts were entertained whether the Act was not repugnant to Imperial legislation, and to the Order in Council made in 1868, by which the prohibitions against importing foreign reprints into the Dominion of Canada had been suspended, power was given to Your Majesty by an Imperial Act passed in 1875 to assent to the Canadian Bill, and thus make it law. Your Majesty's assent was subsequently given.

199. It is in this Imperial Act that a clause will be found, which has been strongly objected to by Mr. Farrer in his evidence before us, prohibiting the importation into the United Kingdom of Canadian reprints.

200. The Canadian Act gave to any person domiciled in Canada, or in any part of the British possessions, or being a citizen of any

country having an international copyright treaty with the United Kingdom, being the author of any literary or artistic work, power to obtain copyright in Canada for 28 years, by printing, and publishing, or reprinting, or republishing, or, in the case of works of art, by producing or reproducing his work in Canada, and fulfilling certain specified conditions. The copyright thus capable of being secured by British copyright owners is in addition to and concurrent with the copyright they have throughout the British dominions under the Imperial Act.

201. The Dominion Act has been in force for so short a time that it is difficult to ascertain its full effect; but from a return obtained from Canada by the Secretary of State for the Colonies in November 1876, it appears that 31 works of British authors had been published in Canada under the Act up to that date. A comparison of the prices of these works shows that if the English editions were sold in Canada at any price over about half a dollar, or 2*s*., there was a reduction more or less considerable in the price of the Canadian edition, the reduction in one instance being as great as from $12.60 or 2*l*. 11*s*. 8½*d*. to $1.50 or 6*s*. 1¾*d*. It also appears that of many of the books republished in Canada under the Act the American reprints were, as a rule, kept out of the Dominion; and that the prices of American reprints sold in the Dominion were higher than those of the Canadian reprints.

202. We have thought it desirable to give this brief sketch of the law of colonial copyright, as it enables us to explain more clearly the questions we have had to consider. The remedies we propose are intended to meet the grievance put forward by the colonial readers.

203. The main grievance, as we have already pointed out, lies in the difficulty experienced by the colonists in procuring, at a sufficiently cheap price, a supply of English copyright books.

204. The Canadian Copyright Act of 1875 may have the effect in time of securing cheap editions of British works in the Dominion. But, in the first place it is too soon to judge of this, and no similar Act has, as yet, been passed in other colonies; and in the second place, it is questionable whether such an Act would work at all in small colonies.

205. We may at once state that we do not propose to interfere with the Canadian Copyright Act, 1875, or with the principle of that law.

206. We recommend that the difficulty of securing a supply of English literature at cheap prices for colonial readers be met in two ways: 1st. By the introduction of a licensing system in the colonies;

and 2d. By continuing, though with alterations, the provisions of the Foreign Reprints Act.

207. In proposing the introduction of a licensing system, it is not intended to interfere with the power now possessed by the Colonial Legislatures of dealing with the subject of copyright, so far as their own colonies are concerned. We recommend that in case the owner of a copyright work should not avail himself of the provisions of the copyright law (if any) in a colony, and in case no adequate provision be made by republication in the colony or otherwise, within a reasonable time after publication elsewhere, for a supply of the work sufficient for general sale and circulation in the colony, a license may, upon an application, be granted to republish the work in the colony, subject to a royalty in favor of the copyright owner of not less than a specified sum per cent. on the retail price, as may be settled by any local law. Effective provision for the due collection and transmission to the copyright owner of such royalty should be made by such law.

208. We do not feel that we can be more definite in our recommendation than this, nor indeed do we think that the details of such a law could be settled by the Imperial Legislature. We should prefer to leave the settlement of such details to special legislation in each colony.

209. With regard to the continuance of the Foreign Reprints Act, we have already stated that strong efforts have been made to procure its repeal. In March 1870, at a meeting of the leading authors and publishers over which the late Earl Stanhope presided, the following resolution was passed: "That a representation be made to the Right Honorable the First Lord of the Treasury, pointing out the great hardship sustained by British authors and publishers from the operation of the Imperial Copyright Act of 1847, and stating the earnest desire they feel that Her Majesty's Government may deem it right to propose its prompt repeal."

210. We are fully sensible of the weight that must attach to the opinion of persons so qualified to form a judgment on this matter, but upon careful consideration of the subject and of the peculiar position of many of Your Majesty's colonies—and upon this point we would refer to the answers returned by the colonies to Lord Kimberley's Circular Dispatch of the 29th July 1873—we are not prepared to recommend the simple repeal of the Act of 1847, and the consequent determination of the power now vested in Your Majesty, of allowing the introduction of foreign reprints into colonies which have made due provision for securing the rights of British authors.

211. We believe that although the system of republication under a license may be well adapted to some of the larger colonies, which have printing and publishing firms of their own, and which could reprint and republish for themselves with every prospect of fair remuneration, it would be practically inapplicable in the case of many of the smaller colonies. These latter now depend almost wholly on foreign reprints for a supply of literature; and to sweep away the Foreign Reprints Act without establishing some other system of supply would be to deprive them in a great measure of English books.

212. But we are of opinion that it has been proved necessary to amend the existing law, for the purpose of more effectually protecting the rights of owners of copyright, whilst affording to colonial readers the means of making themselves acquainted with the literature of the day.

213. As the provisions hitherto made in the different colonies to which Orders in Council have been applied, have failed to secure remuneration to proprietors of copyright, we recommend that power should be given to Your Majesty to repeal the existing Orders in Council; and that no future Order in Council should be made under that Act until sufficient provision has been made by local law for better securing the payment of the duty upon foreign reprints to the owners of copyright works.

214. Probably it will be desirable to grant a certain period to the colonies, for the purpose of enabling them to propose further and better provisions, before such revocation actually takes place. In that case, however, it should be clearly understood that Your Majesty is in no way pledged, by the grant of such delay, to issue any fresh Order in Council; and power should be given to Your Majesty in Council to revoke, at any time, any future Order in Council, should the provisions of the colonial law prove practically insufficient.

215. It is perhaps hardly within the scope of this Commission to suggest what provisions Your Majesty should be advised to consider sufficient, within the meaning of the Act, to secure the rights of the proprietors of copyright. But it appears to us that possibly some arrangement might be effected, by which all foreign reprints should be sent to certain specified places in the colony, and should be there stamped with date of admission upon payment of the duty, which could then be transmitted here to the Treasury or Board of Trade for the author. All copies of foreign reprints not so stamped should be liable to seizure, and it is worthy of consideration whether some

penalty might not also be affixed to the dealing with unstamped copies.

216. And, having regard to the power which we have contemplated, for authors to obtain colonial copyright by republication in the colonies, and to the licensing system which we have suggested, we recommend that where an Order in Council for the admission of foreign reprints has been made, such reprints should not, unless with the consent of the owner of the copyright, be imported into a colony—

1. Where the owner has availed himself of the local copyright law, if any;
2. Where an adequate provision, as pointed out in paragraph 207, has been made; or,
3. After there has been a republication under the licensing system.

217. A subject of great moment with reference to colonial copyright, is the propriety of permitting the introduction of colonial reprints into the United Kingdom. This question has given rise to much discussion, as may be seen by reference to the correspondence, which, at the time The Canadian Copyright Act, 1875, was under consideration, passed between the Colonial Office and the Board of Trade. Ultimately the 4th section of that Act was passed by which it is enacted, that, where any British copyright work has acquired copyright in Canada under the colonial Act by republication, it is unlawful for any person other than the owner to import Canadian reprints into the United Kingdom. This provision is analogous to that in force in the case of books reprinted in foreign countries.

218. We have been urged to recommend the repeal of that section, so far at all events as to admit the importation into the United Kingdom of copies published with the consent of the copyright owner.

219. We may state generally that authors and publishers, who are the persons most interested in copyrights, are strongly opposed to the introduction of colonial reprints into the United Kingdom, on the following grounds:—That the cheaper price of those reprints would cause great pecuniary loss to the owners of copyrights:—that the present system of trade, which has been found most remunerative to authors and publishers, would be disarranged:—and that publishers would not be willing or able to offer so much to authors for their works.

220. It is argued that, if importation is allowed, no copyright owner will consent to republication in the colonies by himself or others, because all such republications, being made with his consent,

would be liable to be introduced here, and that the colonial readers would therefore suffer to a certain extent by the alteration in the law. This last argument will, however, lose its force, if effect is given to our suggestion of permitting republication in the Colonies under a licensing system.

221. The arguments in favor of admission of colonial reprints are based on consideration of the public interest, which is alleged to be greatly injured by the high prices at which books are now published —prices that are altogether prohibitory to the great mass of the reading public; and it is said that if the cheaper colonial editions were to be allowed in this country, the necessary effect would be that prices generally would be greatly reduced.

222. It is also urged that if the law gives British copyright owners the benefit of copyright throughout the empire, and the exclusive command of the colonial market, it is unfair to the British public that they should be deprived of the advantage they might derive from that extended copyright, and that they should be the only section of Your Majesty's subjects who are debarred from participating in the advantages of cheap colonial editions.

223. It is also said that it is a mistake to suppose that authors would really be injured by the introduction into the United Kingdom of the colonial editions, for that the profit which would be derived from the extended market would more than compensate for the loss resulting from publication at lower prices. Thus the public would derive the benefit of cheap literature, while authors would reap profit equal to or greater than that they now enjoy.

224. The witness who principally advocated the introduction of these reprints was Mr. Farrer, the Permanent Secretary to the Board of Trade, which is the department specially charged with legislation affecting copyright. Having regard to the great attention he has devoted to the subject and to his official position, we desire to state that we think his opinions are entitled to much consideration. The arguments adduced by him will be found fully stated in his evidence.

225. We have carefully weighed this evidence with the views of other persons who are opposed to the introduction of colonial reprints into the United Kingdom; and on the whole we think that the admission of such reprints would probably operate injuriously towards British authors and publishers, and that it is doubtful if it would be attended in many cases with the result anticipated by Mr. Farrer, that is to say, the cheapening of books for home consumption. We

think the almost certain result would be, that it would operate as a preventive to republication in the colonies by authors themselves, so that, if no publisher republished under the licensing system, the colonial reader would be in no better condition than he is now.

226. We therefore think that colonial reprints of copyright works first published in the United Kingdom should not be admitted into the United Kingdom without the consent of the copyright owners; and, conversely, that reprints in the United Kingdom of copyright works first published in any colony should not be admitted into such colony without the consent of the copyright owners.

227. It will have been observed that in suggesting the above alterations in the existing law of copyright, we have not proposed to interfere with the existing powers of colonial legislatures to deal with this subject. An author who first publishes in a colony should only be entitled to secure copyright throughout the British dominions, if he complies with the requirements of the copyright law for the time being of that colony. It will rest, therefore, with each colonial legislature to determine the nature of those requirements, such as registration, deposit of copy, and so forth; and we cannot doubt that they will be alive to the expediency of adopting for the colony, so far as it is practicable, the principal provisions of the Imperial Act, which, if effect be given to our suggestions, will, as to all such matters of detail, be hereafter limited to the United Kingdom. By this means uniformity of practice will be secured throughout Your Majesty's dominions, and certain difficulties will be avoided, which might arise if, for example, registration were in some colonies compulsory, and in others voluntary.

228. But important as uniformity is in matters of detail, it becomes still more important in respect to the term to be fixed for the duration of copyright. As the law now stands, we apprehend that each colony has a right to decide what shall be the term during which an author who publishes in the colony shall have copyright therein. The exercise of this power does not, it is true, override the provisions of the Imperial Act, which gives copyright in such colony to a work first published in the United Kingdom, but the existence of this double term is inconvenient. If, as we recommend, publication in any colony shall for the future secure copyright throughout all Your Majesty's dominions, in the same way and for the same term as if the work had been first published in this country, the necessity for fixing a term for duration of a copyright in a colony

will practically cease. In truth the difference between colonial and imperial copyright will disappear, as colonial copyright will merge into imperial copyright; and we may fairly assume that where, as in Canada and at the Cape, a term has been fixed for copyright in the colony different from that fixed by the Imperial Act, the colonial legislature will be ready to repeal *pro tanto* the colonial law, and to confine legislation to matters of detail.

229. Should, however, our anticipations on this point be incorrect, it will become a question whether, with a view to secure uniformity, the concession to any colony might not be made conditional upon the adoption by the legislature of such colony of the same term as that fixed for the time being by the Imperial Act.

230. In concluding our remarks upon this part of the subject, we recommend that the production of a copy of the colonial register (if any), certified by some duly authorized officer in that behalf, shall be *prima facie* evidence in Your Majesty's Courts of compliance with the requirements of the local law, and of the title to copyright of the person named therein. A provision to this effect would have to be made by the different colonial legislatures for the guidance of colonial courts.

231. It has been suggested to us that some re-registration, or notice of the original registration, should be made in England of a work published in a colony, and that a copy of every work published in the colonies should be deposited at the British Museum, within a certain time after publication. Upon the whole we are not disposed to recommend the adoption of either of these suggestions. Publication in a colony will give copyright throughout the British dominions, and if re-registration of the work is desirable in England, it is equally so in all the other British possessions in which the work obtains copyright. But to require such a general re-registration would throw a considerable burden upon the owners of colonial copyright, and it appears to us not unreasonable to call upon a person who desires to reprint a work which has already been published to take the necessary steps to ascertain whether the work has been duly published and, if necessary, registered in the place of publication, and whether the term of copyright has expired. Should, however, a notice of registration be thought desirable, we suggest that it should be officially given by the registering department in the United Kingdom or colony; and the fee for original registration might be made to cover the expenses of giving such notice.

232. As regards the second suggestion, we are of opinion that the Trustees of the British Museum may fairly be expected to purchase such colonial works as they want, considering that the author or owner of the copyright will doubtless be required by local law to deposit a copy in the place of publication. Indeed it was stated to us by officers of the British Museum that many such works are now purchased.

INTERNATIONAL COPYRIGHT.

The American Question.

233. As to continental nations, few questions have, in the course of our inquiry, been raised with regard to the general regulations of international copyright; but we find it to be impossible to exclude from examination the present condition of the copyright question between Great Britain and the United States. There is no international protection of copyright as between ourselves and the Americans, although, owing to causes to be presently referred to, the United States is of all nations the one in which British authors are most concerned,—the nation in regard to which the absence of a copyright convention gives rise to the greatest hardships.

234. When deciding upon the terms in which we should report upon this subject, we have felt the extreme delicacy of our position in expressing an opinion upon the policy and laws of a friendly nation, with regard to which a keen sense of injury is entertained by British authors. Nevertheless, we have deemed it our duty to state the facts brought to our knowledge, and frankly to draw the conclusions to which they lead.

235. Although with most of the nations of the continent treaties have been made, whereby reciprocal protection has been secured for the authors of those countries and Your Majesty's subjects, it has hitherto been found impracticable to arrange any terms with the American people. We proceed to indicate what in our view are the difficulties which have impeded a settlement.

236. The main difficulty undoubtedly arises from the fact that, although the language of the two countries is identical, the original works published in America are, as yet, less numerous than those published in Great Britain. This naturally affords a temptation to the Americans to take advantage of the works of the older country, and at the same time tends to diminish the inducement to publish

original works. It is the opinion of some of those who gave evidence on this subject, and it appears to be plain, that the effect of the existing state of things is to check the growth of American literature, since it is impossible for American authors to contend at a profit with a constant supply of works, the use of which costs the American publisher little or nothing.

237. Were there in American law no recognition of the rights of authors, no copyright legislation, the position of the United States would be logical. But they have copyright laws; they afford protection to citizen or resident authors, while they exclude all others from the benefit of that protection. The position of the American people in this respect is the more striking, from the circumstance that, with regard to the analogous right of patents for inventions, they have entered into a treaty with this country for the reciprocal protection of inventors.

238. Great Britain is the nation which naturally suffers the most from this policy. The works of her authors and artists may be and generally are taken without leave by American publishers, sometimes mutilated, issued at cheap rates to a population of forty millions, perhaps the most active readers in the world, and not seldom in forms objectionable to the feelings of the original author or artist.

239. Incidentally, moreover, the injury is intensified. The circulation of such reprints is not confined to the United States. They are exported to British colonies, and particularly to Canada, in all of which the authors are theoretically protected by the Imperial law. The attempts which were made, by legalizing the introduction of these reprints into Canada, to secure a fair remuneration to British *copyright owners have, as we have shown, completely failed.*

240. This system of reproduction is not confined to books, but extends to music and the drama, and we have been told that it is not an uncommon thing when a new play by an author of eminence is produced in London, for shorthand writers to attend and take down the words of the play for transmission to the United States.

241. But though there is no law in the United States to protect a foreign work from republication by any number of publishers, the natural result of general publication and rivalry was to make the competition which arose disastrous to those engaged in it. Firms of eminence and respectability rivaled each other in the efforts of their agents in England to secure early sheets of important works, but when the sheets were obtained, and an edition issued at a moderate price, some other firm would undertake to supply the public with

the same article at a lesser rate. American publishers were thus obliged to take steps for their own protection. This was effected by an arrangement among themselves. The terms of this understanding are, that the trade generally will recognize the priority of right to republication of a British work as existing in the American publisher who can secure priority of issue in the United States. This priority may be secured either by an arrangement with the author, or in any other way. The understanding, however, is not legally binding, and is rather a result of convenience and of a growing disposition to recognize the claims of British authors, than of actual agreement.

242. The effect of this trade understanding has no doubt been profitable to a certain number of British copyright owners, since, now that American publishers are practically secured from competition at home, it is worth while for them to rival each other abroad in their offers for early sheets of important works. We are assured that there are cases in which authors reap substantial results from these arrangements, and instances are even known in which an English author's returns from the United States exceed the profits of his British sale, but in the case of a successful book by a new author it would appear that this understanding affords no protection. Even in the case of eminent men, we have no reason to believe that the arrangements possible under the existing conditions are at all equivalent to the returns which they would secure under a copyright convention between Your Majesty and the United States.

243. We may remark in this place that as authors of books in some cases obtain payment for early sheets from American publishers, so also dramatic authors of note sometimes obtain remuneration for the right to perform their plays. There appears, however, to be a difference in the law relating to books and plays in the United States; for although the English author of a book can give no copyright to an American publisher, yet it is stated that the author of an English play can give an American theatrical manager a right of representation, if the play has not been published anywhere as a book, and for this purpose a distinction is made between such publication and public performance.

244. It is, without doubt, a general opinion that a copyright convention with the United States is most desirable. We have, therefore, endeavored during our inquiry to ascertain the feeling of Americans on the subject, and wherein, if at all, their interests would be prejudiced. We have also endeavored to find out what practical difficulty there is in the way of such a convention, and if by any means such difficulty can be surmounted.

245. It may be stated that American authors have not the same need of a convention as those of Great Britain, since our law affords copyright protection throughout the British dominions to foreigners as well as to Your Majesty's subjects, provided they publish their books in the United Kingdom before bringing them out elsewhere, while the American law, unlike ours, does not make first publication at home a condition for obtaining copyright. It is consequently the practice of some American authors to publish their books first in England, and so to obtain British copyright, and then to republish them in the United States and obtain American copyright, or to publish in the two countries almost simultaneously.

246. We have it in evidence from Mr. Putham, a member of a large American publishing firm, that American authors are unanimous as to the advantage of international copyright between the United States and this country. We have also been told by another American witness that as publishers can bring out reprints of English books without paying the authors, it is so much more to their interest to do so than to pay American authors, that they frequently refuse to publish American works unless at a low rate of payment. *Hence it appears that, in the opinion of many Americans, international copyright is desirable for American authors.*

247. This question has been before the United States legislature on more than one occasion, and the Senate has twice agreed in a recommendation made to them by the Government on the subject.

248. We are therefore satisfied that, though there are other obstacles, the most active opposition in the United States arises from the publishing and printing interests. It is feared that if there were international copyright, British authors would be able to select their own mode of manufacturing their books, and to choose their own publishers, and that they would in many cases have their books printed in this country, and perhaps prepared for sale, so as to avoid the expense of producing them in America. Moreover, the American publisher fears the competition of the English publisher, because at the present time books cannot be as cheaply manufactured in the United States as in Great Britain; and, but for the protective tariff, there would no doubt be a great inducement to British publishers to compete with those of America in the large and important market of the United States.

249. These fears have indeed been urged with a discouraging effect upon the negotiations and proposals for international copyright, and have induced the Americans to claim that the privilege of

copyright in the United States should only be granted on condition that the book is wholly re-manufactured and republished in America. On the other hand the British copyright owner feels that such conditions would lead, in many cases, to a useless outlay for the re-manufacture of stereotype plates and the reproduction of illustrations, practically at his expense and to his loss, because this outlay would have to be taken into account by the publisher in considering the sum he could afford to pay for authorship. While the English author desires not to be restricted in the selection of a publisher, he apparently does not care much whether the publisher be an American or an Englishman.

250. Although it has hitherto been the practice, we believe, of Your Majesty's Government to make international copyright treaties only with countries which are willing to give British subjects the full advantage of their domestic copyright laws, untrammeled by commercial restrictions, in exchange for the protection afforded to their subjects by our own copyright laws, yet we think it not unreasonable for the American people to wish to insure the publication of editions suited to their large and peculiar market, if they enter into a copyright treaty with this country. On the whole, therefore, we are of opinion that an arrangement by which British copyright owners could acquire United States copyright by reprinting and republishing their books in America, but without being put under the condition of reproducing the illustrations or re-manufacturing the stereotype plates there, would not be unsatisfactory to Your Majesty's subjects, and that it would be looked upon more favorably in the United States than any other plan now before us.

251. It has been suggested to us that this country would be justified in taking steps of a retaliatory character, with a view of enforcing, incidentally, that protection from the United States which we accord to them. This might be done by withdrawing from the Americans the privilege of copyright on first publication in this country. We have, however, come to the conclusion that, on the highest public grounds of policy and expediency, it is advisable that our law should be based on correct principles, irrespective of the opinions or the policy of other nations. We admit the propriety of protecting copyright, and it appears to us that the principle of copyright, if admitted, is one of universal application. We therefore recommend that this country should pursue the policy of recognizing the author's rights, irrespective of nationality.

* * * * * *

294. In concluding our labors we beg leave to express our hope

that we have duly considered and made our report upon all the matters intended to be referred to us by Your Majesty's Commission. We are conscious that there may be points of detail upon which we have not touched, but these, if noticed by us, would have lengthened our Report, without, as we think, affording any substantial assistance to those upon whom the duty of legislating may hereafter devolve.

All which is humbly submitted to Your Majesty's gracious consideration.

Dated the 24th day of May 1878.

JOHN MANNERS.
Subject to my Dissent from a part of paragraph 150.
DEVON.
CHARLES LAWRENCE YOUNG.
Subject to my Note appended hereto.
H. T. HOLLAND.
JOHN ROSE.
Subject to Dissent and Separate Report.
H. DRUMMOND WOLFF.
Subject to my Separate Report and Dissent from part of paragraph 150.
J. F. STEPHEN.
Subject to a Note appended hereto.
JULIUS BENEDICT.
F. HERSCHELL.
EDWARD JENKINS.
Subject to my Separate Report.
WM. SMITH.
Subject to my Dissent from a part of paragraph 150.
J. A. FROUDE.
ANTHONY TROLLOPE.
Subject to my Note of Dissent as to paragraphs 153 and 154.
FREDERICK RICHARD DALDY.
Subject to my Note of Dissent as to paragraphs 147 and 154.

For the Notes of Dissent referred to by certain of the signers, space for which could not conveniently be found in this volume, the reader is referred to the Report of the Commission contained in the Blue Book, No. 2036, series of 1878.—Editor.

XV.

THE COPYRIGHT BILL OF THE BRITISH SOCIETY OF AUTHORS, INTRODUCED INTO THE HOUSE OF LORDS, NOVEMBER 26TH, 1890. BY LORD MONKSWELL.[1]

GENERAL PROVISIONS AND LITERARY COPYRIGHT.

6. THIS Act shall, except when expressly provided to the contrary, apply only to copyright works other than paintings and sculpture first published after, and to paintings and sculpture which shall be or shall have been made, and which shall not have been sold or disposed of before the passing of this Act, and not to copyrights existing at the commencement, nor to such works published, sold, or disposed of respectively before the commencement of this Act, nor to any copyright to which a person may be entitled under any law of a British possession; and all expressions in this Act referring to copyright shall, unless the context otherwise requires, be construed as referring to copyright under this Act only, and all rights and remedies to which a person may be entitled under this Act shall be in addition to and not in derogation of any rights and remedies to which he may be entitled in any British possession under the law of that possession.

7.—(1.) The copyright or performing right which at the time of the passing of this Act shall be subsisting in any book or other subject of copyright or performing right theretofore published, sold, or disposed of (as the case may be), shall endure for the term limited by the existing enactments, or for the term fixed by this Act, whichever is the longer, and shall be the property of the person who at the time of passing this Act shall be the proprietor of such copyright or performing right.

[1] Space is found here only for a summary of the more important provisions.

(2.) Provided always, that in all cases in which such copyright or performing right 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 or performing right shall not be extended by this Act, but shall endure for the term which shall subsist therein at the time of passing this Act, and no longer, unless the original copyright owner, if he shall be living, or his personal representative if he shall be dead, and the proprietor of *such copyright or performing right shall, before the expiration of* such term, agree to accept the benefits of this Act in respect of such book or other subject of copyright or performing right, and shall cause a minute of such consent in the form in that behalf given in Schedule Three to this Act to be entered in the proper register, in which case such copyright or performing right shall endure for the term fixed by this Act, and shall be the property of such person or persons as in such minute shall be expressed.

8. The Acts or parts of Acts specified in the First Schedule to this Act are hereby repealed as from the commencement of this Act, except with relation to copyrights already existing, and works other than paintings and sculpture already published at, and paintings and sculpture sold or disposed of before the commencement of this Act, but the said Acts shall remain in as full force and effect for the purpose of and with relation to such copyrights and works as if this Act had not been passed.

9. Copyright and performing right shall respectively be deemed to be personal property in England, and personal and movable estate in Scotland, and subject to the provisions of this Act, shall be capable of assignment and transmission by operation of law as such.

10. The copyright and performing right in a posthumous work shall belong in the case of a book, musical composition, dramatic work, lecture, piece for recitation, address or sermon, to the owner of the manuscript; in the case of a print to the owner of the plate, stone or other thing on which the design is engraved; and, in the case of a photograph, to the owner of the negative.

11.—(1.) Every assignment of copyright or performing right other than an assignment by operation of law or testamentary disposition, shall be in writing, signed by the assignor or his agent, duly authorized in writing.

(2.) No assignment of or other dealing with any subject of copyright or performing right (other than an assignment by operation of

law or testamentary disposition) shall pass the copyright or performing right therein unless the intention to assign the same shall be expressly evidenced in writing, signed as aforesaid.

12. If the owner of the copyright or performing right in any work shall give permission to another person to copy, imitate, perform or otherwise repeat such work, such permission shall not, in the absence of an express agreement to the contrary, disentitle such owner from giving a similar or any other permission with respect to the same work, even though the first person to whom such permission was given has acquired copyright or performing right in his work.

13. It shall be lawful for Her Majesty in Council, on complaint that the owner of copyright in any book, musical composition, or dramatic work, after the death of its author or composer, has refused to republish or allow republication or public performance of the same, and that by reason of such refusal such book, musical composition or dramatic work is withheld from the public, to grant a license to the complainant to republish such book, musical composition or dramatic work, or to publicly perform or procure public performances of the same in such manner and subject to such conditions as She may think fit.

14. After the commencement of this Act the following persons and their assigns, whether British subjects or aliens, shall, subject to the provisions of this Act, be entitled to copyright therein, throughout the British dominions, provided such works shall have been first published in some part of the British dominions; that is to say—

(*a.*) In the case of books, the author of any original work:

(*b.*) In the case of lectures, pieces for recitation, addresses or sermons, the author of any original lecture, piece for recitation, address or sermon:

(*c.*) Provided always that if a British subject who, under the provisions of this section, would otherwise be entitled to copyright in any work shall first publish such work in some state, the subjects whereof shall not, at the date of such publication, be entitled to copyright in the British dominions, under the provisions of this Act or of the Acts mentioned in the Second Schedule hereto, he shall, on republishing such work in the British dominions within *three* years of such first publication, be entitled to copyright therein as fully as if he had first published such work in the British dominions.

15. Copyright in books, lectures, pieces for recitation, addresses and sermons shall endure for the following terms:—

(1.) If the work is published in the lifetime and in the true name of the original copyright owner, for the life of the original copyright owner, and thirty years after the end of the year in which his death shall take place:

(2.) If the work is written or composed by two or more persons jointly, for the life of the longest liver, and thirty years after the end of the year in which his death shall take place:

(3.) In the case of posthumous works, for thirty years from the end of the year in which the same shall have been first published;

(4.) In the case of an anonymous or pseudonymous work for thirty years from the end of the year in which the same shall have been first published: Provided always that upon the original copyright owner thereof or his personal representative, during the continuance of the said term of thirty years, with the consent of the registered copyright owner, making a declaration of the true name of the "original copyright owner" and the insertion thereof, in the form set forth in the Schedule Three of this Act in the Register, the copyright shall, subject to the provisions of this Act, be extended to the full term of copyright under this Act.

16.—(1.) In the case of any article, essay, or other work whatsoever, being the subject of copyright, first published in and forming part of a collective work for the writing, composition, or making of which the original copyright owner shall have been paid or shall be entitled to be paid by the proprietor of the collective work, the copyright therein shall, subject as is herein-after mentioned, and in the absence of any agreement to the contrary, belong to such proprietor for the term of thirty years next after the end of the year in which such work shall have been first published:

(2.) Except in the case where such article, essay, or other work is first published in an encyclopædia, the original copyright owner thereof and his assigns shall, after the term of three years from the first publication thereof, have the exclusive right to publish the same in a separate form, and shall have copyright therein as a separate publication for the term provided by section fifteen of this Act, and, notwithstanding anything herein-before contained, the proprietor of the collective work shall not, either during the said term of three years, nor afterwards during the continuance of copyright therein, be entitled to publish such article, essay, or other work, or any part thereof, in a separate form, without the consent in writing of the original copyright owner or his assigns.

17. The original copyright owner of any article, essay, or other work first published in and forming part of a collective work, may register the same as a separate book in the manner herein-after provided (but without the deposit or delivery of any copy thereof at, or for the use of, the British Museum or other libraries), and shall thereupon be entitled to prevent and obtain damages for the publication of, or other infringement of the copyright in such article, essay, or other work as if it were a separate book, notwithstanding that the said term of three years has not elapsed.

18.—(1.) The copyright in a joint work being a book, lecture, piece for recitation, address or sermon shall, in the absence of any agreement to the contrary, belong to the persons by whom the same is written or composed jointly, and no one of such persons shall be deemed to be the owner of the copyright in any particular part of the work to the exclusion of the other or others.

(2.) In the event of the death of any one of such joint owners, his interest shall, in the absence of any testamentary or other disposition to the contrary, vest in the person or persons who would be entitled to the copyright in any work of which he had been the sole writer or composer.

19. The copyright given by this Act in respect of newspapers shall extend only to articles, paragraphs, communications, and other parts which are compositions of a literary character, and not to any articles, paragraphs, communications, or other parts which are designed only for the publication of news, or to advertisements.

20. Whereas by an Act passed in the fifteenth year of King George the Third, certain copyrights in books are now, or might hereafter become, vested in the Universities of Oxford and Cambridge, in the colleges or houses of learning within the same, the four universities of Scotland, or the several colleges of Eton, Westminster, and Winchester, in perpetuity, and certain special and peculiar penalties are provided against persons who infringe such copyright: And whereas the said Act is repealed by this Act, but it is not desirable or just that the said universities and colleges should be deprived of the copyrights they already possess, by virtue of the said Act; be it enacted, that the repeal of the said Act shall not operate to deprive the said universities and colleges of any copyrights they already possess in perpetuity under the said Act, and that instead of the special and peculiar penalties provided by the said Act the said universities and colleges respectively shall, in case

of infringement of their said copyrights, be entitled to the remedies and to enforce the forfeitures and penalties provided for infringement of copyright in books by this Act.

21. The following acts by any person other than the copyright owner, and without his consent in writing, shall be deemed to be infringements of copyright, unless such acts shall be specially permitted by the terms of this or some other Act not hereby repealed:

(1.) In the case of books, printing or otherwise multiplying, or causing to be printed or otherwise multiplied, for distribution, sale, hire, or exportation, copies, abridgments, or translations of any copyright book or any part thereof; exporting for sale or hire any such copies, abridgments, or translations, printed unlawfully in any part of the British dominions; importing any such copies, abridgments, or translations, whether printed unlawfully in any other part of the British dominions or printed without the consent of the copyright owner in any foreign state; or knowing such copies to have been so printed or imported, distributing, selling, publishing, or exposing them for sale or hire, or causing or permitting them to be distributed, sold, published, or exposed for sale or hire:

(2.) In the case of a book which is a work of fiction it shall also be an infringement of the copyright therein if any person shall, without the consent of the owner of the copyright, take the dialogue, plot, or incidents related in the book, and use them for or convert them into or adapt them for a dramatic work, or knowing such dramatic work to have been so made, shall permit or cause public performance of the same:

(3.) In the case of lectures, pieces for recitation, addresses, or sermons, whether before or after they are published in print by the owner of the copyright, the same acts as herein-before declared to be infringements in the case of books, and if they be not published in print, by the owner of the copyright, re-delivering them or causing them to be re-delivered in public.

22. Notwithstanding anything in this Act contained, the making of fair and moderate extracts from a book in which there is subsisting copyright, and the publication thereof in any other work, shall not be deemed to be infringement of copyright if the source from which the extracts have been taken is acknowledged.

23. It shall not be deemed an infringement of copyright in a lecture, piece for recitation, address, or sermon to report the same in a

newspaper, unless the person delivering the same shall have previously given notice that he prohibits the same being reported.

24. For the purposes of this Act any second or subsequent edition of a book which is published with any additions or alterations, whether in the letterpress or in the maps or illustrations belonging thereto, shall be deemed to be a new book.

25.—(1.) The publisher of every book first published in the United Kingdom shall within one month after publication deliver, at his own expense, a copy of the book to the trustees of the British Museum.

(2.) He shall also within the same time deliver at his own expense a copy of the book to, or in accordance with the directions of, the authority having the control of each of the following libraries, namely: the Bodleian Library at Oxford, the Public Library at Cambridge, the Library of the Faculty of Advocates at Edinburgh, and the Library of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, or, at the option of the publisher, to the registrar under this Act, to be by him so delivered.

(3.) The copy delivered to the trustees of the British Museum shall be a copy of the whole book with all maps and illustrations belonging thereto, finished and colored in the same manner as the best copies of the book are published, and shall be bound, sewed, or stitched together, and on the best paper on which the book is printed.

(4.) The copy delivered to the other authorities mentioned in this section shall be on the paper on which the largest number of copies of the book is printed for sale, and shall be in the like condition as the books prepared for sale.

(5.) Delivery of a copy to the registrar on registration under this Act shall, for the purposes of this section, be deemed delivery to the trustees of the British Museum.

(6.) If a publisher fails to comply with this section, he shall incur a fine not exceeding *five pounds* and the value of the book, and this fine shall be paid to the trustees or authority to whom the book ought to be delivered.

26.—(1.) There shall continue to be charged on and paid out of the Consolidated Fund of the United Kingdom such annual compensation as is at the passing of this Act payable in pursuance of any Act as compensation to a library for the loss of the right to receive gratuitous copies of books.

(2.) Such compensation shall not be paid to a library in any year unless the Treasury shall be satisfied that the compensation for the previous year has been applied in the purchase of books for the use of and to be preserved in the library.

ANALYSIS OF THE BILL.

By Sir Frederick Pollock.

THE following Memorandum sets out its contents, and shows the various authorities for the changes in present legislation suggested by the Bill.

Memorandum.

This Bill is intended to consolidate and amend the Law of Copyright other than copyright in designs.

The existing law on the subject consists of no less than 18 Acts of Parliament, besides common law principles, which are to be found only by searching the Law Reports. Owing to the manner in which these Acts have been drawn, the law is in many cases hardly intelligible, and is full of arbitrary distinctions for which it is impossible to find a reason. (See paragraphs 9 to 13 of the Report of the Royal Commission on Copyright of 1878.)

For instance, the term of copyright in books is the life of the author and 7 years, or 42 years from publication, whichever period is the longer; in lectures, when printed and published, the term is probably the life of the author or 28 years; in engravings, 28 years; and in sculpture, 14 years, with a possible further extension for another 14 years; while the term of copyright in music and lectures which have been publicly performed or delivered but not printed is wholly uncertain.

Again the necessity for and effect of registration is entirely different with regard to (1) books, (2) paintings, (3) dramatic works.

In consolidating these enactments (all of which it is proposed to repeal) it has been thought advisable to deal separately with the various subjects of copyright, viz., (1) Literature, (2) Music and Dramatic Works, and (3) Works of Art, and to make the part of the Bill deal-

ing with each of these as far as possible complete in itself. This will account for certain repetitions which might otherwise seem unnecessary.

The alterations proposed to be made in the law are for the most part those suggested in the Report of the Royal Commission on Copyright of 1878, and embodied in a Bill introduced at the end of the Session of 1879 by Lord John Manners, Viscount Sandon, and the Attorney-General on behalf of the then Government. References will be found in the margin of the present Bill both to the Report of the Commission and the Bill of 1879.

The most important of these alterations may be summarized as follows :—

1. A uniform term of copyright is introduced for all classes of work, consisting of the life of the author and 30 years after his death. The only exceptions are in the cases of engravings and photographs, and anonymous and pseudonymous works for which, owing to the difficulty or impossibility of identifying the author, the term is to be 30 years only, with power for the author of an anonymous or pseudonymous work at any time during such 30 years to declare his true name and acquire the full term of copyright.

2. The period after which the author of an article or essay in a collective work (other than an encyclopædia) is to be entitled to the right of separate publication, is reduced from 28 years to 3 years.

3. The right to make an abridgment of a work is for the first time expressly recognized as part of the copyright, and an abridgment by a person other than the copyright owner is made an infringement of copyright.

4. The authors of works of fiction are given the exclusive right of dramatizing the same as part of their copyright, and the converse right is conferred on authors of dramatic works.

5. The exhibition of photographs taken on commission, except with the consent of the person for whom they are taken, is rendered illegal.[1]

6. Registration is made compulsory for all classes of work in which copyright exists, except painting and sculpture : that is to say, no proceedings for infringement or otherwise can be taken before registration, nor can any proceedings be taken after registration in respect

[1] At present it seems to be merely a matter of implied contract (see Pollard *vs.* The Photographic Co., 40 *Ch. D.*, 345).

of anything done before the date of registration, except on payment of a penalty. This penalty, it should be mentioned, was not recommended by the Royal Commission, but is introduced in order that an accidental omission to register may not entirely deprive the copyright owner of his remedies. Registration of paintings and sculpture is made optional owing to their being so frequently subject to alteration that it is practically impossible to say when they are completed, so as to be capable of registration.

7. Provision is made (in Clause 89) for the seizure of piratical copies of copyright works which are being hawked about or offered for sale. Some such provision is required particularly for the protection of works of Art, and was recommended by the Royal Commission.

The part of the Bill which relates to the fine arts and photography is taken, almost without alteration, from the Copyright (Works of Fine Art) Bill which was introduced into the House of Commons in the session of 1886 by Mr. Hastings, Mr. Gregory, and Mr. Agnew. That Bill received the general approval of those interested in the fine arts; and although it does not altogether follow the recommendations of the Royal Commission, there does not appear to be any serious reason against adopting its provisions.

The part of the Bill which relates to Foreign and Colonial Copyright is practically a re-enactment of the provisions of the International Copyright Act, 1886, which was passed in order to carry into effect the "Berne Convention" for giving to authors of literary and artistic works first published in one of the countries parties to the Convention, copyright in such works throughout the other countries parties to the Convention.

By the earlier parts of the Bill, the same rights are given to Colonial as to British authors; while the right of the Colonial Legislatures to deal with the subject is expressly recognized and preserved. The Foreign Reprints Act of 1847 (10 and 11 Vict. c. 95) is re-enacted in the form adopted in the Bill of 1879, but it has not been found possible to frame provisions for the introduction of any such licensing system of republication in the Colonies as that suggested by the Royal Commission. There appear to be great difficulties in providing for the practical working of any such system, and even if they could be overcome, it is felt that while it is more than doubtful whether the colonial reader would benefit to any great extent, the British copyright owner must suffer considerable loss.

With regard to registration, the Bill (as was recommended by the Royal Commission) provides for the establishment of a Copyright Registration Office, under the control of Government, in lieu of the present office at Stationers' Hall, established under 5 and 6 Vict. c. 45. This office has even under the present law been found inadequate, and would be still more so upon the introduction of compulsory registration in all cases.

It is felt, however, that the details and formalities of any scheme of registration can only be satisfactorily settled by Government officials, and the provisions of Part V. of the Bill are put forward rather by way of suggestion than as a definitely settled scheme. It will probably be found desirable either now or hereafter to combine the Copyright Registration Office with the Registry of Designs and Trade Marks, and this part of the Bill has, therefore, as far as possible, been modeled on the corresponding provisions of the Patents Designs and Trade Marks Act, 1883.

The chief points on which the recommendations of the Royal Commission are departed from in the present Bill are as follows :—

1. The Commissioners recommended that the universities and libraries (other than the British Museum) which are now entitled to receive a copy of every book published in the United Kingdom, should be left to purchase the books they required in the market, and that their present privilege should be taken away. But from communications which have been received from the librarians, it appears that they are most anxious to retain their present privilege ; that the libraries could not be properly supplied if it was abolished, and that the cases in which it can cause any real hardship are very few. The Bill, therefore, provides for the continuance of the supply to these institutions.
2. With regard to the Fine Arts, the Commissioners were of opinion that the copyright in paintings, etc., should pass to the purchaser unless specially reserved to the artist. Under the Bill, however, the copyright will remain in the artist, unless expressly assigned to the purchaser. This, it is believed, is in accordance with the general wish of artists, and as no replica can be produced without the consent of the owner of the original painting, no injury will be inflicted on purchasers, who will moreover have the right (under section 46) of pre-

venting unauthorized reproductions, even though they have not (*as of course it will be open to them to do*) taken an express assignment of the copyright. Practically the only effect of the artist retaining the copyright after parting with the picture, will be to give him a control over its reproduction by engraving or otherwise, and this control it seems proper that he should have.

3. The exception made in the Act, 5 and 6 Will. IV. c. 65, with respect to lectures delivered in universities and elsewhere, is not proposed to be re-enacted in the present Bill. What the exact meaning and effect of that exception may be seems to be far from clear (*see* the observations of the Lords in Caird *vs.* Sime, *L.R.* 12 *App. Ca.* 326), and moreover, it does not by any means seem to follow that because a lecture is delivered in a university, or in virtue of an endowment or foundation, the lecturer should be deprived of rights conferred on all other lecturers whether they are paid for their services or not.
4. The omission of any provisions for the introduction of a licensing system into the Colonies; and
5. The right given to a copyright owner of taking proceedings in respect of infringements, committed before he registers his title on payment of a penalty, have been already noticed and explained.

LONDON, *January*, 1891.

XVI.

CONVENTION CONCERNING THE CREATION OF AN INTERNATIONAL UNION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS.

Ratified at Berne, Switzerland, Sept. 5th, 1887.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the German Emperor, King of Prussia; His Majesty the King of the Belgians; Her Majesty the Queen Regent of Spain, in the name of His Catholic Majesty the King of Spain; the President of the French Republic; the President of the Republic of Hayti; His Majesty the King of Italy; the President of the Republic of Liberia; the Federal Council of the Swiss Confederation; His Highness the Bey of Tunis,

Being equally animated by the desire to protect effectively, and in as uniform a manner as possible, the rights of authors over their literary and artistic works,

Have resolved to conclude a convention to that effect, and have named for their Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, Sir Francis Ottiwell Adams, Knight Commander of the Most Distinguished Order of St. Michael and St. George, Companion of the Most Honorable Order of the Bath, her Envoy Extraordinary and Minister Plenipotentiary at Berne; and John Henry Gibbs Bergne, Esquire, Companion of the Most Distinguished Order of St. Michael and St. George, Director of a Department in the Foreign Office at London.

His Majesty the German Emperor, King of Prussia, M. Otto von Bülow, Privy Councilor of Legation, and Chamberlain of His Majesty, his Envoy Extraordinary and Minister Plenipotentiary to the Swiss Confederation.

His Majesty the King of the Belgians, M. Maurice Delfosse, his Envoy Extraordinary and Minister Plenipotentiary to the Swiss Confederation.

Her Majesty the Queen Regent of Spain, in the name of His Catholic Majesty the King of Spain; the Count de la Almina y Castro, Senator, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Confederation; M. Don José Villa-Amil, Chief of the Section of Intellectual Property in the Ministry of Public Instruction, Doctor of Civil and Canon Law, Member of the Facultative Corps of Archivists, Librarians, and Archæologists, and of the Academies of History, of the Fine Arts of St. Ferdinand, and of the Academy of Sciences at Lisbon.

The President of the French Republic, M. François Victor-Emmanuel Arago, Senator, Ambassador from the French Republic to the Swiss Confederation.

The President of the Republic of Hayti, M. Louis Joseph Janvier, Doctor of Medicine of the Faculty of Paris, Prize-man of the Faculty of Medicine of Paris, bearing Diplomas from the School of Political Sciences of Paris (Administrative and Diplomatic Sections), decorated with the Haytian Medal of the third class.

His Majesty the King of Italy, M. Charles Emmanuel Beccaria des Marquis d'Incisa, Chevalier of the Orders of Saints Maurice and Lazarus, and of the Crown of Italy, his Chargé d'Affaires to the Swiss Confederation.

The President of the Republic of Liberia, M. William Koentzer, Imperial Councilor, Consul-General, Member of the Chamber of Commerce of Vienna.

The Federal Council of the Swiss Confederation, M. Numa Droz, Vice-President of the Federal Council, Head of the Department of Commerce and Agriculture; M. Louis Ruchonnet, Federal Councilor, Chief of the Department of Justice and Police; M. A. d'Orelli, Professor of Law at the University of Zurich.

His Highness the Bey of Tunis, M. Louis Renault, Professor to the Faculty of Law of Paris, and to the Free School of Political Sciences, Chevalier of the Order of the Legion of Honor, and Chevalier of the Order of the Crown of Italy.

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

The Contracting States are constituted into an Union for the protection of the rights of authors over their literary and artistic works.

ARTICLE II.

Authors of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether published in one of those countries or unpublished, the rights which the respective laws do now or may hereafter grant to natives.

The enjoyment of these rights is subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work, and cannot exceed in the other countries the term of protection granted in the said country of origin.

The country of origin of the work is that in which the work is first published, or if such publication takes place simultaneously in several countries of the Union, that one of them in which the shortest term of protection is granted by law.

For unpublished works the country to which the author belongs is considered the country of origin of the work.

ARTICLE III.

The stipulations of the present Convention apply equally to the publishers of literary and artistic works published in one of the countries of the Union, but of which the authors belong to a country which is not a party to the Union.

ARTICLE IV.

The expression "literary and artistic works" comprehends books, pamphlets, and all other writings; dramatic, or dramatico-musical works, musical compositions with or without words; works of design, painting, sculpture, and engraving; lithographs, illustrations, geographical charts; plans, sketches, and plastic works relative to geography, topography, architecture, or science in general; in fact, every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction.

ARTICLE V.

Authors of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of

making or authorizing the translation of their works until the expiration of ten years from the publication of the original work in one of the countries of the Union.

For works published in incomplete parts ("livraisons") the period of ten years commences from the date of publication of the last part of the original work.

For works composed of several volumes published at intervals, as well as for bulletins or collections ("cahiers") published by literary or scientific Societies, or by private persons, each volume, bulletin, or collection is, with regard to the period of ten years, considered as a separate work.

In the cases provided for by the present Article, and for the calculation of the period of protection, the 31st December of the year in which the work was published is admitted as the date of publication.

ARTICLE VI.

Authorized translations are protected as original works. They consequently enjoy the protection stipulated in Articles II. and III. as regards their unauthorized reproduction in the countries of the Union.

It is understood that, in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.

ARTICLE VII.

Articles from newspapers or periodicals published in any of the countries of the Union may be reproduced in original or in translation in the other countries of the Union, unless the authors or publishers have expressly forbidden it. For periodicals it is sufficient if the prohibition is made in a general manner at the beginning of each number of the periodical.

This prohibition cannot in any case apply to articles of political discussion, or to the reproduction of news of the day or *current topics*.

ARTICLE VIII.

As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational or scientific purposes, or for chrestomathies, the matter is to be decided by the legislation of the different countries of the Union, or by special arrangements existing or to be concluded between them.

Article IX.

The stipulations of Article II. apply to the public representation of dramatic or dramatico-musical works, whether such works be published or not.

Authors of dramatic or dramatico-musical works, or their lawful representatives, are, during the existence of their exclusive right of translation, equally protected against the unauthorized public representation of translations of their works.

The stipulations of Article II. apply equally to the public performance of unpublished musical works, or of published works in which the author has expressly declared on the title-page or commencement of the work that he forbids the public performance.

Article X.

Unauthorized indirect appropriations of a literary or artistic work, of various kinds, such as *adaptations*, *arrangements of music*, etc., are specially included amongst the illicit reproductions to which the present Convention applies, when they are only the reproduction of a particular work, in the same form, or in another form, with non-essential alterations, additions, or abridgments, so made as not to confer the character of a new original work.

It is agreed that, in the application of the present Article, the Tribunals of the various countries of the Union will, if there is occasion, conform themselves to the provisions of their respective laws.

Article XI.

In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against pirates before the Courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work is entitled to protect the rights belonging to the author. He is, without other proof, reputed the lawful representative of the anonymous or pseudonymous author.

It is, nevertheless, agreed that the Tribunals may, if necessary, require the production of a certificate from the competent authority to the effect that the formalities prescribed by law in the country of origin have been accomplished, as contemplated in Article II.

ARTICLE XII.

Pirated works may be seized on importation into those countries of the Union where the original work enjoys legal protection.

The seizure shall take place conformably to the domestic law of each State.

ARTICLE XIII.

It is understood that the provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit, by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.

ARTICLE XIV.

Under the reserves and conditions to be determined by common agreement,[1] the present Convention applies to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin.

ARTICLE XV.

It is understood that the Governments of the countries of the Union reserve to themselves respectively the right to enter into separate and particular arrangements between each other, provided always that such arrangements confer upon authors or their lawful representatives more extended rights than those granted by the Union, or embody other stipulations not contrary to the present Convention.

ARTICLE XVI.

An international office is established, under the name of "Office of the International Union for the Protection of Literary and Artistic Works."

This office, of which the expenses will be borne by the Administrations of all the countries of the Union, is placed under the high authority of the Superior Administration of the Swiss Confedera-

[1] See paragraph 4 of Final Protocol.

tion, and works under its direction. The functions of this Office are determined by common accord between the countries of the Union.

ARTICLE XVII.

The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union.

Questions of this kind, as well as those which are of interest to the Union in other respects, will be considered in Conferences to be held successively in the countries of the Union by Delegates of the said countries.

It is understood that no alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries composing it.

ARTICLE XVIII.

Countries which have not become parties to the present Convention, and which grant by their domestic law the protection of rights secured by this Convention, shall be admitted to accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, which will communicate it to all the other countries of the Union.

Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention.

ARTICLE XIX.

Countries acceding to the present Convention shall also have the right to accede thereto at any time for their Colonies or foreign possessions.

They may do this either by a general declaration comprehending all their Colonies or possessions within the accession, or by specially naming those comprised therein, or by simply indicating those which are excluded.

ARTICLE XX.

The present Convention shall be put in force three months after the exchange of the ratifications, and shall remain in effect for an

indefinite period until the termination of a year from the day on which it may have been denounced.

Such denunciation shall be made to the Government authorized to receive accessions, and shall only be effective as regards the country making it, the Convention remaining in full force and effect for the other countries of the Union.

Article XXI.

The present Convention shall be ratified, and the ratifications exchanged at Berne, within the space of one year at the latest.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Berne, the 9th day of September, 1886.

F. O. ADAMS.
J. H. G. BERGNE.
OTTO von BÜLOW.
MAURICE DELFOSSE.
COMTE DE LA ALMINA Y CASTRO.
JOSÉ VILLA-AMIL.
EMMANUEL ARAGO.
LOUIS-JOSEPH JANVIER.
E. DI BECCARIA.
KŒNTZER.
DROZ.
L. RUCHONNET.
A. D'ORELLI.
L. RENAULT.

Additional Article.

The Plenipotentiaries assembled to sign the Convention concerning the creation of an International Union for the protection of literary and artistic works have agreed upon the following Additional Article, which shall be ratified together with the Convention to which it relates :—

The Convention concluded this day in nowise affects the maintenance of existing Conventions between the Contracting States, provided always that such Conventions confer on authors, or their lawful representatives, rights more extended than those secured by

the Union, or contain other stipulations which are not contrary to the said Convention.

In witness whereof, the respective Plenipotentiaries have signed the present Additional Article.

Done at Berne, the 9th day of September, 1886.

(Signed) F. O. ADAMS.
J. H. G. BERGNE.
OTTO von BÜLOW.
MAURICE DELFOSSE.
ALMINA.
VILLA-AMIL.
EMMANUEL ARAGO.
LOUIS-JOSEPH JANVIER.
E. DI BECCARIA.
KŒNTZER.
DROZ.
L. RUCHONNET.
A. D'ORELLI.
L. RENAULT.

Final Protocol.

In proceeding to the signature of the Convention concluded this day, the undersigned Plenipotentiaries have declared and stipulated as follows :

1. As regards Article IV., it is agreed that those countries of the Union where the character of artistic works is not refused to photographs, engage to admit them to the benefits of the Convention concluded to-day, from the date of its coming into effect. They are, however, not bound to protect the authors of such works further than is permitted by their own legislation, except in the case of international engagements already existing, or which may hereafter be entered into by them.

It is understood that an authorized photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the said Convention, for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private arrangements between those who have legal rights.

2. As regards Article IX., it is agreed that those countries of the

Union whose legislation implicitly includes choregraphic works amongst dramatico-musical works, expressly admit the former works to the benefits of the Convention concluded this day.

It is, however, understood that questions which may arise on the application of this clause shall rest within the competence of the respective Tribunals to decide.

3. It is understood that the manufacture and sale of instruments for the mechanical reproduction of musical airs which are copyright, shall not be considered as constituting an infringement of musical copyright.

4. The common agreement alluded to in Article XIV. of the Convention is established as follows :

The application of the Convention to works which have not fallen into the public domain at the time when it comes into force, shall operate according to the stipulations on this head which may be contained in special Conventions either existing or to be concluded.

In the absence of such stipulations between any countries of the Union, the respective countries shall regulate, each for itself by its domestic legislation, the manner in which the principle contained in Article XIV. is to be applied.

5. The organization of the International Office established in virtue of Article XVI. of the Convention shall be fixed by a Regulation which will be drawn up by the Government of the Swiss Confederation.

The official language of the International Office will be French.

The International Office will collect all kinds of information relative to the protection of the rights of authors over their literary and artistic works. It will arrange and publish such information. It will study questions of general utility likely to be of interest to the Union, and, by the aid of documents placed at its disposal by the different Administrations, will edit a periodical publication in the French language treating questions which concern the Union. The Governments of the countries of the Union reserve to themselves the faculty of authorizing, by common accord, the publication by the Office of an edition in one or more other languages if experience should show this to be requisite.

The International Office will always hold itself at the disposal of members of the Union, with the view to furnish them with any special information they may require relative to the protection of literary and artistic works.

The Administration of the country where a Conference is about to be held, will prepare the programme of the Conference with the assistance of the International Office.

The Director of the International Office will attend the sittings of the Conferences, and will take part in the discussions without a deliberative voice. He will make an annual Report on his administration, which shall be communicated to all the members of the Union.

The expenses of the Office of the International Union shall be shared by the Contracting States. Unless a fresh arrangement be made, they cannot exceed a sum of 60,000 fr. a year. This sum may be increased by the decision of one of the Conferences provided for in Article XVII.

The share of the total expense to be paid by each country shall be determined by the division of the contracting and acceding States into six classes, each of which shall contribute in the proportion of a certain number of units, viz.:—

First Class	.. .. ..	25 units.
Second "	.. .. ..	20 "
Third "	.. .. ..	15 "
Fourth "	.. .. ..	10 "
Fifth "	.. .. ..	5 "
Sixth "	.. .. ..	3 "

These co-efficients will be multiplied by the number of States of each class, and the total product thus obtained will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unity of expense.

Each State will declare at the time of its accession, in which of the said classes it desires to be placed.

The Swiss Administration will prepare the Budget of the Office, superintend its expenditure, make the necessary advances, and draw up the annual account, which shall be communicated to all the other Administrations.

6. The next Conference shall be held at Paris, between four and six years from the date of the coming into force of the Convention.

The French Government will fix the date within these limits after having consulted the International Office.

7. It is agreed that, as regards the exchange of ratifications con-

templated in Article XXI., each Contracting Party shall give a single instrument, which shall be deposited, with those of the other States, in the Government archives of the Swiss Confederation. Each party shall receive in exchange a copy of the *procès-verbal* of the exchange of ratifications, signed by the Plenipotentiaries present.

The present Final Protocol, which shall be ratified with the Convention concluded this day, shall be considered as forming an integral part of the said Convention, and shall have the same force, effect, and duration.

In witness whereof the respective Plenipotentiaries have signed the same.

Done at Berne, the 9th day of September, 1886.

(Signed) F. O. ADAMS.
J. H. G. BERGNE.
OTTO VON BÜLOW.
MAURICE DELFOSSE.
ALMINA.
VILLA-AMIL.
EMMANUEL ARAGO.
LOUIS-JOSEPH JANVIER.
E. DI BECCARIA.
KŒNTZER.
DROZ.
L. RUCHONNET.
A. D'ORELLI.
L. RENAULT.

Procès-verbal of Signature.

The undersigned Plenipotentiaries, assembled this day to proceed with the signature of the Convention with reference to the creation of an International Union for the protection of literary and artistic works, have exchanged the following declarations :—

1. With reference to the accession of the Colonies or foreign possessions provided for by Article XIX. of the Convention :

The Plenipotentiaries of His Catholic Majesty the King of Spain reserve to the Government the power of making known His Majesty's decision at the time of the exchange of ratifications.

The Plenipotentiary of the French Republic states that the accession of his country carries with it that of all the French Colonies.

The Plenipotentiaries of Her Britannic Majesty state that the accession of Great Britain to the Convention for the protection of literary and artistic works comprises the United Kingdom of Great Britain and Ireland, and all the Colonies and foreign possessions of Her Britannic Majesty.

At the same time they reserve to the Government of Her Britannic Majesty the power of announcing at any time the separate denunciation of the Convention by one or several of the following Colonies or possessions, in the manner provided for by Article XX. of the Convention, namely :—

India, the Dominion of Canada, Newfoundland, the Cape, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, and New Zealand.

2. With respect to the classification of the countries of the Union having regard to their contributory part to the expenses of the International Bureau (No. 5 of the Final Protocol) :

The Plenipotentiaries declare that their respective countries should be ranked in the following classes, namely :—

Germany in the first class.
Belgium in the third class.
Spain in the second class.
France in the first class.
Hayti in the fifth class.
Italy in the first class.
Switzerland in the third class.
Tunis in the sixth class.

Great Britain in the first class.

The Plenipotentiary of the Republic of Liberia states that the powers which he has received from his Government authorize him to sign the Convention, but that he has not received instructions as to the class in which his country proposes to place itself with respect to the contribution to the expenses of the International Bureau. He therefore reserves that question to be determined by his Government, which will make known its intention on the exchange of ratifications.

In witness whereof, the respective Plenipotentiaries have signed the present *procès-verbal*.

Done at Berne, the 9th day of September, 1886.

(Signed) For Great Britain .. F. O. ADAMS.
J. H. G. BERGNE.
For Germany .. .. OTTO von BÜLOW.
For Belgium .. .. MAURICE DELFOSSE.
For Spain .. .. .. ALMINA.
VILLA-AMIL.
For France .. .. EMMANUEL ARAGO.
For Hayti.. .. .. LOUIS-JOSEPH JANVIER.
For Italy .. .. .. E. DI BECCARIA.
For Liberia .. .. KŒNTZER.
For Switzerland .. DROZ.
L. RUCHONNET.
A. D'ORELLI.
For Tunis .. .. .. L. RENAULT.

Procès-verbal recording Deposit of Ratifications.

In accordance with the stipulations of Article XXI., paragraph 1, of the Convention for the creation of an International Union for the protection of literary and artistic works, concluded at Berne on 9th September, 1886, and in consequence of the invitation addressed to that effect by the Swiss Federal Council to the Governments of the High Contracting Parties, the Undersigned assembled this day in the Federal Palace at Berne for the purpose of examining and depositing the ratifications of :—

Her Majesty the Queen of Great Britain and Ireland, Empress of India,

His Majesty the Emperor of Germany, King of Prussia,

His Majesty the King of the Belgians,

Her Majesty the Queen Regent of Spain, in the name of His Catholic Majesty the King of Spain,

The President of the French Republic,

The President of the Republic of Hayti,

His Majesty the King of Italy,

The Council of the Swiss Confederation,
His Highness the Bey of Tunis,

to the said International Convention, followed by an Additional Article and Final Protocol.

The instruments of these acts of ratification having been produced and found in good and due form, they have been delivered into the hands of the President of the Swiss Confederation, to be deposited in the archives of the Government of that country, in accordance with clause No. 7 of the Final Protocol of the International Convention.

In witness whereof the Undersigned have drawn up the present *procès-verbal*, to which they have affixed their signatures and the seals of their arms.

Done at Berne, the 5th September, 1887, in nine copies, one of which shall be deposited in the archives of the Swiss Confederation with the instruments of ratification.

For Great Britain	..	F. O. ADAMS.
For Germany	.. ..	ALFRED von BÜLOW.
For Belgium	.. ..	HENRY LOUMYER.
For Spain	.. .. ..	COMTE DE LA ALMINA.
For France	.. ..	EMMANUEL ARAGO.
For Hayti	.. .. ..	LOUIS-JOSEPH JANVIER.
For Italy	.. . ..	FÈ.
For Switzerland	..	DROZ.
For Tunis	.. .. ..	H. MARCHAND.

Protocol.

On proceeding to the signature of the *procès-verbal* recording the deposit of the acts of ratification given by the High Parties Signatory to the Convention of the 9th September, 1886, for the creation of an International Union for the protection of literary and artistic works, the Minister of Spain renewed, in the name of his Government, the declaration recorded in the *procès-verbal* of the Conference of the 9th September, 1886, according to which the accession of Spain to the Convention includes that of all the territories dependent upon the Spanish Crown.

The Undersigned have taken note of this declaration.

In witness whereof they have signed the present Protocol, done at Berne, in nine copies. the 5th September, 1887.

For Great Britain .. F. O. ADAMS.
For Germany .. .. ALFRED von BÜLOW.
For Belgium .. .. HENRY LOUMYER.
For Spain .. .. .. COMTE DE LA ALMINA.
For France .. .. EMMANUEL ARAGO.
For Hayti .. .. .. LOUIS-JOSEPH JANVIER.
For Italy .. .. .. FÈ.
For Switzerland .. DROZ.
For Tunis .. .. .. H. MARCHAND.

THE INTERNATIONAL COPYRIGHT ACT, 1886.

[49 & 50 Vict., c. 33.]

Arrangement of Sections.

Section.

1. Short titles and construction.
2. Amendment as to extent and effect of order under International Copyright Acts.
3. Simultaneous publication.
4. Modification of certain provisions of International Copyright Acts.
5. Restriction on translation.
6. Application of Act to existing works.
7. Evidence of foreign copyright.
8. Application of Copyright Acts to Colonies.
9. Application of International Copyright Acts to Colonies.
10. Making of Orders in Council.
11. Definitions.
12. Repeal of Acts.

SCHEDULES.

An act to amend the Law respecting International and Colonial Copyright. [25th June, 1886.]

Whereas, by the International Copyright Acts Her Majesty is authorized by Order in Council to direct that as regards literary and artistic works first published in a foreign country the author shall have copyright therein during the period specified in the order, not exceeding the period during which authors of the like works first published in the United Kingdom have copyright :

And whereas, at an international conference held at Berne in the month of September one thousand eight hundred and eighty-five a draft of a convention was agreed to for giving to authors of literary and artistic works first published in one of the countries parties to the convention copyright in such works throughout the other countries parties to the convention:

And whereas, without the authority of Parliament such convention cannot be carried into effect in Her Majesty's dominions and consequently Her Majesty cannot become a party thereto, and it is expedient to enable Her Majesty to accede to the convention:

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

1.—(1.) This Act may be cited as the International Copyright Act, 1886.

(2.) The Acts specified in the first part of the First Schedule to this Act are in this Act referred to and may be cited by the short titles in that schedule mentioned, and those Acts, together with the enactment specified in the second part of the said schedule, are in this Act collectively referred to as the International Copyright Acts.

The Acts specified in the Second Schedule to this Act may be cited by the short titles in that schedule mentioned, and those Acts are in this Act referred to, and may be cited collectively as the Copyright Acts.

(3.) This Act and the International Copyright Acts shall be construed together, and may be cited together as the International Copyright Acts, 1844 to 1886.

2. The following provisions shall apply to an Order in Council under the International Copyright Acts:—

(1.) The order may extend to all the several foreign countries named or described therein:

(2.) The order may exclude or limit the rights conferred by the International Copyright Acts in the case of authors who are not subjects or citizens of the foreign countries named or described in that or any other order, and if the order contains such limitation and the author of a literary or artistic work first produced in one of those foreign countries is not a British subject, nor a subject or citizen of any of the foreign countries so named or described, the publisher of such work, unless the order otherwise provides, shall, for

the purpose of any legal proceedings in the United Kingdom for protecting any copyright in such work, be deemed to be entitled to such copyright as if he were the author, but this enactment shall not prejudice the rights of such author and publisher as between themselves :

(3.) The International Copyright Acts and an order made thereunder shall not confer on any person any greater right or longer term of copyright in any work than that enjoyed in the foreign country in which such work was first produced.

3.—(1.) An Order in Council under the International Copyright Acts may provide for determining the country in which a literary or artistic work, first produced simultaneously in two or more countries, is to be deemed, for the purpose of copyright, to have been first produced, and for the purposes of this section "country" means the United Kingdom and a country to which an order under the said Acts applies.

(2.) Where a work produced simultaneously in the United Kingdom, and in some foreign country or countries, is by virtue of an Order in Council under the International Copyright Acts deemed for the purpose of copyright to be first produced in one of the said foreign countries, and not in the United Kingdom, the copyright in the United Kingdom shall be such only as exists by virtue of production in the said foreign country, and shall not be such as would have been acquired if the work had been first produced in the United Kingdom.

4.—(1.) Where an order respecting any foreign country is made under the International Copyright Acts the provisions of those Acts with respect to the registry and delivery of copies of works shall not apply to works produced in such country except so far as provided by the order.

(2.) Before making an Order in Council under the International Copyright Acts in respect of any foreign country, Her Majesty in Council shall be satisfied that that foreign country has made such provisions (if any) as it appears to Her Majesty expedient to require for the protection of authors of works first produced in the United Kingdom.

5.—(1.) Where a work being a book or dramatic piece is first produced in a foreign country to which an Order in Council under the International Copyright Acts applies, the author or publisher, as the case may be, shall, unless otherwise directed by the Order, have

the same right of preventing the production in and importation into the United Kingdom of any translation not authorized by him of the said work as he has of preventing the production and importation of the original work.

(2.) Provided that if after the expiration of ten years, or any other term prescribed by the order, next after the end of the year in which the work, or in the case of a book published in numbers each number of the book, was first produced, an authorized translation in the English language of such work or number has not been produced, the said right to prevent the production in and importation into the United Kingdom of an unauthorized translation of such work shall cease.

(3.) The law relating to copyright, including this Act, shall apply to a lawfully produced translation of a work in like manner as if it were an original work.

(4.) Such of the provisions of the International Copyright Act, 1852, relating to translations, as are unrepealed by this Act shall apply in like manner as if they were re-enacted in this section.

6. Where an Order in Council is made under the International Copyright Acts with respect to any foreign country, the author and publisher of any literary or artistic work first produced before the date at which such order comes into operation shall be entitled to the same rights and remedies as if the said Acts and this Act and the said order had applied to the said foreign country at the date of the said production: Provided that where any person has before the date of the publication of an Order in Council lawfully produced any work in the United Kingdom, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such production which are subsisting and valuable at the said date.

7. Where it is necessary to prove the existence or proprietorship of the copyright of any work first produced in a foreign country to which an Order in Council under the International Copyright Acts applies, an extract from a register, or a certificate, or other document stating the existence of the copyright, or the person who is the proprietor of such copyright, or is for the purpose of any legal proceedings in the United Kingdom deemed to be entitled to such copyright, if authenticated by the official seal of a Minister of State of the said foreign country, or by the official seal or the signature of a British diplomatic or consular officer acting in such country, shall be

admissible as evidence of the facts named therein, and all courts shall take judicial notice of every such official seal and signature as is in this section mentioned, and shall admit in evidence, without proof, the documents authenticated by it.

8.—(1.) The Copyright Acts shall, subject to the provisions of this Act, apply to a literary or artistic work first produced in a British possession in like manner as they apply to a work first produced in the United Kingdom:

Provided that—

(*a*) the enactments respecting the registry of the copyright in such work shall not apply if the law of such possession provides for the registration of such copyright; and

(*b*) where such work is a book the delivery to any persons or body of persons of a copy of any such work shall not be required.

(2.) Where a register of copyright in books is kept under the authority of the government of a British possession, an extract from that register purporting to be certified as a true copy by the officer keeping it, and authenticated by the public seal of the British possession, or by the official seal or the signature of the governor of a British possession, or of a colonial secretary, or of some secretary or minister administering a department of the government of a British possession, shall be admissible in evidence of the contents of that register, and all courts shall take judicial notice of every such seal and signature, and shall admit in evidence, without further proof, all documents authenticated by it.

(3.) Where before the passing of this Act an Act or ordinance has been passed in any British possession respecting copyright in any literary or artistic works, Her Majesty in Council may make an Order modifying the Copyright Acts and this Act, so far as they apply to such British possession, and to literary and artistic works first produced therein, in such manner as to Her Majesty in Council seems expedient.

(4.) Nothing in the copyright Acts or this Act shall prevent the passing in a British possession of any Act or ordinance respecting the copyright within the limits of such possession of works first produced in that possession.

9. Where it appears to Her Majesty expedient that an Order in Council under the International Copyright Acts made after the passing of this Act as respects any foreign country, should not apply to any British possession, it shall be lawful for Her Majesty by the

same or any other Order in Council to declare that such Order and the International Copyright Acts and this Act shall not, and the same shall not, apply to such British possession, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order; and the expressions in the said Acts relating to Her Majesty's dominions shall be construed accordingly; but save as provided by such declaration the said Acts and this Act shall apply to every British possession as if it were part of the United Kingdom.

10.—(1.) It shall be lawful for Her Majesty from time to time to make Orders in Council for the purpose of the International Copyright Acts and this Act, for revoking or altering any Order in Council previously made in pursuance of the said Acts, or any of them.

(2.) Any such Order in Council shall not affect prejudicially any rights acquired or accrued at the date of such Order coming into operation, and shall provide for the protection of such rights.

11. In this Act, unless the context otherwise requires—

The expression "literary and artistic work" means every book, print, lithograph, article of sculpture, dramatic piece, musical composition, painting, drawing, photograph, and other work of literature and art to which the Copyright Acts or the International Copyright Acts, as the case requires, extend.

The expression "author" means the author, inventor, designer, engraver, or maker of any literary or artistic work, and includes any person claiming through the author; and in the case of a posthumous work means the proprietor of the manuscript of such work and any person claiming through him; and in the case of an encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, includes the proprietor, projector, publisher, or conductor.

The expressions "performed" and "performance" and similar words include representation and similar words.

The expression "produced" means, as the case requires, published or made, or, performed or represented, and the expression "production" is to be construed accordingly.

The expression "book published in numbers" includes any review, magazine, periodical work, work published in a series of books or parts, transactions of a society or body, and other books of which different volumes or parts are published at different times.

The expression "treaty" includes any convention or arrangement.

The expression "British possession" includes any part of Her Majesty's dominions exclusive of the United Kingdom; and where parts of such dominions are under both a central and a local legislature, all parts under one central legislature are for the purposes of this definition deemed to be one British possession.

12. The Acts specified in the Third Schedule to this Act are hereby repealed as from the passing of this Act to the extent in the third column of that schedule mentioned:

Provided as follows:

(*a.*) Where an Order in Council has been made before the passing of this Act under the said Acts as respects any foreign country the enactments hereby repealed shall continue in full force as respects that country until the said Order is revoked.

(*b.*) The said repeal and revocation shall not prejudice any rights acquired previously to such repeal or revocation, and such rights shall continue and may be enforced in like manner as if the said repeal or revocation had not been enacted or made.

FIRST SCHEDULE.

INTERNATIONAL COPYRIGHT ACTS.

PART I.

Session and Chapter	Title.	Short Title.
7 & 8 Vict. c. 12.	An Act to amend the law relating to International Copyright.	The International Copyright Act, 1844.
15 & 16 Vict. c. 12	An Act to enable Her Majesty to carry into effect a convention with France on the subject of copyright, to extend and explain the International Copyright Acts, and to explain the Acts relating to copyright in engravings.	The International Copyright Act, 1852.
38 & 39 Vict. c. 12	An Act to amend the law relating to International Copyright.	The International Copyright Act, 1875.

FIRST SCHEDULE.

Part II.

Session and Chapter	Title.	Enactment referred to.
25 & 26 Vict. c. 68	An Act for amending the law relating to copyright in works of the fine arts, and for repressing the commission of fraud in the production and sale of such works.	Section twelve.

SECOND SCHEDULE.

Copyright Acts.

Session and Chapter	Title.	Short Title.
8 Geo. 2. c. 13	An Act for the encouragement of the arts of designing, engraving, and etching, historical, and other prints by vesting the properties thereof in the inventors and engravers during the time therein-mentioned.	The Engraving Copyright Act, 1734.
7 Geo. 3. c. 38	An Act to amend and render more effectual an Act made in the eighth year of the reign of King George the Second, for encouragement of the arts of designing, engraving, and etching, historical and other prints, and for vesting in and securing to Jane Hogarth, widow, the property in certain prints.	The Engraving Copyright Act, 1766.
15 Geo. 3. c. 53	An Act for enabling the two Universities in England, the four Universities in Scotland, and the several Colleges of Eton, Westminster, and Winchester, to hold in perpetuity their copyright in books given or bequeathed to the said universities and colleges for the advancement of useful learning and other purposes of education; and for amending so much of an Act of the eighth year of the reign of Queen Anne, as relates to the delivery of books to the warehouse-keeper of the Stationers' Company for the use of the several libraries therein mentioned.	The Copyright Act, 1775.

SECOND SCHEDULE—*Continued.*

Session and Chapter	Title.	Short Title.
17 Geo. 3. c. 57 -	An Act for more effectually securing the property of prints to inventors and engravers by enabling them to sue for and recover penalties in certain cases.	The Prints Copyright Act, 1777.
54 Geo. 3. c. 56 -	An Act to amend and render more effectual an Act of His present Majesty for encouraging the art of making new models and casts of busts and other things therein mentioned, and for giving further encouragement to such arts.	The Sculpture Copyright Act, 1814.
3 Will. 4. c. 15 -	An Act to amend the laws relating to Dramatic Literary Property.	The Dramatic Copyright Act, 1833.
5 & 6 Will. 4. c. 65	An Act for preventing the publication of Lectures without consent.	The Lectures Copyright Act, 1835.
6 & 7 Will. 4. c. 69	An Act to extend the protection of copyright in prints and engravings to Ireland.	The Prints and Engravings Copyright Act, 1836.
6 & 7 Will. 4. c. 110	An Act to repeal so much of an Act of the fifty-fourth year of King George the Third, respecting copyrights, as requires the delivery of a copy of every published book to the libraries of Sion College, the four Universities of Scotland, and of the King's Inns in Dublin.	The Copyright Act, 1836.
5 & 6 Vict. c. 45 -	An Act to amend the law of copyright.	The Copyright Act, 1842.
10 & 11 Vict. c. 95	An Act to amend the law relating to the protection in the Colonies of works entitled to copyright in the United Kingdom.	The Colonial Copyright Act, 1847.
25 & 26 Vict. c. 68	An Act for amending the law relating to copyright in works of the fine arts, and for repressing the commission of fraud in the production and sale of such works.	The Fine Arts Copyright Act, 1862.

THIRD SCHEDULE.

ACTS REPEALED.

Session and Chapter	Title.	Extent of Repeal.
7 & 8 Vict. c. 12	An Act to amend the law relating to international copyright.	Sections fourteen, seventeen, and eighteen.
15 & 16 Vict. c. 12	An Act to enable Her Majesty to carry into effect a convention with France on the subject of copyright, to extend and explain the International Copyright Acts, and to explain the Acts relating to copyright engravings.	Sections one to five, both inclusive, and sections eight and eleven.
25 & 26 Vict. c. 68	An Act for amending the law relating to copyright in works of the fine arts, and for repressing the commission of fraud in the production and sale of such works.	So much of section twelve as incorporates any enactment repealed by this Act.

ORDER IN COUNCIL.

At the Court at Windsor, the 28th day of November, 1887.

PRESENT,

The QUEEN'S Most Excellent Majesty,
Lord President,
Lord Stanley of Preston,
Secretary Sir Henry Holland, Bart.

WHEREAS the Convention of which an English translation is set out in the First Schedule to this Order has been concluded between her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the foreign countries named in this Order, with respect to the protection to be given by way of copyright to the authors of literary and artistic works :

And whereas the ratifications of the said Convention were exchanged on the fifth day of September one thousand eight hundred and eighty-seven, between Her Majesty the Queen and the Governments of the foreign countries following, that is to say :

Belgium ; France ; Germany ; Hayti ; Italy ; Spain ; Switzerland ; Tunis :

And whereas Her Majesty in Council is satisfied that the foreign countries named in this Order have made such provisions as it appears to Her Majesty expedient to require for the protection of authors of works first produced in Her Majesty's dominions :

Now, therefore, Her Majesty, by and with the advice of her Privy Council, and by virtue of the authority committed to Her by the International Copyright Acts, 1844 to 1886, doth order ; and it is hereby ordered, as follows :

1. The Convention as set forth in the First Schedule to this Order, shall, as from the commencement of this Order, have full effect throughout Her Majesty's dominions, and all persons are enjoined to observe the same.

2. This Order shall extend to the foreign countries following, that is to say : Belgium ; France ; Germany ; Hayti ; Italy ; Spain ; Switzerland ; Tunis ; and the above countries are in this Order referred to as the foreign countries of the Copyright Union, and those foreign countries, together with Her Majesty's dominions, are in this Order referred to as the countries of the Copyright Union.

3. The author of a literary or artistic work which, on or after the commencement of this Order, is first produced in one of the foreign countries of the Copyright Union shall, subject as in this Order and in the International Copyright Acts, 1844 to 1886, mentioned, have as respects that work throughout Her Majesty's dominions, the same right of copyright, including any right capable of being conferred by an Order in Council under section two or section five of the International Copyright Act, 1844, or under any other enactment, as if the work had been first produced in the United Kingdom, and shall have such right during the same period ;

Provided, that the author of a literary or artistic work shall not have any greater right or longer term of copyright therein, than that which he enjoys in the country in which the work is first produced.

The author of any literary or artistic work first produced before the commencement of this Order shall have the rights and remedies to which he is entitled under section six of the International Copyright Act, 1886.

4. The rights conferred by the International Copyright Acts, 1844 to 1886, shall, in the case of a literary or artistic work first produced in one of the foreign countries of the Copyright Union by an author who is not a subject or citizen of any of the said foreign countries, be limited as follows, that is to say, the author shall not

be entitled to take legal proceedings in Her Majesty's dominions for protecting any copyright in such work, but the publisher of such work shall, for the purpose of any legal proceedings in Her Majesty's dominions for protecting any copyright in such work, be deemed to be entitled to such copyright as if he were the author, but without prejudice to the rights of such author and publisher as between themselves.

5. A literary or artistic work first produced simultaneously in two or more countries of the Copyright Union shall be deemed for the purpose of copyright to have been first produced in that one of those countries in which the term of copyright in the work is shortest.

6. Section six of the International Copyright Act, 1852, shall not apply to any dramatic piece to which protection is extended by virtue of this Order.

7. The Orders mentioned in the Second Schedule to this Order are hereby revoked ;

Provided that neither such revocation, nor anything else in this Order, shall prejudicially affect any right acquired or accrued before the commencement of this Order, by virtue of any Order hereby revoked, and any person entitled to such right shall continue entitled thereto, and to the remedies for the same, in like manner as if this Order had not been made.

8. This Order shall be construed as if it formed part of the International Copyright Act, 1886.

9. This Order shall come into operation on the sixth day of December, one thousand eight hundred and eighty-seven, which day is in this Order referred to as the commencement of this Order.

And the Lords Commissioners of Her Majesty's Treasury are to give the necessary orders herein accordingly.

C. L. PEEL.

XVII.

SUMMARY OF THE REPORT OF THE INTERNATIONAL COPYRIGHT CONVENTION OF SOUTH AMERICA, HELD AT MONTEVIDEO, JANUARY 11, 1889.

THE Congress held at Montevideo for the revision of international laws came to some important decisions regarding international copyright. The seven states represented were the Argentine Republic, Bolivia, Brazil, Chili, Paraguay, Peru, and Uruguay. In the main the articles of agreement closely followed the provisions of the Berne Conference of 1886. We briefly summarize a few important differences:

1. The South American treaty secures its benefits to all authors who have published a work in one of the contracting states, without regard to his nationality. The Convention of Berne only protects authors born in one of the contracting countries. It modifies this rule by protecting the publisher of a work issued in one of the countries of the Union, although the author is an alien. The protection to the work is the same, but it is the publisher who profits by it.

2. In South America the rights for translations are exactly the same as the right of the author in the original work, whereas the Berne Conference only assures the exclusive right of translation up to the expiration of ten years from the date of publication of the original work in one of the countries of the Union.

3. In the enumeration of what is understood under the expression

"literary and artistic works," photographs and choregraphic works are specifically mentioned, whereas the Berne Conference merely makes a general mention of processes of reproduction.

4. The treaty of South America contains no clause relating to public performances or representations of protected works, whereas the Berne Conference decrees that such works shall not be publicly performed or reprinted if the author has declared on the title-page that he forbids public performances, which declaration makes such performances a violation of original copyright.

5. The South American treaty may be extended to other nations which did not take part in the Congress. The Berne Convention guarantees admission to such countries as shall assure within their jurisdiction the protection which is the object of the Convention.

6. The South American treaty says nothing of the formalities of registering and depositing works to be protected. According to the Berne Convention these formalities can only be exacted in the country of origin and according to the laws enacted by that country.

7. The South American treaty makes no mention of works published before its going into force, whereas the Berne Convention has made provision in a special protocol for works published before its decisions went into force.

It may be of interest to note that these contracting South American countries represent a total population of 24,800,000.

The treaty embodying these points was signed by the delegates of the seven states, and it is to go into operation between such states as may ratify it as soon as ratified by them, no time being specified for such ratification.[1]

[1] The above summary is based upon the report of the *Publishers' Weekly* —EDITOR.

XVIII.

STATES WHICH HAVE BECOME PARTIES TO THE CONVENTION OF BERNE, JANUARY, 1896.

Germany.
France, with Algeria and Colonies.
Great Britain, with Colonies.
Hayti.
Italy.
Belgium.
Spain, with Colonies.
Luxembourg.
Morocco.
Montenegro.
Switzerland.
Tunis.

XIX.

THE NATURE AND ORIGIN OF COPYRIGHT.

By R. R. Bowker.

COPYRIGHT (from the Latin *copia*, plenty) means, in general, the right to copy, to make plenty. In its specific application it means the right to multiply copies of those products of the human brain known as literature and art.

There is another legal sense of the word "copyright" much emphasized by several English justices. Through the low Latin use of the word *copia*, our word "copy" has a secondary and reversed meaning, as the pattern to be copied or made plenty, in which sense the schoolboy copies from the "copy" set in his copy-book, and the modern printer calls for the author's "copy." Copyright, accordingly, may also mean the right in copy made (whether the original work or a duplication of it), as well as the right to make copies, which by no means goes with the work or any duplicate of it. Said Lord St. Leonards: "When we are talking of the right of an author we must distinguish between the mere right

to his manuscript, and to any copy which he may choose to make of it, as his property, just like any other personal chattel, and the right to multiply copies to the exclusion of every other person. Nothing can be more distinct than these two things. The common law does give a man who has composed a work a right to it as composition, just as he has a right to any other part of his personal property; but the question of the right of excluding all the world from copying, and of himself claiming the exclusive right of forever copying his own composition after he has published it to the world, is a totally different thing." Baron Parks, in the same case, pointed out expressly these two different legal senses of the word copyright, the right *in* copy, a right of possession, always fully protected by the common law, and the right *to* copy, a right of multiplication, which alone has been the subject of special statutory protection.

There is nothing which may more properly be called property than the creation of the individual brain. For property means a man's very *own*, and there is nothing more his own than the thought, created, made out of no material thing (unless the nerve-food which the brain consumes in the act of thinking be so counted), which uses material things only for its record or manifestation. The best proof of *own*-ership is that, if this individual man or woman had not thought this individual thought, realized in writing or in music or in marble, it would not exist. Or if the individual, thinking it, had put it aside without such record, it would not, in any

practical sense, exist. We cannot know what "might have beens" of untold value have been lost to the world where thinkers, such as inventors, have had no inducement or opportunity to so materialize their thoughts.

It is sometimes said, as a bar to this idea of property, that no thought is new—that every thinker is dependent upon the gifts of nature and the thoughts of other thinkers before him, as every tiller of the soil is dependent upon the land as given by nature and improved by the men who have toiled and tilled before him—a view of which Henry C. Carey has been the chief exponent in this country. But there is no real analogy—aside from the question whether the denial of individual property in land would not be setting back the hands of progress. If Farmer Jones does not raise potatoes from a piece of land, Farmer Smith can; but Shakespeare cannot write *Paradise Lost* nor Milton *Much Ado*, though before both Dante dreamed and Boccaccio told his tales. It was because of Milton and Shakespeare writing, not because of Dante and Boccaccio, who had written, that these immortal works are treasures of the English tongue. It was the very self of each, *in propria persona*, that gave these form and worth, though they used words that had come down from generations as the common heritage of English-speaking men. Property in a stream of water, as has been pointed out, is not in the atoms of the water but in the flow of the stream.

Property right in unpublished works has never been effectively questioned—a fact which in itself

confirms the view that intellectual property is a natural inherent right. The author has "supreme control" over an unpublished work, and his manuscript cannot be utilized by creditors as assets without his consent. "If he lends a copy to another," says Baron Parkes, "his right is not gone; if he sends it to another under an implied undertaking that he is not to part with it or publish it he has a right to enforce that undertaking." The receiver of a letter, to whom the paper containing the writing has undoubtedly been given, has no right to publish or otherwise use the letter without the writer's consent. The theory that, by permitting copies to be made, an author dedicates his writing to the public, as an owner of land dedicates a road to the public by permitting public use of it for twenty-one years, overlooks the fact that in so doing the author only conveys to each holder of his book the right to individual use, and not the right to multiply copies; as though the landowner should not give, but sell, permission to individuals to pass over his road, without any permission to them to sell tickets for the same privilege to other people. The owner of a right does not forfeit a right by selling a privilege.

It is at the moment of publication that the undisputed possessory right passes over into the much-disputed right to multiply copies, and that the vexed question of the true theory of copyright property arises. The broad view of literary property holds that the one kind of copyright is involved in the other. The right to have is the right to use. An author cannot use—that is, get beneficial results

from—his work, without offering copies for sale. He would be otherwise like the owner of a loaf of bread who was told that the bread was his until he wanted to eat it. That sale would seem to contain "an implied undertaking" that the buyer has liberty to use his copy but not to multiply it. Peculiarly in this kind of property the right of ownership consists in the right to prevent use of one's property by others without the owner's consent. The right of exclusion seems to be, indeed, a part of ownership. In the case of land the owner is entitled to prevent trespass to the extent of a shot-gun, and in the same way, the law recognizes the right to use violence, even to the extreme, in preventing others from possession of one's own property of any kind. The owner of a literary property has, however, no physical means of defence or redress; the very act of publication by which he gets a market for his productions opens him to the danger of wider multiplication and publication without his consent. There is, therefore, no kind of property which is so dependent on the help of the law for the protection of the real owner.

The inherent right of authors is a right at what is called common law—that is, natural or customary law. So far as concerns the undisputed rights before publication, the copyright laws are auxiliary merely to common law. Rights exist before remedies; remedies are merely invented to enforce rights. "The seeking for the law of the right of property in the law of procedure relating to the remedies," says Copinger, "is a mistake similar to supposing that the mark on the ear of an animal is the cause, instead

of the consequence, of property therein." After the invention of printing it became evident that new methods of procedure must be devised to enforce common law rights. Copyright became, therefore, the subject of statute law, by the passage of laws imposing penalties for a theft which, without such laws, could not be punished.

These laws, covering, naturally enough, only the country of the author, and specifying a time during which the penalties could be enforced, and providing means of registration by which authors could register their property rights, as the title to a house is registered when it is sold, had an unexpected result. The statute of Anne, which is the foundation of present English copyright law, intended to protect authors' rights by providing penalties against their violation, had the effect of limiting those rights. It was doubtless the intention of those who framed the statute of Anne to establish, for the benefit of authors, specific means of redress. Overlooking, apparently, the fact that law and equity, as their principles were then established, enabled authors to use the same means of redress, so far as they held good, which persons suffering wrongs as to other property had, the law was so drawn that, in 1774, the English House of Lords (against, however, the weight of one half of English judicial opinion) decided that, instead of giving additional sanction to a formerly existing right, the statute of Anne had substituted a new and lesser right, to the exclusion of what the majority of English judges held to have been an old and greater right. Literary and like

property to this extent lost the character of copy-*right*, and became the subject of copy-*privilege*, depending on legal enactment for the security of the private owner. American courts, wont to follow English precedent, have rather taken for granted this view of the law of literary property, and our Constitution, in authorizing Congress to secure "for limited terms to authors and inventors the exclusive right to their respective writings and discoveries," was evidently drawn from the same point of view, though it does not in itself deny or withdraw the natural rights of the author at common law.

XX.

THE EVOLUTION OF COPYRIGHT.

BY BRANDER MATTHEWS.

(Reprinted from the *Political Science Quarterly.*)

"THE only thing that divides us on the question of copyright seems to be a question as to how much property there is in books," said James Russell Lowell, two or three years ago; and he continued,

"but that is a question we may be well content to waive till we have decided that there is any property at all in them. I think that, in order that the two sides should come together, nothing more is necessary than that both should understand clearly that property, whether in books or in land or in anything else, is artificial; that it is purely a creature of law; and, more than that, of local and municipal law. When we have come to an agreement of this sort, I think we shall not find it difficult to come to an agreement that it will be best for us to get whatever acknowledgment of property we can, in books, to start with."

"An author has no natural right to a property in his production," said the late Matthew Arnold, in his acute and suggestive essay on copyright,

"but then neither has he a natural right to anything whatever which he may produce or acquire. What is true is that a man has a strong instinct making him seek to possess what he has produced or acquired, to have it at his own disposal; that he finds pleasure in so having it, and finds profit. The instinct is natural and salutary, although it may be over-stimulated and indulged to excess. One of

the first objects of men, in combining themselves in society, has been to afford to the individual, in his pursuit of this instinct, the sanction and assistance of the laws, so far as may be consistent with the general advantage of the community. The author, like other people, seeks the pleasure and the profit of having at his own disposal what he produces. Literary production, wherever it is sound, is its own exceeding great reward; but that does not destroy or diminish the author's desire and claim to be allowed to have at his disposal, like other people, that which he produces, and to be free to turn it to account. It happens that the thing which he produces is a thing hard for him to keep at his own disposal, easy for other people to appropriate; but then, on the other hand, he is an interesting producer, giving often a great deal of pleasure by what he produces, and not provoking Nemesis by any huge and immoderate profits on his production, even when it is suffered to be at his own disposal. So society has taken him under its protection, and has sanctioned his property in his work, and enabled him to have it at his own disposal."

Perhaps a consideration of the evolution of copyright in the past will conduce to a closer understanding of its condition at present, and to a clearer appreciation of its probable development in the future. It is instructive as well as entertaining to trace the steps by which men, combining themselves in society, in Arnold's phrase, have afforded to the individual author the sanction of the law in possessing what he has produced; and it is no less instructive to note the successive enlargements of jurisprudence by which property in books—which is, as Lowell says, the creature of local municipal law—has slowly developed until it demands and receives international recognition.

I.

The maxim that "there is no wrong without a remedy," indicates the line of legal development.

The instinct of possession is strong; and in the early communities, where most things were in common, it tended more and more to assert itself. When anything which a man claimed as his own was taken from him, he had a sense of wrong, and his first movement was to seek vengeance—much as a dog defends his bone, growling when it is taken from him, or even biting. If public opinion supported the claim of possession, the claimant would be sustained in his effort to get revenge. So, from the admission of a wrong, would grow up the recognition of a right. The moral right became a legal right as soon as it received the sanction of the State. The State first commuted the right of vengeance, and awarded damages, and the action of tort was born. For a long period property was protected only by the action for damages for disseizin; but this action steadily widened in scope until it became an action for recovery; and the idea of possession or seizin broadened into the idea of ownership. This development went on slowly, bit by bit and day by day, under the influence of individual self-assertion and the resulting pressure of public opinion, which, as Lowell once tersely put it, is like that of the atmosphere: "You can't see it, but it is fifteen pounds to the square inch all the same."

The individual sense of wrong stimulates the moral growth of *society* at large; and *in due course* of time, after a strenuous struggle with those who profit by the denial of justice, there comes a calm at last, and ethics crystallize into law. In more modern periods of development, the recognition of new

forms of property generally passes through three stages. First, there is a mere moral right, asserted by the individual and admitted by most other individuals, but not acknowledged by society as a whole. Second, there is a desire on the part of those in authority to find some means of protection for this admitted moral right, and the action in equity is allowed—this being an effort to command the conscience of those whom the ordinary policeman is incompetent to deal with. And thirdly, in the fullness of time, there is declared a law setting forth clearly the privileges of the producer and the means whereby he can defend his property and recover damages for an attack on it. This process of legislative declaration of rights is still going on all about us and in all departments of law, as modern life develops and spreads out and becomes more and more complex; and we have come to a point where we can accept Jhering's definition of a legal right as "a legally protected interest."

As it happens, this growth of a self-asserted claim into a legally protected interest can be traced with unusual ease in the evolution of copyright, because copyright itself is comparatively a new thing. The idea of property was probably first recognized in the tools which early man made for himself, and in the animals or men whom he subdued; later, in the soil which he cultivated. In the beginning the idea attached only to tangible things—to actual physical possession—to that which a man might pass from hand to hand. Now, in the dawn of history nothing was less a physical possession than literature; it was

not only intangible, it was invisible even. There was literature before there was any writing, before an author could set down his lines in black and white. Homer and the rhapsodists published their poems by word of mouth. *Litera scripta manet*; but the spoken poem flew away with the voice of the speaker and lingered only in the memory. Even after writing was invented, and after parchment and papyrus made it possible to preserve the labors of the poet and the historian, these authors had not, for many a century yet, any thought of making money by multiplying copies of their works.

The Greek dramatists, like the dramatists of to-day, relied for their pecuniary reward on the public performance of their plays. There is a tradition that Herodotus, when an old man, read his *History* to an Athenian audience at the Panathenaic festival, and so delighted them that they gave him as a recompense ten talents—more than twelve thousand dollars of our money. In Rome, where there were booksellers having scores of trained slaves to transcribe manuscripts for sale, perhaps the successful author was paid for a poem, but we find no trace of copyright or of anything like it. Horace (*Ars Poetica*, 345) speaks of a certain book as likely to make money for a certain firm of booksellers. In the other Latin poets, and even in the prose writers of Rome, we read more than one cry of suffering over the blunders of the copyists, and more than one protest in anger against the mangled manuscripts of the hurried, servile transcribers. But nowhere do we find any complaint that the author's

rights have been infringed; and this, no doubt, was because the author did not yet know that he had any wrongs. Indeed, it was only after the invention of printing that an author had an awakened sense of the injury done him in depriving him of the profit of vending his own writings; because it was only after Gutenberg had set up as a printer that the possibility of definite profit from the sale of his works became visible to the author. Before then he had felt no sense of wrong; he had thought mainly of the honor of a wide circulation of his writings; and he had been solicitous chiefly about the exactness of the copies. With the invention of printing there was a chance of profit; and as soon as the author saw this profit diminished by an unauthorized reprint, he was conscious of injury, and he protested with all the strength that in him lay. He has continued to protest from that day to this; and public opinion has been aroused, until by slow steps the author is gaining the protection he claims.

It is after the invention of printing that we must seek the origin of copyright. Mr. De Vinne shows that Gutenberg printed a book with movable types, at Mentz, in 1451. Fourteen years later, in 1465, two Germans began to print in a monastery near Rome, and removed to Rome itself in 1467; and in 1469 John of Spira began printing in Venice. Louis XI. sent to Mentz Nicholas Jenson, who introduced the art into France in 1469. Caxton set up the first press in England in 1474.

In the beginning these printers were p
most of their first books were Bibles

and the like; but in 1465, probably not more than fifteen years after the first use of movable types, Fust and Schoeffer put forth an edition of Cicero's *Offices*—"the first tribute of the new art to polite literature," Hallam calls it. The original editing of the works of a classic author, the comparison of manuscripts, the supplying of *lacunæ*, the revision of the text, called for scholarship of a high order; this scholarship was sometimes possessed by the printer-publisher himself; but more often than not he engaged learned men to prepare the work for him and to see it through the press. This first edition was a true pioneer's task; it was a blazing of the path and a clearing of the field. Once done, the labor of printing again that author's writings in a condition acceptable to students would be easy. Therefore the printer-publisher who had given time and money and hard work to the proper presentation of a Greek or Latin book was outraged when a rival press sent forth a copy of his edition, and sold the volume at a lower price, possibly, because there had been no need to pay for the scholarship which the first edition had demanded. That the earliest person to feel the need of copyright production should have been a printer-publisher is worthy of remark; obviously, in this case, the printer-publisher stood for the author and was exactly in his position. He was prompt to protest against this disseizin[1]

[1] *If any lawyer objects to the use of the word "disseizin" in connection with other than real property, he is referred to Prof. J. B. Ames's articles on Disseizin of Chattels, in the Harvard Law Review, Jan.—March, 1890.*

of the fruit of his labors; and the earliest legal recognition of his rights was granted less than a score of years after the invention of printing had made the injury possible. It is pleasant for us Americans to know that this first feeble acknowledgment of copyright was made by a republic. The Senate of Venice issued an order, in 1469, that John of Spira should have the exclusive right for five years to print the epistles of Cicero and of Pliny.[1]

This privilege was plainly an exceptional exercise of the power of the sovereign state to protect the exceptional merit of a worthy citizen; it gave but a limited protection; it guarded but two books, for a brief period only, and only within the narrow limits of one commonwealth. But, at least, it established a precedent—a precedent which has broadened down the centuries until now, four hundred years later, any book published in Venice is, by international conventions, protected from pillage for a period of at least fifty years, through a territory which includes almost every important country of continental Europe. If John of Spira were to issue to-day his edition of Tully's *Letters*, he need not fear an unauthorized reprint anywhere in the kingdom of which Venice now forms a part, or in his native land, Germany, or in France, Belgium, or Spain, or even in Tunis, Liberia, or Hayti.

The habit of asking for a special privilege from the authorities of the State wherein the book was printed spread rapidly. In 1491 Venice gave the pub-

[1] Sanuto, *Script. Rerum. Italic.*, t xxii., p. 1189; cited by Hallam, *History of Middle Ages*, chap. ix., part ii.

licist, Peter of Ravenna, and the publisher of his choice the exclusive right to print and sell his *Phœnix*[1] —the first recorded instance of a copyright awarded directly to an author. Other Italian states "encouraged printing by granting to different printers exclusive rights for fourteen years, more or less, of printing specified classics," and thus the time of the protection accorded to John of Spira was doubled. In Germany the first privilege was issued at Nuremberg, in 1501. In France the privilege covered but one edition of a book; and if the work went to press again, the publisher had to seek a second patent.

In England, in 1518, Richard Pynson, the King's Printer, issued the first book *cum privilegio;* the title-page declaring that no one else should print or import in England any other copies for two years; and in 1530 a privilege for seven years was granted to John Palsgrave "in the consideration of the value of his work and the time spent on it; this being the first recognition of the nature of copyright as furnishing a reward to the author for his labor."[2] In 1533 Wynkyn de Worde obtained the king's privilege for his second edition of Witinton's *Grammar.* The first edition of this book had been issued ten years before, and during the decade it had been reprinted by Peter Trevers without leave—a despoilment against which Wynkyn de Worde protested vigorously in the preface to the later edition, and on account of which he applied for and secured pro-

[1] Bowker, *Copyright*, p. 5.
[2] T. E. Scrutton, *Laws of Copyright*, p. 72.

tection. Here again is evidence that a man does not think of his rights until he feels a wrong. Jhering bases the struggle for law on the instinct of ownership as something personal, and the feeling that the person is attacked whenever a man is deprived of his property; and, as Walter Savage Landor wrote: "No property is so entirely and purely and religiously a man's own as what comes to him immediately from God, without intervention or participation." The development of copyright, and especially its rapid growth within the past century, is due to the loud protests of authors deprived of the results of their labors, and therefore smarting as acutely as under a personal insult.[1]

The invention of printing was almost simultaneous with the Reformation, with the discovery of America, and with the first voyage around the Cape of Good Hope. There was in those days a ferment throughout Europe, and men's minds were making ready for a great outbreak. Of this movement, intellectual on one side and religious on the other, the governments of the time were afraid; they saw that the press was spreading broadcast new ideas which might take root in the most inconvenient places, and spring up at the most inopportune moments; so they sought at once to control the printing of books. In less than a century after Gutenberg had cast the first type, the privileges granted for the encouragement and reward of the printer-publisher and of the author were utilized to enable those in authority to prevent the sending forth of such works

[1] Jhering, *The Struggle for Law* (translated by J. J. Lalor).

as they might choose to consider treasonable or heretical. For a while, therefore, the history of the development of copyright is inextricably mixed with the story of press-censorship. In France, for example, the edict of Moulins, in 1566, forbade "any person whatsoever printing or causing to be printed any book or treatise without leave and permission of the king, and letters of privilege."[1] Of course, no privilege was granted to publisher or to author if the royal censors did not approve of the book.

In England the "declared purpose of the Stationers' Company, chartered by Philip and Mary in 1556, was to prevent the propagation of the Protestant Reformation."[2] The famous "Decree of Star Chamber concerning printing," issued in 1637, set forth,

> "that no person or persons whatsoever shall at any time print or cause to be imprinted any book or pamphlet whatsoever, unless the same book or pamphlet, and also all and every the titles, epistles, prefaces, poems, preambles, introductions, tables, dedications, and other matters and things whatsoever thereunto annexed, or therewith imprinted, shall be first lawfully licensed."

In his learned introduction to the beautiful edition of this decree, made by him for the Grolier Club, Mr. De Vinne remarks that at this time the people of England were boiling with discontent; and, "annoyed by a little hissing of steam," the ministers of Charles I. "closed all the valves and outlets, but did not draw or deaden the fires which made the steam;"

[1] Alcide Darras, *Du Droit des Auteurs*, p. 169.

[2] E. S. Drone, *A Treatise on the Law of Property in Intellectual Productions*, p. 56.

then "they sat down in peace, gratified with their work, just before the explosion which destroyed them." This decree was made the eleventh day of July, 1637; and in 1641 the Star Chamber was abolished; and eight years later the king was beheaded at Whitehall.

The slow growth of a protection, which was in the beginning only a privilege granted at the caprice of the officials, into a legal right, to be obtained by the author by observing the simple formalities of registration and deposit, is shown in a table given in the appendix (page 370) to the *Report of the Copyright Commission* (London, 1878). The salient dates in this table are these:

"1637.—Star Chamber Decree supporting copyright.

1643.—Ordinance of the Commonwealth concerning licensing. Copyright maintained, but subordinate to political objects.

1662.—13 and 14 Car. II., c. 33.—Licensing Act continued by successive Parliaments; gives copyright coupled with license.

1710.—8 Anne, c. 19.—First Copyright Act. Copyright to be for fourteen years, and if author then alive, for fourteen years more. Power to regulate price.

1814.—54 Geo. III., c. 156.—Copyright to be for twenty-eight years absolutely, and further for the life of the author, if then living.

1842.—5 and 6 Vict., c. 45.—Copyright to be for the life of the author and seven years longer, or for forty-two years, whichever term last expires."

From Mr. Bowker's chapter on the *History of Copyright in the United States*, it is easy to draw up a similar table showing the development in this country:

"1793.—Connecticut, in January, and Massachusetts, in March, passed acts granting copyrights for twenty-one years. In May

Congress recommended the States to pass acts granting copyright for fourteen years—seemingly a step backward from the Connecticut and Massachusetts statutes.

1785 and 1786.—Copyright Acts passed in *Virginia*, New York, and New Jersey.

1786.—Adoption of the Constitution of the United States, authorizing Congress 'to promote the progress of science and useful arts by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.'

1790.—First United States Copyright Act. Copyright to citizens or residents for fourteen years, with a renewal for fourteen years more *if the author were living* at the expiration of the first term.

1831.—Copyright to be for twenty-eight years, with a renewal for fourteen years more, if the author, his widow, or his children are living at the expiration of the first term.

1856.—Act securing to dramatists stage-right; that is, the sole right to license the performance of a play.

1873-4.—The Copyright Laws were included in the Revised Statutes (*sections 4948 to 4971*)."

From the exhaustive and excellent work of M. Lyon-Caen and M. Paul Delalain on *Literary and Artistic Property*[1] we see that France, now, perhaps, the foremost of all nations in the protection it accords to literary property, lagged behind Great Britain and the United States in taking the second step in the evolution of copyright. It was in 1710 that the act of Anne gave the British author a legal right independent of the caprice of any official; and as soon as the United States came into being, the same right was promptly confirmed to our citizens; but it was not until the fall of the ancient *régime* that a Frenchman was enabled to take out a copy-

[1] *La Propriété Littéraire et Artistique: Lois Françaises et Étrangères* (Paris, Pichon, 1889, 2 vols.).

right at will. Up to the eve of the Revolution of 1789, French authors could do no more, say MM. Lyon-Caen and Delalain, "than ask for a privilege which might always be refused them" (page 8). As was becoming in a country where the drama has ever been the most important department of literature, the first step taken was a recognition of the stage-right of the dramatist, in a law passed in 1791. Before that, a printed play could have been acted in France by any one, but thereafter the exclusive right of performance was reserved to the playwright; and at one bound the French went far beyond the limit of time for which any copyright was then granted either in England or America, as the duration of stage-right was to be for the author's life and for five years more. It is to be noted, also, that stage-right was not acquired by British and American authors for many years after 1791.

Two years after the French law protecting stage-right, in the dark and bloody year of 1793, an act was passed in France granting copyright for the life of the author and for ten years after his death. It is worthy of remark that, as soon as the privileges and monopolies of the monarchy were abolished, the strong respect the French people have always felt for literature and art was shown by the extension of the term of copyright far beyond that then accorded in Great Britain and the United States; and although both the British and the American term of copyright has been prolonged since 1793, so also has the French, and it is now

for life of the author and for fifty years after his death.

The rapid development of law within the past century and the effort it makes to keep pace with the moral sense of society—a sense that becomes finer as society becomes more complicated and as the perception of personal wrong is sharpened—can be seen in this brief summary of copyright development in France, where, but a hundred years ago, an author had only the power of asking for a privilege which might be refused him. The other countries of Europe, following the lead of France as they have been wont to do, have formulated copyright laws not unlike hers. In prolonging the duration of the term of copyright, one country has been even more liberal. Spain extends it for eighty years after the author's death. Hungary, Belgium, and Russia accept the French term of the author's life and half a century more. Germany, Austria, and Switzerland grant only thirty years after the author dies. Italy gives the author copyright for his life, with exclusive control to his heirs for forty years after his death; after that period the exclusive rights cease, but a royalty of five per cent. on the retail price of every copy of every edition, by whomsoever issued, must be paid to the author's heirs for a further term of forty years: thus a quasi-copyright is granted for a period extending to eighty years after the author's death, and the Italian term is approximated to the Spanish. Certain of the Spanish-American nations have exceeded the liberality of the mother-country: in Mexico, in

Guatemala, and in Venezuela the author's rights are not terminated by the lapse of time, and copyright is perpetual.[1]

To set down with precision what has been done in various countries will help us to see more clearly what remains to be done in our own. It is only by considering the trend of legal development that we can make sure of the direction in which efforts toward improvement can be guided most effectively. For example: the facts contained in the preceding paragraphs show that no one of the great nations of continental Europe grants copyright for a less term than the life of the author and a subsequent period varying from thirty to eighty years. A comparison also of the laws of the various countries, as contained in the invaluable volumes of MM. Lyon-Caen and Delalain, reveals to us the fact that there is a steady tendency to lengthen this term of years, and that the more recent the legislation the more likely is the term to be long. In Austria, for instance, where the term was fixed in 1846, it is for thirty years after the author's death; while in the twin-kingdom of Hungary, where the term was fixed in 1884, it is for fifty years.

On a contrast of the terms of copyright granted by the chief nations of continental Europe with those granted by Great Britain and the United

[1] Here again it may be noted that certain decisions in the United States courts, to the effect that the performance of a play is not publication, and that therefore an unpublished play is protected by the common law and not by the copyright acts, recognize the perpetual stage-right of any dramatist who will forego the doubtful profit of appearing in print.

States, it will be seen that the English-speaking race, which was first to make the change from privilege to copyright, and was thus the foremost in the protection of the author, now lags sadly behind. The British law declares that the term of copyright shall be for the life of the author and only seven years thereafter, or for forty-two years, whichever term last expires. The American law does not even give an author copyright for the whole of his life, if he should be so unlucky as to survive forty-two years after the publication of his earlier books; it grants copyright for twenty-eight years only, with a permission to the author himself, his widow, or his children to renew for fourteen years more. This is niggardly when set beside the liberality of France, to say nothing of that of Italy and Spain. Those who are unwilling to concede that the ethical development of France, Italy, and Spain is more advanced than that of Great Britain and the United States, at least as far as literary property is concerned, may find some comfort in recalling the fact that the British act was passed in 1842 and the American in 1831—and in threescore years the world moves.

There is no need to dwell on the disadvantages of the existing American law, and on the injustice which it works. It may take from an author the control of his book at the very moment when he is at the height of his fame and when the infirmities of age make the revenue from his copyrights most necessary. An example or two from contemporary American literature will serve to show the demerits of the existing law. The first part of Bancroft's

History of the United States, the history of the colonization, was published in three successive volumes in 1834, 1837, and 1840; and although the author, before his death, revised and amended this part of his work, it has been lawful, since 1882, for any man to take the unrevised and incorrect first edition and to reprint it, despite the protests of the author, and in competition with the improved version which contains the results of the author's increased knowledge and keener taste.

At this time of writing (1890) all books published in the United States prior to 1848 are open to any reprinter; and the reprinter has not been slow to avail himself of this permission. The children of Fenimore Cooper are alive, and so are the nieces of Washington Irving; but they derive no income from the rival reprints of the *Leatherstocking Tales* or of the *Sketch Book*, reproduced from the earliest editions without any of the authors' later emendations.[1] Though the family of Cooper and the family of Irving survive, Cooper and Irving are dead themselves, and cannot protest. But there are living American authors besides Bancroft who are despoiled in like manner. Half a dozen volumes were published by Mr. Whittier and by Dr. Holmes before 1848, and these early, immature, uncorrected verses are now reprinted and offered to the public as "*Whittier's Poems*" and "*Holmes's Poems*." Sometimes the tree of poesy flowers early and bears fruit late. So it is with Lowell, whose

[1] The emendations, having been made within forty-two years, are, of course, still guarded by copyright.

Heartsease and Rue we received with delight only a year or two ago, but whose *Legend of Brittany*, *Vision of Sir Launfal*, *Fable for Critics* and first series of *Biglow Papers* were all published forty-two years ago or more, and are therefore no longer the property of their author, but have passed from his control absolutely and forever.

Besides the broadening of a capricious privilege into a legal right, and besides the lengthening of the time during which this right is enforced, a steady progress of the idea that the literary laborer is worthy of his hire is to be seen in various newer and subsidiary developments. With the evolution of copyright, the author can now reserve certain secondary rights of abridgment, of adaptation, and of translation. In all the leading countries of the world the dramatist can now secure stage-right,[1] *i.e.*, the sole right to authorize the performance of a play on a stage. Copyright and stage-right are wholly different; and a dramatist is entitled to both. The author of a play has made something which may be capable of a double use, and it seems proper that he should derive profit from both uses. His play may be read only and not acted, like Lord Tennyson's *Harold* and Longfellow's *Spanish Student*, in which case the copyright is more valuable than the stage-right. Or the play may be acted only, like the imported British melodramas, and of so slight a literary merit that no one would care

[1] Mr. Drone uses the word "playright," but this is identical in sound with "playwright," and it seems better to adopt the word "stage-right," first employed by Charles Reade.

to read it, in which case the stage-right would be more valuable than the copyright. Or the drama may be both readable and actable, like Shakespeare's and Sheridan's plays, like Augier's and Labiche's, in which case the author derives a double profit, controlling the publication by copyright and controlling performance by stage-right. It was in 1791, as we have seen, that France granted stage-right. In England, "the first statute giving to dramatists the exclusive right of performing their plays was the 3 and 4 William IV., c. 15, passed in 1833," says Mr. Daly. In the United States, stage-right was granted in 1851 to dramatists who had copyrights here.

Closely allied to the stage-right accorded to the dramatist is the sole right of dramatization accorded to the novelist. Indeed, the latter is an obvious outgrowth of the former. Until the enormous increase of the reading public in this century, consequent upon the spread of education, the novel was an inferior form to the drama and far less profitable pecuniarily. It is only within the past hundred years—one might say, fairly enough, that it is only since the Waverley novels took the world by storm—that the romance has claimed equality with the play. Until it did so, no novelist felt wronged when his tale was turned to account on the stage, and no novelist ever thought of claiming a sole right to the theatrical use of his own story. Lodge, the author of *Rosalynde*, would have been greatly surprised if any one had told him that Shakespeare had made an improper use of his story in founding on it *As You*

Like It. On the contrary, in fact, literary history would furnish many an instance to prove that the writer of fiction felt that a pleasant compliment had been paid him when his material was made over by a writer for the stage. Scott, for example, aided Terry in adapting his novels for theatrical performance; and he did this without any thought of reward. But by the time that Dickens succeeded Scott as the most popular of English novelists the sentiment was changing. In *Nicholas Nickleby* the author protested with acerbity against the hack playwrights who made haste to put a story on the stage even before its serial publication was finished. His sense of injury was sharpened by the clumsy disfiguring of his work. Perhaps the injustice was never so apparent as when a British playwright, one Fitzball, captured Fenimore Cooper's *Pilot* in 1826 and turned Long Tom Coffin into a British sailor! —an act of piracy which a recent historian of the London theatres, Mr. H. B. Baker, records with hearty approval. The possibility of an outrage like this still exists in England. In France, of course, the novelist has long had the exclusive right to adapt his own story to the stage; and in the United States, also, he has it, if he gives notice formally on every copy of the book itself that he desires to reserve to himself the right of dramatization. But England has not as yet advanced thus far; and no English author can make sure that he may not see a play ill-made out of his disfigured novel. Charles Reade protested in vain against unauthorized dramatization of his novels, and then, with character-

istic inconsistency, made plays out of novels by Anthony Trollope and Mrs. Hodgson Burnett without asking their consent. But the unauthorized British adapter may not lawfully print the play he has compounded from a copyright novel, as any multiplication of copies would be an infringement of the copyright; and Mrs. Hodgson Burnett succeeded in getting an injunction against an unauthorized dramatization of *Little Lord Fauntleroy* on proof that more than one copy of the unauthorized play had been made for use in the theatre. It is likely that one of the forthcoming modifications of the British law will be the extension to the novelist of the sole right to dramatize his own novel.

II.

From a consideration of the lengthening of the term of copyright and the development of certain subsidiary rights now acquired by an author, we come to a consideration of the next step in the process of evolution. This is the extension of an author's rights beyond the boundaries of the country of which he is a citizen, so that a book formally registered in one country shall by that single act and without further formality be protected from piracy[1] throughout the world. This great and needful improvement is now in course of accom-

[1] "Piracy" is a term available for popular appeal but perhaps lacking in scientific precision. The present writer used it in a little pamphlet on *American Authors and British Pirates* rather by way of retort to English taunts. Yet the inexact use of the word indicates the tendency of public opinion.

plishment; it is still far from complete, but year by year it advances farther and farther.

In the beginning the sovereign who granted a privilege, or at his caprice withheld it, could not, however strong his good-will, protect his subject's book beyond the borders of his realm; and even when privilege broadened into copyright, a book duly registered was protected only within the State wherein the certificate was taken out. Very soon after Venice accorded the first privilege to John of Spira, the extension of the protection to the limits of a single State only was found to be a great disadvantage. Printing was invented when central Europe was divided and subdivided into countless little states almost independent, but nominally bound together in the Holy Roman Empire. What is now the kingdom of Italy was cut up into more than a score of separate states, each with its own laws and its own executive. What is now the German Empire was then a disconnected medley of electorates, margravates, duchies, and grand-duchies, bishopries and principalities, free towns and knight-fees, with no centre, no head, and no unity of thought or of feeling or of action. The printer-publisher made an obvious effort for wider protection when he begged and obtained a privilege not only from the authorities of the State in which he was working but also from other sovereigns. Thus, when the Florentine edition of the *Pandects* was issued in 1553, the publisher secured privileges in Florence first, and also in Spain, in the Two Sicilies, and in France. But privileges of this sort granted to non-residents were

very infrequent, and no really efficacious protection for the books printed in another State was practically attainable in this way. Such protection, indeed, was wholly contrary to the spirit of the times, which held that an alien had no rights. In France, for example, a ship wrecked on the coasts was seized by the feudal lord and retained as his, subject only to the salvage claim.[1] In England a wreck belonged to the king unless a living being (man, dog, or cat) escaped alive from it; and this claim of the crown to all the property of the unfortunate foreign owner of the lost ship was raised as late as 1771, when Lord Mansfield decided against it. When aliens were thus rudely robbed of their tangible possessions, without public protest, there was not likely to be felt any keen sense of wrong at the appropriation of a possession so intangible as copyright.

What was needed was, first of all, an amelioration of the feeling toward aliens as such; and second, such a federation of the petty states as would make a single copyright effective throughout a nation, and as would also make possible an international agreement for the reciprocal protection of literary property. Only within the past hundred years or so, has this consolidation into compact and homogeneous nationalities taken place. In the last century, for example, Ireland had its own laws, and Irish pirates reprinted at will books covered by English copyright. In the preface to *Sir Charles Grandison*, published in 1753, Richardson, novelist and printer, inveighed against

[1] A. C. Bernheim, *History of the Law of Aliens* (N. Y., 1885), p. 58.

the piratical customs of the Hibernian publishers. In Italy, what was published in Rome had no protection in Naples or Florence. In Germany, where Luther in his day had protested in vain against the reprinters, Goethe and Schiller were able to make but little money from their writings, as these were constantly pirated in the other German states, and even imported into that in which they were protected, to compete with the author's edition. In 1826, Goethe announced a complete edition of his works, and, as a special honor to the poet in his old age, "the *Bundestag* undertook to secure him from piracy in German cities."[1] With the union of Ireland and Great Britain, with the accretion about the kingdom of Sardinia of the other provinces of Italy, with the compacting of Germany under the hegemony of Prussia, this inter-provincial piracy has wholly disappeared within the limits of these national states.

The suppression of international piracy passes through three phases. First, the nation whose citizens are most often despoiled—and this nation has nearly always been France—endeavors to negotiate reciprocity treaties, by which the writers of each of the contracting countries may be enabled to take out copyrights in the other. Thus France had, prior to 1852, special treaties with Holland, Sardinia, Portugal, Hanover, and Great Britain. Secondly, a certain number of nations join in an international convention, extending to the citizens of all the copyright advantages that the citizens of each

[1] G. H. Lewes, *Life and Works of Goethe*, p. 545.

enjoy at home. Third, a State modifies its own local copyright law so as to remove the disability of the alien. This last step was taken by France in 1852; and in 1886 Belgium followed her example.

The French, seeking equity, are willing to do equity; they ask no questions as to the nationality or residence of an author who offers a book for copyright; and they do not demand reciprocity as a condition precedent. Time was when the chief complaint of French authors was against the Belgian reprinters; but the Belgians, believing that the ship of state was ill-manned when she carried pirates in her crew, first made a treaty with France and then modified their local law into conformity with the French. These two nations, one of which was long the headquarters of piracy, now stand forward most honorably as the only two which really protect the full rights of an author.

Most of the states which had special copyright treaties one with another have adhered to the convention of Berne, finally ratified in 1887. Among them are France, Belgium, Germany, Spain, Italy, Great Britain, and Switzerland. The adhesion of Austro-Hungary, Holland, Norway, and Sweden is likely not long to be delayed. The result of this convention is substantially to abolish the distinction between the subjects of the adhering powers and to give to the authors of each country the same faculty of copyright and of stage-right that they enjoy at home, without any annoying and expensive formalities of registration or deposit in the foreign State.

The United States of America is now the only

one of the great powers of the world which absolutely refuses the protection of its laws to the books of a friendly alien.[1] From having been one of the foremost states of the world in the evolution of copyright, the United States has now become one of the most backward. Nothing could be more striking than a contrast of the liberality with which the American law treats the foreign inventor and the niggardliness with which it treats the foreign author. In his *Popular Government* (page 247) the late Sir Henry Sumner Maine declared that "the power to grant patents by federal authority has . . . made the American people the first in the world for the number and ingenuity of the inventions by which it has promoted the 'useful arts;' while, on the other hand, the neglect to exercise this power for the advantage of foreign writers has condemned the whole American community to a literary servitude unparalleled in the history of thought."

[1] If a foreign dramatist chooses to keep his play in manuscript, then the American courts will defend his stage-right; but the foreign dramatist is the only alien author whose literary property is assured to him by our courts.

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XXI.

LITERARY PROPERTY.

AN HISTORICAL SKETCH.

By Geo. Haven Putnam.

(Originally published in 1884, in Mason and Lalor's *Cyclopædia of Political Science.*)

DURING the past twenty years there has been a very considerable increase in the extent of international literary exchanges, and a fuller recognition, at least in Europe, of the propriety and necessity of bringing these under the control of international law. Americans also are beginning to appreciate how largely the intellectual development of their nation must be affected by all that influences the development of the national literature, and to recognize the extent to which such development must depend upon the inducements extended to literary producers, as well as upon the character of the competition with which these producers have to contend.

Literary property is defined by Drone as "the exclusive right of the owner to possess, use, and dispose of intellectual productions," and copyright as "the exclusive right of the owner to multiply and to dispose of copies of an intellectual production."

The English statute (5 and 6 Vict.) defines copy-

right to mean "the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the word is herein applied."

The American statute (U. S. Rev. Stat., § 4952) speaks of copyright in a book as "the sole liberty of printing, reprinting, publishing, . . . and vending the same."

The French Constitutional Convention adopted, in January, 1791, a report prepared by Chopelin, which declares that: *La plus sacré, la plus inattaquable, et, si je puis, parler ainsi, la plus personelle de toutes les propriétés, est l'ouvrage, fruit de la pensée d'un écrivain.* And in the decree rendered by the convention, July 10, 1793, the preamble (written by Lakanal) declares that *de toutes les propriétés, la moins susceptible de contestation, c'est, sans contrédit, celle des productions du génie: et si quelque chose peut étonner, c'est qu'il ait fallu reconnaitre cette propriété, assurer son libre exercice par une loi positive; c'est qu'une aussi grande revolution que la notre ait été nécessaire pour nous ramener sur ce point, comme sur tout d'autres, aux simples éléments de la justice la plus commune.*

The act relating to copyright, adopted by the Reichstag of Germany, in April, 1871, declares that *Das Recht, ein Schriftwerk auf mechanischem Wege zu vervielfältigen, steht dem Urheber desselben ausschliesslich zu.*

Copinger defines copyright as "the sole and exclusive right of multiplying copies of an original work or composition," and says that the right of an author "to the productions of his mental exertions

may be classed among the species of property acquired by occupancy; being founded on labor and invention."

Francis Lieber says (in an address delivered April 6, 1868): "The main roots of all property whatsoever are appropriation and production. . . . Property . . . precedes government. If a man appropriates what belongs to no one (for instance, the trunk of a tree), and if he produces a new thing (for instance, a canoe) out of that tree, this product is verily his own, . . . and any one who in turn attempts to appropriate it without the process of exchange, is an intruder, a robber. . . . The whole right of property . . . rests on appropriation and production: and I appeal to the intuitive conviction of every thinking man to say whether a literary work, such as Baker's description of his toilsome journeys, or Goethe's *Faust*, is not a *production* in the fullest sense of the word, even more so than a barrel of herrings, which have been appropriated in the North Sea, and pickled and barreled by the fishermen; and whether any one has a right to meddle with this property by production, any more than you or I with the barrel of herrings."

Drone says: "There can be no property in a production of the mind unless it is expressed in a definite form of words. But the property is not in the words alone; it is in the intellectual creation, which language is merely a means of expressing and communicating." It is evident that copyright is in its nature akin to patent right, which also represents the legal recognition of the existence of property in

an idea or a group of ideas, or the form of expression of an idea.

International patent rights have, however, been recognized and carried into effect more generally than have copyrights. The patentee of an improved toothpick would be able to secure to-day a wider recognition of his right than has been accorded to the author of *Uncle Tom's Cabin* or of *Adam Bede*.

Almost the sole exception to this consensus of civilized opinion on the status of literary property is presented by Henry C. Carey. He took the position that "Ideas are the common property of mankind. Facts are everybody's facts. Words are free to all men. . . . Examine Macaulay's *History of England*, and you will find that the body is composed of what is common property." Of Prescott, Bancroft, and Webster he says: "They did nothing but reproduce ideas that were common property." Of Scott and Irving, "They made no contribution to knowledge." (*Letters on Copyright*, Phila., 1854.) Therefore, the author of a work has no right of property in the book he has made. He took the common stock and worked it over; and one man has just as good a right to it as another. If the author is allowed to be the *owner* of his works, the public are deprived of their rights. Property in books is robbery. But this is simply a partial or specific application of the well-known formula of Proudhon: "Property is robbery," a theory which it is not necessary to discuss in this paper.

The conception of literary property was known

to the ancients. A recompense of some sort to the author was regarded as a natural right, and any one contravening it as little better than a robber. Klostermann says: "The first germs of a recognition of a property in thought are to be found in the agreements which authors entered into with the booksellers for the multiplication and sale of copies of their works, and in the custom to treat as unlawful any infringement upon the bookseller's right in a work which had been so transferred to him. The booksellers among the Romans succeeded, through the use of slave labor, in producing duplicates of their manuscripts at so low a cost that the use and productions, centuries later, of the first printing presses, were hardly cheaper." Martial records, in one of his epigrams that the edition of his *Xenii* could be bought from the bookseller Tryphon for four sesterces, the equivalent of about twelve and a half cents. He grumbles at this price as being too high, and claims that the bookseller would have been able to get a profit from a charge of half that amount. This poet appears to have had not less than four publishers in charge of the sale of his works, one of whom was a freedman of the second Lucensis. The latter issued a special pocket edition of the *Epigrams*. The poet prepared the advertisements for the booksellers, putting these in the form of epigrams, but not neglecting to specify the form and price of each book, as well as the place where it was offered for sale.[1] Horace refers to the brothers Sosius as his

[1] Omnis in hoc gracili xeniorum turba libello
Constabit nummis quatuor empta tibi.

publishers, but complains that while his works brought gold to them, for their author they earned only fame in distant lands and with posterity.' Terence sold his *Eunuchus* to the ædiles, and his *Hecyra* to the player Roscius; while Juvenal reports that Statius would have starved if he had not succeeded in selling to the actor Paris his tragedy of *Agave*. "Such sales," says Coppinger, "were considered as founded upon natural justice. No man could possibly have a right to make a profit by the sale of the works of another without the author's consent. It would be converting to his own emolument the fruits of another's labor."

It is apparent from these and from similar references, that under the Roman Empire authors were in the habit of transferring to booksellers, for such consideration as they could obtain, the right to duplicate and to sell their works, and that, under the trade usages, they were protected in so doing. There

Quatuor est nimium, poterit constare duobus.
Et faciet lucrum bibliopola Tryphon.
(*Epigrammata*, lib. xiii., ep. 3.)

Qui tecum cupis esse meos ubicunque libellos.
Et comites longæ quæris habere viæ,
Hos eme quos arcet brevibus membrana tabellis:
Scrinia da magnis, me manus una capit.

* * * * *

Libertum docti Lucensis quare secundi
Limina post Pacis, Palladiumque Forum.
Epigrammata, lib. i., ep. 3.)

'Hic meret æra liber Sosiis, hic et mare transit,
Et longum noto scriptori prorogat alvum.
(*Art. Poet.*, 345.)

was no imperial act covering such transfers, and it does not appear that in any division of the Roman law was there provision for the exclusive right in the "copy" of literary material.

It is nevertheless the case that the Roman jurists interested themselves in the question of immaterial property, but it was apparently rather as a theoretical speculation than as a study in practical law. Some of the earlier discussions as to the nature of property in ideas appear to have turned upon the question as to whether such property should take precedence over that in the material which happened to be made use of for the expression of the ideas. The disciples of Proculus maintained that the occupation of alien material, so as to make of it a new thing, gave a property right to him who had so reworked or reshaped it; while the school of Sabinus insisted that the ownership in the material must carry with it the title to whatever was produced upon the material. Justinian, following the opinion of Gaius, took a middle ground, pointing out that the decision must be influenced by the possibility of restoring the material to its original form, and more particularly by the question as to whether the material, or that which had been produced upon it, was the more essential. This opinion of Gaius appears to have had reference to the ownership of a certain table upon which a picture had been painted, and the decision was in favor of the artist. This decision contains an unmistakable recognition of immaterial property, not, to be sure, in the sense of a right to exclusive reproduction, but in the par-

ticular application that, while material property depends upon the substance, immaterial property, that is to say, property in ideas, depends upon the form.

For the centuries following the destruction of the Roman Empire, during which literary undertakings were confined almost entirely to the monasteries, the Roman usage, under which authors could dispose of their works to booksellers, and the latter could be secured control of the property purchases, was entirely forgotten. No limitation was placed on the duplication of works of literature. According to Wächter (*Das Verlagsrecht*, 1857), it was even the case that by a statute of the University of Paris, issued in 1223, the Parisian booksellers (who were in large part dependent upon the university) were enjoined to extend, as far as practicable, the duplication of works of a certain class. The business of bookseller at that time consisted as much in the renting out for reading and copying of authentic manuscript versions as in the sale of manuscript copies. In the University of Paris, as well as in that of Bologna, a statute specified the least number of copies, usually 120, of a manuscript that a bookseller must keep in stock, and the prices for loaning manuscripts were also fixed by statute. The difficulty and expense attending the reproduction of manuscripts was in every case considerable (much greater than in the early days of the Roman Empire), and when, therefore, an author desired to secure a wide circulation for his work, he came to regard the reproduction of copies not as a reserved right and source of

income, but as a service to himself, which he was very ready to facilitate, and even to compensate.

Throughout the middle ages, whatever immaterial property in the realms of science, art, or technics obtained recognition and protection, was held in ownership, not by individuals, but by churches, monasteries, or universities. Before the invention of printing, the writers of the middle ages were fortunate if, without a ruinous expenditure, they could succeed in getting their productions before the public. The printing-press brought with it the possibility of a compensation for literary labor. Very speedily, however, the unrestricted rivalry of printers brought into existence competing and unauthorized editions, which diminished the prospects of profit, or entailed loss for the authors, editors, and printers of the original issue, and thus discouraged further similar undertakings.

As there was no general enactment under which the difficulty could be met, protection for the authors and their representatives was sought through special "privileges," obtained for separate works as issued. The earliest privilege of the kind was, according to Putter (*Beiträge zum deutschen Staats- und Fürstenrecht*), that conceded by the republic of Venice, January 3, 1491, to the jurist Peter of Ravenna, securing to him, and to the publishers selected by him, the exclusive right for the printing and sale of his work, *Phœnix*. No term of years appears to have been named in this "privilege." It appears, however, that most of the early Italian enactments in regard to literature were framed, not

so much with reference to the protection of authors, as for the purpose of inducing printers (acting also as publishers) to undertake certain literary enterprises which were believed to be of importance to the community.

The republic of Venice, the dukes of Florence, and Leo X. and other popes conceded at different times to certain printers the exclusive privilege of printing, for specified terms—rarely, apparently, exceeding fourteen years—editions of certain classic authors. At this time, when the business of the production and the distribution of books was in its infancy, such undertakings must have been attended with exceptional risk, and have called for no little enlightened enterprise on the part of the printers. It is fair to assume that the princes conceding these privileges were not interested in securing profits for the printers, but had in mind simply the encouragement, for the benefit of the community, of literary ventures on the part of the editors and printers.

After Italy, it is in France that we find the next formal recognition, on the part of the government, of the rights of property in literature. From the reign of Louis XII. to the beginning of the sixteenth century it became usage for the publisher (at that time identical with the printer), before undertaking the publication of a work, to obtain from the king an authorization, or letters patent, the term of which appears to have varied according to the nature of the work and the mood of the monarch or of the advising ministers. At the close of nearly

all of the volumes issued previous to the Revolution will be found printed: *Les Lettres du Roi*, addressed, *A nos ames et feaux conseillers, les gens tenons nos cours de Parlement . . . et autres nos justiciers, et qui font defenses à tous libraires et imprimeurs et autres personnes de quelque qualité et condition qu'elles soient, d'introduire aucun impression étrangère* (that is to say, any unauthorized reprint) *dans aucun lieu de notre obeissance.*

These letters were in the first place obtained, as in Italy, for the protection of special editions of the classics, but very speedily the native literature increased in importance, and the list of original works came to outnumber that of the reprints of ancient authors. The rights specified in the letters were, in the first place, nearly always vested in the printers, but it is evident that the longer the terms of the royal concessions the larger the remuneration that could be looked for from the work, and the greater the price that the printer would be in a position to pay to author or writer. It is also to be noted that the terms granted to original French works were usually longer than those for the new editions of the classics or of reprints of devotional works.

According to Lowndes, the penalties for infringing copyright were, until the Revolution, heavier in France than anywhere else in Europe. It was argued that such infringement constituted a worse crime than the stealing of goods from the house of a neighbor, for in the latter case some negligence might possibly be imputed to the owner,

while in the former it was stealing what had been confided to the public honor.

The status of literary property was further recognized and defined by the so-called *Ordinances de Moulins* of Henry II., in 1556, the declaration of Charles IX., in 1571, and the letters patent of Henry III., in 1576, but the character of the methods of granting and defending copyrights was not changed in any material respects.

By the decree of the National Assembly of August 4, 1789, all the privileges afforded to authors and owners of literary property by the various royal edicts were repealed. In July, 1793, the first general Copyright Act was passed, under which protection was conceded to the author for his life, and to his heirs and assigns for ten years thereafter.

The imperial Act of 1810 extended the term to twenty years after the author's death, for widow or children, the term remaining at ten years if the heirs were further removed. In 1872 the act now (1883) in force was passed. Under this the term was extended to fifty years from the death of the author. The provisions of the act were also extended to the colonies. Foreigners and Frenchmen enjoy the right equally, and no restriction is made as to the authors being residents at the time the copyright is taken out. It is, further, not necessary that the first publication of the work should be made in France. In case the work be first published abroad, French copyright may subsequently be secured by depositing two copies at the Ministry of the Interior in Paris, or with the secre-

tary of the prefecture in the departments. The provisions of the statute affecting foreigners may be modified by any convention concluded between France and a foreign country.

The earliest German enactment in regard to literary property was the "privilege" accorded in Nuremberg, in 1501, to the poet Conrad Celtes, for the works of the poet Hroswista (Helena von Rossow, a nun of the Benedictine cloister of Gardersheim). As this author had been dead for 600 years, the privilege was evidently not issued for her protection, but must rather have been based upon the idea of encouraging Celtes in a praiseworthy (and probably unremunerative) undertaking. Between the years 1510 and 1514 we find record of "privileges" issued by the Emperor Maximilian in favor of the sermons of Geiler of Kaisersberg, and the writings of Schottius, Stabius, and others. In 1534 Luther's translation of the Bible was issued in Wittenberg under the protection of the "privilege" of the Elector of Saxony.

Penalties for piratical reprints were sometimes specified in the special "privileges," but from 1660 we find certain general acts under which privileged works could obtain protection, and their owners could secure against reprinters uniform penalties. Decrees of this class were issued by the city of Frankfort in 1657, 1660, and 1775, by Nuremberg in 1623, by the electorate of Saxony in 1661, and by the imperial government in 1646. There were also enactments in Hanover in 1778, and in Austria in 1795. All of the above specified acts expressly per-

mitted the reprinting of "foreign" works, that is, of works issued outside of the domain covered by the enactment. Piratical reprinting between the different German states increased, therefore, with the growth of the literature, and although the injury and injustice caused by it were recognized, and measures for its suppression were promised by the emperors Leopold II. and Francis II. (1790 and 1792), nothing in this direction could be accomplished by the unwieldy imperial machinery.

In 1794 legislation was inaugurated in the Prussian parliament, which was accepted by the other states of Germany (excepting Wurtemberg and Mecklenburg), under which all German authors and foreign authors whose works were represented by publishers taking part in the book fairs in Frankfort and Leipzig were protected throughout the states of Germany against unauthorized reprints.

According to Klostermann, these enactments were only in small part effective, and it was not until forty years later that, under the later acts of the new German confederacy, German authors were able to secure throughout Germany a satisfactory protection. It is, nevertheless, the case that to those who framed the Berlin enactment of 1794 must be given the credit of the first steps toward the practical recognition of international copyright.

The copyright statute now in force in Germany, including Elsass and Lothringen, dates from 1871. The term is for the life of the author and for thirty years thereafter. The copyright registry for the empire is kept at Leipzig. The protection of the

law is afforded to the works of citizens, whether published inside or outside of the empire, and also to works of aliens, if these are published by a firm doing business within the empire.

In Italy, literary copyright rests upon the statute of 1865. The term is for the life of the author and for forty years after his death, or for eighty years from the publication of the work. After the expiration of the first forty years, however, or after the death of the author, in case this does not take place until more than forty years have elapsed since the publication, the work is open to publication by any one who will pay to the author of the copyright a royalty of five per cent. of the published price. It is necessary to deposit two copies of the work, together with a declaration in duplicate, at the prefecture of the province. No distinction is made between citizens and aliens, and the provisions of the law are applicable to the authors of works first published in any foreign country, between which and Italy there is no copyright treaty.

In Austria, the term of literary copyright is for thirty years after the author's death, and the other provisions of the act in force are similar to those of the German statute.

In Holland and Belgium, copyright, formerly perpetual, is now limited to the life of the author and twenty years thereafter.

In Denmark, copyright, formerly perpetual, is now limited to thirty years from the date of publication.

In Sweden, copyright was also, until recently, perpetual. By the Act of 1877, however, it now en-

dures for the life of the author, and for fifty years thereafter. The provisions of the law are made applicable to the works of foreign authors only on condition of reciprocity.

In Spain, copyright rests on the Act of 1878, and endures during the life of the author and for eighty years thereafter. If the right be assigned by the author and the author leave no heirs, it belongs to the assignees for eighty years from the author's death. In the case, however, of heirs being left by the author, the assignment holds good for but twenty-five years, after which the ownership reverts to the heirs for the remaining fifty-five years of the term. Owners of foreign works will retain their rights in Spain, provided they adhere to the law of their own country. The copyright registry is kept at the Ministry of the Interior, and, to perfect the registry, a deposit of three copies of the work is required. The Spanish government is authorized to conclude copyright treaties with foreign countries on the condition of complete reciprocity between the contracting parties. Under such an arrangement any author, or his representative, who has legally secured copyright in the one country, would be, without further formalities, entitled to enjoy it in the other.

In Russia, copyright endures for the life of the author and for fifty years thereafter.

In Greece, the term is fifteen years from publication.

In Japan the law of copyright dates from 1874. Manuscript must be examined by the Department of the Interior, and if found free from disloyal

opinions or any matter calculated to injure public morals, a certificate of protection is promptly issued. Three copies of the work must be deposited in the department, and the fees amount to the value of six more copies.

In China, notwithstanding the large body of national literature, no laws have been enacted for the protection of literary property.

In Great Britain, the Act of 1842, now (1883) in force, provides as follows: Copyright in a book endures for forty-two years from the date of publication, or for the author's life, and for seven years after, whichever of these two terms may be the longer. The first publication of the work must be in Great Britain. The copy can be taken out by any author or owner who is a British citizen, or by an alien who may at the time of the first publication be within the British dominions (in any portion of the British Empire). The work must be registered in the records of the Stationers' Company, and five copies must be delivered to certain institutions specified. A bill is now, however, before Parliament, framed mainly upon the recommendations of the Copyright Commission of 1878, which provides that the term of copyright for books shall be fifty years; that in the case of British subjects copyright extends to all the British dominions; that aliens, wherever resident, shall be entitled to British copyright on registering their work in that part of the British dominions where it was first published.

The history of the status of literary property in England prior to 1863 is given in detail in the ar-

ticle of Mr. Macleod (vol. i., p. 642). It is in England that the nature and basis of copyright have received the most thorough consideration, and the English opinions (although representing very wide differences among themselves) have been the most important contributions to the discussion of the subject. It is sufficient to note here that the first record of the recognition of property in literature appears in 1558 (that is, half a century later than in France or Germany), when the earliest entry of titles was made on the register of the Company of Stationers in London. As early as 1534, however, Henry VIII. granted to the University of Cambridge the exclusive right of printing certain books in which the crown claimed a prerogative. Afterward, patents *cum privilegio* were granted to individuals. Prior to 1710 there was no legislation creating literary property or confining ownership, nor any abridging its perpetuity or restricting its enjoyment. It was understood, therefore, to owe its existence to common law, and this conclusion, arrived at by the weightiest authorities, remained practically unquestioned until 1774. For the provisions of the Act of 1710 (8 Anne), the details of the cases of Miller *vs.* Taylor (1769), and Donaldson *vs.* Becket (1774), the discussions concerning these cases, with the opinions of Lord Mansfield, Lord Camden, and Justice Yates, and also for the debate attending the framing of the Act of 1842, with the arguments of Talfourd, Lord Campbell, Justice Coleridge, Lord Macaulay, and Thomas Hood, the reader is referred to Mr. Macleod's paper.

In the United States, the first act in regard to copyright was passed in Connecticut in January, 1783. This was followed by the Massachusetts act of March, 1783, that of Virginia in 1785, and New York and New Jersey in 1786. These acts were due more particularly to the efforts of Noah Webster, and their first service was the protection of his famous *Speller*. Webster journeyed from State capital to State capital, to urge upon governors and legislatures the immediate necessity of copyright laws, and under his persistency measures had also been promised, and in part framed, in Rhode Island, Pennsylvania, Delaware, Maryland, and South Carolina. The necessity for State laws on the subject was, however, obviated by the United States statute of 1790. In creating a public and legislative opinion which made such a law possible, Webster's writings and personal influence were all-important.

Previous to the adoption of the Federal Constitution, in 1787, a general copyright law was not within the province of the central government, and in order to encourage the States in the framing of copyright legislation, a resolution, proposed by Madison, was adopted in Congress in May, 1783, recommending to the States the adoption of laws securing copyright for a term of not less than fourteen years. The State acts passed prior to this resolution had conceded a term of twenty-one years. The Act of 1790 provided for the shorter time suggested by Madison. The Act of 1831 extended the fourteen years to twenty-eight, with privilege to the

author, his widow, or children, of renewal for fourteen years more. The act of 1834 provided that all deeds for the transfer or assignment of copyright should be recorded in the office in which the original entry had been made. In 1846, the act establishing the Smithsonian Institution required that one copy of the work copyrighted should be delivered to that institution, and one copy to the Library of Congress. This provision was repealed in 1859, by a statute which transferred to the Department of the Interior the custody of the publications and records. In 1865 the copies were again ordered to be delivered to the Library of Congress. In 1861 an act was passed, providing that cases of copyright could, without regard to the amount involved, be appealed to the Supreme Court.

The act now in force in the United States is that of July, 1870 (see Rev. Stat., §§ 4948–4971). This provides that the business of copyrights shall be under charge of the Librarian of Congress; that copyrights may be secured by any citizen of the United States or resident therein; that the term of copyright shall be twenty-eight years, with the privilege of renewal for the further term of fourteen years by the author, if he be still living, and continues to be a citizen or a resident, or by his widow or children, if he be dead; that two copies of the work shall be deposited in the Library of Congress; that the work must first be published in the United States, and that the original jurisdiction of all suits under the copyright laws shall rest with the United States Circuit Courts.

Under the present interpretation of the courts in both the United States and Europe, copyright in published works exists only by virtue of the statutes defining (or establishing) it, while in works that have not been published, such as compositions prepared exclusively for dramatic representation, the copyright obtains through the common law. Copyright by statute is of necessity limited to the term of years specified in the enactment, while copyright at common law has been held to be perpetual. The leading English decisions have before been referred to. The United States decision, which still serves as a precedent on the point of the statutory limitation of copyright, is that of the United States Supreme Court in 1834, in the case of Wheaton *vs.* Peters. This decision involved the purport of the United States law of 1790, and the determination of the same question that had been decided by the House of Lords in 1774, viz., whether copyright in a published work existed by the common law, and, if so, whether it had been taken away by statute. The court held that the law had been settled in England, the act of 8 Anne having taken away any right previously existing at common law; that there was no common law of the United States; and that the copyright statute of 1790 did not affirm a right already in existence, but created one. Justices Thompson and Baldwin, in opposing the decision of the four justices concurring in the decision, took the ground that the common law of England *did* prevail in the United States, and that copyright at common law had been fully

recognized; and that, even if it were admitted that such copyright had been abrogated in England by the statute of Anne, such statute had, of course, no effect either in the colonies or in the United States. "These considerations," says Drone, "deprive Wheaton *vs.* Peters of much of its weight as an authority." In 1880, in the case of Putnam *vs.* Pollard, it was claimed by the plaintiff that the decision in Wheaton *vs.* Peters could in any case only make a precedent for Pennsylvania; that the English common law obtained in the State of New York, and could not have been affected by the statute of Anne; but the New York Supreme Court decided that Wheaton *vs.* Peters constituted a valid precedent.

What may be the Subject of Copyright. In order to acquire a copyright in a work, it is necessary that it should be original. The originality can, however, consist in the form or arrangement as well as in the substance. Corrections and additions to an old work, not the property of the compiler, can also secure copyright. The copyright of private letters, forming literary compositions, is in the composer and not in the receiver. (Oliver *vs.* Oliver, Percival *vs.* Phipps et al., *Story's Com.*)

The English statute, 5 and 6 Vict., defines "book" "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." The right of property in lectures, whether written or oral, is now confirmed by statute, the most important English decision on the

point being that of Abernethy *vs.* Hutchinson, and American precedents being Bartlett *vs.* Crittenden, Keene *vs.* Kimball, and Putnam *vs.* Meyer. Copyright can be secured for original arrangements of common material or novel presentations of familiar facts. In Putnam *vs.* Meyer the New York Supreme Court held that certain tabular lists of anatomical names, arranged in a peculiar and arbitrary manner for the purpose of facilitating the work of memorizing, were entitled to protection.

Abridgments and abstracts, which can be called genuine and just, are also entitled to copyright. (Lawrence *vs.* Dana, Gray *vs.* Russell et al.) According to English precedent, copyright cannot exist in a work of libelous, immoral, obscene, or irreligious tendency. There is no record in the United States of a case in which the question of copyright in irreligious books has been considered. Drone points out that the uniform construction of the law relating to blasphemy is evidence of the large freedom of inquiry and discussion allowed in religious matters. On this point the opinion of Justice Cooley (People *vs.* Ruggles, 8 Johns. Rep., N. Y.) is worth citing: "It does not follow because blasphemy is punishable as a crime, that therefore one is not at liberty to dispute and argue against the truth of the Christian religion, or of any accepted dogma. Its 'divine origin and truth' are not so far admitted in the law as to preclude their being controverted. To forbid discussions on this subject, except by the various sects of believers, would be to abridge the liberty of speech and of the press on a

point which, with many, would be regarded as the most important of all." In quoting a similar opinion of Justice Story, Drone concludes that "there appears to be no good reason why valid copyright will not rest in a publication in which are denied any or all of the doctrines of the Bible; provided the motives and manner of the author be such as not to warrant the finding of a case of blasphemy or immorality."

Several of the questions concerning the status and the defence of literary property in this country are only now beginning to come into discussion. The literature of the country is still so young that as yet but a small portion of it has survived the statute term of copyright. From the present time, however, as the terms of works which have established a position as classics begin in part or in whole to expire, we can look forward to a larger number of issues and of suits connected with alleged infringements of copyright.

The case of Putnam *vs.* Pollard, decided in the New York Supreme Court in 1881, covered some points that appear to have not before received consideration. The defendants had reprinted some fragmentary and unrevised portions of the works of Washington Irving, on which the copyright had expired, and offered these for sale under the designation of *Irving's Works.* The plaintiff had for a number of years used this title to describe the authorized, complete, and revised writings of this author, in the shape in which he had finally prepared them for posterity. The plaintiff sought to

enjoin the sale, under the above title, of the fragmentary work, on the several grounds that it misled the public, caused injury to the literary reputation of Irving, and interfered with the property rights of Irving's heirs. The courts decided, however, that as long as the volumes in question contained nothing but material which had actually been written by Irving, it was not unlawful to designate them as *Irving's Works*, even though the writings should not be complete or in their final form; and the injunction was denied. The question involved was, it will be noted, one of trade-mark, and the decision took the ground that an author's name, combined with the term "works," does not constitute a trade-mark. Under this ruling, it might be proper to add to the title-pages of volumes of "fragments" sold as "works," the caution "*Cavcat emptor*."

The four theories which have resulted from this discussion of a century are thus summarized by Drone: 1. That intellectual productions constitute a species of property founded in natural law, recognized by the common law, and neither lost by publication nor taken away by legislation. 2. That an author has, by common law, an exclusive right to control his works before, and not after, publication. 3. That this right is not lost by publication, but has been destroyed by statute. 4. That copyright is a monopoly of limited duration, created and wholly regulated by the legislature, and that an author has, therefore, no other title to his published works than that given by statute.

The first country to take action in regard to in-

ternational copyright was Prussia, which, in 1836, passed an act conceding the protection of the Prussian statute to the writers of every country which should grant reciprocity. In 1837 a copyright convention was concluded between the different members of the German confederation.

This was followed by the English Act of 1838, 1 and 2 Vict., c. 59, amended and extended by 15 Vict., c. 12. This act provided that her majesty might, by order in council, grant the privilege of copyright to authors of books, etc., first published in any foreign country to be named in such order, provided always that "due protection had been secured by the foreign power so named in such order in council, for the benefit of parties interested in works first published in the British dominions."

Different provisions may be made in the arrangements with different countries. Under the general Copyright Act, no right of property is recognized in any book, etc., not first published in her majesty's dominions. Hence, British as well as foreign authors, first publishing abroad, have no protection in Great Britain unless a convention has been framed, under the International Copyright Act, between Great Britain and the country in which the publication is made. It may be noted here that the condition of "first publication," which obtains in the statutes of nearly all countries, has been held to be complied with by a *simultaneous* publication in two or more countries.

Under this International Copyright \ct, Great Britain has entered into copyright conventions with

the following countries: with Saxony, in 1846; France, in 1851; Prussia, in 1855; states of Germany comprised in the German empire: Anhalt, in 1853; Brunswick, in 1849; Hamburg, in 1853; Hanover, in 1847; Oldenburg, in 1847; Hesse-Darmstadt, in 1862; Thuringian Union, in 1847. (It is not clear what effect the absorption of these states into the empire may have had upon their several copyright treaties.) With Spain, in 1857 (temporarily renewed in 1880); Belgium, in 1855; and Sardinia, in 1862 (confirmed in 1867 by the kingdom of Italy).

The conventions with the several German states contain essentially identical provisions, which are as follows: The author of any book to whom the laws of either state (English or German) give copyright, shall be entitled to exercise that right in the other of such states, for the same term to which an author of a similar work would be entitled if it were first published in such other state. The authors of each state shall enjoy in the other the same protection against piracy and unauthorized republication, and shall have the same remedies before courts of justice, as the law affords to the domestic authors. Translators are protected against a piracy of their translation, but acquire no exclusive right to translate a work except in the following case: the author who notifies on the title-page of his book his intention of reserving the right of translation, will, during five years from the first publication of the book, be entitled to protection, in the treaty state, from the publication of any translation not

authorized by him. In order, however, to secure this protection, the author must, within three months of the first publication of his book, register the title and deposit a copy in the proper office in the treaty state; part of the authorized translation must appear within a year, and the whole of it within three years of the deposit and registration of the original; and the translation must itself be duly registered and deposited. When a work is issued in parts, each part shall be treated as a separate book; but notice of the reservation of the right of translation need be printed only on the first page. The importation into either of the two states of unauthorized copies of works protected by the convention is forbidden. A certified copy of the entry in the registry of either state shall *prima facie* confer an exclusive right of republication within such state.

The provisions of the existing conventions between England and France, Spain, Belgium, and Italy, are essentially identical with those of the German treaty. The continental book, on the title-page of which has been duly printed the announcement of the reservation of the right of translation, must be duly registered at Stationers' Hall, London. The English work must be registered for France at the *Bureau de la Librairie* of the Ministry of the Interior, in Paris, and for Spain and Belgium at the corresponding offices in Madrid and Brussels.

The provisions of the treaty between Spain and France, which is based upon the Spanish Copyright Act of 1878, have, in the main, been followed in the conventions between Spain and Italy, Spain and

Portugal, France and Italy, etc. They are as follows: 1. Complete reciprocity between the contracting parties. 2. Treatment of each nation by the other as the most favored nation. 3. Any author or his representative who has legally secured copyright in the one country, to enjoy it forthwith in the other, without further formalities. 4. The prohibition in each country of the printing, selling, importation or exportation of works in the language of the other country, without the consent of the owners of the copyright therein.

The copyright treaty between France and Germany, as framed in 1883, is a step in advance in many ways. By Article 10, authors of the two countries are spared all formalities of registration, and the appearance of the writer's name on the title-page is to be considered sufficient proof of his rights, unless the contrary is proved. In the case of anonymous or pseudonymous works the publisher will be regarded as the author's representative. The knotty point of the right of translation has been solved by a compromise. The necessity to print a reserve of the right of translation on the book is abolished, as is the registration of translations. The author is to retain his right of translation for ten years, instead of the five hitherto allowed. When a work is issued in parts, the ten years are to be counted from the issue of the last part. Books and acting plays are put on the same footing; and the treaty will apply to works already published.

An international literary association was organ-

ized some years ago, with Victor Hugo as its first president, and has been of service in calling attention to defects in existing enactments and conventions for the protection of property in literature. It has recently called special attention to the exceptional position occupied by the United States toward the literature of other countries.

Between no two countries has the exchange of literary productions been so considerable or so important as between Great Britain and the United States. The interests of authors, of readers, of publishers, of national literature and of national morality, have alike demanded that the exchange should be placed under international regulation, and that this extensive use by the public of each country of the literature of the other should be conditioned upon an adequate acknowledgment of the rights of the producers of such literature.

It is a disgrace that the two great English-speaking people, claiming to stand among the most enlightened of the community of nations, should be practically the only members of such community which have failed to arrive at an agreement in this all-important international issue; and it is mortifying for an American to be obliged to admit that the responsibility for such failure must, in the main, rest with the United States.

The reproduction of British literature in this country has, during the past century, been much more considerable than that of American literature in Great Britain, and the direct loss to the English authors, through the want of an assured and legal-

lzed remuneration from the American editions of their works, has therefore been greater than the corresponding direct loss to American authors. For this and for other reasons, the suggestions and propositions for an international arrangement have been more frequent and more pressing on the part of England. And although it is certainly true, that from an early date the rightfulness and desirability of an international copyright have been maintained in this country, not only by authors, but by leading publishers and many others who have given thought and labor to the matter, it is nevertheless the case that the views of these advocates of a measure have not as yet been successful in securing the legislation required to change the national policy. This policy still persistently refuses to recognize the rights of any alien writers, and, through such refusal, continues to inflict a grievous and indefensible wrong, not only upon such alien writers, but also upon the authors and the literature of our own country.

The history of the efforts made in this country to secure international copyright is not a long one. The attempts have been few, and have been lacking in organization and in unanimity of opinion, and they have for the most part been made with but little apparent expectation of any immediate success. Those interested seem to have nearly always felt that popular opinion was, on the whole, against them, and that progress could be hoped for only through the slow process of building up by education and discussion a more enlightened public understanding.

In 1838, after the passing of the first International Copyright Act in Great Britain, Lord Palmerston invited the American government to co-operate in establishing a copyright convention between the two countries. In the year previous, Henry Clay, as chairman of the joint Library Committee, had reported to the Senate very strongly in favor of such a convention, taking the ground that the author's right of property in his work is similar to that of the inventor in his patent. This is a logical position for a protectionist, interested in the rights of labor, to have taken, and the advocates of the so-called protective system, who call themselves the followers of Henry Clay, but who are to-day opposed to any full recognition of authors' rights, would do well to bear in mind this opinion of their ablest leader.

No action was taken in regard to Mr. Clay's report or Lord Palmerston's proposal. In 1840 Mr. G. P. Putnam issued in pamphlet form *An Argument in Behalf of International Copyright*, the first publication on this subject in the United States of which we find record. It was prepared by himself and Dr. Francis Lieber. In 1843 Mr. Putnam obtained the signatures of ninety-seven publishers, printers, and binders to a petition he had prepared, which was duly presented to Congress. It took the broad ground that the absence of an international copyright was "alike injurious to the business of publishing and to the best interests of the people at large." A memorial, originating in Philadelphia, was presented the same year, in opposition to this petition, setting forth, among other consider-

ations, that an international copyright would prevent the adaptation of English books to American wants.

In the report made by Mr. Baldwin to Congress twenty-five years later, he remarks that "the mutilation and reconstruction of American books to suit English wants are common to a shameless extent."

In 1853 the question of a copyright convention with Great Britain was again under discussion, the measure being favored by Mr. Everett, at that time Secretary of State. A treaty was negotiated by him, in conjunction with Mr. John F. Crampton, minister in London, which provided simply that all authors, artists, composers, etc., who were entitled to copyright in one country, should be entitled to it in the other on the same terms and for the same length of time. The treaty was reported favorably from the Committee on Foreign Relations, but was laid upon the table in the Committee of the Whole. While this measure was under discussion, five of the leading publishing houses in New York addressed a letter to Mr. Everett, in which, while favoring a convention, they advised: 1. That the foreign author must be required to register the title of his work in the United States before its publication abroad. 2. That the work, to secure protection, must be issued in the United States within thirty days of its publication abroad; and 3. That the reprint must be wholly manufactured in the United States.

In 1853 Henry C. Carey published his *Letters on International Copyright*, in which he took the ground that the facts and ideas in a literary production are

the common property of society, and that property in copyright is indefensible.

In 1858 a bill was introduced into the House of Representatives by Mr. Morris, of Pennsylvania, providing for international copyright on the basis of an entire remanufacture of the foreign work, and its reissue by an American publisher within thirty days of its publication abroad. This bill does not appear to have received any consideration.

In March, 1868, a circular letter, headed "Justice to Authors and Artists," was issued by a committee composed of George P. Putnam, S. Irenæus Prime, Henry Ivison, James Parton, and Egbert Hazard, calling together a meeting for the consideration of the subject of international copyright. The meeting was held on the 9th of April, Mr. Bryant presiding, and a society was organized under the title of the "Copyright Association for the Protection and Advancement of Literature and Art," of which Mr. Bryant was made president, and E. C. Stedman secretary. The primary object of the association was stated to be "to promote the enactment of a just and suitable international copyright law for the benefit of authors and artists in all parts of the world." A memorial had been prepared by the above-mentioned committee to be presented to Congress, which requested Congress to give its early attention to the passage of a bill, "To secure in all parts of the world the right of authors," but which made no recommendations as to the details of any measure. Of the 153 signatures attached to this memorial, 101 were those of authors, and 19 of publishers.

In the fall of 1868 Mr. J. D. Baldwin, member of the House from Massachusetts, reported a bill, the provisions of which had in the main received the approval of the Copyright Association, which provided that a foreign work could secure a copyright in this country, provided it was wholly manufactured here and should be issued for sale by a publisher who was an American citizen. The bill was recommitted to the joint Committee on the Library, and no action was taken upon it. Mr. Baldwin was of opinion that an important cause for the shelving of the measure without debate was the impeachment of President Johnson, which was at that time absorbing the attention of Congress and the country. No general expression of opinion was, therefore, elicited upon the question from either Congress or the public, and even up to this date (June, 1883) the question has never reached such a stage as to enable an expression of public opinion to be fairly arrived at. In 1871 Mr. Cox, of New York, introduced a bill which was practically identical with Mr. Baldwin's measure, and which was also recommitted to the Library Committee.

In 1870 a copyright convention was proposed by Lord Clarendon, which called forth some discussion, but concerning which no action was taken on the part of the American government until 1872.

In 1872 the new Library Committee called upon the authors, publishers, and others interested to assist in framing a bill. At a meeting of the publishers, held in New York, a majority of the firms present were in favor of the provision of Mr. Cox's

bill. The report was, however, dissented from by a large minority, on the ground that the bill was drawn in the interests of the publishers rather than that of the public; that the prohibition of the use of foreign stereotypes and electrotypes of illustrations was an economic absurdity, and that an English publishing house could, in any case, through an American partner, retain control of the American market. During the same week a bill was drafted by C. A. Bristed, representing more particularly the views of the authors in the Copyright Association, which provided simply that all rights secured to citizens of the United States by existing copyright laws be hereby secured to the citizens and subjects of every country the government of which secures reciprocal rights to the citizens of the United States. A few weeks later, at a meeting of publishers and others, held in Philadelphia, resolutions were adopted (which will be referred to later) opposing any measure of international copyright.

These four reports were submitted to the Library Committee, together with one or two individual suggestions, of which the most noteworthy were those of Harper & Bros. and of Mr. J. P. Morton, a bookseller of Louisville. Messrs. Harper, in a letter presented by their counsel, took the broad ground that "any measure of international copyright was objectionable because it would add to the price of books, and thus interfere with the education of the people." It is to be remarked, in regard to this consideration, that it is equally forcible against any copyright whatever. As Thomas Hood says: "Cheap *bread*

is as desirable and necessary as cheap books, but one does not on that ground appropriate the farmer's wheat stack." Mr. Morton was in favor of an arrangement that should give to any dealer the privilege of reprinting a foreign work, provided he would contract to pay to the author or his representative ten per cent. of the wholesale price. This suggestion was afterward incorporated in what was known as the Sherman bill. In view of the wide diversity of the plans and suggestions presented to this committee, there was certainly some ground for the statement made in his report by the chairman, Senator Lot M. Morrill, that "there was no unanimity of opinion among those interested in the measure." He maintained further, in acceptance of the positions taken by the Philadelphians, "that an international copyright was not called for by reasons of general equity or of constitutional law; that the adoption of any plan which had been proposed would be of very doubtful advantage to American authors, and would not only be an unquestionable and permanent injury to the interests engaged in the manufacture of books, but a hinderance to the diffusion of knowledge among the people, and to the cause of American education."

The commission appointed by the British government in 1876, to make inquiry in regard to the laws and regulations relating to home, colonial, and international copyright, made reference in the following terms to the present relations of British authors with this country: "It has been suggested to us that this country would be justified in taking steps

of a retaliatory character with a view of enforcing, incidentally, that protection from the United States which we accord to them. This might be done by withdrawing from the Americans the privilege of copyright on first publication in this country. We have, however, come to the conclusion that, on the highest public grounds of policy and expediency, it is advisable that our laws should be based on correct principles, without respect to the opinions or the policy of other nations. We admit the propriety of protecting copyright, and it appears to us that the principle of copyright, if admitted, is of universal application. We therefore recommend that this country should pursue the policy of recognizing the rights of authors, irrespective of nationality." Here is a claim for a far-seeing, statesman-like policy, based upon principles of wide equity, and planned for the permanent advantage of literature in England and throughout the world.

It is mortifying for Americans, possessed of any sensitiveness, not only for their national honor, but for their national reputation for common sense, to see quoted abroad as "the American view of the copyright question" such utterances as the resolutions adopted in the meeting previously referred to, held in Philadelphia in January, 1872. The meeting was presided over by Henry Carey Baird, and may be considered as having represented the opinions of the Pennsylvania protectionists—opinions which, while not, as I believe, shared by the majority of our community, do still succeed in shaping the economic policy of the nation. The resolutions are as follows:

1. That thought, unless expressed, is the property of the thinker; when given to the world, it is, as light, free to all. 2. As property, it can only demand the protection of the municipal law of the country to which the thinker is subject. 3. The author, of any country, by becoming a citizen of this, and assuming and performing the duties thereof, can have the same protection that an American author has. 4. The trading of privileges to foreign authors for privileges to be granted to Americans is not just, because the interests of others than themselves may be sacrificed thereby. 5. Because the good of the whole people, and the safety of republican institutions, demand that books shall not be made costly for the multitude by giving the power to foreign authors to fix their price here as well as abroad.

The first proposition is certainly a pretty safe one, as thought, until expressed, can hardly incur any serious risk of being appropriated.

The second proposition, while admitting for a literary creation its claim to be classed as property, denies to it the rights which are held to pertain to all property in which the owner's title is absolute. The property which would, if it still existed, most nearly approximate to such a definition as above given, is that in slaves. Twenty-five years ago the title to an African chattel, who was worth, in Charleston, say $1,000, became valueless if said chattel succeeded in slipping across to Bermuda. It is this ephemeral kind of ownership, limited by accidental political boundaries, that the Philadelphia protectionists are willing to concede to the creation of a man's mind,

the productions into which have been absorbed the gray matter of his brain, and, possibly, the best part of his life.

In regard to the third proposition, it may be said that the protection accorded to American authors is, according to their testimony, most unremunerative and unsatisfactory; and it is difficult to understand why an European author, who has before him, under international conventions, the markets of his native country and of all the civilized world, excepting belated America, should be expected to give up these for the poor half loaf accorded to his American brother.

The fourth proposition strikes one as rather a remarkable protest to come from Philadelphia. Here are a number of American producers (of literature) who ask for a very moderate amount of protection (if that is the proper term to apply to a mere recognition of property rights) for their productions; but the Philadelphians, filled with an unwonted zeal for the welfare of the community at large, say: "No; this won't do; prices would be higher and *consumers* would suffer."

The last proposition appears to show that this want of practical sympathy with the producers of literature is not due to any lack of interest in the public enlightenment. It may well, however, be doubted whether education as a whole, including the important branch of ethics, is advanced by permitting our citizens to appropriate, without compensation, the labor of others, while through such appropriation they are also assisting to deprive our

own authors of a portion of their rightful earnings. But, apart from that, the proposition, as stated, proves too much. It is fatal to all copyright and to all patent right. If the good of the community and the safety of republican institutions demand that, in order to make books cheap, the claim to a compensation for the authors must be denied, why should we continue to pay copyrights to Lowell and Whittier, or to the families of Longfellow and Irving? The so-called owners of these copyrights actually have it in their power, in co-operation with their publishers, to "fix the prices" of their books in this market. This monopoly must, indeed, be pernicious and dangerous when it arouses Pennsylvania to come to the rescue of oppressed and impoverished consumers against the exactions of greedy producers, and to raise the cry of "free books for free men."

Early in 1880 a draft of an international copyright treaty was prepared, which received the support of nearly all the publishers, including Messrs. Harper, who had found reasons since 1872 to modify their views, and of some authors. The latter, together with the publishing firms which had previously been most active in behalf of a measure, gave their assent to this, not because they thought its provisions on the whole wise or desirable, but because the middle ground that it took between an author's bill, without any restrictions, and the extreme "manufacturing view" of the Philadelphians seemed most likely to secure the general support required; and it was believed that, if a

copyright could once be inaugurated, it ought not to prove difficult to amend it in the direction of greater liberty and greater simplicity.

The proposed treaty provided that copyright should be accorded reciprocally to English and American works, the foreign editions of which should be issued not later than three months after the first publication; the entries for copyright should, however, by means of title-pages, be made simultaneously in the home and the foreign offices of registry, and the several conditions applicable to the national copyright enactments should be duly complied with. It was further provided, in order to secure the protection of the American copyrights, that the foreign work must be printed and bound in this country, the privilege being accorded of importing stereotype plates and electrotypes of the illustrations. It is to be noted that this last clause indicates an advance in liberality of opinion since the suggestions of 1872 and of earlier dates, in nearly all of which it was insisted that the foreign work must be entirely remanufactured in this country. The authors and publishers who gave their signatures, under protest, to the petition in behalf of this treaty, objected principally to the brief term allowed for the preparation and issue of the reprinted editions. Many of the authors believed that there should be no limit of time, while some of the leading publishing houses insisted that the limit ought to be twelve months, and should in no case exceed six months. Attention was especially called to the fact that such a limitation as three months, while a disadvantage to all

authors whose reputations were not sufficiently assured to enable them to make advance agreements for their works, would be especially detrimental to American writers, whose books were rarely undertaken by English or continental reprinters until they had secured a satisfactory home reputation. Chas. Scribner, Henry Holt & Co., and Roberts Bros. united with G. P. Putnam's Sons in a protest against what seemed to them the unwise and illiberal restrictions of the proposed measure. These firms did not, however, think best to withhold their signatures from the petition in behalf of the treaty, being of opinion that even if it might not prove practicable to amend this before it was put into effect, amendments could at a later date be introduced, and that in any case, even a very faulty treaty would be an advance over the present unsatisfactory and iniquitous state of things.

In July, 1880, the American members of the International Copyright Committee, which had been appointed by the association for the reform of the law of nations, addressed to Mr. Evarts, Secretary of State, a memorial in behalf of a treaty practically identical with the measure above specified, with the exception of specifying no limit of time for the issue of the reprint.

In September, 1880, Mr. Lowell, at that time minister in London, submitted to Earl Granville the draft of a treaty based upon the suggestions of American publishers. Lord Granville advised Mr. Lowell, in March, 1881, that the British government would be interested in completing such treaty,

but that an extension of the term for republication from three months to six would be considered essential, while a term of twelve months was thought to be much more equitable.

In March, 1881, the International Literary Association adopted the report of a committee appointed to examine the provisions of the proposed treaty between the United States and England. In this report the two countries were congratulated at the prospect of an agreement so important to the authors of each, and the United States was especially congratulated upon the first steps being taken to remove from the nation the opprobrium of being the only people from whom authors could not secure just treatment. The provisions of the treaty calling for remanufacture, and the brief term allowed for the preparation of the reprint, were, however, sharply criticised. In the spring of 1881 Sir Edward Thornton, the British minister in Washington, received instructions from London to proceed to the consideration of the treaty, provided the term for reprint could be extended. President Garfield had taken a strong interest in the matter, an interest which Mr. Blaine was understood to share, and it was expected that the treaty would be submitted to the Senate in the fall of 1881. The death of Garfield and the change in the State Department appear to have checked the progress of the business, and there has since, to the date of this writing (June, 1883), been no evidence of any interest in it on the part of the present administration.

It appears as if further consideration for the

treaty can be secured only on the strength of a popular demand, based on a correct understanding of the rights and just requirements of authors, American and foreign, and on an intelligent appreciation of the unworthy position toward the question at present occupied by the United States, which alone among civilized nations has failed to give full recognition to literature as property.

This brief historical sketch of the various national and international enactments relating to copyrights, indicates also the lines along which were developed the ideas relating to authors' rights. The conception of property in literary ideas is of necessity closely bound up with the conception of property in material things. In tracing through successive centuries the history of this last, we find a continued development in its range and scope corresponding to the development in civilization itself, of which so large a factor is the recognition of human rights and reciprocal human duties.

It would be beyond the scope of this paper to go into the history of the property idea. It is sufficient to point out that what a man owned appears in the first place to have been that which he had "occupied," and could defend with his own strong arm. Later, it became what his tribe could defend for him. With the organization of tribes into nations, that which a man had occupied, shaped, or created was recognized as his throughout the territory of his nation.

The idea of protection by national law was widened into an imperial conception by the Roman

control of the imperial world. With the shattering of the empire, the former local views of property rights (or, at least, of property possibilities) again obtained, and were only gradually widened and extended by the growth, through commerce, of international relations—a growth much retarded by feudal claims and feudal strifes. The robber-barons of the Rhine, by their crushing extortions from traders, did what was in their power to stifle commerce, and unwittingly laid the foundations of the so-called protective system; and later, the little trading communities, still hampered by the baronial standard, built up at their gates barriers against the admission of various products from the outer world, the free purchase of which by their own citizens would, as they imagined, in some manner work to their impoverishment. Barons and traders were alike fighting against the international idea of property, under which that which a man has created, or legitimately occupied, is his own, and he is free to exchange it; that is, entitled to be protected in the free exchange of it, throughout the civilized world, for any other commodities or products. A man's ownership of a thing cannot be called complete if it is to be hampered with restrictions as to the place where, or the objects for which, he can exchange it.

To that extent the idea of international copyright is bound up with the idea of free trade. They both claim a higher and wider recognition for the rights of property, taking the position that what a man has created by his own labor is his own, to do what he will with, subject only to his proportionate contri-

bution to the cost of carrying on the organization of the community under the protection of which his labor has been accomplished, and to the single limitation that the results of his labor shall not be used to the detriment of his fellow-men. The opponents of free trade would limit the right of the producer to exchange his products, saying, as to certain commodities, that he shall not be permitted to receive them at all, and, as to others, that he must give of his own product, in addition to the open market equivalent of the article desired, an additional quantity as a bonus to some of his favored fellow-citizens. The opponents of international copyright assert that the producers of literary works should be at liberty to sell them only within certain political boundaries. The necessary deduction from such a position is, that the extent of an author's remuneration is made to depend, not upon the number of readers whom he had benefited, but upon the extent of the political boundaries of the country in which he happened to be a resident.

If the recognition of the fact that aliens and citizens of foreign states (the "barbarians" of the Greeks and Romans) possessed rights deserving of respect, had depended solely upon the development of international ethics and humanitarian principles, its growth would have been still slower than has been the case. That growth has, however, been powerfully furthered by utilitarian teachings. When men came to understand that their own welfare was not hampered, but furthered, by the prosperity of their neighbors, reciprocity took the place

of reprisals, and commercial exchanges succeeded Chinese walls.

The same result, in Europe at least, followed the understanding of the fact that the development of national literature, and the adequate compensation of national authors, is largely dependent upon the proper recognition of the property rights of foreign authors: this understanding, added to the widening conceptions of human rights, irrespective of boundaries, and the increasing assent to the claim that the producer is entitled to compensation proportioned to the extent of the service rendered by his production, and to the number of his fellow-men benefited by this, have secured international copyright arrangements on the part of all countries where literature exists, excepting only the great republic, which was founded on the "rights of men."

The question of the proper duration of literary property has called forth a long series of discussions and arguments, the more important of which are referred to in Mr. Macleod's paper in this work. Authors have almost from the beginning taken the position that literary property is the highest kind of property in existence; that no right or title to a thing can be so perfect as that which is created by a man's own labor and invention; that the exclusive right of a man to his literary productions and to the use of them for his own profit is as entire and perfect as the faculties employed and labor bestowed are entirely and perfectly his own. "If this claim be accepted," says Noah Webster, "it is difficult to understand on what logical principle a legislature

or court can determine that an author enjoys only a *temporary property* in his own productions. If a man's right to his own *property in writing* is as perfect as to the productions of his farm or his shop, how can the former be abridged or limited while the latter is held without limitations? Why do the productions of manual labor reach higher in the scale of rights of property than the productions of the intellect?"

It is the case, however, that, notwithstanding the logic of this position, no nation to-day accords copyright for more than a limited term, of which the longest is eighty years. In the only countries in which the experiment of perpetual copyright has been attempted—Holland, Belgium, Sweden and Denmark—a return was speedily made to protection for a term of years. There appears to have been always apprehension on the part of the public and the governments lest an indefinite copyright might result in the accumulation in the hands of traders of "literary monopolies," under which extortionate prices would be demanded from successive generations for the highest and most necessary productions of national literature. It is hardly practicable to estimate how well founded such apprehensions may be, as no opportunities have as yet existed for the development of such monopolies. It seems probable that accumulations of literary property would, as in the case of other property, be so far regulated by the laws of supply and demand as not to become detrimental to the interests of the community. If a popular demand existed or could be

created for an article, it would doubtless be produced and supplied at the lowest price that would secure the widest popular sale. If the article was suited but for a limited demand, the price, to remunerate the producer and owner, would be proportionately higher. A further consideration obtains in connection with literary property which has also influenced the framing of copyright enactments. The possibility exists that the descendants of an author, who have become by inheritance the owners of his copyrights, might, for one cause or another, desire to withdraw the works from circulation. A case could even occur in which parties desiring to suppress works might possess themselves of the copyrights for this purpose. The heirs of Calvin, if converted to Romanism, would very naturally have desired to suppress the circulation of the *Institutes*; and the history of literature affords, of course, hundreds of instances in which there would have been sufficient motive for the suppressing, by any means which the nature of copyrights might render possible, works that had been once given to the world. It will, doubtless, be admitted that, in this class of cases, the development of literature and freedom of thought would alike demand the exercise of the authority of the government on behalf of the community, to insure the continued existence of works in which the community possessed any continued interest.

The efforts in this country in behalf of international copyright have been always more or less hampered by the question being confused with that

of a protective tariff. The strongest opposition to a copyright measure has uniformly come from protectionists.

Richard Grant White said, in 1868: "The refusal of copyright in the United States to British authors is, in fact, though not always so avowed, a part of the American protective system. With free trade we shall have a just international copyright."

It would be difficult, however, for protectionists to show logical grounds for their position. American authors are manufacturers who are simply asking, first, that they shall not be undersold in their home market by goods imported from abroad on which no (ownership) duty has been paid, which have been simply "appropriated;" secondly, that the government may facilitate their efforts to secure compensation for such of their own goods as are enjoyed by foreigners. These are claims with which a protectionist who is interested in developing American industry ought certainly to be in sympathy. The contingency that troubles him, however, is the possibility that, if the English author is given the right to sell his books in this country, the copies sold may be, to a greater or less extent, manufactured in England, and the business of making these copies may be lost to American printers, binders, and paper men. He is much more concerned for the protection of the makers of the *material casing* of the book than for that of the author who created its essential substance.

It is evidently to the advantage of the consumer, upon whose interest the previously referred to Phila-

delphia resolutions lay so much stress, that the labor of preparing the editions of his books be economized as much as possible. The principal portion of the cost of a first edition of a book is the setting of the type, together with, if the work is illustrated, the designing and engraving of the illustrations. If this first cost of stereotyping and engraving can be divided among several editions, say, one for Great Britain, one for the United States, and one for Canada and the other colonies, it is evident that the proportion to be charged to each copy printed is less, and that the selling price per copy can be smaller, than would be the case if this first cost had got to be repeated in full for each market. It is, then, to the advantage of the consumer that, whatever copyright arrangement be made, nothing shall stand in the way of foreign stereotypes and illustrations being duplicated for use here whenever the foreign edition is in such shape as to render this duplicating an advantage and a saving in cost.

The few protectionists who have expressed themselves in favor of an international copyright measure, and some others who have fears as to our publishing interest being able to hold its own against any open competition, insist upon the condition that foreign works, to obtain copyright, must be wholly remanufactured and republished in this country. We have shown how such a condition would, in the majority of cases, be contrary to the interests of the American consumer, while the British author is naturally opposed to it, because, in increasing ma-

terially the outlay to be incurred by the American publisher in the production of his edition, it proportionately diminishes the profits, or prospects of profits, from which is calculated the remuneration that can be paid to the author.

The suggestion, previously referred to, of permitting the foreign book to be reprinted by all dealers who would contract to pay the author a specified royalty, has, at first sight, something specious and plausible about it. It seems to be in harmony with the principles of freedom of trade, in which we are believers. It is, however, directly opposed to those principles. First, it impairs the freedom of contract, preventing the producer from making such arrangements for supplying the public as seem best to him; and, secondly, it undertakes, by paternal legislation, to fix the remuneration that shall be given to the producer for his work, and to limit the prices at which this work shall be furnished to the consumer. There is no more equity in the government's undertaking this limitation of the producer and protection of the consumer in the case of *books*, than there would be in that of bread and beef. Further, such an arrangement would be of benefit to neither the author, the public, nor the publishers, and would, we believe, make of international copyright, and of any copyright, a confusing and futile absurdity.

A British author could hardly obtain much satisfaction from an arrangement which, while preventing him from placing his American business in the hands of a publishing house selected by himself,

and of whose responsibility he could assure himself, would throw open the use of his property to any dealers who might scramble for it. He could exercise no control over the style, the shape, or the accuracy of his American editions; could have no trustworthy information as to the number of copies the various editions contained; and, if he were tenacious as to the collection of the royalties to which he was entitled, he would be able in many cases to enforce his claims only through innumerable law suits, and would find the expenses of the collection exceed the receipts.

The benefit to the public would be no more apparent. Any gain in the cheapness of the editions produced would be more than offset by their unsatisfactoriness; they would, in the majority of cases, be untrustworthy as to accuracy or completeness, and be hastily and flimsily manufactured. A great many enterprises, also, desirable in themselves, and that would be of service to the public, *no publisher could*, under such an arrangement, afford to undertake at all, as, if they proved successful, unscrupulous neighbors would, through rival editions, reap the benefit of his judgment and his advertising. In fact, the business of reprinting would fall largely into the hands of irresponsible parties, from whom no copyright could be collected. The arguments against a measure of this kind are, in short, the arguments in favor of international copyright. A very conclusive statement of the case against the equity or desirability from any point of view of such an arrangement in regard to home

copyright was made before the British commission, in 1877, by Herbert Spencer.

The recommendation had been made, for the sake of securing cheap books for the people, that the law should give to all dealers the privilege of printing an author's books, and should fix a copyright to be paid to the author that should secure him a "fair profit for his work." Mr. Spencer objected: 1. That this would be a direct interference with the laws of trade, under which the author had the right to make his own bargains. 2. No legislature was competent to determine what was a "fair rate of profit" for an author. 3. No average royalty could be determined which could give a fair recompense for the different amounts and kinds of labor given to the production of different classes of books. 4. If the legislature has the right to fix the profits of the author, it has an equal right to determine that of his associate in the publication, the publisher: and if of the publisher, then also of the printer, binder, and paper maker, who all have an interest in the undertaking. Such a right of control would apply with equal force to manufacturers of other articles of importance to the community, and would not be in accordance with the present theories of the proper functions of the government. 5. If books are to be cheapened by such a measure, it must be at the expense of some portion of the profits now going to the authors and publishers; the assumption is, that book producers and distributers do not understand their business, but require to be instructed by the state how to carry it on, and that the pub-

lishing business alone needs to have its returns regulated by law. 6. The prices of the best books would, in many cases, instead of being lessened, be higher than at present, because the publishers would require some insurance against the risk of rival editions, and because they would make their first editions smaller, and the first cost would have to be divided among a less number of copies. Such reductions of prices as would be made would be on the flimsier and more popular literature, and even on this could not be lasting. 7. For the enterprises of the most lasting importance to the public, requiring considerable investment of time and capital, the publishers require to be assured of returns from the largest market possible, and without such security enterprises of this character could not be undertaken at all. 8. Open competition of this kind would, in the end, result in crushing out the smaller publishers, and in concentrating the business in the hands of a few houses whose purses had been long enough to carry them through the long and unprofitable contests that would certainly be the first effect of such legislation.

All the considerations adduced by Mr. Spencer have, of course, equal force with reference to open international publishing, while they may also be included among the arguments in behalf of international copyright.

It is due to American publishers to explain that, in the absence of an international copyright, there has grown up among them a custom of making payments to foreign authors, which has become, espe-

cially during the last twenty-five years, a matter of very considerable importance. Some of the English authors who testified before the British commission stated that the payments from the United States for their books exceeded their receipts in Great Britain. These payments secure, of course, to the American publisher no title of any kind to the books. In some cases, they obtain for him the use of advance sheets, by means of which he is able to get his edition printed a week or two in advance of any unauthorized edition that might be prepared. In many cases, however, payments have been made some time after the publication of the works, and when there was no longer even the slight advantage of "advance sheets" to be gained from them.

While the authorization of the English author can convey no title or means of defence against the interference of rival editions, the leading publishing houses have, with very inconsiderable exceptions, respected each other's arrangements with foreign authors, and the editions announced as published "by arrangement with the author," and on which payments in lieu of copyright have been duly made, have not been, as a rule, interfered with. This understanding among the publishers goes by the name of "the courtesy of the trade." I think it is safe to say that it is to-day the exception for an English work of any value to be published by any reputable house without a fair, and often a very liberal, recognition being made of the rights (in equity) of the author. In view of the considerable amount of harsh language that has been expended in England

upon our American publishing houses, and the opinion prevailing in England that the wrong in reprinting is entirely one sided, it is in order here to make the claim—which can, I believe, be fully substantiated—that, in respect to the recognition of the rights of authors unprotected by law, their record has, in fact, during the past twenty-five years been better than that of their English brethren. English publishers have become fully aroused to the fact that American literary material has value and availability, and each year a larger amount of this material has had the honor of being introduced to the English public. According to the statistics of 1878, ten per cent. of the works issued in England in that year were American reprints. The acknowledgments, however, of any rights on the part of American authors have been few and far between, and the payments but inconsiderable in amount. The leading English houses would doubtless very much prefer to follow the American practice of paying for their reprinted material, but they have not succeeded in establishing any general understanding similar to our American "courtesy of the trade," and books that have been paid for by one house are, in a large number of cases, promptly reissued in cheaper rival editions by other houses. It is very evident that, in the face of open and unscrupulous competition, continued or considerable payments to authors are difficult to provide for; and the more credit is due to those firms who have, in the face of this difficulty, kept a good record with their American authors.

One of the not least important results to be looked for from international copyright is a more effective co-operation in their work on the part of the publishers of the two great English-speaking nations. They will find their interest and profit in working together; and the very great extension that may be expected in the custom of a joint investment in the production of books for both markets will bring a very material saving in the first cost—a saving in the advantage of which authors, publishers, and public will alike share.

It seems probable that the "courtesy of the trade," which has made possible the present relations between American publishers and foreign authors, is not going to retain its effectiveness. Within the last few years certain "libraries" and "series" have sprung into existence, which present in cheaply printed pamphlet form some of the best recent English fiction. The publishers of these series reap the advantage of the literary judgment and foreign connections of the older publishing houses, and, taking possession of material that has been carefully selected and liberally paid for, are able to offer it to the public at prices which are certainly low as compared with those of bound books that have paid copyright, but are doubtless high enough for literature that is so cheaply obtained and so cheaply printed. These enterprises have been carried on by concerns which have not heretofore dealt in standard fiction, and which are not prepared to respect the international arrangements or trade courtesies of the older houses.

To one of the "cheap series" the above remarks do not apply. The "Franklin Square Library" is published by a house which makes a practice of paying for its English literary material, and which lays great stress upon "the courtesy of the trade." It is generally understood that this series was planned, not so much as a publishing investment, as for purposes of self-defence, and that it would in all probability not be continued after the necessity for self-defence had passed by. A good many of its numbers include works for which the usual English payments have been made, and it is probable that, in this shape, books so paid for cannot secure a remunerative sale. It seems safe to conclude, therefore, that their publication is not, in the literal sense of the term, a *business* investment, and that the undertaking was not planned to be permanent.

A very considerable business in cheap reprints has also sprung up in Canada, from which point are circulated throughout the western states cheap editions of English works, for the "advance sheets" and "American market" of which United States publishers have paid liberal prices. Some enterprising Canadian dealers have also taken advantage of the present confusion between the United States postal and customs regulations to build up a trade by supplying through the mails reprints of *American copyright works*, in editions which, being flimsily printed and free of charge for copyright, can be sold at very moderate prices indeed.

It is very evident that, in the face of competition of this kind, the payments by American publishers

to foreign writers of fiction must be materially diminished. These pamphlet series have, however, done a most important service in pointing out the absurdity of the present condition of literary property, and in emphasizing the need of an international copyright law. In connection with the change in the conditions of book manufacturing before alluded to, they may be credited as having influenced a material modification of opinion on the part of certain publishers who have in years past opposed an international copyright as either inexpedient or unnecessary, but who are now quoted as ready to give their support to any practicable and equitable measure that may be proposed.

We may, I trust, be able, at no very distant period, to look back upon, as exploded fallacies of an antiquated barbarism, the two beliefs, that the material prosperity of a community can be assured by surrounding it with Chinese walls of restriction to prevent it from purchasing in exchange for its own product its neighbor's goods, and that its moral and mental development can be furthered by the free exercise of the privilege of appropriating its neighbor's books.'

June, 1884.

[1] For the account of the realization of these prophecies, at least in part, seven years later, the reader is referred to a subsequent chapter in this volume, in which will be found the text of the International Copyright Bill of 1891.

XXII.

DEVELOPMENT OF STATUTORY COPYRIGHT IN ENGLAND.

By R. R. Bowker.

THE statute of Anne, the foundation of the present copyright system, which took effect April 10, 1710, gave the author of works then existing, or his assigns, the sole right of printing for twenty-one years from that date and no longer; of works not printed, for fourteen years and no longer, except in case he were alive at the expiration of that term, when he could have the privilege prolonged for another fourteen years. Penalties were provided, which could not be exacted unless the books were registered with the Stationers' Company, and which must be sued for within three months after the offence. If too high prices were charged, the queen's officers might order them lowered. A book could not be imported without written consent of the owner of the copyright. The number of deposit copies was increased to nine. The act was not to prejudice any previous rights of the universities and others.

This act did not touch the question of rights at common law, and soon after its statutory term of protection on previously printed books expired, in

1731, lawsuits began. The first was that of Eyre *vs.* Walker, in which Sir Joseph Jekyll granted, in 1735, an injunction as to *The Whole Duty of Man*, which had been first published in 1657, or seventy-eight years before. In this and several other cases the Court of Chancery issued injunctions on the theory that the legal right was unquestioned. But in 1769 the famous case of Millar *vs.* Taylor, as to the copyright of Thomson's *Seasons*, brought directly before the Court of King's Bench the question whether rights at common law still existed, aside from the statute and its period of protection. In this case Lord Mansfield and two other judges held that an author had, at common law, a perpetual copyright, independent of statute, one dissenting justice holding that there was no such property at common law. In 1774, in the case of Donaldsons *vs.* Beckett, this decision was appealed from, and the issue was carried to the highest tribunal, the House of Lords.

The House of Lords propounded five questions to the judges. These, with the replies,[1] were as follows:

I. Whether, at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale; and might bring an action against any person who printed, published, and sold the same without his consent? Yes, 10 to 1 that he had the sole right, etc., and 8 to 3 that he might bring the action.

[1] The votes on these decisions are given differently in the several copyright authorities. These figures are corrected from 4 Burrow's Reports, 2408, the leading English parliamentary reports, and are probably right.

II. If the author had such right originally, did the law take it away, upon his printing and publishing such book or literary composition; and might any person afterward reprint and sell, for his own benefit, such book or literary composition against the will of the author? No, 7 to 4.

III. If such action would have lain at common law, is it taken away by the statute of 8 Anne? And is an author, by the said statute, precluded from every remedy, except on the foundation of the said statute and on the terms and conditions prescribed thereby? Yes, 6 to 5.

IV. Whether the author of any literary composition and his assigns had the sole right of printing and publishing the same in perpetuity, by the common law? Yes, 7 to 4.

V. Whether this right is any way impeached, restrained, or taken away by the statute 8 Anne? Yes, 6 to 5.

These decisions, that there was perpetual copyright at common law, which was not lost by publication, but that the statute of Anne took away that right and confined remedies to the statutory provisions, were directly contrary to the previous decrees of the courts, and on a motion seconded by the Lord Chancellor, the House of Lords, 22 to 11, reversed the decree in the case at issue. This construction by the Lords, in the case of Donaldsons *vs.* Beckett, of the statute of Anne, has practically "laid down the law" for England and America ever since.

Two protests against this action deserve note. The first, that of the universities, was met by an act of 1775, which granted to the English and Scotch universities and to the colleges of Eton, Westminster, and Winchester (Dublin was added in 1801) perpetual copyright in works bequeathed to and printed by them. The other, that of the

booksellers, presented to the Commons February 28, 1774, set forth that the petitioners had invested large sums in the belief of perpetuity of copyright, but a bill for their relief was rejected. In 1801 an act was passed authorizing suits for damages at common law, as well as penalties under statute during the period of protection of the statute, the need for such a law having been shown in the case of Beckford *vs.* Hood, wherein the court had to "stretch a point" to protect the plaintiff's rights in an anonymous book which he had not entered in the Stationers' Register. An Act of 1814 extended copyright to twenty-eight years and for the remainder of the life of a surviving author, and relieved the author of the necessity of delivering the eleven library copies, except on demand. These deposit copies were reduced to five by the Act of 1836.

In 1841, under the leadership of Sergeant Talfourd, a great debate on copyright, in which Macaulay took a leading part in favor of restricted copyright, was started in the Commons, which resulted in the act of 1842 (5 and 6 Vict.), repealing the previous acts, and presenting a new code of copyright. It practically preserved, however, the restrictions of the statute of Anne. The copyright term was made the author's lifetime and seven years beyond, but in any event at least forty-two years. The Judicial Committee of the Privy Council may authorize publication of a posthumous work in case the proprietor of the copyright refuse to publish. Articles in periodicals, etc., have the same copyright term, but they revert to the author after

twenty-eight years. Subsequent acts extend copyright to prints and like art works, designs for manufactures, sculptures, dramas, musical compositions, lectures, for various terms and under differing conditions.

The present law of England as to copyright, says the Report of the Royal Copyright Commission, in a Blue Book of 1878, "consists partly of the provisions of fourteen Acts of Parliament, which relate in whole or in part to different branches of the subject, and partly of common law principles, nowhere stated in any definite or authoritative way, but implied in a considerable number of reported cases scattered over the law reports." The Digest, by Sir James Stephen, appended to this report, is presented by the commission as "a correct statement of the law as it stands." This Digest is, perhaps, the most valuable single contribution yet made to the literature of copyright, but the frequency with which such phrases occur as "it is probable, but not certain," "it is uncertain," "probably," "it seems," show the state of the law, "wholly destitute of any sort of arrangement, incomplete, often obscure," as says the report itself. The Digest is accompanied, in parallel columns, with alterations suggested by the commission, and it is much to be regretted that their work failed to reach the expected result of an Act of Parliament. The evidence taken by the commissioners forms a second Blue Book, also of great value. A new copyright law is now under consideration in England.

It seems possible that, under the precedent of

the acts of 1775 and 1801, the common law rights, practically taken away by the statute of Anne, could be restored by legislation. Its restrictions have not only ruled the practice of England ever since, but they were embodied in the Constitution of the United States, and have influenced alike our legislators and our courts.

December, 1885.

XXIII.

CHEAP BOOKS AND GOOD BOOKS.

By Brander Matthews.

Mr. Lowell has told us that "there is one thing better than a cheap book, and that is a book honestly come by." And Mr. Curtis has put the same thought quite as aptly: "Cheap books are good things, but cheapening the public conscience is a very bad thing." In these sayings, as in a nutshell, we have the ethics of international copyright. But on this side of the question Dr. Van Dyke, with a felicity and a force I cannot hope to rival, has said all that need be said; and I hasten at once to a consideration of the assertion that the effect of the granting of International Copyright will be to raise the price of books.

There are still a few who declare that the People must have cheap books, and that therefore the People will not permit the passage of any bill for International Copyright. Within a few days we have seen declarations like this ascribed to Members of Congress and to Senators of the United States. It is our duty always to acknowledge the good faith of our disputant; and we must assume, then, that these Representatives and these Senators are sincere in holding that the absence of International Copy-

right gives us cheap books in the United States. I am inclined to think that not only the opponents of copyright reform, but even many of its advocates, believe that the existing lawlessness gives us cheaper books than we should have if the rights of foreign authors were legally guarded. It is true, no doubt, that, in consequence of the competing reprints of rival pirates, some few books, mostly in a single department of literature, and generally of inferior literary quality, are to be bought here for very little money. But, with these infrequent exceptions, books are not now cheaper in America because there is free stealing from the foreigner. It may be said, further, that the absence of International Copyright really retards the cheapening of good books in this country.

This may sound like a paradox, but I shall try to prove its exact truth. The books which are made cheaper by piracy are nearly all English novels. The so-called libraries—the Seaside Library, for instance, the Franklin Square Library, and their fellows—contain nearly all the books which are cheap because they are not paid for. I do not mean here to suggest that all the books reprinted in all these libraries are pirated; but piracy is the primary cause of their low prices. These libraries are devoted almost wholly to fiction; by actual count of their catalogues, nine volumes out of ten are novels. To profit by the provisions of the postal laws, these libraries are registered as periodicals; and they appear at regular intervals, once, twice, and even three times a week. A library which issues but one book

a week must publish fifty-two books a year; after allowing for the occasional American book of which the copyright has run out, and for the occasional foreign biography or history which seems popular enough to fit it for the uneducated audience to which these series appeal—after making these allowances, fully forty of the fifty-two annual numbers of any one of these libraries must be English novels. Now, there are not forty novels published in Great Britain in any one year which are worth reprinting in the United States. I do not think there are twenty—I doubt if there are ten. Yet in one of the cheap libraries, issued three times a week, more than a hundred English novels are now published every year.

And this is at a time when there is no great novelist alive in England, and when the English novel is distinctly inferior to the novel of America, of Russia, and of France. But these English novels are almost the only books which are cheapened by piracy. These are the books which the women of America, allured by the premium of cheapness, are now reading almost exclusively, to the neglect of native writers. There is a resulting deterioration of the public taste for good literature; and there is a resulting tendency to the adoption of English social standards. It is not wholesome, nor a good augury for the future of the American people, that the books easiest to get, and therefore most widely read, should be written wholly by foreigners, and chiefly by Englishmen, who cannot help accepting and describing the surviving results of feudalism

and the social inequalities we tried to do away with one hundred and twelve years ago. "Society is a strong solution of books," Dr. Holmes has told us; "it draws the virtue out of what is best worth reading, as hot water draws the strength of tea-leaves." While the privilege of piracy endures, American society is drawing the vice out of what is least worth reading, the machine-made tales of the inferior British novelists of the present day.

Lest this opinion as to the demerits of the mass of the English novels now so freely reprinted here may seem over-severe, attention is drawn to a passage from Mr. Frederic Harrison's incisive essay on the *Choice of Books*—one of the invigorating volumes of essays which England has sent us of late years: "But assuredly black night will quickly cover the vast bulk of modern fiction—work as perishable as the generations whose idleness it has amused. It belongs not to the great creations of the world. Beside them it is flat and poor. Such facts in human nature as it reveals are trivial and special in themselves, and for the most part abnormal and unwholesome. I stand beside the ceaseless flow of this miscellaneous torrent as one stands watching the turbid rush of the Thames at London Bridge, wondering whence it all comes, whither it all goes, what can be done with it, and what may be its ultimate function in the order of providence. To a reader who would nourish his taste on the boundless harvests of the poetry of mankind, this sewage outfall of to-day offers as little in creative as in moral value. Lurid and irregular streaks of imagination, extrava-

gance of plot and incident, petty and mean subjects of study, forced and unnatural situations, morbid pathology of crime, dull copying of the dullest commonplace, melodramatic hurly-burly, form the certain evidence of an art that is exhausted, produced by men and women to whom it is become a mere trade, in an age wherein change and excitement have corrupted the power of pure enjoyment."

It may surprise some readers to be told that almost the only books which are cheaper in America owing to the absence of International Copyright are English novels. But that this *is* the fact I have convinced myself by a careful examination of the statistics of the American book-trade. Pirated books are nearly always issued in a series or library; and, as I have said, nine numbers in ten on the list of these libraries are fiction. The tenth number may be Mr. Froude's *Life of Carlyle*, for instance, or Mr. Justin McCarthy's *History of Our Own Times*, both of them books worth reading and worth keeping, but in this flimsy form almost impossible either to read or to keep, because of the shabbiness of the type, the press-work, and the paper. It is not sound economy to spare the pocket and spoil the eyes. It is not sound economy to pay eighty cents for four evil and awkward pamphlets comprising a book which can be bought for a dollar and a half, decently bound and decently printed on decent paper—a pleasure to read now and a treasure to transmit to those who come after us.

A consideration of the present condition and annual statistics of the American book-trade will show

that the legal right to pirate is not now utilized by most American publishers, and that those who are still privateers seek their booty chiefly, if not solely, among books of one exceptional class. From the figures published annually in *The Publishers' Weekly*, the following table has been prepared to show the different kinds of books published in the United States during the past five years.[1] (The classification is not quite that of the *Weekly*, but has been modified slightly by condensation.)

	1882	1883	1884	1885	1886
Education and language	221	197	227	225	275
Law	261	397	455	431	469
Science (medical, physical, mathematical, political, and social)	406	407	511	443	469
Theology, religion, mental and moral philosophy	347	395	399	469	395
History	118	119	115	137	182
Literary history and miscellany, biography and memoirs, description and travel, humor and satire	559	521	529	591	719
Poetry and the drama	182	184	222	171	220
Juveniles	278	331	358	388	458
Fiction	767	670	943	934	1080
Et cetera	131	265	329	330	379
Total	3472	3481	4088	4020	4670

Taking up these classes in turn, we shall see what will be the effect on each of the passage of the bill of the American Copyright League. On the first class, education and language, there would be no effect at all, as the text-books now used in American schools were written by Americans and are covered by copyright: it is hardly an exaggeration to say that the American school-boy never sees a book of foreign authorship in school-hours; I

[1] This essay was first issued in 1887.

know that I never did until after I had entered college, and then very infrequently. Fortunately for the future of our country, young Americans are brought up on American books. The foundation of American education is the native Webster's Spelling-book. In some respects the making of school-books is the most important branch of the publishing business, and the passage of the Copyright Bill would not influence it in any way; American school-books would be neither dearer nor cheaper.

In the second class, law, are included a tenth of the books published in the United States last year, and from the inexorable circumstances of the case most of these books are of American authorship and are already protected by copyright. All reports and all treatises on practice and on constitutional law, etc., are of necessity national. Now and again an English treatise of marked merit may be edited for the use of American lawyers with references to American cases, but this is infrequent; and not often would the price of any work needed by the American lawyer be increased by the passage of the Copyright Bill.

Of books in the third and fourth classes—science and theology—very few indeed are ever pirated. Once in every three or four years there appears, in England, or France, or Germany, a book like Canon Farrar's *Life of Christ*, the American price of which is lowered by rival reprints. A large majority of books of science and theology published in America are written by American

authors; and in general the minority by foreign authors are published here by an arrangement with the foreign author tantamount to copyright. Although purely ethical considerations ought to have more weight with readers of books of this class than with those of any other, yet it would be infrequently that the price of any book of this class would be raised by giving to the literary laborer who made it the right to collect the hire of which he is worthy.

Taken together, the next three classes on the list —history;—literary history and miscellany, biography and memoirs, description and travel, humor and satire;—and poetry and the drama—include nearly all of what used to be called Belles Lettres (except fiction), and they comprise nearly a quarter of the books published in America. In these and in the preceding classes most of the books are of American authorship, and most of those of foreign authorship are published at just the same price as though they were by native writers. It would probably surprise most readers who imagine that the absence of International Copyright gives us many inexpensive histories and biographies, and books of travel and poems, if they were to consider carefully the catalogues of the paper-covered collections which furnish forth our cheap literature. Among the chief of these collections are the Franklin Square Library and Harper's Handy Series. In 1886 there were issued fifty-four numbers of the Franklin Square Library, one of which was by an American. Of the remaining fifty-three, forty-six

were fiction, and only seven numbers could be classified as history, biography, travels, or the drama—only seven of these books in one year, and they were less than one-seventh of the books contained in this collection. In the same year there were sixty-two numbers in Harper's Handy Series. Deducting four by American authors, we have fifty-eight books issued in cheap form owing to the absence of International Copyright. Of these fifty-eight books fifty-two were fiction, and only six belonged in other branches of Belles Lettres; only six of these books in one year, and they less than one-ninth of the series. In these two cheap collections, then, there were published in 1886 one hundred and eleven books of foreign authorship, and of these all but thirteen were novels or stories. Not one of these thirteen books was a work of the first rank which a man might regret missing. It may as well be admitted frankly that these thirteen books would probably not have been published quite so cheaply had there been International Copyright; but it may be doubted whether, if that were the case, the cause of literature and education in the United States would have been any the worse.

In the class of books for the young there are possibly more works of foreign authorship sold than in any other class that we have hitherto considered, but in most cases they are not sold at lower prices than American books of the same character. Indeed, I question whether many English or French books for the young are sold at all in America. At bottom the American boy is harder

to please and more particular than the American woman; he likes his fiction home-made, and he has small stomach for imported stories about the younger son of a duke. He has a wholesomer taste for native work. No English juvenile magazine is sold in the United States, although several American juvenile magazines are sold in Great Britain. We export books for the young, while we import them only to a comparatively slight extent.

I come now to the one class of books the price of which would be increased by the granting of International Copyright. This is the large and important class of fiction. Of course, American novels would be no dearer; and probably translations from the French, German, Italian, Spanish, and Russian would not vary greatly in price. But English novels would not be sold for ten or fifteen cents each. We should not see five or ten rival reprints of a single story by the most popular English novelists. There would be but a single edition of the latest novels of the leading British story-tellers, and this would be offered at whatsoever price the authorized publisher might choose to ask—sometimes much, generally little. English fiction would no longer cost less than American fiction. The premium of cheapness, which now serves to make the American public take imported novels instead of native wares, would be removed; and with it would be removed the demoralizing influence on Americans of a constant diet of English fiction. That American men and women should read the best that the better English novelists have to offer

us is most desirable; that our laws should encourage the reading of English stories, good and bad together, and the bad, of course, in enormous majority, is obviously improper and unwise.

The evil effect of this unfortunate state of things Mark Twain has most graphically depicted. He asks if it is an advantage to us, the people of the United States, to get all kinds of cheap alien books devoured "in these proportions: an ounce of wholesome literature to a hundred tons of noxious?"

"Is this an advantage to us?" he inquires further; and he answers his own question thus: "It certainly is, if poison is an advantage to a person; or if to teach one thing at the hearth-stone, the political hustings, and in a nation's press, and teach the opposite in the books the nation reads is profitable; or, in other words, if to hold up a national standard for admiration and emulation half of each day, and a foreign standard the other half, is profitable. The most effective way to train an impressible young mind and establish for all time its standards of fine and vulgar, right and wrong, and good and bad, is through the imagination; and the most insidious manipulator of the imagination is the felicitously written romance. The statistics of any public library will show that of every hundred books read by our people about seventy are novels —and nine-tenths of them foreign ones. They fill the imagination with an unhealthy fascination for foreign life, with its dukes and earls and kings, its fuss and feathers, its graceful immoralities, its sugar-coated injustice and oppressions; and this

fascination [illegible]ds a more or less pronounced dissatisfaction with our country and form of government, and contempt for our republican commonplaces and simplicities; it also breathes longings for something 'better,' which presently crop out in diseased shams and imitations of that ideal foreign life. Hence the dude. Thus we have this curious spectacle: American statesmen glorifying American nationality, teaching it, preaching it, urging it, building it up—with their mouths; and undermining it and pulling it down with their acts. This is to employ an Indian nurse to suckle your child, and expect it not to drink in the Indian nature with the milk. It is to go Christian-missionarying with infidel tracts in your hands. Our average young person reads scarcely anything but novels; the citizenship and morals and predilections of the rising generation of America are largely under training by foreign teachers. This condition of things is what the American statesmen think it wise to protect and preserve — by refusing International Copyright, which would bring the national teacher to the front and push the foreign teacher to the rear. We do get cheap books through the absence of International Copyright; and any who will consider the matter thoughtfully will arrive at the conclusion that these cheap books are the costliest purchase that ever a nation made."

International Copyright will perhaps increase the cost of such English novels as may be written in the future; but it is not retroactive; it cannot affect the past; it will not alter the price of Shake-

speare or of Scott, of Macaulay or of Thackeray. It will not make any American author ask more for his book, if, indeed, by expanding his market, it does not tempt him to lower his terms, seeking a wider sale and a smaller profit. Emerson and Irving, Longfellow and Hawthorne, will be as easily accessible hereafter as they are to-day. The books which are cheap now will always be cheap; and with the removal of the sickly flood of stolen English fiction there will come an opportunity for the American publisher to issue good books at low prices.

Here we come to the special point of this paper: the cheapest books to be bought to-day in the United States are mostly inferior stories by contemporary English novelists, while the cheapest books to be bought to-day in England, in France, and in Germany are the best books by the best authors of all times. Those who declaim against International Copyright because they do not wish to deprive the poor boy of the cheap book he may study by the firelight after his hard day's work, would perhaps be surprised to be told that of the "Hundred Best Books" (of which we lately had so many lists), of the books best fitted to form character and to make a man, very few indeed, not more than half a dozen, are to be found in any of the cheap libraries which flourish because of the absence of copyright. Most of these great works are old and consecrated by time; they are nearly all free to be printed by whoso will. In Sir John Lubbock's original list of a hundred best authors only two were American, and only

twelve were recent Englishmen whose works are still protected by English copyright. Eighty-six out of the hundred were classics of ancient and modern literature—Greek and Latin, Italian and French, German and English.

Now, in Germany, in France, and in England, there have been many efforts of late years to supply very cheap editions of these classics at a price within the means of the poorest student. In the United States no such effort has been made; nor is it likely to be made as long as the market for cheap books is supplied by inferior foreign fiction, which not only usurps the place of better literature, but spoils the appetite for it. The cheap books to be bought in England, in France, and in Germany are stimulant and invigorating, mentally and morally; a man is better for reading them; he is richer and stronger, and more fit for the struggle of life. The cheap books to be bought in the United States are only too often the trivial trash of the ladies who call themselves "Ouida" and "The Duchess." How much these may nerve a man or a woman for the realities of existence, how much the wisdom to be got from them may arm us for the stern battle of life, I cannot say.

A consideration of the conditions of book-publishing in Great Britain, in France, and in the German Empire is not without interest in itself; and it may serve further to show that Americans do not enjoy a monopoly of cheap books.

The British are book-borrowers, and not book-buyers; they are accustomed to hire their freshest

reading matter from the circulating library. I remember hearing Professor Sylvester, the eminent English mathematician, who was until recently a member of the faculty of Johns Hopkins University—I remember hearing him express the surprise he felt on his first arrival in this country, when he was staying with Professor Pearce in Cambridge, and happened to hear two of the ladies of the family remark that they had just been in to Boston to buy a book. "To *buy* a book?" repeated Professor Sylvester; "why, in England nobody buys a book!" Perhaps this is an over-statement of the case; but it is true that the British book-trade is in an unhealthy condition, and that the publishers and the public are at opposite sides of a vicious circle—the people refuse to purchase because new books are dear, and the publishers ask a high price because there are but few buyers.

In England a novel, for instance, is generally published in three volumes at half a guinea a volume—say seven dollars and a half for a single story. At this prohibitive price the publisher can hope for no private purchaser, and he relies wholly on the demand from the circulating libraries, which have to meet the wishes of their subscribers, and to which the volumes are sold at a heavy discount. Not only novels, but travels, histories, and biographies are usually brought out in England at absurdly exaggerated prices. If the book succeed, if it be really deserving of a wider sale, popular editions at lower figures soon follow. It is only the first editions, intended solely for the circulating libraries,

which are disproportionately dear. Six months or a year after a novel first appears in three volumes, it will probably be republished in a single volume at a price varying from three shillings and sixpence to six shillings—say, ninety cents to a dollar and a half. Often it also appears a little later in a railway edition at two shillings—fifty cents. The reduction in the price of histories and biographies is not so large; but second-hand copies in excellent condition can be had at a tithe of the original cost from the circulating libraries, which sell off their surplus stock as soon as the pressure of the first demand is relieved.

This system of publishing seems cumbrous and top-heavy. It is peculiar to Great Britain. It has never been adopted by any other nation. It could exist only in an island, or in a country with a compact population having both leisure and means. But apparently it is not altogether unsatisfactory to the English, and it does not make books as dear as at first glance we might suppose. The brand-new book, smoking-hot from the press, is intended to be borrowed and not bought; but commonly, after a year or two, it can be had at a moderate price. Professor Lounsbury, of the Sheffield Scientific School at Yale, after an experience of many years, has recorded it as his deliberate opinion that, in the long run, English books are cheaper than American books.

Of late there have been many efforts made in England to create and to satisfy a popular desire for good books at low prices. There are even signs

that the circulating library system is not as secure as it has seemed, and that the British may become book-buyers instead of book-borrowers. A Bristol publisher having sold several hundred thousand copies of the late Hugh Conway's *Called Back* at a shilling (twenty-five cents), has continued the series with original stories by Mr. Wilkie Collins, Mr. Walter Besant, Mr. Andrew Lang, and others. All of Disraeli's novels are now for sale at a shilling each; and all of Thackeray's writings are being reissued at a shilling a volume by his own publishers, who still own the copyrights. A complete edition of Carlyle's works has just been begun, to be sold at the same low price—twenty-five cents. And it is to be noted that these sets of Thackeray and Carlyle are not ill-made and flimsy pamphlets, badly printed with worn type on poor paper; they are honest books, firmly printed on good paper and substantially bound in cloth.

Mr. John Morley's admirable series of English Men of Letters is now in course of republication at a shilling for each biography. And a shilling is the price asked for each of the well-made, neatly bound, and carefully prefaced volumes of Professor Henry Morley's Universal Library, which is intended to contain the masterpieces of the master minds of all countries and all ages. In this most excellently edited series there have already appeared, month by month, the chief works of Homer, Virgil, Dante, Machiavelli, Rabelais, Bacon, Ben Jonson, Cervantes, Molière, De Foe, Locke, Dr. Johnson, Goldsmith, Goethe, and Coleridge.

Professor Henry Morley is also the editor of another series, perhaps even more important, because the price is lower and the issue more frequent. This is Cassell's National Library, in weekly volumes at threepence each. For six cents a week a man may buy a solid little tome of about two hundred pages, containing Franklin's *Autobiography*, Walton's *Complete Angler*, Byron's *Childe Harold*, and the like. Nothing at once as cheap in price and as good in quality as this National Library has ever been brought out in America.

Crossing the Channel to France, we find the conditions of publishing very different and far more healthy. There was a time once when books in France were expensive, and when authors and publishers alike were content with a small sale and an apparently large profit. The late Michel-Lévy believed that "cheap books are a necessity, and a necessity which need bring, moreover, no loss to either authors or publishers."[1] He converted certain of the leading French writers to his views, and he revolutionized the methods of French publishing. The theory of Michel-Lévy, that the low price of one book will tempt the reader and create a desire for another book, was solidly sustained by the result of his experiment. Thanks to him and to those who followed his example, France is now the country where books are the cheapest and where authors are the best paid. Dignified historical

[1] An account of Michel-Lévy's reform may be found in Mr. Matthew Arnold's acute paper on "Copyright" in his volume of *Irish Essays*.

works generally appear in portly tomes at seven francs and a half each —say, a dollar and a half (the price in America for a volume of the same importance would probably vary from two dollars and a half to five dollars). These volumes at seven francs and a half each are relatively few, as the enormous majority of French books, poems, novels, biographies, essays, and so forth are of the size called the "format Charpentier," and are sold for three francs and a half each—say, seventy cents.

Cheap as these French books are when new, they are often made even cheaper still as their popularity broadens. In imitation of the Michel-Lévy collection, many publishers have series which they sell for one franc a volume—twenty cents—for a seemly and shapely tome containing a complete copyright book, by an author of wide repute. Even lower priced, however, is a later series, the *Bibliothèque Nationale*, founded twenty-five years ago, now extending to several hundred numbers, and containing not only the French classics but also translations of nearly all the classics of other literatures. The tidy little tomes of this series are sold in stitched paper covers at twenty-five centimes each—five cents—and in cloth bindings for nine cents each. Inexpensive as is this *Bibliothèque Nationale*, it has now a new rival —the *Nouvelle Bibliothèque Populaire*—in which the single numbers are sold for two cents each. I believe that nothing cheaper than this has ever been attempted anywhere. Besides the consecrated masterpieces of literature, the books of an impregnable reputation, which ought to furnish forth the

bulk of any collection making an appeal to the very widest circle of readers, the conductor of the ... *velle Bibliothèque Populaire* is wisely selecting ... lations into French of the best books of contemporary authors of other nations. Thus can a pleased American discover on the catalogue the names of Poe, Irving, Longfellow, and Mr. Bret Harte; whether these authors are as pleased to see their works taken without money and without price is another question!

Turning from France to Germany, we ... great difference in the conditions of ... although the Germans cannot make the ... quite as cheap as can the French, since ... is not so large. German books, in the ... which at college we used to call Belles Let... be consumed in the home market; there is no fierce demand for export. But French fiction and French criticism are interesting and entertaining throughout the world. A German novel must rely for its readers on the Fatherland and on those who speak the mother-tongue; while French is still the language of courts and of culture, and a French novel may be read with as much avidity in Berlin and Vienna, in London and New York, as in Paris itself.

Whatever may be the price of the new novel in Germany, and however insufficient may be its sale, the Germans are not behind the French in their cheap editions of the great books of the world. The successors of the house which issued Goethe's writings now publish the *Cotta'sche Bibliothek der Weltliteratur*, in which the works of Goethe, Schil-

ler, Lessing, Shakespeare, Molière, Calderon, Dante, and their fellows appear in solid volumes, substantially bound, and sold at one mark each—twenty-five cents. One mark is also the price asked for any volume of *Das Wissen der Gegenwart*, a collection of new books, expressly prepared, well printed, well bound, and most elaborately illustrated. The volumes of this series are written by experts, and they are intended to form a sort of cyclopædia of the results of the latest researches in science and history.

Nor are the Germans lacking in a library of the ancient and modern classics at a still lower price. I believe that it was Herr Reclam's *Universal Bibliothek* which suggested the French *Bibliothèque Nationale* and the English "National Library." The single numbers of this series cost each twenty pfennige—say, five cents; and at this price may be had all the German classics, as well as translations of the best writings in other languages. Alongside the works of Schiller and Sophocles, of Shakespeare and Sheridan, the American finds translations of Cooper, Longfellow, Mark Twain, Mrs. Stowe, Mr. Aldrich, and Mr. Bret Harte—of course we cannot expect Germany to protect the rights of American authors until America protects the rights of German authors. The success of this cheap series has brought out a rival still cheaper—Meyer's *Volksbücher* at ten pfennige a volume—say, two cents and a half for a complete copy of a masterpiece.

In this survey of the conditions of publishing in England, France, and Germany, I have sought to

show that what might seem, at first sight, to be a paradox, is only the exact truth. In America the cheapest books are not good books, for the most part; certainly they are not the best books. *In Europe the best books are the cheapest.* That this unfortunate state of affairs in this country is the result of the absence of International Copyright, and the inevitable instability of the book trade, I maintain; and I assert also that the consequences of the present unhealthy condition are injurious to the character of the American people. We now enjoy the privilege of piracy, as the dwellers on a rocky islet used to enjoy the privilege of wrecking—and we avail ourselves of this privilege only to the perdition of our own souls. We encourage bad books and we discourage good books. And to discourage or injure or retard a good book, as it goes on its mission of making the world better, is to do an evil deed. No one has more nobly spoken of the crime of book murder than John Milton, and with a quotation from him I may fitly conclude:

"For books are not absolutely dead things, but do contain a potency of life in them to be as active as that soul was whose progeny they are; nay, they do preserve, as in a vial, the purest efficacy and extraction of that living intellect that bred them. I know they are as lively and as vigorously productive as those fabulous dragon's teeth: and being sown up and down may chance to spring up armed men. And yet, on the other hand, unless wariness be used, as good almost kill a man as kill a good book. Who kills a man kills a reasonable creature,

God's image; but he who destroys a good book kills reason itself, kills the image of God, as it were, in the eye. Many a man lives, a burden to the earth; but a good book is the precious life-blood of a master-spirit, embalmed and treasured up on purpose to a life beyond life."

NEW YORK, *March* 15, 1888.

XXIV.

AN INTERNATIONAL COPYRIGHT WILL NOT INCREASE THE PRICES OF BOOKS.

ONE of the most frequent objections to the granting of copyright to foreign authors is the impression that any such measure must materially increase the selling price of books. It is pointed out that, in the absence of a copyright, foreign works have been issued in this country at very low prices, and it is assumed that when it becomes necessary to add to the cost of production the amounts to be paid to the authors, and when the sales, now divided between several competing editions, are left under the control of one publisher, the prices paid by the consumer will probably be materially increased.

The supporters of International Copyright take the ground, on the other hand, that when the American people, who are lovers of fair play, are once convinced of the justice of the claim of authors (American and foreign) to control their productions, and to receive compensation from all who are benefited by these productions, this claim will be promptly granted, whether it costs the public something to do so or not.

Those who are familiar with the business of making and selling books assert further, moreover, that a copyright measure will have the effect of lessening the price of all the better classes of books, which are of the most importance for the higher education and cultivation of the people, and of increasing the supplies of these; and that the only publications which will be increased in price are the cheapest issues of foreign fiction; and in support of this conclusion they ask attention to the following considerations:

First. It is in order to bear in mind that the conditions of the literature now in existence can, of course, not be affected by any copyright measure, as no such measure could be made retroactive, and there is, therefore, no foundation for the vague assertion which has occasionally been made, that "the people are to be asked to pay more for their Macaulay and Tennyson."

Second. It is to be remembered that the so-called "Libraries," which have been supplying foreign novels at fifteen and twenty cents, after exhausting the books really worth reprinting, and after including in their lists (under the necessity of a periodical issue) a large mass of indifferent and undesirable material, by no means deserving the attention of American readers, are now in great part being discontinued, partly because of the exhaustion of reprintable material, and partly, also, because they are not profitable undertakings. One reason why these "Libraries" are proving unremunerative is unquestionably because of a change in the taste and in the

judgment of buyers of books, who are beginning to understand that they secure better value in paying fifty cents or seventy-five for a decently printed volume, that can be preserved for the use of a number of readers, than in expending fifteen or twenty cents for a flimsy quarto, fit only to be thrown away after one reading.

Third. A large number of important English and Continental works, American editions of which would prove of material service to American students and readers, it is not practicable, under the present state of things, for American publishers to undertake at all, as, in case their reprints are favorably received, any prospect of profit from these is promptly destroyed by the competition of rival and unauthorized editions, which secure the advantage of their literary judgment and their advertising. Such American readers as are obliged to purchase this class of works must, as a result, pay the cost of the expensive and often unsuitable foreign editions, while (as such editions cannot be adequately advertised) a large number of readers to whom such books would be of service are never even made aware of their existence. An immediate result of an International Copyright would be the reprinting of inexpensive editions, suited for the wants of a large circle of impecunious buyers, of a number of European works now brought into this country only in expensive "limited" editions.

Fourth. An International Copyright will render practicable a large number of international undertakings which cannot be ventured upon without the

assured control of several markets. The volumes for these international series will be secured from the leading writers of the world, American, English, and Continental, and the compensation paid to these writers, together with the cost of the production of illustrations, maps, tables, etc., will be divided between the several editions. The lower the proportion of this first outlay to be charged to the American edition, the lower the price at which this can be furnished; and as the publisher secures the most satisfactory returns from large sales to a wide circle, the lower the price at which it *will* be furnished.

It would not be quite correct to say that these international series would be cheaper than at present, for there are as yet hardly any examples of them; but it is the case that by means of such series (only adequately possible under International Copyright) American readers will secure the best literature of leading contemporary writers at far lower prices than can ever otherwise be practicable.

Fifth. The higher prices of current English books are cited as examples of what American readers would under a copyright be compelled to pay for American editions of similar works. It is, however, easy to show that the selling price of books depends, not upon the conditions of copyright, but upon the requirements of the market. Books are first issued in England in the high-priced editions, because under the English system the first demand for new publications is largely through the circulating libraries, which have encouraged the main-

tenance of prices sufficiently high to hinder the buying of books. There is also the further reason that in England the readers and buyers of books belong in much larger proportions to the wealthy classes than is the case in the United States.

In France and Germany, on the other hand, countries fully under the control of copyright, both domestic and international, the first issues of standard and current publications, both copyright and non-copyright, are cheaper than anywhere else in the world.

In Paris, for instance, a beautifully printed and beautifully illustrated edition of such a book as Daudet's *Tartarin dans les Alpes* is published at seventy cents, and this is one example of many. In Berlin, we find such series as *Das Wissen der Gegenwart*, "The Knowledge of the Present," issued in handsomely printed, well-illustrated, and neatly bound volumes, of which sixty-two are now ready, selling at one mark, twenty-five cents, each. The works in this series are written especially for it by the leading scholars and scientists of the Continent, and this series is one of many. The Leipsic publisher, Tauchnitz, possesses, under the present International Copyright system of Europe, a practical "monopoly" for the sale on the Continent of his cheap reprints, in English, of the works purchased by him from English authors. He does not, however, take advantage of such "monopoly" to attempt to extort high prices from his readers, simply because there would be no profit in making any such attempt. He sells these copyright books, in

complete and well-printed volumes, at one and a half marks, or thirty-six cents, each.

American publishers controlling, under a similar copyright, the sale of similar books for a market of sixty millions of people, would in like manner find it to their advantage to supply this market with low-priced editions planned for popular sale, simply because high-priced editions could not be sold.

It is also the case that, since the establishment of International Copyright between the different states of Germany and the several countries of Europe, there has been a steady decrease in the prices, in these countries, of standard and current literature, copyright as well as non-copyright, and a marked impetus has been given to publishing undertakings of service to the community.

As Mr. Brander Matthews has well pointed out, the cheapest books to be bought to-day in the United States are mostly inferior stories by contemporary English novelists, while the cheapest books to be bought to-day in Europe are the best works by the best authors of all times. In America, where the system, or lack of system, of "open publishing" prevails, the cheapest books are the least important and often the least desirable. In Europe, where International Copyright is in force, *the best books are the cheapest.* The absence of International Copyright encourages bad books or poor books, and discourages good books.

Such examples show that the selling price of a book depends not on the copyright but on the extent of the market that can be assured for it. With-

out an International Copyright no assured market is possible, and no low-priced international series can be planned or prepared for American readers.

Sixth. A reduction can also be looked for in the selling price of certain lines of American fiction and other current literature. Under the present "cut-throat" competition, the publishers of the works of such authors as Howells, James, Aldrich, Bret Harte, and other leading American writers have practically given up the attempt to compete with the unpaid-for reprints of foreign writers. Knowing that they can depend upon certain (comparatively limited) circles of readers, they find it to be more profitable to obtain from these readers the highest prices they are willing to pay. When, on the other hand, the foreign works are put on the same footing as those of American writers, the publishers of the latter will find it to their interest to plan for the widest popular sale, and for this purpose will at once issue their books at popular prices.

The possibility of exporting stereotype plates or editions of standard American works will also lessen the proportion of first outlay to be charged to the American edition, and will enable this to be sold profitably at lower prices than would otherwise be practicable. An example of the advantage given to the American buyer by such an export arrangement is afforded by the great Latin Dictionary lately published by the Harpers. Duplicate plates of this were sold by the publishers for the edition issued by the Clarendon Press, in Oxford, and the saving secured from the proportion of the type-setting and

editorial outlay charged to the English edition has enabled the American publishers to sell the book in this market much more cheaply than would otherwise have been practicable.

To summarize—the selling price of books depends not on the copyright, but on the requirements of the market and the extent of the market that is controlled by the author and his representative.

American buyers are accustomed to cheap books, and will not buy dear books, and the publishers are not likely to throw away their money by making dear books for which they could not find a sale.

The wider the markets and the greater the number of the editions between which the first outlays can be divided, the smaller the cost of each edition and of each copy, and the lower the price at which each copy can be and will be supplied.

With assured markets, and an assured control to authors and publishers of the results of their literary undertakings, there will be a great increase in the publication of international series, which will provide for American readers, at the lowest prices, satisfactory editions of the works of the leading writers of the world, American, English, and Continental.

NEW YORK, *March* 15, 1890. G. H. P.

XXV.

"COPYRIGHT," "MONOPOLIES," AND "PROTECTION."

Reprinted from *The Literary World*.

To the Editor of the Literary World:

The writer of an editorial in *The Literary World* of January 7th (a number which, owing to a mischance, has only to-day reached my desk), in referring to the organization of the Boston Copyright Association, speaks of copyright as a "species of protection." The words used are:

"For what is copyright but a species of protection? and what is international copyright but a bulwark erected by protection against free trade? From this point of view the spectacle of President Eliot presiding [illegible] international copyright meeting one day and appearing the [illegible] as a sympathetic guest at an anti-tariff dinner is one to be pondered."

This "point of view" shows, as it seems to me, a confusion of thought based upon a misconception of the actual meaning of the terms "protection" and "free trade;" and as such misconception has before now stood in the way of a proper understanding of the grounds on which are based the claims of an author to the control of his productions, I think it worth while to ask you to give me space to correct

The difficulty is really due to the poverty of our

language, which uses the term "protection" to express two entirely different things, and the same is true of the terms "free trade" and "monopoly," which also have been largely misapplied in the discussion of questions of copyright. The "protection" for which the author asks is simply his portion of the benefit of the machinery organized by society for the defence of individual property against unauthorized appropriation. He is in the position of a gardener whose labor has produced a crop of strawberries, and who, in order to retain for his own use the results of his labor, asks for his share of the policeman.

In the sense, however, in which it is used in the article in question the term stands for something entirely different. The "protection" to which your writer was referring is the system under which one producer secures through legislation the imposition of a tax upon the labor of another producer, and by this means also secures the privilege of taxing indirectly (to the extent of any increase caused by such taxation in the average selling price) all the consumers of the things produced.

The author, however, asks for no legislation of this kind. In securing copyright for his *History of the United States*, Professor McMaster secures simply the control of the sales of his own work. He does not ask the government to further the sale of his history by putting a tax upon the production or the sale of any other history of the United States, for instance, that written by the foreigner Von Holst. The production of future histories of the

United States, by American or foreign writers, is not going to be impeded by any privilege conceded to or demanded by McMaster. In like manner the conceding to Justin McCarthy, under an international copyright, of the control of his *History of Our Own Times*, would, of course, in no manner have stood in the way of the production of any number of competing histories covering the same period.

Mr. Henry Carey Baird takes the ground that there is no propriety in giving to Von Holst the privilege of making money out of historical facts and records which are the common property of all Americans. Mr. Baird forgets, however, that these facts and records are as much common property after the publication of Von Holst's history as they were before. Von Holst's privilege of copyright (if conceded) has not enabled him to diminish in any way the common stock of facts (as the nation's stock of acres is diminished, for instance, by the grants to the Pacific railroads). The stock of historical facts available for the use of future writers has, indeed, actually been increased by Von Holst's researches and labors. It is evident, therefore, that copyright gives to the writer no property in facts or ideas, but simply permits him to control the special form in which he presents these facts and ideas, and it is for this form only, and not for the ideas themselves, that he asks "protection."

The "free trader," in the accepted signification of the term, and the person who is opposing copyright and talking about "free trade in books," are

two very different individuals. The former claims for each producer the liberty to do what he will with that which he has produced, such liberty including the right to procure in exchange for the same (subject only to the taxes necessary for the support of the government and for his share of the policeman) the products of any other producers, whether fellow-citizens or not. He wishes, for instance, to purchase with money made out of wheat a ship built on the Clyde, and he would be free to apply in this way the results of his labor and thus to secure further proceeds from these results if it were not for the existence of an objecting individual or group of individuals in Maine or Pennsylvania. The man who talks about "free trade in books," however, meaning thereby the right to appropriate what another has produced, aims to obtain certain proceeds which he could not have secured but for the existence and the labor of another man, namely, the author of the material to be appropriated

In like manner the opponent of any international copyright, or the supporter of the misleading Pearsall-Smith scheme of "open publishing" (which may be appropriately classified as "copywrong"), describes as a "monopoly" the right of an author to control the sale of his productions. The dictionary justifies him in such use of the word, which means, of course, "single sale," or sale controlled by a single person. The term is, however, at present, in its general use associated with something very different, and its application to copyright is misleading and unjustifiable.

The popular understanding of the term "monopoly" covers the appropriation, under legislation, by an individual or a group of individuals, of some portion of the property of the community or of the facilities belonging to the community, which, if it were not for such legislation, would remain free to all. In this sense a Pacific railway, to which has been conceded the sole use of a route across the continent and the fee of some thousands of acres of public lands, is a monopoly; a horse railway, with a charter for the exclusive use of certain public highways, is a monopoly; and a telephone company, with a patent under which it prevents the construction of other telephones, and with privileges, thus made exclusive, for the use of its wires, of traversing both public and private property, is a monopoly. The control of a book by the man whose labor has produced the book is not a monopoly, for the existence of such a book does not in any degree stand in the way of the production and sale of any number of books of the same character, and addressed to the same class of readers, and its production has in no degree lessened the extent of the facilities or of the property belonging to the public.

The importance of securing at this time, when international copyright is a matter of pending legislation, the widest possible understanding of the grounds upon which rests the claim of the author to the control of his productions, is my excuse for troubling you with this letter.

NEW YORK, *January* 30, 1888.

XXVI.

SUMMARY OF THE EXISTING COPYRIGHT LAWS OF THE MORE IMPORTANT COUNTRIES OF THE WORLD (January, 1896.)

1. *Argentine Republic.*—No statute for the protection of intellectual property has as yet been enacted. Article 17 of the Constitution of 1860 declares that property is to be held inviolable, and that no citizen shall be deprived of the same except by process of law. The article proceeds to state that each author and inventor is the exclusive proprietor of his production or invention during the term specified by the law, but the law itself is yet to be enacted. In its absence, authors and artists secure a quasi-protection under certain provisions of the civil code. The penal code of 1880 contained a provision for the prohibition of literary piracy, with a penalty for infringement of from $25 to $1000. In the code of 1887 this provision was, however, omitted.

2. *Austria* (Empire).—Law of 1895. Literary and artistic works, published during the life of the author, term, during author's life and thirty years after his death: Works posthumous, or anonymous, or published under a pseudonym, thirty years from the date of the first publication. Publications of learned societies recognized by the Government, fifty years from the date of the first publication; right of the Government reserved to extend this term by special privileges in favor of important works of science and art. Exclusive rights of translation reserved to the author, on condition of the publication being simultaneous with that of the original; in the contrary case, free right of translation permitted after the delay of one year. Free right of arrangement of musical airs, at the expiration of one year. Exclusive right of artistic reproduction reserved

to the artist, but on condition of reproducing the work within two years; in contrary case, free right of reproduction. Dramatic and musical representations, performed during the life of the author: copyright term, during his life and thirty years after his death. Works posthumous, anonymous, collaborated, or published under a pseudonym, thirty years from the date of first representation (term increased, in 1894, from ten years). *Interstate conventions*, Germany, 1867 and 1870; Italy, 1890; France, 1866; Great Britain, 1893.

3. *Belgium* (Kingdom).—Law of 1886. Works of literature and of art, published during the life of the author, protected for his life and for fifty years thereafter. (The previous term was for life and for twenty years.) Posthumous works, fifty years from date of issue or for works of art, from date of first exhibition. A work of collaboration is protected for fifty years from the death of the surviving collaborator. The author and his representatives have full control of the rights of translation and dramatization. The provisions of the law are applicable to residents as well as to citizens. The condition of priuting in Belgium which obtained in the previous law is annulled. Belgium was a party to the Berne Convention, and is in copyright relations with the United States under the Act of 1891. Deposit of three copies—one for the national library and two for the communal administration.

4. *Bolivia* (Republic).—Law of 1879. Term, life of the author and fifty years. Deposit of three copies—one with the Minister of Public Instruction, one with the governor of the district, one with the national library. Concedes copyright to foreigners under reciprocal conditions. Registration without charge. A party, since 1889, to the Convention of Montevideo.

5. *Brasil* (Republic).—Law of 1890 (enacted under the Empire). Terms for literary and artistic works, published during the life of the author, life of author and ten years thereafter. Works published by societies and corporations, ten years from the date of the first publication. A party since 1889, to the Convention of Montevideo.

6. *Canada*.—Term, forty-two years from date of publication. Deposit of two copies. Requirements (with certain noteworthy exceptions) of manufacture within the Dominion. Authority vested in the Minister of Agriculture to license the publication of Canadian editions, under certain conditions. (See further summary on page 467 *et seq.*)

7. *Chili* (Republic).—Act of 1834. Term, for literary and artistic works published during the life of the author, for his life and for five years after his death. Posthumous, ten years from first publication. For works published in Chili by a foreigner, ten years from first publication. Deposit of three copies in the library of Santiago, obligatory. Right of the Government to extend these terms. Term, for dramatic and musical representations performed during the life of the author, for his life, and for five years after his death. Posthumous works, ten years from the date of the first representation. Right of the Government to extend these terms. Has accepted the Interstate Convention of Montevideo.

8. *China.*—In theory, copyright is perpetual. There is, however, no statute on the subject, and in practice the protection of a literary production is hardly practicable. The author of modern times is usually his own publisher. In case of piracy the usual penalty is eighty blows with a stick and confiscation of the piratical production. The protection of the magistrates can however be claimed only for works of "pure literature" or of poetry. Authors of political works or of romances can claim no privileges, and are in fact liable to punishment. The sole dependence for the author is the intelligence and equity of the local magistrates. (Tcheng-Ki-Tong. Cited by Lyon-Caen.)

9. *Colombia.*—Law of 1886, based on that of Spain of 1879. Term, life of the author and eighty years thereafter. Deposit of three copies, one with the Minister of Public Instruction and two in the national library.

10. *Costa Rica.*—This State was represented at the Berne Convention but did not become a party to the same. No copyright statute has yet been enacted. In 1887, a provisional agreement was entered into with the four other States of Central America for the recognition of property in literary and art productions.

11. *Denmark.*—Law of 1868. Term, for literary works published during the life of the author, during his life and for fifty years thereafter. (Formerly life and thirty years.) Anonymous, collaborated works, and works published under a pseudonym, fifty years from date of publication. Art works published during the life of the author, for his life and for thirty years thereafter. Dramatic and musical works first represented during the life of the author, for his life and for thirty years thereafter. The control of the author terminates however, if no representation of the work has been made

during the five years. Interstate conventions. Admission of the principle of reciprocity. Convention with France in 1866, with the United States in 1891.

12. *Ecuador.*—Law of 1887. Term, life of the author and fifty years thereafter. Deposit of three copies, one for the library of the province, one for the national library, and one for the Minister of Public Instruction.

13. *Egypt.*—No general law has yet been enacted. Cases of copyright are decided by the judges "according to the principles of natural art and the rules of equity." On this basis, the Court of Appeals in Alexandria has, since 1887, given several decisions in favor of the protection of productions in art, music, and literature. In these decisions no term of copyright has been specified or referred to. They may, therefore, be compared to the decisions in the English courts, prior to the statute of 1710, under which decisions copyright was assumed to exist under the common law and in perpetuity.

14. *Finland* (Grand Duchy).—Act of 1880. The term is for the life of the author and fifty years thereafter. Privileges of copyright extended not only to citizens but to residents who make publication in the country. Deposit of two copies. The law is in substance identical with that of Russia, but differs in certain details.

15. *France* (Republic).—Act of the Corps-Legislatif (of the Empire), of July 14, 1866, approved by Napoleon, Emperor. The duration of term of copyright, accorded under previous legislation, for the works of authors, artists, and composers, is extended from the lifetime of the author and thirty years, to the lifetime and fifty years, whether for widow, children, direct heirs, indirect heirs, legatees, or assigns. In the cases in which the estate of the deceased author becomes the property of the State, the copyright is terminated with the death of the author, and the work falls into the public domain. Works published posthumously are subject to the same term of copyright as obtains for those published during the lifetime of the author. Authors who are citizens or residents of other States enjoy, for works first published in France, the same rights and term of copyright as those given to French authors. (This provision is met by simultaneous publication.) Two copies of all works copyrighted must be deposited at the Ministry of the Interior, or (for transmission) at the prefectures of the departments. The same regulations and the same term of copyright apply in the cases of works of art.

The term of copyright is also the same for dramatic and musical compositions, and no representation of such compositions can be given without the written permission of the authors or composers. The conditions of international copyright have been, since 1887, regulated by the provisions of the Convention of Berne. In addition to the States with which it is in relation through the Berne Convention, France has entered into literary conventions with the following states which are not parties to the Berne Convention: Austria, Hungary, 1886; Bolivia, 1888; Holland, 1856; Mexico, 1886; Portugal, 1866; Russia, 1861 (this convention was cancelled by Russia in 1887 and has not since been renewed); Salvador, 1880; Sweden and Norway, 1884; United States, 1891.

16. *Germany.*—Law of the Empire, June 11, 1870. This law applied to all the states of the Empire except Bavaria. It was applied to Bavaria January 1, 1872, and to Alsace-Lorraine, January 1, 1873. Registration of copyright is made at Leipsic. Deposit of a single copy. Term, for literary and artistic works published during the life of the author, is for his life and thirty years thereafter. Posthumous and anonymous works and works published under a pseudonym, thirty years from the date of the first publication. Publications of learned societies, thirty years from the date of first publication. Dramatic and musical productions, ten years from the first representation, provided the work represented has not before been printed. No protection is given under this heading for anonymous productions. The Empire is a party to the Berne Convention. On January 15, 1892, a copyright convention was completed with the United States under which Germany accepted the provisions of the American Act of 1891. Under this convention, the citizens of the United States possess in Germany the same privileges that belong under the German act to the citizens and residents of the Empire. In like manner, the privileges possessed in the United States under the American act by American citizens and residents are extended to the citizens of Germany. The criticism was at once made in Germany, and has since been repeated with increasing acerbity, that this arrangement did not constitute an equitable reciprocity, and was much to the disadvantage of the German producers of copyright property. The provisions in the American law making copyright conditional on simultaneous publication and on the manufacturing of the work in the United States, place serious obstacles in the way of German writers desiring to secure for their works American copy-

right. Similar complaints are being made with equal justice on behalf of the authors of France and Italy. The condition of simultaneous publication, while creating occasional differences in the case of English authors, becomes of necessity much more serious when arrangement must be made not only for publication and for printing but also for translating.

17. *Great Britain.*—The law at present in force in Great Britain is in substance that enacted in 1842. While this law has been amended in certain of its details, the main provisions, including the term of protection for literary property, remain as in the original act. A summary of the existing laws together with the digest prepared by Sir James Stephen, will be found in a previous division of this volume. The term of copyright covers the life of the author and seven years thereafter, or a period of forty-two years from the date of publication of the work, whichever term be the longer. A deposit of five copies is required, one for the British Museum, and one for each of the four libraries designated in the Act. Registration is not compulsory. Great Britain is a party to the Berne Convention. In addition to the states with which it is in relation through the Berne Convention, Great Britain has entered into literary conventions with the following, which are not parties to the Berne Convention: Austria-Hungary, 1893; Brazil, 1884; Dominican Republic, 1894; Mexico, 1893; Netherlands, 1884; Netherlands, East India Colonies, 1888; Netherlands, Curaçoa, Surinam, etc., 1890; Paraguay, 1886; Portugal, 1884; Servia, 1884; Sweden and Norway, 1895; Uraguay, 1886; United States, 1891.

18. *Greece* (Kingdom).—Law of 1833; amended in 1867. Literary and artistic works, term, fifteen years from the date of first publication. Right of the Government to extend this term. Admission of the principle of reciprocity. Deposit of two copies.

19. *Guatemala* (Republic).—Law of 1879; copyright is recognized under this law as existing in perpetuity for the author, the heirs of the author, or their assignees.

20. *Hawaii* (Republic).—Law of 1888 (enacted under the kingdom). Term, twenty years from the date of publication. Deposit of one copy. Registration fee of $5 to be paid to the Minister of the Interior.

21. *Hayti* (Republic).—Law of 1885 Term, for the life of the author, and if the copyright be inherited by the children of the author, for twenty years thereafter. If the inheritance goes to heirs

other than children or to assignees of the author, the term is for ten years from the author's death. Deposit of two copies. A party to the Convention of Berne.

22. *Holland* (Kingdom).—Law of 1881. Term, for printed works printed within the lifetime of the author, fifty years from date of publication of first edition (former term, life of the author and twenty years). Obligation to print the work within the kingdom and to deposit two copies with the Minister of Justice. Term, for works not printed during the life of the author, thirty years from the date of his death. Conventions with Belgium, 1858, and with France, 1855, 1860, and 1884.

23. *Hungary* (Kingdom).—Law of 1887. Term, life of the author and fifty years thereafter. Posthumous works, fifty years from the death of the author. Residents other than citizens who make first publication in the country are entitled to the privileges of the law. Deposit of two copies with the Minister of Agriculture.

24. *Honduras* (Republic).—The Civil code of 1880 contains the declaration that the productions or inventions of the mind are the property of the producers. No copyright statute has as yet been enacted.

25. *Italy* (Kingdom).—Law of 1882. Works of literature and art published during the lifetime of the author: term, during his life and forty years from date of first publication. At the close of that term the works are open to publication; but during the second term of forty years, the publishers must pay to the owner of the copyright a royalty of five per cent. Term for musical and dramatic compositions, eighty years from the first presentation. Exclusive right of translation reserved to author, and of reproduction to the artist, for a term of ten years. Deposit of two copies with the Prefect of the Province. Publication of the State and of learned societies: term, twenty years from the date of issue. The term for musical and dramatic compositions, the same as for works of literature; such compositions, are, however, open to any one to produce or present on the payment of a royalty or proportion of profits. International conditions subject to the Convention of Berne. Copyright relations with the United States since October 31, 1892, under the Act of 1891.

26. *Japan* (Empire).—Act of 1887. Term, life of the author and five years thereafter, or thirty-five years from the date of publication (whichever term be the longer), for works of literature, art, and music. Fee for registration, the equivalent of the price of six copies of the work. Term, for photographs, ten years from date of registration.

The Government has under consideration (December, 1895) acceptance of the Convention of Berne.

27. *Luxembourg* (Grand Duchy).—Act of 1817. Term, life of the author and twenty years. Has accepted the Convention of Berne.

28. *Mexico* (Republic).—Act 1871. The copyright of new literary productions is made perpetual (the former term having been life of the author and ten years thereafter), and the author possesses the same rights in regard to its assignment and alienation as obtain in the case of material property. The heirs and assigns succeed to the full rights of the original producers, retaining control in perpetuity. In case the author, having assigned the copy of a work, has later reshaped such work, making changes that are "substantial and material," he will be at liberty, as if it were a new work, to control the copyright of the same, without prejudice, however, to the ownership of the copyright of the work as first issued. The term of a dramatic production, covering stage rights, is for the life of the author and thirty years. Of works of literature and of art a deposit of two copies is required, one in the national library, and one in the archives of the Minister of Instruction. Works of art may be deposited in the form of a photograph or reproduction of the original design. Copyright is granted to residents as well as to citizens. The principle of reciprocity is accepted.

29. *Monaco* (Principality).—Ordinance of 1889. Term, life of the author and fifty years. A party to the Convention of Berne.

30. *Montenegro* (Principality).—Act of 1889. Term, life of the author and thirty years thereafter. Accepts the Convention of Berne.

31. *Norway* (Kingdom).—Act of 1876. Term, for works of literature and art, life and fifty years (former terms, life and twenty years).

32. *Paraguay* (Republic).—The law of 1862, passed under the rule of the Dictator Lopez, has fallen into desuetude, and the record and text of the Act have been lost. No statute is at this time in force.

33. *Peru* (Republic).—Law of 1849. Term, for literature and for art, life and twenty years thereafter. Posthumous works, thirty years from date of publication. Deposit of one copy in the national library.

34. *Portugal* (Kingdom).—Act of 1867. Term, for literature and for art, life of the author and fifty years thereafter. (Formerly, twenty years.) The term for a translation of a work, the original of which is out of copyright, covers (for the translator's version only) thirty years from date of publication. Publications of societies, fifty

years from date of publication. Works published in series, fifty years for each division or volume from date of publication of such division. Of works of literature, a deposit of two copies is required in the royal library in Lisbon; for a work of art one copy of a reproduction must be deposited in the Academy of Fine Arts. The term for posthumous works is twenty-five or fifty years from date of first publication, according to the class. The Government reserves the right to authorize for the service of the public, and in consideration of the payment of an indemnity to the owner, the publication of the abridgment of, or of extracts from, works which are still protected by copyright. Dramatic and musical representations performed during the life of the author, term, during his life and thirty years thereafter. Posthumous works, thirty years from date of first publication. Unless, however, there be stipulation to the contrary, each theatre, after the death of the author, is free to make presentation of his works on payment of a fixed honorarium. A remuneration is due to the Royal Conservatory for representing translated dramatic works which have fallen into the public domain. Admission of the principle of reciprocity. Conventions with Belgium, 1866; France, 1851 and 1860; Spain, 1860; and the United States, 1894.

35. *Russia* (Empire).—Exclusive of Finland. Act of 1857. Works of literature published during the life of the author; term, for his life and fifty years after his death (formerly life and thirty years). Posthumous works, fifty years from the date of the first publication. Learned societies, fifty years from the date of the first publication. Deposit of two copies, one with the Bureau of Censorship and one in the imperial library. The supervision of the copyright regulations rests with the minister or Intendant of the Palace (*Le ministre de la Maison*). The control of the censorship (upon which copyright is conditioned) is placed with the Bureau of Censorship. For scientific books, there is a special provision in the law under which the exclusive right of translation is reserved to the author with the condition that the announcement of the reservation be printed in the original volume, and that the translation be published within three years. Russian authors retain for their works first published in foreign countries the control of the Russian copyright. It is obligatory to make registration of works of art. The reproduction in sculpture of a design originally produced in painting or the converse is not considered to be an infringement of the artist's copyright. The author of a work of literature who prints notice of the reserva-

tion of such rights controls the dramatization of his production. Dramatic and musical representations can be made only with the consent of the authors or composers of the works. Convention with Belgium, 1862. A convention made with France in 1861 was cancelled in 1887. French, English, and German works are "appropriated" at the convenience of Russian publishers. There is, however, a considerable importation of the authorized editions of the current publishers of all three countries.

36. *Salvador* (Republic).—No copyright statute. The civil code of 1880 declares that the productions of the mind are the property of the producers.

37. *Servia* (Kingdom).—Copyright law similar in general terms to that of Austria-Hungary is at this time (January, 1896) under consideration.

38. *South African Republic* (The Transvaal).—Law of 1887. Term, fifty years from date of publication.

39. *Spain* (Kingdom).—Act of 1879. Term, life and eighty years (formerly life and fifty years), provided that the author is, at the time of his death, in possession of his copyrights, and provided, further, that he leaves direct heirs. In case the copyright has been assigned by the author, the assignee retains control for the life of the author and for twenty-five years thereafter, after which term it reverts to the heirs, who have control for a further term of twenty-five years. This term covers the cases of original works in literature and art. collections of discourses and translations (in verse) of original works in modern languages, published during the life of the author. For discourses, sermons, and newspaper articles that are not united in collections published during the life of the author, the term is for his life and twenty-five years thereafter, but with no exclusive privilege of translation. Anonymous works and those published under a pseudonym, term, during the life of the editor, and for fifty or twenty-five years after his death, according to the class of the work, as above. Works of learned societies, fifty years from date of the first publication. Unedited MSS., twenty-five years after the date of the first publication. Posthumous works, fifty or twenty-five years after date of first publication, according to the class. The Government reserves the right to authorize, "for the service of the public," the publication of abridgments of, or extracts from, works constituting private property, in consideration of an indemnity. Deposit of three copies is required, one for the library of the Province,

one for the Minister of Instruction, and one for the national library. Spanish authors retain the right of property in works originally published by them in foreign countries. The term for representations, dramatic and musical, performed during the life of the author, is for his life and twenty-five years thereafter. The term of copyright instituted by Spain is the longest adopted in any State excepting Mexico and Venezuela. Spain is a party to the Berne Convention, and has also entered into international copyright relations with the United States, under the Act of 1891. It has conventions in force with Holland and with Portugal.

40. *Sweden* (Kingdom).—Act of 1877. Term, for works of literature, life and fifty years (formerly life and twenty years); for works of art, life of the producer and ten years.

41. *Switzerland* (Republic).—Act of 1883. Term, life of the author and thirty years (formerly life or thirty years, whichever term were the longer). Swiss authors retain their property rights for Switzerland in works originally issued in foreign lands, on condition of their making registration of the same and of depositing a copy in the national library. Switzerland is a party to the Convention of Berne, and has copyright relations with the United States dating from July, 1891.

42. *Tunis* (Principality).—Law of 1889. Term, the life of the author and fifty years. A party to the Convention of Berne.

43. *Turkey* (Empire).—Firmans of 1872, 1875, 1888. The legislation of Turkey still retains for the protection of literary property the mediæval system of privileges. The author secures on application, a protection for his work for life or for a term of forty years from the date of publication. Copyright for the unexpired term can be assigned or bequeathed. The right to control a translation must be specified. The term for the translation is twenty years from the date of publication. An authorization for publication (constituting a censorship's permit) must be secured from the Minister of Instruction. Deposit of two copies, one for the Minister of Instruction and one for the Government of the Province.

44. *Uruguay* (Republic).—No copyright statute as yet enacted. The civil code of 1868 declares that the productions of the mind are the property of the producer.

45. *United States* (Republic).—Law of July, 1870, and March, 1891, amended, March, 1895. (For details of these statutes see separate chapter.) The term for works of literature and for works of

art is for twenty-eight years from the date of registration and publication. If at the end of that term the author or the author's widow or children be living and an application is made for the purpose, the copyright is extended for a further term of fourteen years, making forty-two years in all. Under the Act of 1891, the United States has entered into copyright relations in July 1891, with Belgium, France, Great Britain, and Switzerland; in 1892, with Italy; in 1893, with Portugal and Denmark; and in 1895, with Spain. In 1892, a copyright convention or treaty was put into effect with Germany.

46. *Venezuela* (Republic).—Act of 1880. The term is in perpetuity for the author and his heirs. (Previous term, life and fourteen years.) If the copyright has been assigned, the control of the producer ceases twenty-five years after the death of the author, and the property reverts to the heirs for perpetuity. A deposit of four copies is required, one for the local institute of the province, one for the Minister of Instruction, one for the library of the University of Caracas, and one for the Academy of Venezuela. A party to the Convention of Montevideo.

It will be noted from the above summary that practically all the literature-producing States of the world have now in force measures for the protection of literary property. The Argentine Republic is in fact the only country with any considerable educated population in which no copyright statute has yet been enacted. The state with the shortest term of copyright is Greece, and next to Greece comes the United States. The states giving protection in perpetuity are Mexico and Venezuela. The states giving the longest statutory term of protection are Spain and Italy. There has been during the past twenty-five years a steady tendency for the increase of the term of the copyright. The term that is now accepted by the majority of the states of Europe is the life of the author and fifty years thereafter. The theory of this term is that it gives to the author an incentive for producing property for the enjoyment of his children and his grandchildren, with the possibility also of future enjoyment by the great-grandchildren. Beyond that term, the interest of the public at large in securing the widest distribution, at the least cost, of literature of permanent value, is assumed to offset such attenuated interest as an author may be supposed to retain in the remote progeny beyond the

generation of his grandchildren. The steps that are now being taken to extend the term of copyright in Great Britain, the country in which, as in the United States, the present term is very much shorter than has been accepted as equitable for the rest of Europe, are specified in a preceding chapter. I trust that it may be practicable in later editions of this volume to make reference to some similar efforts for the extension of literary property in the United States.

XXVII.

THE STATUS OF CANADA, JANUARY, 1896.

THE position of Canada in regard to its copyright relations with Great Britain and with the States with which the British Government has entered into copyright conventions, has for some years been an anomalous one. The authorities of the Home government have heretofore maintained that copyright was a matter belonging to imperial control, and that the British copyright legislation and the British conventions with foreign states were to be held as binding upon all the territories and colonies of the Empire. With this understanding, the representatives of Great Britain at the Convention of Berne accepted the provisions of that Convention for Great Britain and for all the British colonies. The Dominion of Canada has, however, declined to be bound by the action of the Home government. It is the Canadian view that both copyright and patent-right are matters which belong properly within the control of the Dominion. Acting on this contention, the Dominion government gave but a provisional assent to the Convention of Berne, reserving the right to

withdraw after a year's notice, and such notice has since been given.

The House of Lords held in 1868, in the case of Routledge *vs.* Low, that a copyright existing in the United Kingdom, is valid throughout all parts of the British dominions, even though there may be colonial statutes dealing with the same subject. Under the colonial copyright act of 1847, known as the Foreign Reprints Act, it was provided that upon a British possession passing an Act or ordinance sufficient for the purpose of securing to British authors reasonable protection within such possessions, it should be lawful for her Majesty, by an Order in Council, to declare the prohibition against the importation of foreign books suspended for such territory. This provision became applicable to Canada in 1858. After that date, reprints from the United States of English copyright books could be imported into the Dominion on the payment of an import duty of 12½ per cent., the receipts from which duty were to be transmitted to the several authors concerned. According to the testimony of the English authors, however, their receipts from this source have been very inconsiderable. This duty has since been changed to one of 12½ cents per pound.

In 1889, a copyright act was passed by the Legislature of the Dominion of which the main provisions were as follows:

1. The control of the copyright of works of literature or of art was given for a term of twenty-eight years to residents of the Dominion or of any portion

of the British Empire, subject to the conditions specified.

2. The work so copyrighted must be printed or produced within the territory of the Dominion, within one month after the date of production in the country of origin, and must be duly registered in the office of the Minister of Agriculture.

3. In case within this term of one month no Canadian edition should be produced by the author or his representative, the work shall be opened to production by any Canadian resident who shall obtain a license for the purpose from the Minister of Agriculture.

4. A license was to be granted to any applicant who should agree to pay to the author or to his representatives a royalty of ten per cent. on the retail price of each copy printed or issued, and who should give to the Minister of Agriculture satisfactory security for such payments. Such license was to convey no exclusive rights to the work, and was not to prevent the importation of any other authorized editions.

The British authors made strong and continued protests against an Act which would take out of their hands the privilege of selecting their own publishers for the Dominion, and which was likely to work mischief with their relations with the publishers of their authorized editions in the United States. After the American Act of 1891 had secured for British authors copyright in the United States, their opposition became still more determined against a measure which was certain to bring their American copyright

into peril. The Imperial government refused to give its approval to the Canadian Act, and after an acrimonious correspondence between the Canadian authorities and the Colonial office, which extended over a number of years, the Act was, in 1895, finally withdrawn.

In 1895, at the instance of Mr. Hall Caine and of Mr. F. R. Daldy, who came to Canada as the representatives of the Colonial office and of the British Society of Authors, a new act was framed in Ottawa which is expected to secure the approval of the British Government, and which will in that case go into effect in 1896. Its chief provisions are as follows:

1. The work securing Canadian copyright must be printed in the Dominion, but the importation of plates is permitted. (In the American Act such importation is prohibited.)

2. The term is made forty-two years from date of publication.

3. The registration in Ottawa must, for a book not originating in Canada, be made simultaneous with the registration in the country of origin.

4. Three copies of the copyrighted book must be delivered at Ottawa.

5. The Canadian edition must be produced within sixty days of the date of registration, but the Minister of Agriculture may, for sufficient cause, allow an extension to ninety days.

6. From the day of registration, the importation of copies of any edition other than one produced within the United Kingdom must cease. Copies of

a British edition can continue to be imported during the term of sixty or of ninety days within which term the Canadian edition must be in readiness.

7. Copyright can be secured in Canada by the citizens of any country which grants copyright to citizens of the British Empire.

8. The English or foreign author, or his representative (usually, of course, the English, American, or Continental publisher), has the option either of himself producing the Canadian edition, or of leaving such edition to be produced by a Canadian publisher, acting under a license.

9. In case, within the term specified, no edition has been produced by the author's representative, the Minister of Agriculture shall be at liberty to issue a license to a Canadian applicant, but not more than one license shall be in force at any one time. The licensee shall pay to the author through the Department of Inland Revenue, a royalty of ten per cent., making payment in advance on the printing of such edition, the editions thus paid for to comprise not less than 500 copies. Each copy on which royalty has been paid is to be stamped by the Department of Inland Revenue.

10. Copyright books going out of print must be reprinted within sixty days, otherwise a license may be issued.

11. Books published under license are to be printed within thirty days after issue of license, but the Minister may for adequate cause allow an extension of thirty days.

12. An author has the privilege of arranging for

exclusive serial publication in Canada, and if he fail so to do, application may be made to the Minister for a license to publish serially. Serial license carries with it no right to publish the material in any other form.

The draft of the Act which is before me at the time this summary is being prepared for the compositor, makes no specification concerning the status of books for which no Canadian editions may have been arranged, either under the author's instructions, or (in the absence of such instructions) under a license from the Minister of Agriculture. It is evident that, in the ordinary course of trade, but a small percentage of the current publications of each year can be available for Canadian editions, as it is only the exceptional work that can be made to pay in an edition printed for so small a reading public as that of Canada. In the absence of any specific provision for such books, I can only assume that their status will be as at present; and this understanding is confirmed by Mr. Caine's analysis which follows.

If, therefore, no Canadian edition may have been printed under the provisions of this Act, a work which has been copyrighted in Great Britain, or which has secured British copyright under the Berne Convention, under the American act, or under any other interstate convention, will be entitled to copyright protection within the Dominion. For such books, the right to secure a license for a Canadian edition will, however, continue. After the publication of such licensed edition, however long such publication may be deferred, the importation of the

English or American edition must, under the provisions of the present act, be prohibited. I judge, however, that it will in practice prove very difficult to enforce such prohibition in the case of books the importation of which has continued during any successive seasons.

It is probable that the full bearing of the Act will not be understood until the courts have had opportunities of passing upon its provisions.

In January, 1896, a memorial was formulated by representatives of various associations in France interested in literary and artistic copyright, protesting against the approval by the British Government of any Canadian act which made Canadian manufacture a condition of copyright. It was the conclusion of these remonstrants that if such a law should go into force, it would be necessary to exclude Canada from the Berne Convention. This French contention seems to me to be well founded. I judge, however, that Canada will probably elect to be excluded from the provisions of the Berne Convention rather than to give up the right of making printing in Canada a condition of Canadian copyright.

Mr. Caine gives the following analysis of the provisions and of the probable working of the proposed Act:

1. Such an Act would be limited in its operation to the works of the popular authors. This would meet one of the objections of Mr. Goldwin Smith to the clause requiring that a book should be printed in the Dominion.

2. If a book would not pay to print and publish

in Canada, it would not therefore fail of copyright there. The original edition could go into the Dominion, as at present, during the whole term of its copyright in the country of its origin. This would meet the case described in the valuable letter of Mr. Herbert Spencer.

3. Though a new writer might lose his copyright in America by failing to comply with the American Copyright Act, he would not on that ground lose his copyright in Canada, where he would hold it absolutely until the end of his term.

4. Such an Act would not exclude from Canada the English book which had been copyrighted in the United States but never registered or licensed in the Dominion, but it would exclude the American reprint of a book which had been registered or licensed, and it would also exclude the English colonial reprint, which was meant to meet a condition that is gone—the condition of general piracy in the United States—and would then be useless and mischievous; and it would also exclude the English edition after the publication of the Canadian edition.

5. Our understanding with the United States would not be endangered, because American authors would enjoy the same privileges and be under the same obligations as English authors.

6. Such an Act would not imperil the great advantages to English authors of American copyright, because it would put it within the author's control (both under the condition of registration and under the condition of license) to see that his American market could not be injured in Canada.

7. Such an Act should not be inconsistent with the spirit of the Berne Convention. As the excellent report of the departmental representatives (1892) very properly says: "The Convention merely stipulates that foreign copyright owners are to be entitled to the same rights and privileges as British copyright owners, and if the rights of British copyright owners are cut down by such licenses, foreign copyright owners are not entitled to complain of their rights being cut down to a similar extent.

8. Such an Act ought to enable the Dominion Government to withdraw its application to denounce the Berne Convention, and so to remove the danger under which Canadian authors now stand of being put into a position of isolation.

9. The interposition of a Government department (the Department of Agriculture) in the publishing industry of Canada—now perplexed by the uncertainties of the Foreign Reprints Act, and threatened with the intricacies of the proposed legislation of 1889—would be confined to a single and simple transaction, which would probably be the less frequent form of arrangement.

G. H. P.

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