THE LAW OF COPYRIGHT.

THE

LAW OF COPYRIGHT.

BY

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"O IMITATORES, SERVUM PECUS!"

HOR. I. *Ep.* 19, 19.

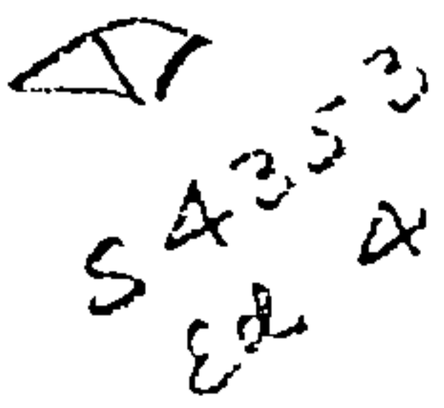
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PREFACE.

THE publication of this Edition has been delayed in the hope that Parliament might undertake a systematic revision of the Copyright Laws. This was recommended by the Copyright Commission in 1878, with no substantial result. Of late years authors, artists, and publishers, have combined to press upon Parliament and the Government reform and codification of the numerous and ill-drawn Acts which deal with various branches of the Copyright Law. A Committee of the House of Lords took a great deal of evidence, and gave much trouble to the drafting of separate Bills for Literary and Artistic Copyright, and a Literary Copyright Bill was mentioned in the Speech from the Throne; but nothing further has happened, or seems likely to happen. Musical publishers, whose property was being destroyed, owing to the failure of Parliament to protect, against impudent thieves, the property it had created, took the law into their own hands; and a series of fights in the public streets forced Parliament to pass, with considerable opposition, a measure which gave some, but an inadequate, protection to musical property. Now that it has been decided that, while there is no machinery for

ascertaining the name and address of a street hawker, you cannot get an order for destruction of the pirated songs that hawker is selling with knowledge they are pirated, unless you serve a summons, addressed to him by name, on him, or at his address, there is presented a striking object-lesson of the difficulty of getting Parliament to extend to Literary and Artistic Property the protection they would hasten to afford to pheasants, were they threatened.

The most noteworthy decision since the publication of the last edition of this work in 1896, has been the much-discussed case of *Walter* v. *Lane*. Probably no case of recent years has given rise to more animated differences of opinion, both among lawyers and laymen not ordinarily interested in legal decisions. The House of Lords has spoken, and the law is established. But for its decision, it would seem startling that a person should be the author of a work, to which he has contributed neither the words, nor their arrangement, nor the ideas contained in them, when his only relation to that work is that he has correctly copied from dictation the language of the speaker who composed the thoughts in words. The so-called author shares his authorship with the mechanical phonograph, but under the protection of the House of Lords acquires a property in his copy from dictation.

Another gap in the copyright laws was discovered when it was found that the owners of mechanical pianos might make profit out of the sale of rolls, from which copyright musical compositions could be reproduced, without paying a penny to the authors or owners of

the copyright in the music they appropriate for their own profit.

It is a slight consolation for this defect that it has been laid down that the Sculpture Acts apply to toy soldiers.

I have been much assisted in the preparation of this edition by the labours of my friends, Mr. A. B. Laugridge, of the Middle Temple, and Mr. F. D. Mackinnon, of the Inner Temple.

T. E. S.

3, Temple Gardens,

January 15*th*, 1903.

ADDENDUM.

In *Graves* v. *Gorrie* (32 Ontario R. 266; 1 Ont. 309; 3 Ont. 697) the Canadian Courts have decided that the English Statute of 1862 (25 & 26 Vict. c. 68) does not protect English copyright pictures from infringements in the Colonies. This case is under appeal to the Privy Council.—*Note* at p. 211.

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THE LAW OF COPYRIGHT.

INTRODUCTION.

BEFORE the year 1709, when the Statute of Anne (*a*) was passed, Copyright, or the exclusive right of multiplying copies of a literary or artistic work already published, if it existed at all in the English law, did so by common law, for there was no statutory foundation for such a right. Whether such a common law right existed is now a question of purely historical interest (*b*); for since the decision of the House of Lords in *Donaldson* v. *Beckett* (*c*), it has been clear law that after publication copyright can only exist by virtue of some statute. Before publication there is a common law right of restraining publication which has the same effect as copyright (*d*); after publication, the statutes alone are material. The work for which copyright is claimed may be communicated to the public in various ways, and in the English law each method of communication is treated in a separate statute. Thus books (*e*), plays, which may be either represented or printed (*f*) lectures, which may be both orally delivered and printed (*g*),

(*a*) 8 Anne, c. 19.
(*b*) See Chapter I. below.
(*c*) (1774) Brown, Cases in Parliament, p. 129; p. 37, *post*.
(*d*) Chapter II., *post*.
(*e*) 5 & 6 Vict. c. 45, and Chapter VI., *post*.
(*f*) 3 & 4 Will. IV. c. 15; 5 & 6 Vict. c. 45; Chapter IV., *post*.
(*g*) 5 & 6 Will. IV. c. 65; 5 & 6 Vict. c. 45; Chapter III., *post*.

engravings (*h*), sculptures (*i*), paintings, drawings and photographs (*k*), and music (*l*), have each a separate statute or statutes to establish and regulate copyright therein. These statutes are without exception of most involved and inartistic draftsmanship, and present to the Legislature a suitable, even an urgent, case for codification, though little has been done to attain this desirable end since the Report of the Copyright Commission in 1878. Valuable work has been achieved in the Committee of the House of Lords, presided over by Lords Herschell and Monkswell, in the sessions of 1898, 1899, and 1900, but the Government appears unable to find time to consider the bills which the Committee has drafted.

English statutes deal with copyright in the United Kingdom; some of their provisions extend the right to works produced in the colonies, and also confer colonial rights on works produced in the United Kingdom (*m*).

A system of international copyright has also been established by means of English legislation and Orders in Council, embodying and giving effect to conventions on the subject with foreign nations. Under their provisions works produced in the British dominions enjoy copyright in the foreign countries which are parties to such conventions, and works produced in those foreign countries may obtain copyright in the British dominions (*n*).

(*h*) Chapter VII. Section I., *post*.
(*i*) Chapter VII. Section II., *post*.
(*k*) 25 & 26 Vict. c. 68, and Chapter VII. Section III., *post*.
(*l*) Chapter V., *post*.
(*m*) Chapter VIII., *post*.
(*n*) Chapter IX., *post*.

CHAPTER I.

HISTORY OF THE ENGLISH LAW OF COPYRIGHT.

Introduction.—Questions at issue.—Copyright before Statute of Anne. —Early days of printing.—Royal privileges.—History of Stationers' Company.—Registers of Stationers' Company.—Resistance to the Company.—Sources of the sole right of printing in 1623.—History, 1625–1643.—Decree of 1637.—Protest of Authors: Ordinance of 1643.—Ordinances of Long Parliament.—Licensing Act of 1662.—Position of Literary Property in 1660.—Statutory protection ceases.—By-law of 1681.—Charter of 1684.—By-law of 1694.—Recapitulation of period previous to 1710.—Cases prior to Statute of Anne.—Result.—Statute of Anne.—Result of Statute of Anne.—Cases under Statute of Anne.—*Miller* v. *Taylor*.—*Donaldson* v. *Beckett*.—Effects of *Donaldson* v. *Beckett*. —Subsequent legislation.—Talfourd's Bill.—Act of 1842.—*Jefferys* v. *Boosey*.—Colonial Copyright: Commission of 1875.—Recapitulation of history.—Common Law Copyright.—Answers to questions.—History in other countries.

Introduction.

BEFORE dealing with the law as it exists at the present day, the History of the English Law of Copyright claims our attention, not so much on account of its practical importance as of its interest as history, and by reason of the vigorous controversy which raged during the eighteenth century as to the legal interpretation to be placed on certain alleged facts which themselves were disputed. Pages of argument, metaphysical, historical and juridical, were devoted to "the common law right" and the "Statute of Anne," and though it is now settled that the Law of Copyright as to published literary productions rests entirely on statute, yet on account of

Introduction.

the historical interest attaching to the growth of the law, especially on a question considered in the eighteenth century of the greatest importance, it may be useful to spend a little time in exploring this extinct volcano of controversy.

Questions at issue.

The questions at issue were two:—

I. Was there, between the introduction of printing in 1471 and the passing of the Statute of Anne (*a*) in 1709, either such a direct recognition of copyright by the judges, or such a state of things existing in the custom of authors and printers and recognized indirectly by statute, that the judges, if the question were brought before them, were bound to recoguize copyright or literary property? In other words, did copyright after publication exist at common law before the Statute of Anne?

II. If so, what was the effect of the Statute of Anne on this common law right?

Copyright before Statute of Anne.

And with regard to the first question, we may say at once that there appears to be no direct creation of copyright by statute, or direct recognition of it by judicial decisions, during the period named. This may be accounted for, and an attempt is made to explain it elsewhere, by the constitution and powers of the Stationers' Company, but the fact remains. When a custom, having reached a certain degree of general acceptance and long duration, comes before the Courts they are bound to recognize and give effect to it, unless it is clearly unreasonable. And it is contended with great show of truth that such a general recognition

(*a*) 8 Anne, c. 19.

Copyright before Statute of Anne.

of ownership in literary works had existed for a long period of time when the Statute of Anne was passed.

The question is, however, complicated by the quasi-private position of the Stationers' Company and the doubtful character of its register. It is not clear whether it was compulsory on the company to register works published in England, or what means, if any, existed by which owners of copyright might ensure the accuracy of the entries in the register. Further, the king's "patents" for books which he claimed as his property by prerogative, and the numerous grants of "privileges" for different periods to private authors involve the discussion in some difficulty. That a certain amount of the custom of the time is founded upon decrees of the Star Chamber, and the other part upon ordinances of the Long Parliament, is used to create prejudice; while the whole matter is further obscured by the fact that the question of Literary Property is entirely subordinated in the history of the time to that of Licensing and the State Regulation of the Press.

Early days of printing.

Until means existed for rapid multiplication of copies of literary works the right of making copies was not of much pecuniary value. Such multiplication first became possible on the invention of printing, introduced into England by Caxton in 1474, or, according to a very doubtful story, at the King's expense by Corsellis at Oxford in 1468. Some time naturally elapsed before the art took sufficient root in England for questions of piratical printing to arise. At first indeed the demand for the new printing outran the supply, and an Act of 1485 (*b*) allowed the importation of printed books from abroad. This freedom of trade continued

(*b*) 1 Rich. III. c. 9, s. 12.

Early days of printing.

till 1534, when apparently the printers and binders were strong enough to obtain protection by an Act (*c*) prohibiting the importation of books, while protecting the interests of the public in the way then considered right by making provisions for fixing the price of books printed at home.

The position of authors in the first half of the sixteenth century is by no means clear. The Crown claimed prerogative rights in certain classes of books, and granted the sole privilege of printing them by patent to its assigns (*d*). As head of the State, the King claimed the sole right of printing all Acts of State, Ordinances of the Council, and the like; as head of the Church, he alone could print the books of rites and ceremonies of the Church. The Bible had been translated in 1547 by Grafton at the King's expense; the Year-Books were said to be reported at the expense of the Crown; and this labour expended was alleged to give the sole right of printing such works to the Sovereign. Further, almanacs were claimed by the King as his prerogative (*e*), on the ground either that they were mechanical applications of the tables in the book of Common Prayer, which was his, or that being no man's property they were therefore the Crown's. The royal claims indeed went so far as to assert that all printing was the King's prerogative, on the ground that the first printer, Corsellis, had been brought to England at the King's expense. . . .

All, however, that these claims of prerogative right,

(*c*) 25 Hen. VIII. c. 15.

(*d*) *Basket* v. *Cambridge University* (1758), 1 W. Blackstone, 105; Willes, J., in *Millar* v. *Taylor* (1769), 4 Burrows, 2329; Lord Mansfield, *Ibid.*, p. 2401.

(*e*) *Stationers' Co.* v. *Carnan* (1775), 2 W. Bl. 1002, in which case the claim was rejected.

together with the grants of "privileges" by the Crown to private persons, seem to show is, that at a time when the Crown prerogative was very extensive and grasping the Sovereign attempted to secure the monopoly of what promised to be a new and valuable invention. But side by side with privileges of royal grant something very like a custom of property gradually grew up to form part of the common law. In its infancy it is not surprising that authors, and especially printers, should strengthen their position by the most obvious means in their power, a grant from a royal prerogative which had never been more powerful. Early days of printing.

In 1504 a printer, William Faques by name (*f*), first describes himself on the title-page of his books as "*Regius Impressor*" (*g*); and in 1518, Richard Pynson,

(*f*) Herbert's Ames, Typ. Ant. i. 308.

(*g*) *Office of King's Printer.*—This continued to be held for many years, Richard Grafton (1553), Richard Jugge and John Cawood (1564), and Christopher Barker (1584), being among the occupants of the office. A full account of its holders is given in *Basket* v. *Cambridge University* (1758), 1 W. Bl. 105. Its tenure required the expenditure of considerable sums of money through various channels. In June, 1619 (S. P. Dom. 1619–1623), p. 55, John Bill presents a statement incidentally reciting that Bonham Norton and himself "had for many thousand pounds bought the office of King's Printer"; and in 1630, Bonham Norton is brought before the Star Chamber for alleging that the Lord Keeper had £600 out of this transaction (S. P. Dom. 1629–1631, p. 285). In July, 1630, the Council direct certain persons to aid the King's Printer in a search for "persons importing books of right belonging to him" (S. P. Dom. 1629–1631, p. 306). The position, however, had its disadvantages. In January, 1634, Barker and Lucas, the King's Printers, were fined £300 for "base and corrupt printing of the Bible," the fine being remitted at the instance of Laud, if they would provide Greek type and print a Greek work every year. The documents contain a recital that "the King's patentees for printing are great gainers by that patent" (S. P. Dom. 1633–1634, pp. 412, 480). In 1630, indeed, the question of "the propriety of maintaining the office of King's Printer" had been considered, and a memorandum of the services of the late John Bill in printing books was prepared, on which the office was continued (S. P. Dom. 1629–31, p. 271).

Early days of printing.

who succeeds Faques as the King's printer, publishes the first book issued "*cum privilegio*" (*h*), bearing on the title-page the inscription, "cum privilegio impressa a rege indulto, ne quis hanc orationem intra biennium in regno Angliae imprimat aut alibi impressam et importatam in eodem regno Angliae vendat."

In 1519 a work of the same printer is printed "*cum privilegio*" without mentioning any restriction of time; and in 1520 (*i*) his books appear simply "*cum privilegio a rege indulto.*" In 1530 (*k*) a "privilege" for seven years is granted to an author 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 labour.

In 1537 (*l*) the author of an edition of the Bible petitions the Lord Cromwell that a privilege may be granted to his work till that edition be sold, which he suggests will not be for three years from that time, and his reasons might be used nowadays in favour of copyright; that he will be ruined by competition, that the competing works will be badly done, and "that it is a thing unreasonable to permit or suffer them" (the copyists) "to enter into the labours of them that had both sore trouble and unreasonable charges."

Meanwhile between 1523 and 1533 the first recorded dispute as to copyright had arisen (*m*): a work printed in the former year by Wynkyn de Worde was reprinted by a printer named Trevers, and Worde's second edition,

(*h*) Herb. Ames, T. A. i. 264; iii. 1782. It was also the first work printed in Roman type in England.

(*i*) Herb. Ames, T. A., sub nomine "Pynson."

(*k*) Herb. Ames, T. A. i. 470.

(*l*) Lowndes, p. 7.

(*m*) Herb. Ames, T. A. i. 186; Lowndes, p. 6.

published in 1533, and protected by the privilege of the King, contains a vigorous attack on the former piracy.

Thenceforth for the next hundred years or more we find a large number of books protected by special privilege from the King, besides his grants by patent of books considered his own property, such as the one to the University of Cambridge in 1534. And these "privileges" were co-existent with the keeping of the register of the Stationers' Company, entries in which conferred exclusive rights of printing on the persons in whose names the books were entered. Royal privileges.

It has been urged that the existence of these royal grants was conclusive against the existence of copyright, as showing that without them there was no literary property. And it may be granted that at their first appearance there was no custom strong enough to found a common law right. In the infancy of printing and the zenith of sovereign power authors and printers naturally came to the royal favour for protection. Thus in the case of musical copyright, as to which no definite legal decision was given till 1777 (*n*), as late as 1763 a royal licence for the sole printing of certain musical works for fourteen years was granted by the Crown. And it is interesting to note that in Wurtemberg so late as 1815, literary property was still founded on sole privileges to print granted by the Sovereign (*o*). But meanwhile in England the fact that the King's patents as to his prerogative of property in books were justified as rights acquired by labour and occupancy, and that his grants to private persons of privileges were usually granted in consideration of the labours of the author or the expense of the printer, served to justify the

(*n*) *Bach* v. *Longman* (1777), 2 Cowper, 623.
(*o*) Lowndes, p. 126.

Royal privileges.

reasonableness of a custom of literary property, and thus might have recommended it to the judges as the foundation for a common law right. The age was one of monopolies and royal grants, and it was not therefore surprising that the monopolies should have continued after the necessity for any such extraordinary invention had passed. Besides, in days when licensing and patronage were all-important, the royal favour acted both as a shield and an advertisement. The patents collected by Rymer in his Fœdera, and those contained in the calendars of Domestic State papers, in nearly every case involve something more than a simple recognition of literary property (*p*). The State papers show that these royal privileges were used both as a means of rewarding the persons whom the King delighted to honour, and also for the purpose of lining the pockets of the King's servants. An application for a "privilege" made by Thomas Wilson to Sir Thomas Lake, the Latin Secretary in 1607, after specifying the service required, winds up with a frank remark: "The gratuity I shall entreat you to accept of a poor man shall be forty or fifty angels to buy my lady a velvet gown, and a most devoted and thankful heart" (*q*). In 1597 (*r*) a privilege to print certain school books for fourteen years had been granted to Henry Stringer, the Queen's footman; and in 1631 (*s*) G. R. Wackerlin petitions for a renewal of the grant of the sole right of printing certain Latin books (Virgil, Terence, Cicero, and Ovid) made to the late King's footman, to the petitioner for

(*p*) Collected in the Appendix to the first edition of this work.

(*q*) S. P. Domestic, Addenda, 1580–1625, p. 495, on date April 12, 1607.

(*r*) S. P. Domestic, 1595–97, p. 352.

(*s*) S. P. Dom. 1629–1631, pp. 514, 537, on dates Feb. 20 and Mar. 21, 1631.

thirty-one years, "whereby he may get some small recompense, as the footman did, by letting the same grant to the Stationers' Company." In 1630 (*t*) the Attorney-General brings Bonham Norton and others before the Star Chamber for spreading a rumour that the Lord Keeper had £600 for making a decree between Norton and Barker for the King's Printer's office. These documents throw a suggestive light on the nature of many of the privileges, and the method of obtaining them. Royal privileges.

In the early days of printing the royal grants of patents and privileges went side by side with the growth of the Stationers' Company, till at last the register of the Company superseded the privilege of the King. In 1556 the records of the Star Chamber contain the entry (*u*):—"Thos. Marsh, stationer, for selling books without license of the patentee: Ordered that the persons detected for the printing and corrupting of the Bishop of London's book shall be bound to print no more"; and a decree of the same date, constituting the *charter of the Stationers' Company*, ranks as the first great landmark in the history of Copyright in England. History of the Stationers Company. Charter of Stationers' Company.

But, while it occupies this position in our history, its immediate cause was very far from being the interest of authors. The chief motive of all these early Ordinances and Acts is the same; *the order and regulation of printing and printing presses in the interests of Church and State.* The charter or decree of 1556 recites (*x*): "That certain seditious and heretical books both in rhymes and tracts are daily printed, renewing and spreading great and Purpose of early legislation.

(*t*) S. P. Dom. 1629–1631, p. 285, on date June 17, 1630.

(*u*) Burn on Star Chambér, p. 55.

(*x*) Herb. Ames, T. A. iii. 1590; it was ratified in 1559 by Elizabeth; Herb. Ames, T. A. iii. 1600; Maugham, Lit. Prop., p. 12.

History of the Stationers' Company.

detestable heresies against the Catholic doctrine of the holy Mother Church," and ordains that for the suppression of this evil ninety-seven persons, who are named, shall be incorporated as a society of the art of a stationer. No person in England shall practise the art of printing unless he be one of this society, and the master and warden are authorized to search for, seize, and burn all prohibited books, and to imprison anyone that should exercise the art of printing contrary to their direction.

Printing was thus confined to members of the Company; they had power to make by-laws so long as they were not repugnant to the statutes of the kingdom, and their by-laws, thus tacitly approved by the Crown, must have been considered part of the law of the land. Further, their summary powers of seizure, search, and imprisonment rendered it unnecessary for them to bring disputes before the ordinary Courts, and this, it is suggested, affords the explanation of the lack of early judicial recognition of copyright (*y*).

(*y*) Thus the State Papers contain, in 1560, articles of the Stationers' Company against Wolfe, for unlawfully printing and infringing the patent of the Queen's Printer (S. P. Dom. 1547–1580, p. 167). In 1623 there appears a petition of William Stainsby a printer, to Secretary Calvert, for pardon and restoration to his business, the Wardens of the Stationers' Company having, by warrant from the Council, nailed up his printing-house and broken down his presses, for unlawful printing (S. P. Dom. 1623–25, p. 141). A large number of cases, mainly of unlicensed printing, came before the High Commission Court. On July 11, 1624, Locke writes to Carleton, "A poor man is in trouble for printing a book called *Votiva Anglia*; the High Commission Court were about to liberate him, when the King ordered him to be remanded and pay a £1000 fine, as he was said to have gained £1000 by the book" (S. P. Dom. 1623–25, p. 298). A certain Sparkes stands out as the Hampden of printing. Brought up in 1629 on articles of the Ecclesiastical Commissioners, he denied the present binding authority of the decree (of 1585) in the Star Chamber, for regulation of printing, as directly intrenching on the hereditary liberty of the subject's person

History of the Stationers' Company.

In 1559 (*z*) the charter was confirmed by Elizabeth, and thus by patent a monopoly of printing was conferred on the society. In the same year an injunction (*a*) from the Queen enjoined that no book or paper should be printed unless licensed by the council or ordinary, and in 1566 a decree of the Star Chamber (*b*) forbade persons to print against the force and meaning of any ordinance, in any of the statutes or laws of the realm.

Registers of the Stationers' Company.

From their foundation the Stationers' Company kept books or registers, and, though no legislative enactment with reference to registration appears till 1637, from 1558 it became apparently the universal practice for authors, or the printers to whom they sold their books, to enter such books in the register of the Company. Such entries were probably required by the by-laws of the Company, infringements of which by its members

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and goods, and being contrary to Magna Charta, the Petition of Right, and other statutes (S. P. Dom. 1625–29, pp. 538, 569). In 1631, Sparkes again appears to answer his contempt before the Star Chamber, because when Barker and Lucas, the King's Printers, had seized his Bibles as printed contrary to their patents, Sparkes had brought a suit at Common Law against them for such seizure (S. P. Dom. 1629–31, p. 510, date Feb. 6, 1631). In the same year, four stationers, of whom Sparkes was one, were brought before the Council for selling unlicensed books (S. P. Dom. 1629–31, pp. 159, 166, 202, 203): and shortly afterwards Sparkes and others were before the High Commission Court on a charge of unlicensed printing (S. P. Dom. 1631–33, pp. 3, 35, 39, 231). Many cases appear in the records of the High Commission Court during the years 1630–35, for printing or selling unlicensed books (*e.g.*, S. P. Dom. 1634–35, pp. 265, 532). And though it is not pretended that cases in the Star Chamber or High Commission Court are authorities for the common law right, the existence of such a summary mode of enforcing the powers of search and seizure as the Stationers possessed explains the absence of any direct acknowledgment of their rights in the ordinary Courts.

(*z*) Herb. Ames, T. A. iii. 1600.

(*a*) Strype's Parker, p. 221; Herb. Ames, T. A. iii. 1601.

(*b*) Herb. Ames, T. A. iii. 1620.

Registers of the Stationers' Company.

were punished with fines by the Master and Court. As only members of the Company could, except by special privilege, print books at all, entry of a work in the Company's register by one of them confirmed the property in him; the Company protected him from piracies by his fellow members or outsiders, and allowed him to assign his rights by entry in the register. Accordingly from 1576 to 1595 (*c*) above 2000 "copies" of books were entered either entirely, or in shares, as the property of particular persons. The first of such entries is in 1558; from 1559 (*d*) we find members fined for printing other men's copies; entries of the sale of a copy and its price appear in and after 1573; and from 1582 copies are entered with an express proviso that "if it be found that anyone has right to any of the copies, then the licence touching such of the copies so entered to another shall be void."

In the subsequent controversy as to the existence of the "common law right," it was attempted to set aside all this evidence as merely entries of private transactions between members of the Stationers' Company, which were no proof of the common law. But the common law right of an author to his unpublished work was universally admitted; and by the ordinances of the Star Chamber his work could only be printed and published by members of the Stationers' Company, so that regulations binding them bound all printing within the realm (*e*), and thus gave a practice sufficiently universal for the judges to found a common law right on. And

(*c*) Carte; Maugham, Lit. Prop., p. 17.

(*d*) Willes, J., in *Millar* v. *Taylor* (1769), 4 Burr. 2313.

(*e*) Such regulation was easy, as in 1583 a return showed only fifty-three presses in London (S. P. Dom. 1581–90, p. 111); and in 1634 there appear to have been only twenty-three master printers in London (S. P. Dom. 1634–35, p. 231).

when the ordinances of the Star Chamber were set on one side by means of the prejudice attaching to that ill-famed body, it should have been remembered that this was a matter not affecting the rights of the Crown in any way, but only dealing with the rights of private authors and printers; in it therefore there was no especial reason to distrust their decisions, which were held sufficient to found other branches of the common law, notably the law as to perjury.

Registers of the Stationers' Company.

The effect, however, of the Company's restrictive by-laws was that a large number of "copies" (*f*) became vested in the wealthier printers, while the poorer ones found themselves shut out from employment, and in consequence endeavoured to break down the restrictions and resisted the governing body of the Company (*g*). The Company accordingly petitioned the Crown for protection and enforcement of their by-laws, urging that if the monopolies were not enforced "no books at all would be printed within a short time. For commonly the first printer was at charge for the author's pains—whereas any other came to the copy gratis, and so he might sell cheaper and better than the first printer. . . . . These inconveniences seen, every man would strain courtesy who should begin so far that in the end all printing would decay in the land to the utter undoing of the whole Company of Stationers." The result was the confirmation of the charters of the Stationers' Company by a decree dated June 23, 1585, providing that every book shall be licensed, "nor shall any person print any book, etc., against the form or meaning of any

Resistance to the Company.

(*f*) "*Copy*," the technical term then used for the right to produce copies—the *copyright*.

(*g*) Strype; Lowndes, p. 12.

Resistance to the Company.

restraint contained in any statute or law of the realm, or *contrary to any allowed ordinance set down for the good government of the Stationers' Company* (*h*).

This was only obtained by concessions on the part of the wealthier printers, whose monopoly of "copies" had roused the resistance by the poorer members of the Company, and the decree of 1585 is followed by a recital that (*i*):—"Many of the richer members who had some licenses from the Queen granting them a property in the printing of some copies, exclusively to all others, yielded divers of their copies to the Company for the benefit and relief of the poorer members thereof," and then follows a list of some eighty or a hundred works of all classes of literature, Latin and English, prose and poetry, for which presumably the Queen's license or privilege had been granted. Mr. Barker, "Her Majesty's printer," yields certain testaments; Mr. Tottell, "the printer of the law books," who clearly did not confine his attention to law, surrenders, *inter alia*, "Romeo et Julietta," and "Songs and Sonnettes of the Earl of Surrey." Mr. Newberry, the warden, and Henry Denham yield, "as assigns to execute the privilege which belonged to Henry Bynneman deceased, as many of the following books as shall be found to have belonged to the said Henry Bynneman:" and Mr. Newberry himself yields certain books "when he hath sold those of the former impressions which he hath on his hands."

Sources of sole right of printing in 1623.

The regulations were still evaded by printing beyond sea, and in 1623 a further decree forbade the printing beyond sea of "such allowed books as have been imprinted within the realm by such *to whom the sole printing*

(*h*) Herb. Ames, T. A. iii. 1668.
(*i*) Herb. Ames, T. A. iii. 1672–75.

thereof by letters patent or lawful ordinances or authority doth appertain." (*k*) Here the sources of the right of "sole printing" are recognized by statute as :— Sources of sole right of printing.

I. *Letters patent;* which are either *grants to Crown patentees* of Crown property, as in the case of Bibles and Law Books, or *special privileges* in books not specially the property of the Crown granted to private persons in exercise of an alleged prerogative. The peculiar position that these grants occupied is shown by the fact that the celebrated *Statute of Monopolies* (*l*) excepts from its prohibition of monopolies other than patents to the authors of new inventions, *patents concerning printing*, saltpetre, gunpowder, great ordnance, and shot.

II. *Lawful Ordinances or authority ;* that is, the rules and regulations of the Stationers' Company.

A Royal Proclamation in 1625 (*m*), interesting in its anticipation of modern arguments, recites :—"That divers books, written in Latin and well printed at Oxford and Cambridge, have afterwards in the parts beyond the seas been reprinted very erroneous, and sent back into our Kingdom and vended here as true copies at lower rates, in respect of the baseness of the paper and print, than the original here can be afforded, whereby the authors have been enforced to disclaim their own works, the first printers much impoverished, and our own people much abused in laying out their money upon falsified and erroneous copies; which hath discouraged our scholars from printing, and disabled printers from undertaking History, 1625-1643.

(*k*) Maugham, Lit. Prop., p. 13.
(*l*) 21 Jac. I. c. 3.
(*m*) Rymer, Fœdera, xviii. 8.

History, 1625–1643.

the charge of the presse for publishing;" wherefore such importation is again forbidden, and certain regulations in connection with the University presses are framed to check it.

Decree of 1637.

In 1637 came the great decree of the Star Chamber, "touching the *Regulation* of Printers and founders of letters," (*n*) still carrying out the original purpose of legislative interference. It recited that "divers decrees had been made for the better government and regulation of printing . . . and divers abuses had arisen . . . to the prejudice of the public, and divers libellous, seditious, and mutinous books had been unduly printed, and other books and papers without licence, to the disturbance of the peace of the Church and State," and enacted, after dealing with "seditious, scismaticall and offensive books," that:—

§ 2. Every book should be licensed *and entered into the Register book of the Company of Stationers.*

§ 7. No person within this kingdom or elsewhere shall imprint or import . . . any copy . . . which the said Company of Stationers, or any other person or persons, have or shall have, by *any letters patent, order, or entrance in their register book, or otherwise,* the right, privilege, authority or allowance solely to print, nor shall put to sale the same.

Here again the sources of the "sole right to print" are set out as: 1. Letters patent and orders; 2. Entries in the register book; while the word "otherwise" was much relied on in *Millar* v. *Taylor* (*o*), as showing a common law right independent of entry in the register.

In 1640 the Court of Star Chamber fell a victim to

(*n*) Tracts, vol. xlviii., Middle Temple Library. Lowndes, p. 15 Maugham, p. 13.

(*o*) 4 Burr. 2314.

the Long Parliament, and in 1641 the place of its Ordinances was temporarily taken by another (*p*), prohibiting printing without consent of the *owner*, or importing, upon pain of forfeiting the copies to the *owner or owners of the copies of the said books*. Here then is a clear statutory recognition of property in copy, which can only have been supported by a custom such that the common law should have recognized and incorporated it. History, 1625–1643.

In the disturbed state of the country, and the embittered controversy between the Court and the Parliament, great licence was manifested in the Press—or, it would perhaps be more correct to say, was conceived by the party in power to exist in the works of their opponents—and much piratical printing occurred both inside and outside the Stationers' Company. It was even suggested that all "copies" should be laid open to any printer that pleased to publish them. This suggestion was opposed in a declaration (*q*), signed by several prominent divines, to the effect that "considerable sums of money had been paid by stationers and printers to many authors for the 'copies' of such useful books as had been imprinted, in regard whereof we conceive it to be both just and necessary that they should enjoy a property for the sole imprinting of their copies; and we further declare that unless (*r*) they do so enjoy a property, all scholars will be utterly deprived of any recompense from the stationers and printers for their studies or labour in writing and preparing books for the press; and that if books were imported to the prejudice of those who bore the charge of impressions, the authors and buyers Protest of authors, and Ordinance of 1643. Protest of authors, 1643.

(*p*) Maugham, Lit. Prop., p. 13.

(*q*) Carte's Letters, 1735; Maugham, Lit. Prop., p. 14; Lowndes, p. 16.

(*r*) *I.e.*, they *do* enjoy, and it must not be taken away.

Protest of authors, and Ordinance of 1643.

would be abused by vicious impressions, to the great discouragement of learned men, and extreme danger of all kinds of good learning."

Here the authors' view of restrictions on piracy, and their object as encouraging learning, is brought clearly before the Legislature. We need not infer that it was not recognized before; the petition to Lord Cromwell quoted above (*s*) takes the same ground; and Milton, in his magnificent protest against the resultant Act of 1643, the *Areopagitica*, treats the matter as beyond question, when, alluding to the reasons urged for that enactment, he says, "One of the glosses used to colour that Ordinance, and make it pass, was the retaining of each man his several copy, *which God forbid should be gainsaid.*"

Ordinance of 1643.

However, on the 14th of June, 1643, the Long Parliament passed the celebrated "Act for redressing Disorders in Printing" (*t*). It recited "that the late orders had proved ineffectual for suppressing the great late abuses and frequent disorders in printing so many false and forged, scandalous, seditious, libelling and unlicensed papers . . . to the great defamation of religion and government . . . and notwithstanding the diligence of the Company of Stationers to put the orders in execution: . . . and further, that divers of the Stationers and others, contrary to former orders and *the constant custom used among the Stationers' Company*, have taken liberty to print, vend, and publish the most profitable and vendible copies of books *belonging to the Company and other Stationers;*" and enacted:—

1. "That no book shall be printed unless the same shall be licensed and entered in the register book of the Company of Stationers, *according to ancient custom.*

(*s*) See p. 8.
(*t*) Scobell, Acts and Ordinances, p. 44.

2. "And that no person shall hereafter print any book lawfully licensed and entered in the registers of the said Company for any particular members thereof, *without the license and consent of the owner or owners thereof;* nor yet import any such book formerly printed here from beyond the seas, upon pain of forfeiting the same to the owner or owners of the copies of the said books, and such further punishment as shall be thought fit;" and suitable penalties are provided. Protest of authors, and Ordinance of 1643.

Under this Act it will be seen that every book printed must have an owner, whose consent is necessary to its reprinting. A book printed without its owner's consent would not be licensed; a pirated book would be exposed both to the penalties for piracy and the penalties for unlicensed printing, and the distinction would not be too clearly marked in the minds of those owners of copy whose right was infringed.

A further Act (*u*) against unlicensed pamphlets followed in 1647, and a second (*x*) in 1649. This latter starts with a lengthy preamble concerning "unlicensed and scandalous books and pamphlets;" the "ignorance and assumed boldness of the weekly pamphleteer," and the "irregularity and licentiousness of printing, the art whereof in this Commonwealth and in all foreign parts hath been sought to be restrained from too arbitrary or general use or excuse." It then gives power to seize books being printed or reprinted *by such as have no lawful interest in them;* and enacts that no pamphlet shall be printed unless licensed and entered in the registrar's book of the said Company of Stationers. Ordinances of Long Parliament.

"For the encouragement of all regular printers and

(*u*) Scobell, p. 134.
(*x*) *Ibid.*, ii. 88.

Ordinances of Long Parliament.

support of the said manufacture in the Commonwealth," it provides that printed books shall not be imported; and finally enacts that "No person shall print or reprint any book now entered in the register book of the said Company for any particular member thereof, *without the consent of the owner or owners thereof*; nor counterfeit the name, mark, or title of any *book or books belonging to the said Company* or particular members."

The Ordinance of 1649, having expired, is renewed by an Ordinance (*y*) in 1652, reciting "that it had appeared by experience to be a good and profitable law for the end therein expressed;" and providing regulations and licenses for printers, "forasmuch as the life and growth of all arts and mysteries consisteth in a due regulation thereof."

Licensing Act of 1662.

As the dissolution of the Star Chamber had led to the renewal of its licensing decrees by Ordinances of the Long Parliament, so the Restoration and the dissolution of the Long Parliament were closely followed by the reconstruction of the Ordinance of 1643 and its followers in the Licensing Act (*z*) of 1662: "An Act for preventing the frequent abuses in printing seditious, treasonable, and unlicensed books and pamphlets, and for regulation of printing and printing-presses." The main purpose is still political; and the preamble recites that "the well-government of and regulating of printing is matter of public concern." Property in books is only recognized incidentally.

§ 3. All books are "to be entered in the book of the

(*y*) Scobell, ii. 230. The Ordinances of 1647 and 1652 do not contain the "owner's clause," in that of 1649. Drone's statement (p. 59) is incorrect.

(*z*) 13 & 14 Car. II. c. 33.

register of the Company of Stationers in London." . . . The Universities are not "to meddle either with books of Common Law, or matters of State and Government" (which are the King's property), "*nor any book the right of printing whereof doth solely and properly belong to any particular person or persons*, without his or their consent." Licensing Act of 1662.

§ 6. "No person shall print or import any book which any person by virtue of letters patent, or of entries duly made in the register book of the Company of Stationers or of either of the Universities, has or shall have the *right*, privilege, authority or allowance *solely to print* . . . *without the consent of* the *owner or owners*." The penalty for infringement of this clause is to go half to the King, and half to the *owner of such copy*.

§ 7. "The mark of the person who has the privilege, authority or allowance solely to print is not to be put on books without his consent, and the licenser is to return copies to the printer or owner"; (thus contemplating that the owner may be other than the printer, and thus not necessarily a member of the Stationers' Company).

The provisions of this statute have been set out at some length, and for this reason. When approaching the Copyright "Statute of Anne," (*a*) which by its unfortunate wording roused one of the greatest controversies in English legal history, it is important to notice how the whole of the Licensing Act, the main end of which is to regulate printing for political purposes, is based on the supposition of existing literary property. It does not create such property, but assumes it as existing and protects it: no previous statute can be shown which does create it; the inference is therefore irresistible that such Position of literary property in 1660.

(*a*) 8 Anne, c. 19.

Position of literary property in 1660.

a universal custom of literary property existed prior to the Statute of Anne as to have ensured the recognition of such property as existing at common law.

But while the Act recognized the custom of literary property, the custom itself—or rather the way in which the custom worked—was strongly objected to by authors and others (*b*). Though the author was obliged to register, there was no obligation on the Stationers' Company to make the entry; but, once an entry made, the person to whom it was entered became the owner. Complaint was heard that the Company asked large sums of money for making entries, and sometimes refused or neglected to make them; that they made erroneous entries, and erased or altered entries when made, and so injured the property of authors.

Indeed, a later protest of the Lords against the renewal of the Licensing Act gives as one of its reasons "that the Act destroys the property of authors in their copies." Similarly, in 1693, a Committee of the Commons gave as one of their reasons for not agreeing to the renewal of the Act, "that the said Company are empowered to hinder the printing of all innocent and useful books" (*i.e.*, by refusing an entry on the register), "and have an opportunity to enter a title to themselves and their friends for what belongs to and is the labour of others."

Some petitioners so much objected to compulsory entry on the register, that they made statements which were directly reversed when the Licensing Acts were suffered to expire. They said (*c*): "The property of the author hath always been owned as sacred among the traders, and generally forborne to be invaded; but

(*b*) Lowndes, pp. 25–27.
(*c*) *Ibid.*, p. 30.

if any should invade such property *there is remedy* by laws already made, and no other were ever thought needful till 1662:" and again, "as for securing property, it's secured already as our own experience may show."

Position of literary property in 1660.

The Licensing Act after several renewals, and one lapse of six years (*d*), expired in 1694, and with it the statutory protection of literary property. Those in whom the "right, privilege, authority, or allowance of sole printing," was vested had now to be content with such remedies as the common law gave them. Instead of their statutory penalty per copy, they could only recover the actual damage proved to result from the piracy, a much less satisfactory mode of procedure. For copyright had been so long protected by Acts and Decrees, that any other mode of proceeding than the statutory one was almost unknown. The Stationers' Company had promptly endeavoured to meet the difficulty as far as its own members were concerned; the Licensing Act had temporarily expired in 1679, and in 1681, when we may suppose the disadvantages of rights only protected by the common law had begun to make themselves felt, they had passed the following by-law (*e*):—

Statutory protection ceases. By-law of 1681.

"Whereas several members of this Company have great part of their estate in 'copies'; and by ancient usage of this Company when any book or copy is duly entered in the register book of this Company to any member thereof, such person to whom such entry is made is and always hath been reputed to be the proprietor of such copy, and ought to have the sole printing

By-law of Stationers' Company, 1681.

(*d*) 1679–1685.

(*e*) Quoted in *Millar* v. *Taylor* (1769), 4 Burr. 2307.

Statutory protection ceases. By-law of 1681.

thereof, which privilege and interest is now of late often violated and abused, *it is therefore Ordained*, that where any entry is now, or hereafter shall be, duly made of any book in the said register, by or for any member of this Company, that in such case, if any member shall thereafter without the license or consent of such member for whom such entry is duly made in the register, or his assigns, print or import any such copy or sell the same, he shall forfeit to the Stationers' Company the sum of 12 pence per copy."

Confirming Charter of 1684.

The members of the Company, however, possibly suffered from piratical competition on the part of outsiders, as well as within their own body, for in 1684, there being no Licensing Act in existence, a new Charter (*f*) was granted them. After reciting "That divers members and brethren of the Company have great part of their estate in books and copies" (*i.e.*, stocks of printed books, and sole rights to print particular books), "and that for upwards of a century before they have had a public register kept in their common hall for the entry and description of books and copies," it confirmed former charters, and proceeded: "We, willing and desiring to confirm and establish every member in their (*sic*) *just rights and properties*, do well approve of the aforesaid register, and declare that every member of the Company who should be the *proprietor of any book*, should have and enjoy the sole *right*, power, privilege, and authority of printing such book or copy *as in that case had been usual heretofore*" (*g*).

(*f*) Maugham, Lit. Prop., p. 17.

(*g*) This Charter may possibly be only one of the set of charters resulting from the wholesale forfeitures by corporations, and their purchase of new charters in 1684. Its language, however, suggests that it is called forth by the five years' lapse of the Licensing Act.

Confirming Charter of 1684.

It will be seen that this charter does not profess to do more than "confirm just rights and properties," and declare "what had been usual heretofore." The Company seem to have so relied on the summary penalty per copy for piracies imposed by the Licensing Act, as hardly to have understood the strength of their position when that Act expired.

By-law of Stationers' Company. 1694.

The Act was renewed in 1685, only to expire in 1694; and its final lapse is immediately followed by the renewal of the by-law of 1681, with the additional recital that such copies were assigned, left by will, and used to make family provisions (*h*).

Recapitulation of period previous to 1710.

We now reach the period immediately preceding the Statute of Anne, and in view of the momentous consequences to copyright resulting from that statute, it will be well briefly to sum up the existing state of things.

Since 1558, literary property "in books and copies" had been recognized by implication in nearly every statute dealing with printing. The precise relation of this property to the Stationers' Company and the entries in its register is not perfectly clear. It has been urged that such copyright as existed applied only to members of the Stationers' Company, and not to authors outside the Company. But the registers of the Company, both in the 16th and 17th centuries, contain entries in sufficient numbers to show that up to 1695, and even later, "there was hardly a book in which property was not ascertained, and the sole right of printing secured, by entries in the Stationers' Register" (*i*). And the jury, in *Millar* v. *Taylor*, on the evidence before

(*h*) Quoted in *Millar* v. *Taylor* (1769), 4 Burr. 2308.
(*i*) Carte; Maugham, Lit. Prop., p. 17.

Recapitulation of period previous to 1710.

them, found, as part of their special verdict (*k*), "That before the reign of her late Majesty, Queen Anne, it was usual to purchase from authors the perpetual copyright of their books, and to assign them from hand to hand for valuable consideration, and to make the same the subjects of family settlements for the provision of wives and children."

It was clearly considered, therefore, that authors (*l*) had perpetual rights of property in their works, and that these rights could be assigned. No statute can be produced which creates these rights, though many allude to them as existing, and provide special means of protecting them. They constantly speak of the "owner of the copy," but no statute calls such owner into existence. If the right existed at all, it existed therefore by the common law, or was such a custom as should and would be recognized by the common law. Hardly any records of protection to the right, afforded by the State, are in existence, and there seems to be no entry of a prosecution in the ordinary Courts, for printing without license (*m*). This may be explained by the fact that the Stationers' Company had, by their charter, summary rights of search, seizure, and imprisonment, and similar powers existed under the Licensing Acts. Here no recourse to the ordinary Courts was needed, and no entry of proceedings would exist.

Cases prior to the Statute of Anne.

The cases which appear in the books are usually cases in which the alleged rights of the Stationers' Company, or of authors, clash with those of the King's patentees (*n*).

(*k*) 4 Burr. 2307.

(*l*) Or more usually the printers, their assigns.

(*m*) 4 Burr. 2313.

(*n*) These rights had clashed in cases which did not come before the ordinary Courts. A long struggle between the Stationers' Company

Cases prior to the Statute of Anne.

Thus in 1666 (*o*), Atkins, a patentee from the Crown of law books, sued the Stationers' Company for infringing his patent, and was successful. His counsel stated that the King had granted fifty-one patents. On appeal to the House of Lords, they seem to have held that a copyright was a thing acknowledged by the common law, that the King had this right, and had granted it to the patentees. One objection and answer during the hearing summarizes a great deal of subsequent discussion. Counsel for the defence urged: "the price of books will be enhanced;" to which the plaintiff's counsel replied: "As a matter of fact, no books are sold so cheap as are printed by the King's patentee, so my client informs me." Again, in *Roper* v. *Streater* (*p*), in 1670, the Lords protected the law patentee of the Crown against the assigns of the author. The right of copy *in some one* seems to have been almost taken for granted. In *Stationer's Co.* v. *Seymour*, in 1678 (*q*), where it was urged that prognostications added to the King's Almanac made a new property, the judges said that it no more did so than "if a man should claim a property in another man's copy, by reason of some inconsiderable additions of his own."

All these cases deal with a Crown right granted by express patent and only by implication uphold a

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and the University of Cambridge, lasting from 1583 to 1629, finally resulted in the triumph of the University. (See *inter alia* S. P. Dom. 1581–90, pp. 107, 111; Add. 1580–1625, p. 658; 1619–23; Nov. 25, 1621; 1625, p. 173; 1626, p. 343; 1627, p. 493; 1628, p. 546; 1629, pp. 496, 520.) The King's prerogative was stated, in an opinion given by Coventry, the Solicitor-General, in Nov. 1618, to override charters of previous sovereigns to the Stationers' Company. (S. P. Dom. 1623–25, p. 554.)

(*o*) Carter's Reports, pp. 89–92; 4 Burr. 2316.

(*p*) Skinner's Reports, 234; 4 Burr. 2317.

(*q*) 1 Mod. 256; 4 Burr. 2317.

Cases prior to the Statute of Anne.

common law right. The summary proceedings and easily recoverable penalties under the charter of the Stationers' Company and the Licensing Act have left no trace on the law reports, though a few of them appear in the Calendars of Domestic State Papers and Records of the High Commission Court. Common law proceedings were far more cumbrous and less profitable, and the use of a bill in equity, subsequently so common, does not seem at this time to have been understood.

Result.

There was then prior to the Statute of Anne no statute expressly creating, or judicial decision expressly recognizing, copyright; there was such constant usage among authors and printers, recognized indirectly both by statutes and judicial decisions, that, when the question arose for decision, a court of law might reasonably recognize literary property both before and after publication, as part of the common law; and such was the opinion of three judges against one in *Millar* v. *Taylor* (*r*), and of eight judges against four in *Donaldson* v. *Beckett* (*s*).

Statute of Anne.

After 1694, the lapse of the Licensing Act left authors and proprietors of copies without the protection summarily enforceable by penalties and seizure of copies, which they had previously enjoyed, and left them very discontented. As Lord Mansfield observed (*t*), they considered an action at law an inadequate penalty, and had no idea that a bill in equity could be maintained except on letters patent. Accordingly the booksellers and publishers, most of whose property consisted

(*r*) (1769) 4 Burr. 2303.
(*s*) (1774) 2 Bro. Cases in Parl. 129; 4 Burr. 2408.
(*t*) 4 Burr. 2406.

in valuable "copies," importuned Parliament for further protection. They petitioned in 1703, 1706, and 1709. They said that (*u*) "at common law a bookseller can recover no more costs than he can prove damages; but it is impossible for him to prove the tenth or hundredth part of damage he suffers, because 1000 counterfeit copies may be dispersed into as many different hands, all over the kingdom, and he is not able to prove the sale of 10; the defendant is always a pauper;" and they therefore prayed "that the confiscation of counterfeit copies might be one of the penalties inflicted on offenders." Statute of Anne.

Amongst other heads of a bill suggested by some petitioners, were (*v*): (1.) That the proprietor of copy should be secured in his particular copies, by giving him a method of process, as treble costs and damages against the invader. (2.) That the register book of the Company of Stationers should be duly rectified, and all fraudulent and false entries, and entries of popish and other illegal and scandalous books therein entered, be expunged, and the true proprietor thus reinstated in his right.

This petitioning resulted in 1709 in the introduction of a bill which, with several material alterations, ultimately became law (*w*). The occasion of its introduction must be borne in mind; it originated with booksellers and publishers to protect further a property they already conceived themselves to have. Its material parts, as finally settled, ran as follows:—

"An Act for the encouragement of learning by *vesting* the 'copies' of printed books in the authors or purchasers of such copies during the times therein mentioned." Title.

(*u*) Lowndes, pp. 29–31.
(*v*) *Ibid.*, p. 29.
(*w*) 8 Anne, c. 19.

Statute of Anne.

(According to Willes, J., in *Millar* v. *Taylor* (*x*), the Bill went to Committee as "a Bill to *secure* the undoubted property of authors for ever." The Journals of the House for January 11, 1709, contain the entry that Mr. Wortley brought in a "bill for the encouragement of learning, and for *securing* the property of copies of books to the rightful owners thereof" (*y*).)

Preamble.

"Whereas printers &c. . . . have of late frequently *taken the liberty* (*a*) of printing, *re*printing (*b*), and republishing books without the consent of the authors or proprietors of such books . . . for preventing such practice and for the encouragement of learned men to compose and write useful books, be it enacted—

(*a*): "*taken the liberty*," it was urged that this phrase was only applicable if a right existed previously, and the answer was made that the same phrase was used in the Hogarth Acts as to engravings, where no previous right existed. (*b*) "*re*printing": it was argued that "*re*printing" could only be objectionable if a sole right to print and reprint existed.

Clause 1.

§ 1. "From the 10th of April, 1710, the author of any book already printed, who shall not have transferred the right, shall have the sole right and liberty of printing such book for the term of twenty-one years to commence from the said 10th day of April, AND NO LONGER (*a*), and that the author of any book not yet printed and his assigns shall have a similar right for fourteen years from first publication, *and no longer*" (*a*).

(*a*): These three words were ultimately fatal to the common law right; whether it was intended that they should be so, or merely that they should decisively restrict the statutory term, is doubtful; clause 9 is quite inconsistent with them. A penalty of a penny a sheet was imposed on piracy. *Clause* 2 enacted that no one should be subjected to penalties unless the title to the copy of books hereafter to be published should, *before such publication*, be entered in the register of

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(*x*) (1769) 4 Burr. 2333.

(*y*) Com. Journ. xvi. 260. Mr. Topham had, on Feb. 20, 1706, brought in a bill "For the better securing the rights of copies of printed books."—C. J. xv. 316.

the Stationers' Company, "*as hath been usual.*" *Clause* 4 contained a proviso for fixing the prices of books if they appear too high and unreasonable. *Clause* 5 required nine copies of each work to be delivered to nine public libraries. Statute of Anne.

§ 9. "Provided that nothing in this Act contained shall extend or be construed to extend either to prejudice or confirm any right that . . . any person . . . claims to have to the printing or reprinting any book or copy of a book already printed or hereafter to be printed." Clause 9.

A large number of persons "claimed to have rights" at common law "to printing or reprinting books." This Act therefore by its ninth clause should have left these rights as they were, without either "prejudicing or confirming them."

§ 11. "Provided always, that after the expiration of the said term of fourteen years the sole right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years." Clause 11.

This throws some light on the term "*and no longer*" in the first clause, and suggests that it should not be interpreted as overriding § 9.

Result of Statute of Anne.

It seems that the bill as originally introduced provided perpetual statutory copyright; that, this being strongly opposed, a term of statutory protection was accepted, the words "and no longer" being added to exclude the possibility of a further statutory term, and that the 9th clause was intended to leave all rights existing or alleged to exist at the passing of the Act *in statu quo*. Though not the judicial interpretation of the Act, this seems on the whole to reconcile the phraseology of clause 9 and the preamble with that of clause 1.

The question as to the effect of this compromise, whether it gave a term of copyright protected both by statute and common law, and left the further common law right as before, or whether it abolished the common

Result of Statute of Anne.

law right in perpetuity, replacing it by a limited statutory term, could not arise till 1731; for until that date, being twenty-one years from the date fixed in the statute, all books had statutory copyright. And after that date cases soon arose to test the effect of this legislation.

First, however, in 1735, an Act (*z*) was passed forbidding the importation of foreign reprints of English works, unless such works had not been printed or reprinted in England for twenty-one years previously, a restriction imposed in the interests of the public. The clause of the Act of Anne for fixing the price of books was also repealed, a recognition that "regulation" is not always "consistent with the life and growth of all arts and mysteries" (*a*).

The first cases to test the effect of the Act of Anne arose on applications to the Court of Chancery for injunctions to prevent the printing of piratical books. It was subsequently urged against the importance of these precedents, that such injunctions were only granted till the final hearing, and were not final settlements of the question. In answer to this it must be remembered that injunctions in the Court of Chancery were only granted in questions of property, and when the right was clear and unquestioned; and also that, though in form interlocutory, they were generally treated as a final settlement of the action, and when granted were made perpetual by consent of the defendants (*b*).

Cases under Statute of Anne.

In 1735, in the case of *Eyre* v. *Walker* (*c*), Sir Joseph Jekyll restrained the defendant from publishing the 'Whole Duty of Man,' said to have been first assigned

(*z*) 12 Geo. II. c. 36.
(*a*) See Ordinance of 1652, p. 22.
(*b*) 4 Burr. 2325.
(*c*) *Ibid.* 2325.

in 1657, and therefore outside the term of statutory copyright. This case however was rendered unsatisfactory by doubts as to the facts; the alleged assignment took place two years before the book was published, and the authorship is still an unsettled question. Cases under Statute of Anne.

In the same year, in the case of *Motte* v. *Falkner* (*d*), the defendant was restrained from printing certain miscellanies of Pope's and Swift's, published in 1701, 1702, and 1708, and therefore outside the term of statutory copyright. After another case in 1736, Lord Hardwicke in 1739, in the case of *Tonson* v. *Walker* (*d*), restrained the defendant from printing Milton's 'Paradise Lost,' the assignment of which was dated in 1667.

In 1760, in the similar case of *Tonson* v. *Collins* (*e*), where the defence set up was that copyright only existed by statute, and that the statutory period had expired, the question was referred to a Court of common law, who ultimately refused to give a decision, on the suspicion of collusion, although it was understood that the judges were in favour of the plaintiff as far as the case had gone.

Up to this point, therefore, the Court of Chancery had recognized that a clear right of literary property existed in works not within the statutory protection. That this right was independent of the statute was further shown by the fact that though the statute required registration at Stationers' Hall as a condition precedent to protection, the Court gave relief in cases where the work pirated had not been so registered (*f*).

Under these circumstances the question was for the first time brought to a decision in the Courts of common *Millar* v. *Taylor.*

(*d*) 4 Burr. 2325.
(*e*) *Ibid.* 2326.
(*f*) *Ibid.* 2319.

Millar v. *Taylor.*

law in the celebrated case of *Millar* v. *Taylor* (*g*). The poet Thomson had published his poem, 'The Seasons,' in the years 1726–1730; statutory copyright therefore expired in 1758. Thomson had sold the copyright to Millar; in 1763 Taylor pirated the work, and in 1766 Millar brought an action against him, which was heard before Lord Mansfield, C.J., Willes, Yates, and Aston, JJ., and decided in 1769.

The judges held by three against one that the copy of a book or literary composition belongs to the author by the common law, and that this common law right of authors to the copies of their own works is not taken away by the Statute of Anne.

Of the majority, Mr. Justice Willes delivered an extremely able historical survey of the question, to which all subsequent authors are much indebted (*h*), Mr. Justice Aston assented on general grounds, and Lord Mansfield, probably the greatest authority of the time on the Law of Copyright, or indeed on any other legal subject, contented himself with agreeing shortly with the judgments of his two puisnes (*i*). In opposition, Mr. Justice Yates delivered a lengthy and involved judgment against the common law right, based mainly on metaphysical considerations as to the nature of property. The effect of his arguments is much weakened by the fact that he admits an author to have *property at common law* in his unpublished works so as to prevent others from printing them. Thus the first discussion of the matter in Courts of Law resulted in the affirmation

(*g*) 4 Burr. 2303.

(*h*) It was subsequently said by Lord Abinger during the argument in *Chappell* v. *Purday*, that this judgment was really the work of Lord Mansfield.

(*i*) It was one of the *two* occasions on which Lord Mansfield's Court were not unanimous: 4 Burr. 2395.

of a copyright at common law undisturbed by the statute. *Millar* v. *Taylor.*

In 1774, after a decision in the Scotch Courts denying the common law right, the question came up for decision on an appeal to the House of Lords in the case of *Donaldson* v. *Beckett* (*k*). The facts were the same as in *Millar* v. *Taylor*, except that Millar's executors had sold the "copy" to Beckett, who sued Donaldson for piracy. The Lord Chancellor Bathurst granted a perpetual injunction against the defendant, from which he appealed. The House of Lords called in the judges to give their opinion on certain questions, which they did with the following result. (Lord Mansfield, as a peer of the realm, did not give his opinion with the judges, or take any part in the decision, a reticence much to be regretted.) *Donaldson* v. *Beckett.*

The judges were asked: Answers of the judges.

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?

Answer.—To this, ten judges (and Lord Mansfield) were of opinion that he had the sole right; one dissented. The judges were thus practically unanimous on the existence of the author's common law right before publication.

II. If the author had such a right originally, did the common law take it away upon his printing or publishing such book? And might any person afterwards reprint

(*k*) Brown, Cases in Parl. 129; 4 Burr. 2408; 17 Cobbett, Parl. Hist. 954, 1003.

Donaldson v. Beckett.

and sell for his own benefit such books against the will of the author?

Answers of the judges.

Answer.—To this, eight judges (and Lord Mansfield) answered "No;" three judges "Yes;" a large majority thus holding that publication did not at common law divest copyright.

III. If such an action would have laid at common law, is it taken away by the Statute of 8th Anne; and is an author by the said statute precluded from every remedy, except on the foundation of the said statute, or on the terms and conditions prescribed therein?

Answer.—On this, the vital point, five judges (and Lord Mansfield) answered "No;" six judges answered "Yes."

IV. The fourth question was a combination of the first and second: Whether the author of any book, and his assigns, had the sole right of printing and publishing the same in perpetuity by the common law?

Answer.—To this, seven judges (and Lord Mansfield) answered "Yes;" four judges "No."

V. The fifth question practically repeated the third—Whether this common law right is in any way impeached, restrained, or taken away by the Statute of Anne?

Answer.—On this, after minute discussion of the wording and circumstances of the statute, six judges answered "Yes;" five (and Lord Mansfield) "No."

On these answers of the judges, Lord Camden moved the House to give judgment for the appellant and against the common law right.

He first dealt with the evidence of custom adduced to shew the existence of such a right, and summarily dismissed it as either illegal decrees of an unconstitutional tribunal, or private regulations of a company of mono-

polists. No authority could be produced for a common law right; and, on grounds of principle, literature once published was a matter *publici juris*. His Lordship indeed was mightily indignant at the idea of pecuniary gain resulting from literature (*l*). "It was not for gain," said he, "that Bacon, Newton, Milton, and Locke instructed the world; it would be unworthy such men to traffic with a dirty bookseller for so much a sheet of letterpress. When the bookseller offered Milton five pounds for his 'Paradise Lost,' he did not reject it and commit his poem to the flames, nor did he accept the miserable pittance as the reward of his labour; he knew that the real price of his work was immortality, and that posterity would pay it." *Donaldson v. Beckett.*

How could the peers resist such eloquence as this: indeed, the only fault to be found with such generosity and highmindedness is, that it is at other people's expense. Possibly, if applied to the remuneration of my Lord Camden's own intellectual labour, his Lordship might have considered immortality an unrealizable commodity for the wants of daily life. Concerning posterity, the lucid dicta of that great lawyer and moralist, Mr. Thomas Hood, are applicable when he says: "The very law of nature protests against an unnatural law which requires an author to write for everybody's posterity except his own." And again: "By the present arrangement posterity is bound to pay everybody or anybody but the true creditor."

It is not clear what view Lord Camden took of the common law right in unpublished works, which he could hardly have denied to exist. Rhetoric apart, while correctly stating that there was no judicial decision expressly creating a common law right, he seems to have

(*l*) 17 Cobbett, Parl. Hist. 1000.

Donaldson v. Beckett.

overlooked the nature of the common law of England and its concealed character of judicial legislation, and not to have realized the importance of all these by-laws, proclamations, entries, and assignments, which he put aside as illegal and unworthy of notice, as forming a weighty reason for a decision in favour of a common law right.

Effects of *Donaldson v. Beckett.*

After all the persons who would have mainly gained by the existence of a common law right in perpetuity were the booksellers and not the authors, and the decision in *Donaldson* v. *Beckett* naturally caused great alarm in the ranks of publishers and owners of "copy." They instantly came to Parliament for relief. On the 28th of February, 1774 (*m*), the booksellers presented a petition complaining that in reliance on their common law right, confirmed by the case of *Millar* v. *Taylor*, booksellers had invested several thousands of pounds in purchase of ancient copyrights not protected by the Statute of Anne; that this property was destroyed by the late decision; and praying for relief. The petition was referred to a committee to report on it, and they accordingly took evidence. The chief witness was a bookseller named Johnson, whose evidence (*n*) in view of past history and present controversies is very interesting. Although the Statute of Anne was introduced to give owners of copy further protection, the witness stated that it was not the custom of publishers to sue for penalties under that statute, since a shorter and more complete relief might be had by filing a bill in Chancery. He had never heard of any action being brought at common law, the bill in Chancery being the easier. In reference to the "reversionary," or "two-term" copy-

(*m*) 17 Cobbett, Parl. Hist. p. 1077.
(*n*) *Ibid.* p. 1086.

right, under the statute, a return to which has been proposed of late years, the witness had never seen or heard of any assignment of copy where the second term of fourteen years was reserved to the author, the assignments being usually to booksellers and their assigns for ever; undoubtedly the bookseller gave more money for twenty-eight years' copy than he would for fourteen. With regard to the value of copyrights, he said that in the previous twenty years nearly £66,000 had been paid for copyrights by publishers. The facts he bore witness to however tended to show that the evidence required of property in a copyright was not of the strictest, that the assignment from the author was frequently assumed, and that there was some ground for calling the then system of copyright a mere trade arrangement.

Effects of *Donaldson* v. *Beckett.*

On this and other evidence the Committee reported to the House, and a bill was brought in on the 22nd of April, 1774, and read a second time on the 10th of May; it was opposed by Attorney-General Thurlow and Charles James Fox, and supported by Edmund Burke (*o*). Counsel were heard for and against it: the interests of the public and of authors however are not prominently put forward; Scotch and country booksellers promote the opposition against the great London firms, mainly on petty trade grounds. The Bill ultimately passed the Commons, but in the House of Lords (*p*), on the motion of Lord Denbigh, supported by Lord Camden and Lord Bathurst, it was thrown out, and large and valuable properties in ancient copyrights were lost without compensation. The report significantly says: "Lord Mansfield did not attend the House on that occasion."

(*o*) 17 Cobbett, 1110.
(*p*) *Ibid.* 1402.

Subsequent legislation.

Another and more powerful section of the community were affected by the decision, and were more fortunate in their endeavours. The Universities in 1775 obtained an Act granting them perpetual copyright "in books given or bequeathed to the said universities and colleges for the advancement of useful learning, and other purposes of education" (*q*).

As the position of authors whose pen was their living became more honourable, it was felt that the Statute of Anne gave too short a term of remuneration, and in 1814 an Act (*r*) was passed "to afford encouragement to literature." It substituted for the previous term of fourteen years, with a reversionary fourteen years to the author if living, an extended term of twenty-eight years, or, if the author were living at its expiration, his life. This clause however must be regarded rather as a bribe to outweigh the disadvantages of an increased supply of copies to public libraries, rendered obligatory by other clauses of the Act, than a disinterested recognition of the claims of literature.

Talfourd's Bill.

In 1837, however, the matter was at last taken in hand purely in the interests of authors. In that year Serjeant Talfourd began the parliamentary battle which ended, after he had left the Commons, in victory. Introducing his bill in 1838 in an eloquent and lengthy speech (*s*), he was supported by Disraeli and Monckton Milnes, afterwards Lord Houghton, and actively opposed, mainly in the interests of the public, by Hume, Grote, and the "philosophic Radicals," on the ground that any extension of copyright must enhance the price of books. During

(*q*) 15 Geo. III. c. 53. Under this Act, the late Master of Balliol's works have been bequeathed to Balliol College.

(*r*) 54 Geo. III. c. 156.

(*s*) Hansard, xlii. 557.

this debate Talfourd laid down the motive of the proposed change to be, "that the present term of copyright is much too short for the attainment of that justice which society owes to authors, especially those, few though they be, whose reputation is of slow growth and enduring character." Talfourd's Bill.

The year 1841 is memorable for the first interposition in these debates of Macaulay, in a speech which must, like its successor in 1842, have had a very great effect on the House (*t*). Members generally were much impressed by the hardships which had lately befallen prominent men of letters, and by petitions presented by writers then in full popular fame, or attaining to it. Scott had died just when the copyright of his earliest and most successful novels was expiring, leaving his family in great financial difficulties. Wordsworth's works were only becoming popular, when they ceased to bring him any return. Southey's literary career was known to have been much altered by his pecuniary needs, and the shortness of the copyright in his works. Alison presented a very important statement with reference to the remuneration of his 'History,' a work of great magnitude and expense and of slow returns (*u*) Thomas Hood wrote a petition, alluded to before, but unfortunately too long to quote, except as to one paragraph, which ran: "That cheap bread is as desirable and necessary as cheap books, but it hath not yet been thought necessary to ordain that after a certain number of crops all cornfields ought to be public property." The whole petition was drafted in a style quite new to the House, but unfortunately it was never presented. There was also a petition from "Thomas Carlyle, a writer of

(*t*) Macaulay's Speeches, p. 108; Hansard, li. 341.
(*u*) Drone on Copyright, p. 78.

Talfourd's Bill.

books" (*w*), setting forth "that your petitioner has written certain books, being incited thereto by certain innocent and laudable considerations, that his labours have found hitherto in money or money's worth small recompense or none; but he thinks that if ever it is so, it will be at some distant time when he, the labourer, will probably no longer be in need of money, and those dear to him will still be in need of it, wherefore your petitioner humbly prays your honourable House to forbid extraneous persons, entirely unconcerned in this adventure of his, to steal from him his small winnings for a space of sixty years at the shortest. After sixty years, unless your honourable House provides otherwise, they may begin to steal."

Against these influences Macaulay rose in opposition. As Talfourd said: "Literature's own familiar friend in whom she trusted, and who has eaten of her bread, has lifted up his heel against her." And successfully; his nephew and biographer is justified in saying: "Never has any public man, unendowed with the authority of a minister, so easily moulded so important a piece of legislation into a shape which so accurately accorded with his own views as did Macaulay the Copyright Act of 1842." (*x*)

F. In introducing his Bill in 1841 (*y*), Talfourd proposed a copyright of sixty years from the death of the author, but professed himself willing to accept thirty years from death. Against this Macaulay delivered the first of his celebrated speeches on copyright (*z*). He argued that there was no natural right to property, or that if there

(*w*) Carlyle, Miscellaneous Essays.
(*x*) Trevelyan's Macaulay, ii. 133.
(*y*) Hansard, lvi. 340.
(*z*) Macaulay's Speeches, p. 109.

was, it did not survive the original proprietor. Copyright was a monopoly, making books dear, and as such only to be justified within certain limits by expediency. He urged that extension of the term beyond the author's death would not benefit him, nor would the expectation of it be an inducement to labour. Copyright he defined as "a tax on readers for the purpose of giving a bounty to writers." He suggested that the descendants of a great author might frequently disapprove on various grounds of his works and so injure the public by refusing to reproduce them. All this was enforced by copious historical illustrations, and was probably even more refreshing to listen to in the House than it is to read in the wilderness of Hansard. The Bill against which it was directed was, small wonder, rejected by forty-five votes to thirty-eight, in which minority there voted Sir E. L. Bulwer, Disraeli, W. E. Gladstone, Lord John Russell, Lord George Bentinck and Sheil, while Macaulay and Joseph Hume are the most conspicuous names in the majority. Talfourd's Bill.

Before the next session of Parliament, Talfourd had been raised to the Bench, and the late Lord Stanhope, then Lord Mahon, introduced the Bill (*a*). He proposed that the statutory period should be twenty-five years from the death of the author, and never less than twenty-eight years. Macaulay in committee brought forward as a counter-proposal that the statutory period should be forty-two years or the life of the author, whichever was the longest. His speech (*b*) in proposing this had little to do with principles, but consisted of a graphic recital of the great works of literature which would receive Act of 1842.

(*a*) Hansard, lxi, 1349.
(*b*) Macaulay's Speeches, p. 118.

Act of 1842.

longer copyright by his than by Lord Mahon's proposal. It was the controversy between, on the one hand, a fixed period from the death of the author for all his works, a varying period therefore for each of his works; and on the othor a fixed period for each work from date of publication, the copyrights thus expiring one by one. The point is one of not very interesting detail, but Macaulay's vivid power and literary memory made the discussion so absorbing that the House was carried with him as by storm. When he sat down Sir Robert Peel told him that the last twenty minutes of his speech had radically altered his views on the Law of Copyright. Macaulay's amendment was carried by sixty-eight votes to fifty-six (*c*). Peel then suggested that the term should be extended to seven years after the author's death, for the benefit of his children; and in spite of Macaulay's opposition this was carried by a large majority. The statutory term thus stood at "forty-two years from publication, or till seven years from the death of the author, whichever shall be longest."

The Bill met with little opposition in the Lords (*d*); it was supported in committee by Lord Lyndhurst, but met with considerable adverse criticism from Lord Brougham, who specially questioned whether the lengthened term would really benefit the author pecuniarily, or whether he would obtain more for his term of forty-two years than he would for one of twenty-eight years (a point however only of importance when the author sells all his rights instead of arranging for each edition separately).

Jefferys v. Boosey.

Since 1842 artistic Copyright has been dealt with by

(*c*) Hansard, lxi. 1398.
(*d*) *Ibid.* lxiii. 778.

an Act of 1862 (*e*); the Drama is the subject of an Act of 1833, known as Bulwer Lytton's Act (*f*); Lectures are partially provided for by an Act of 1835 (*g*); and Music has been very unsatisfactorily legislated for in 1882, 1888, and 1902 (*h*). The whole patchwork and piecemeal collection of Acts waits and has waited for years for a codifying and simplifying measure which Parliament cannot find the leisure to consider. Before however closing this historical sketch of Copyright in England, something must be said of the great case of *Jefferys* v. *Boosey* (*i*), which, though more directly concerned with International Copyright and the extension of the Copyright statutes to cover it, yet raised a question as to the existence and nature of common law copyright and the extent to which it was available to meet the case under discussion. The judges were called in to advise the House, and though the questions put to them did not directly raise the point, yet, amongst others, Erle and Coleridge, JJ., pronounced in favour of the existence of such a right. Pollock, C.B., however, gave it as his opinion that (*j*): "Copyright is altogether an artificial right, not naturally and necessarily arising out of the social rules that ought to prevail among mankind, but is a creature of the municipal laws of each country, to be enjoyed for such time and under such regulation as the law of each state may direct, and has no existence by the common law of England."

Jefferys v. *Boosey*.

The Law Lords also were unanimous against a copyright at common law. Lord Campbell, L.C., said,

(*e*) 25 & 26 Vict. c. 68.
(*f*) 3 & 4 Will. IV. c. 15.
(*g*) 5 & 6 Will. IV. c. 65.
(*h*) 45 & 46 Vict. c. 40; 51 & 52 Vict. c. 27; 2 Edw. VII. c. 15.
(*i*) (1854) 4 H. L. C. 815.
(*j*) *Ibid.* p. 935.

Jefferys v. Boosey.

"Copyright, if not the creature of our statute law, as I believe it to be, is now entirely regulated by it." Lord Brougham (*k*): "In my judgment it is unquestionable that the statutes alone confer the exclusive right"; while Lord St. Leonards (*l*) had "come to the conclusion long since that no common law right existed after publication."

Colonial Copyright. Commission of 1875.

It only remains to add that, the national question being settled for a time by the Act of 1842, increased facilities for intercourse, and the spread of education, led to knotty questions of International and Colonial Copyright. A Canadian Act of 1875, thought to clash with the Imperial Act of 1842, was the cause of the appointment of the Copyright Commission in 1875, under the chairmanship of the late Lord Stanhope, who, as Lord Mahon, had introduced the Bill of 1842. After taking much valuable evidence, it reported in May, 1878, and the changes in the Law of Copyright which it recommended still wait legislative enactment till the House of Commons shall set itself in order and make better arrangements for accomplishing the legislative work of the nation (*m*).

Recapitulation of history.

The History of Copyright in England therefore falls under four periods:—

(*k*) 4 H. L. C. p. 962. (*l*) *Ibid.* p. 977.

(*m*) This passage, from the first edition of 1883, remains unaltered in the fourth edition in 1903. Various private bills dealing with literary and artistic copyright were introduced in the sessions of 1898, 1899, and 1900, and considered by a Committee of the House of Lords, presided over by the late Lord Herschell, and by Lord Monkswell, and in which Lords Knutsford and Thring were active members. The Government included a Literary Copyright Bill in the King's Speech for 1901, but it was not pressed forward. A private measure has very little chance of passing, and the Government do not seem able to find time for a public measure.

I. *From the incorporation of the Stationers' Company in* 1556 (*n*) *to the expiration of the Licensing Act in* 1694; in which period there exists usage sufficient to ground a copyright at common law, side by side with a statutory system of licensing and regulation, which indirectly enforces it. Recapitulation of history.

II. *From the expiration of the Licensing Act in* 1694 *to the passing of the Copyright Act in* 1709, copyright at common law alone exists.

III. *From the passing of the Copyright Act in* 1709 *to the decision in Donaldson* v. *Beckett in* 1774 there is statutory copyright for a limited term, with, as was believed, common law copyright extending beyond it in perpetuity.

IV. *From the decision in Donaldson* v. *Beckett to the present day*, statutory copyright alone exists, as far as published works are concerned, and has been gradually extended.

Whether or not there is now a common law copyright after publication in cases not provided for by statute, might be a question of importance in case of the discovery or invention of a new species of literary property. To this the common law might apply, not as founded on ancient custom, but in its character of judicial legislation as pointed out by Lord Lyndhurst, who says: "The common law applies itself to the varying circumstances of the time, and extends to every new species of property that springs up, the same protection that it has afforded to property previously existing." Common law copyright.

Returning then to the questions put at the outset, we can answer:— Answers to questions.

(*n*) Before 1556, copyright is only rudimentary.

Answers to questions.

I. Between the introduction of printing in 1471, and the passing of the Statute of Anne in 1709, there was no direct recognition by the judges of copyright as existing in the common law of England; nor was there any statute creating copyright. There was, however, such a state of things existing in the custom of authors and printers as to constitute a new species of customary property, which the judges would have been bound to recognise had the question come before them.

II. The Statute of Anne was an unfortunately worded compromise, not understood at the time, containing expressions favouring both the retention and the destruction of copyright as common law, and probably intended, by at least part of the House, to destroy such copyright. It should however have been construed as leaving such copyright *in statu quo*, in accordance with the opinion of Lord Mansfield.

History in the United States.

The United States.—As the law of the *United States* on copyright has been much influenced by that of England, a few words on its growth will not be out of place.

Immediately after the Declaration of Independence, Connecticut and Massachusetts passed Copyright Acts in the interests of authors (*o*); and in May, 1783, the old Congress recommended to the various States to secure by law to authors and publishers a term of copyright similar to that contained in the English statute of Anne, and several states followed this recommendation. In 1790 a copyright law was enacted for the whole of the States, and in 1831 this was re-enacted with extensions of the term.

In 1834 the Supreme Court of the United States had

(*o*) Drone, p. 87.

before it, in the case of *Wheaton* v. *Peters* (*p*), the question of the effect of the American statutes on the common law right, if any, and decided by three judges to two, that the Act of 1790 did not affirm an existing right, but created one. One of the majority put the case in this way (*q*): "The argument that a literary man is as much entitled to the fruits of his labour as any other member of society, cannot be controverted. And the answer is, that he realizes this product by the transfer of his manuscript, or on the sale of books when first published." History in the United States.

In 1870 the Copyright Laws were consolidated, and in 1874 revised and re-enacted. They afford protection to unpublished as well as published works. The attempts to create a system of International Copyright to which the United States should be parties were at last successful in the year 1891, when the Chace Act gave copyright in the United States to works of foreign authors (*r*).

History in other countries.

With regard to other countries, it will suffice to say that copyright laws exist in every European state, and most countries outside Europe of any degree of civilization, except Egypt and some of the South American republics. These laws mostly date from the first half of the last century, and have in many cases been lately revised, the tendency of the revision having invariably been to increase the amount of protection afforded to authors. Usually the original copyright has been in perpetuity; and, after being cut down to a short term of protection, this has been gradually lengthened. This has been the case in England, France, Holland, Norway, Sweden, Denmark, and Spain. To take a typical instance, in

(*p*) Drone, pp. 43–48; 8 Peters' Rep. 591.
(*q*) 8 Peters' Rep. 657.
(*r*) *Vide post*, Cap. IX.

History in other countries.

France (*s*) before the Revolution, copyright was perpetual; a decree of 1793 gives a statutory term of "life + 10 years;" this is extended in 1810 to "life + 20;" in 1854, to "life + 30 years;" and finally, in 1866, the term is fixed at "life + 50 years."

(*s*) Lowndes, p. 12; Copinger, 3rd ed.

CHAPTER II.

THE AUTHOR'S RIGHTS AT COMMON LAW.

The common law right before publication.—Rights arising from special relations.—Right to the use of a title or form of publication.—Rights in works before publication.—Unpublished works.—Nature and limits of right.—Investitive facts.—Transvestitive facts.—Letters.—Conditional communications.—Divestitive facts.—Infringements and remedies.

The common law right before publication.

COPYRIGHT, or the exclusive right of multiplying copies of a literary or artistic work already published, is now the creature of statute (*a*). The various rights possessed by authors at common law, though in effect they may prevent the multiplication of copies of a work, cannot rightly be called "copyright," but are merely common law incidents of property (*b*). Once a work has been published, it is free to all the world to copy it, unless restrained by statute. But, before publication, the author or his assigns can prevent any disclosure of the nature and contents of the work. The author, in the words of Lord Brougham, "has the undisputed right to his manuscript; he may withhold, or he may communicate it, and communicating, he may limit the number of persons to whom it is imparted, and impose such restrictions as he pleases upon the use of it" (*b*). In the case of pictures and drawings, statutory copyright begins on

(*a*) *Jefferys* v. *Boosey* (1854), 4 H. L. C., at p. 954. *Cf. per* Lindley, L.J., in *Tuck* v. *Priester* (1887), 19 Q. B. D. 640.

(*b*) *Jefferys* v. *Boosey* (1854): *per* Lord Brougham, at p. 962; *cf. per* Lord Watson in *Caird* v. *Sime* (1887), 12 A. C., at p. 344; and *per* Lord Esher in *Exchange Telegraph Co.* v. *Gregory* (1896), 1 Q. B., at p. 153.

The common law right before publication.

the making of the picture (*e*), and thus between its making and its publication the statutory and the common law right appear to be co-existent (*d*). The case of lectures and plays is a little more complicated, and is discussed subsequently (*e*).

Rights arising from special relations.

But in addition to the common law right against all the world of preventing the publishing of an unpublished work, there may be special rights enforceable at common law, and depending on the special relations of the parties. As a general principle, an agent, servant, or apprentice has no right to employ against his former principal or master materials obtained for his principal in the course of his employment (*f*) or which he has obtained for himself in breach of the implied confidence reposed in him in such a position (*g*). Thus, a printer employed to print a certain number of copies of an artistic or literary work for its author will be restrained from printing on his own behalf any further copies, on the ground of the breach of faith and breach of contract on his part (*h*). A photographer employed to take a negative and print a certain number of copies for his employer will not be allowed to print others for his own benefit (*i*). An apprentice to a firm of fire-engine manufacturers who in the last days of his apprenticeship compiled a table of fire-engine dimensions from his employers' drawings, was restrained from publishing the contents of such table (*g*);

(*c*) *Tuck* v. *Priester* (1887), 19 Q. B. D. 629.

(*d*) Cap. VII. sect. 4. (*e*) Caps. III., IV.

(*f*) *Lamb* v. *Evans* (1893), 1 Ch., at p. 226, doubting *Reuter's Telegram Co.* v. *Byron* (1874), 43 L. J. Ch. 661.

(*g*) *Merryweather* v. *Moore* (1892), 2 Ch. 518; *Robb* v. *Green* (1895), 2 Q. B. 315; *Louis* v. *Smellie* (1895), 11 Times L. R. 515.

(*h*) *Tuck* v. *Priester* (1887), 19 Q. B. D., at p. 639; *cf. Morison* v. *Moat* (1851), 9 Hare, 241; *Prince Albert* v. *Strange* (1849), 1 MacN. & G. 25.

(*i*) *Pollard* v. *Photographic Company* (1888), 40 Ch. D. 345.

and an agent to publishers of a trade directory was restrained from using, in the service of rival publishers, the materials he had obtained in his former employer's service (*k*). And this is independent of any question of statutory protection or of general rights of property. Rights arising from special relations.

The common law affords another method of protection, which was until recently confused with copyright, when it restrains one man from selling a work under a title and in a form calculated to lead the purchaser to believe that it is another man's work. This, however, is not an invasion of copyright. It is akin to common law fraud (*l*). Right to the use of a title or form of publication.

This class of case was alleged to be within the copyright statutes, on the ground of copyright in the title used or imitated. The case of *Dicks* v. *Yates* (*m*) has finally destroyed this contention; and if a plaintiff is to succeed in cases of this kind he must now show that the defendant has represented his work to be the same, or that the public would understand it to be the same, as the plaintiff's, in such a way as to prejudice or damage the plaintiff (*n*). The confusion may arise from similarity of title or of form, with or without similarity of matter.

Each case of this kind must depend on its own peculiar facts, but some general principles may be gathered from the numerous authorities on the subject.

(*k*) *Lamb* v. *Evans* (1893), 1 Ch. 218.

(*l*) *Per* James, L.J., *Dicks* v. *Yates* (1881), 18 Ch. D. 90. The presence of actual fraudulent intent is not necessary; it is enough if the result be to mislead. See *per* Bowen, L.J., *Walter* v. *Emmott* (1885), 54 L. J. Ch., at p. 1064; *Clement* v. *Maddick* (1859), 1 Giff. 98.

(*m*) *Vide supra*. See also *Maxwell* v. *Hogg* (1867), L. R. 2 Ch. 307; *Kelly* v. *Hutton* (1868), L. R. 3 Ch. 703; *Kelly* v. *Byles* (1879), 13 Ch. D. 682; and *post*, p. 118.

(*n*) *Borthwick* v. *Evening Post* (1888), 37 Ch. D., at p. 460; *per* Lord Eldon in *Hogg* v. *Kirby* (1803), 8 Vesey, 225.

Right to the use of a title or form of publication.

In the first place, the plaintiff must show that some name or form of publication has become attached in the public understanding to his own productions, before he can complain that the defendant is colourably imitating that name and form. Thus, in *Licensed Victuallers' Newspaper Company* v. *Bingham* (*o*) the plaintiff company issued on February 3, 1888, the first number of a weekly newspaper called the *Licensed Victuallers' Mirror*, and registered it at Stationers' Hall on February 4. They had previously advertised their intention to produce such a paper, without mentioning its name. On February 6, when about twenty copies of the first number of the plaintiff's paper had been sold, the defendant issued the first number of a weekly paper under the same name. On February 9, when about eighty copies of the plaintiff's paper had been sold, the company commenced an action against the defendant, and applied for an injunction on February 24, at which time about a hundred copies each of their first and second numbers had been sold, and a large number of their third, published on February 17. North, J., refused the injunction, on the ground that on February 6 the plaintiff's paper was not an article known in the market, or having any reputation which would induce the public to buy the defendant's paper as being that of the plaintiff's; and this judgment was affirmed by the Court of Appeal, on the same ground, that the plaintiff showed no reputation by user. For a similar reason *The Sphere*, and *The Spear*, recent illustrated periodicals of misleading similarity of title, were unable to stop each other, because neither had any public reputation when the other was first published. In the same way, in *Goodfellow* v. *Prince* (*p*), a firm of wine merchants failed to establish their identification with "*Le*

(*o*) (1888) 38 Ch. D. 139. (*p*) (1887) 35 Ch. D. 9.

Court et Cie," as a brand for champagne; and in *Schove* v. *Schmincké* (*q*) the plaintiff did not prove that the name "Castle Album" was exclusively connected with his publications by the trade; while in *Francke* v. *Chappell* (*r*) a still more extravagant claim to appropriate the name "*Richter concerts*" to concerts organised by the plaintiff, even though Dr. Richter did not conduct them and did conduct concerts organised by the defendant, failed on the same ground. Right to the use of a title or form of publication.

Secondly, the plaintiff, having established a reputation by user, must prove that the defendant is so acting as to pass his paper or book off as that of the plaintiff, either by using a similar title, or a similar form, or both. Thus in *Walter* v. *Emmott* (*s*) the plaintiff was the proprietor of the *Mail*, an old-established paper published three days a week at 11 A.M., at the price of twopence, and consisting of a reprint of the most important parts of the *Times*. The defendant began to publish a halfpenny daily paper called the *Morning Mail*, at 3 A.M. every day. There was some evidence of confusion amongst news-agents and advertisers as to the two papers. It was held by the Court of Appeal that there was no such evidence of misleading the public as to justify an interlocutory injunction. Both Cotton and Bowen, L.JJ., expressed the opinion that the right was not based on property, but on untrue representations by the defendant, not necessarily fraudulent, as to what he was selling. So also in *Bradbury* v. *Beeton* (*t*), *Punch and Judy*, a weekly

(*q*) (1886) 33 Ch. D. 546; *cf.* *Talbot* v. *Judges* (1887), 3 Times L. R. 398, where the plaintiff's publication was a bogus one.

(*r*) (1887) 57 L. T. 141. *Semble*, that in *Primrose Agency* v. *Knowles* (1886), 2 Times L. R. 404, the same result should have followed, but the facts were peculiar.

(*s*) (1885) 54 L. J. Ch. 1059.

(*t*) (1869) 18 W. R. 33.

Right to the use of a title or form of publication.

penny comic paper, was held not to interfere with the threepenny *Punch*. But in *Walter* v. *Head* (*u*), a mock edition of the *Times* for 1891 was restrained by the proprietors of the real *Times*.

In *Mack* v. *Petter* (*x*) the proprietor of the 'Birthday Scripture Text-Book' restrained the production of a similar work called the 'Children's Birthday Text-Book'; in *Ingram* v. *Stiff* (*y*) the owner of the *London Journal* succeeded in stopping the publication of the *London Daily Journal*; and in *Read* v. *O'Meara* (*z*) the proprietor of the *Grocer and Oil Trade Review* prevented the *Grocer and Wine Merchant* from using the word "Grocer" as part of its title; but in *Kelly* v. *Byles* (*a*) the 'Bradford Post Office Directory' was held not to interfere with the 'Post Office Directory for West Yorkshire.'

In *Cowen* v. *Hulton* (*b*) the plaintiff was the proprietor of the *Newcastle Daily Chronicle*, an ordinary daily newspaper, known in Newcastle as the *Chronicle*; the defendant was the proprietor of a Manchester paper which had an evening edition circulated widely in the north of England, called the *Sporting Chronicle and Prophetic Bell*, and he opened a publishing office in Newcastle for the supply of that paper. The plaintiff moved to restrain him, but, on evidence that the papers were dissimilar in appearance and contents, the Court of Appeal dismissed the application almost contemptuously. The question in each case will be whether the publication of the defendant's paper or book in the mode in which he is publishing it is likely

(*u*) (1881) 25 Sol. J. 757; see note (1885), 54 L. J. Ch. 1061.

(*x*) (1872) L. R. 14 Eq. 431. See also *Chappell* v. *Sheard* (1855), 2 K. & J. 117; *Kelly* v. *Hutton* (1868), L. R. 3 Ch. 703.

(*y*) (1859) 5 Jur. N. S. 947.

(*z*) (1888) 21 L. R. (Ir.) 216.

(*a*) (1879) 13 Ch. D. 682.

(*b*) (1882) 46 L. T. 897.

to induce the public to believe that it is the plaintiff's paper or book.

Right to the use of a title or form of publication.

It will not be sufficient to show that some confusion may exist in the minds of the public as to the relations of the two papers; reasonable probability of damage from this confusion must also be proved. Thus in *Borthwick* v. *Evening Post* (*c*) the proprietor of the *Morning Post* claimed an injunction against the defendant's evening newspaper, the *Evening Post*. There was some evidence that people had thought the *Evening Post* was published at the office of the *Morning Post*, but no evidence of any falling off in sale of the latter paper, or purchase of one paper in mistake for the other. There was a good deal of dissimilarity in the papers, and the placards announcing them. The Court of Appeal, while strongly suspecting the reasons which had led the defendants to choose their title, and while thinking that people might be misled as to the connection between the two papers, could find no evidence that the confusion would injure the *Morning Post* in any way, and therefore refused the injunction. The case was, however, near the line, and the judgments delivered are very instructive.

The plaintiff will not prove damage by showing that the defendant's publication would interfere with s me future development of his own work. Thus in *Walter* v. *Emmott* (*d*) the fact that the *Morning Mail* might prevent the alteration of the *Mail* to a morning paper, and in *Borthwick* v. *Evening Post* (*c*), the fact that the latter paper might prevent an evening edition of the *Morning Post* under the name of the *Evening Post*, were held immaterial.

(*c*) (1888) 37 Ch. D. 449.
(*d*) (1885) 54 L. J. Ch. 1059.

The common law right before publication.

In addition to these two methods of stopping reproductions of literary or artistic work, resting the one on breach of confidence or trust (*e*), the other on conduct calculated to deceive the public (*f*), there remains the common law right, as an incident of property in a manuscript or work of art which has not been published and so given to the world, to prevent the publication of such a work by another person (*g*).

Thus in 1723 (*h*), Henry, Earl of Clarendon, delivered to Gwynne an original manuscript of his father's (Lord Clarendon's) History; in 1758, the administrator of Gwynne sold it to Shebbeare for publication, and the representatives of the Earl of Clarendon applied for and obtained an injunction against such publication, the Court saying that "it was not to be presumed that when Lord Clarendon gave a copy of his work to Gwynne he intended that he should have the profit of multiplying it in print."

In the celebrated case of *Prince Albert* v. *Strange* in 1849 (*i*), the Queen and Prince Albert made, for their own amusement and not for publication, drawings and etchings from which copies were printed for distribution amongst their friends. The defendant, obtaining copies of these, proposed to exhibit them, and to sell a descriptive catalogue. The Court restrained both the publication by exhibition, and "by descriptive catalogue." The principles applied, however, in this case, at least as regards the catalogue, are far wider than those applied to abridgments and dramatizations in the case of published works.

(*e*) *Ante*, p. 54. (*f*) *Ante*, pp. 55–59.

(*g*) See *ante*, p. 53, and Stephen's Digest, C. C. R., p. 65, s. 1.

(*h*) *Duke of Queensberry* v. *Shebbare* (1758), 2 Eden, 329.

(*i*) (1849) 2 De G. & Sm. 652; 1 Mac. & Gor. 25; *cf. Gilbert* v. *Star Newspaper* (1895), 11 Times L. R. 4.

So in the American case of *Bartlett* v. *Crittenden* (*k*), the plaintiff taught in his school an original system of book-keeping; the defendant, a scholar and teacher in the school, having access to the manuscript of this system, copied it, and inserted 92 pages thereof in a book which he published, consisting of 207 pages. The Court restrained publication, holding *that*:—"No one can determine this essential matter of publication but the author. His MSS., however valuable, cannot, without his consent, be seized by his creditors as property. Publication of a substantial part is piracy." The common law right before publication.

The right is one of property, perpetual unless waived, in original literary or artistic productions, which need not be of any pecuniary or literary or artistic value, but must not be of an immoral, seditious, or blasphemous nature. It rests on the common law. Nature and limits of right.

Mr. Justice Yates, the vigorous opponent of literary property after publication at common law, said, in *Millar* v. *Taylor* (*l*):—"Most certainly the sole proprietor of any copy may determine whether he will print it or not. . . . It is certain every man has a right to judge whether he will make his sentiments public, or commit them only to the sight of his friends. In that state the manuscript is in every sense his peculiar property, and no man can take it away from him, or make any use of it which he has not authorized, without being guilty of a violation of his property." And the nature and extent of the right is well summarized by Lord Brougham in *Jefferys* v. *Boosey* (*m*), where he says:—"The right of the author before publication we may take to be unquestionable; he has the undisputed right to his manuscript; he

(*k*) (1849) 5 McLean, 32, 37, 40.
(*l*) (1769) 4 Burr. 2379.
(*m*) (1854) 4 H. L. C. 962.

Nature and limits of right.

may withhold or he may communicate it, and, communicating, he may limit the number of persons to whom it is imparted, and impose such restrictions as he pleases on the use of it; and the fulfilment of the annexed conditions he may proceed to enforce, and for their breach he may claim compensation."

In character, the work, to be property, must be the result of the intellectual or artistic labour of the claimant or his predecessor in title. Otherwise there can be no property. Neither will the law protect productions of an immoral or injurious tendency. Thus in *Southey* v. *Sherwood*, in 1817 (*n*), though the ground of the decision is not very clear, Lord Eldon refused to prohibit the defendant from publishing 'Wat Tyler,' an early work of Southey's, on the ground apparently that it was an immoral work, and that the State would afford no protection to works of such a character. However, there was also a question whether Southey, by leaving the manuscript in the hands of a publisher for twenty-three years, had not waived his rights.

The work need not be of any pecuniary value or literary or artistic merit (*o*).

Investitive facts.

Putting in writing the result of intellectual work is sufficient to vest the common law right in the author, but it does not appear essential. For instance, there is probably a common law right to prevent the publication of lectures of which no manuscript exists (*p*). But in *Abernethy* v. *Hutchinson* (*q*) Lord Eldon said:—"Where

(*n*) (1817) 2 Merivale, 435.

(*o*) *Gee* v. *Pritchard* (1818), 2 Swanston, 402; *Woolsey* v. *Judd* (Am.) (1855), 4 Duer. N. Y. 379.

(*p*) For instance, in *Caird* v. *Sime* (1887), 12 A. C., at p. 335, it appears that the lectures protected were not in MS.

(*q*) (1825) 1 Hall & Tw. 28, at p. 39; and see *post*, p. 72.

a lecture is orally delivered, it is difficult to say that an injunction could be granted upon the same principle upon which literary compositions are protected; because the Court must be satisfied that the publication complained of is an invasion of the written work; and this can only be done by comparing the composition with the piracy." Investitive facts.

The *author may deal with his copy as with any other* piece of property. He may assign copies under express or implied undertaking not to publish, when the property in the original manuscript will pass, but not the right to publish. In the words of an American case (*r*): "This property in manuscript is not distinguishable from other personal property. It is governed by the same rules of transfer and succession, and is protected by the same process, and has the benefit of all the remedies accorded to other property so far as applicable." Transvestitive facts.

Thus in *Thompson* v. *Stanhope* (*s*), Lord Chesterfield's celebrated letters to his son had been sold by his son's widow to Dodsley, and the latter published them; Lord Chesterfield's executors applied for an injunction to restrain publication. The Lord Chancellor granted it, holding that the widow had no right to print without the consent of Lord Chesterfield, and that when Lord Chesterfield declined receiving the letters from her and said she might keep them, he did not mean to give her leave to publish them. So in *Abernethy* v. *Hutchinson* (*t*) it was held that a right was given to hear a lecture and take notes for information and instruction, but not to

(*r*) *Palmer* v. *De Witt* (1872), 47 N. Y. 532, 538.

(*s*) (1774) Ambler, 737.

(*t*) (1825) 1 Hall & Tw. 28; *cf. Caird* v. *Sime* (1887), 12 A. C. 326; *Nicols* v. *Pitman* (1884), 26 Ch. D. 374.

Trans-vestitive facts.

publish such notes. In the absence of express contract, the purchaser of a manuscript may, in publishing it, alter or add to it at his will (*u*); but questions of considerable difficulty may arise if he suggests that the work, as published, is the work of its original author (*x*).

Letters.

In the case of *Letters*, the writer of a letter on his own behalf (*y*) retains copyright in the letter, so as to hinder the receiver from publishing it, except under special circumstances. It has been suggested (*z*) that the receiver of a letter may publish it without the consent of the writer for purposes of personal vindication; but this exception, if it exists, will be carefully limited, and probably confined either to using the letter as evidence in a court of justice, or when it is the only proof of defendant's innocence of an injurious and unfounded imputation (*a*). In the case of *Pope* v. *Curl*, in 1741, the poet Pope applied for an injunction against Curl, the bookseller, to restrain him from publishing letters to and from Pope. Lord Hardwicke granted it as to letters written by Pope, but not as to those written to him, saying (*b*): "The receiver has only a special property possibly in the paper, but this does not give a license to any person whatsoever to publish letters to the world, for at most the receiver has only a joint property with the writer," who could therefore restrain publication. In *Oliver* v. *Oliver* (*c*) it was held that the receiver of a

(*u*) *Cox* v. *Cox* (1853), 11 Hare, 118.

(*x*) See *Archbold* v. *Sweet* (1832), 5 C. & P. 219; *Lee* v. *Gibbings* (1892), 67 L. T. 263.

(*y*) *Howard* v. *Dunn* (1863), 32 Beav. 462.

(*z*) *Perceval* v. *Phipps* (1813), 2 Ves. & B. 19; *Folsom* v. *Marsh* (Am.) (1841), 2 Story, 100, 111.

(*a*) *cf. Gee* v. *Pritchard* (1818), 2 Swanston, 402; *Lytton* v. *Devey* (1884), 54 L. J. Ch. 293.

(*b*) (1741) 2 Atk. 342.

(*c*) (1861) 11 C. B. N. S. 139.

letter might maintain an action for detinue against a person into whose possession the letter had passed. Under ordinary circumstances the property in the paper on which the letter is written is in the receiver, while the writer can prevent its publication to others (*d*). Letters.

Communication of a work may be only partial, restricted, and conditional, for a limited purpose, and the donor may prevent the donee from transgressing the conditions of the communication (*e*). In the words of Lord Cottenham, in *Prince Albert* v. *Strange* (*f*): "In most of the cases which have been decided, the question was not as to the original right of the author, but whether what had taken place did not amount to a waiver of such right; as in the case of letters, how far the sending of the letters; in the case of dramatic compositions, how far the permitting the performance; and in the case of Mr. Abernethy's lecture, how far the oral delivery of the lecture, had deprived the author of any part of his original right or property." Conditional communications.

Publication destroys the common law right, and vests statutory copyright in books if the conditions of the statute as to authorship, place of publication and regis- Divestitive facts.

(*d*) *Lytton* v. *Devey* (1884), 54 L. J. Ch. 293.

(*e*) For an instance of a case launched on (1) the common law right in unpublished matter; (2) the statutory right in the same matter when subsequently published; and (3) malicious interference with the business of the person publishing, see *Exchange Telegraph Co.* v. *Gregory*, 1896, 1 Q. B. 147, where the defendant, who, either before or after its publication, was copying the plaintiff's tape report of Stock Exchange prices, which he obtained from subscribers to the plaintiff, in breach of their contract with the plaintiff, was restrained on all three grounds above stated. See also *Exchange Telegraph Co.* v. *Central News*, 1897, 2 Ch. 48.

(*f*) (1849) 1 MacN. & G. 25, 42; *cf. Caird* v. *Sime* (1887), 12 App. C. pp. 337, 344.

Divestitive facts.

tration are complied with. Publication is defined as "making a thing public in any manner in which it is capable of being communicated to the public" (*g*). Though not necessarily so, it is generally for sale, or at any rate, so as to be accessible to all who choose to obtain it, on conditions imposed not by the author but by the law. Publication "for private circulation only," that is, on conditions imposed by the author, does not divest the common law right (*h*). In *Kenrick* v. *Danube Colleries Co.* (*i*) printing one hundred copies of a report on a proposed company, and showing or giving some of them to persons interested in floating the company, was held not to be such a publication as divested the common law right.

Waiver of rights is a divestitive fact of copyright.

The American case of *Kiernan* v. *Manhattan Quotation Company* (*k*) shows the difficulty of drawing the line as to what constitutes publication. A., the plaintiff, had bought the exclusive right to use foreign financial news supplied by B., and telegraphed it to his customers, where it was exposed to public view on printed tape connected with stock indicators. C. used A.'s news for transmission to C.'s customers. A. sued C., and it was held that giving news to the public in this way was not such publication as to defeat A.'s common law rights. So in *Exchange Telegraph Co.* v. *Gregory* (*l*), where

(*g*) *Cf. Blank* v. *Footman* (1888), 39 Ch. D. 678. In *McFarlane* v. *Hulton* (1899), 1 Ch. at p. 889, Cozens-Hardy, J., says: "A paper is published when and where it is offered to the public by the proprietor."

(*h*) *Jefferys* v. *Boosey* (1854), 4 H. L. C. at p. 962; *Caird* v. *Sime* (1887), 12 A. C. at p. 344; as to sale of MSS., see *White* v. *Geroch* (1819), 2 B. & Ald. 298.

(*i*) (1891) 39 W. R. 473.

(*k*) (1876) 50 How Pr. N. Y. 194 (cited by Drone, p. 122).

(*l*) (1896) 1 Q. B. 147; see also *Exchange Telegraph Co.* v. *Central News* (1897), 2 Ch. 48.

information as to prices on the Stock Exchange was telegraphed to the plaintiff's customers on the terms that they should not use it outside their offices, the defendant was restrained from using information obtained in breach of such contracts. Divestitive facts.

The right will be infringed by any use of an intellectual production without the consent of the owner, or not warranted by the conditions of its communication by him. The remedies are the ordinary common law action for damages sustained, and for an injunction to restrain publication (*m*). Infringements and remedies.

(*m*) *Cf. Tuck* v. *Priester* (1887), 19 Q. B. D. 48.

CHAPTER III.

LECTURES.

Rights before publication.—Lectures.—Publication of lectures.—Lectures at Universities.—Remedies.

Rights before publication

THE author of any literary composition has the right at Common Law to prevent its publication, until he himself has made it public (*a*): and this right will not be destroyed by the fact that the author communicates such a composition to a limited number of persons under express or implied conditions restraining them from publishing it themselves. Such limited communication may, as we have seen, be by writing a letter, or lending a manuscript, or by publication for private circulation, or by recitation or oral delivery before a select or limited audience (*b*).

Lectures.

The author of a literary composition delivered as a lecture will therefore, until he has "published" his lecture, have a common law right to prevent publication of it by others (*b*). After he has published his lecture, his rights will depend on his compliance with 5 & 6 Will. IV. c. 65:—"An Act for preventing the publication of lectures without consent." This Act gives the copyright for twenty-eight years in a published lecture to the lecturer or his assignee, provided that the lecturer

(*a*) See above, pp. 60–62.

(*b*) *Caird* v. *Sime* (1887), 12 App. C. at pp. 337, 344; *Nicols* v. *Pitman* (1884), 26 Ch. D. 374.

has given notice in writing of his intended delivery of his lecture to two justices of the peace living within five miles of the place of delivery of the lecture two days at least before delivering it (*c*). This Act, however, does not apply to any lecture delivered in a university or public school or college (*d*), or on any public foundation, or by any individual under any gift, endowment, or foundation, and it is expressly provided that the law relating thereto should remain the same as if the Act had not been passed. Rights before publication.

The important question with regard to any lecture as to which the statutory notice has not been given is, has it been published? If it has been published in print, it will receive statutory protection as a book under 5 & 6 Vict. c. 45. No case exists in English law expressly deciding that unauthorized oral delivery of a printed lecture infringes copyright in the printed book. Stirling, J., in *Hanfstaengl* v. *Empire Palace* (*Daily Graphic* and *Westminster Budget*) (*e*), said *obiter*: "Suppose that at a public meeting some portion of a copyright work was recited or read from an authorized copy of the book; that would be no infringement of the rights of the owner of the copyright." American cases, though not directly deciding the point, appear to cover it; thus in *Boucicault* v. *Fox* (*f*) it is said: "Suppose Mrs. Kemble were to read a drama of her own production, would the reading be a dedication to the public, and authorize any elocutionist to read it who could obtain a copy against Publication of lectures.

(*c*) 5 & 6 Will. IV. c. 65, s. 5.

(*d*) *Cf. Nicols* v. *Pitman* (1884), 26 Ch. D. 374, where the Working Men's College in Great Ormond Street was held to be a "College" within this section.

(*e*) (1894) 3 Ch. at p. 116.

(*f*) (1862) 5 Blatchford, 87, 98; see also *Palmer* v. *De Witt* (1872), 47 N. Y. 530; 2 Sweeny, 530, 543.

Publication of lectures.

the consent of the author?" and the question is answered emphatically in the negative. The question has not yet arisen in the English courts.

Rights before publication.

If the lecture has not been printed, the question is whether the circumstances under which it was orally delivered amount to a publication. A lecturer who addresses himself to the public generally, without distinction of persons or selection or restriction of hearers, abandons his ideas and words to the use of the public at large, that is, he publishes them (*g*). On the other hand, where it is matter either of express contract or implied condition that the audience are admitted for the purpose of receiving instruction or amusement, and not in order that they may take a full note of what they hear, and publish it for their own profit and the information of the public at large, publication does not take place (*g*). And the Courts are disposed to hold that where the audience is limited by tickets or payment, the understanding between the lecturer and the audience is that they are quite at liberty to take full notes for personal purposes, but are not at liberty, having taken those notes, to publish them afterwards for profit. Thus in *Nicols* v. *Pitman* (*h*) a lecture on "The Dog as the Friend of Man," delivered at the Working Men's College, Great Ormond Street, to an audience admitted only by ticket, was held not to have been published so as to deprive the author of his common law right, on the ground of implied contract with the audience (*i*). So also in *Abernethy* v.

(*g*) *Per* Lord Watson in *Caird* v. *Sime* (1887), 12 App. C. at p. 344. *Cf. Walter* v. *Lane* (1900), A. C. 539, where, though Lord Rosebery had made a speech to the world at large, a reporter obtained copyright in his *verbatim* report of Lord Rosebery's spoken words.

(*h*) *Per* Kay, J., *Nicols* v. *Pitman* (1884), 26 Ch. D. at p. 381.

(*i*) *Cf. Turner* v. *Robinson* (1860), 10 Ir. Ch. 121, 510, on the effect of exhibition of a picture in galleries, as publication.

Hutchinson (*k*), a course of lectures to students by a physician at Guy's Hospital was held to be only communicated on the condition that notes taken should not be reprinted for profit, and a proposed republication was restrained by injunction (*l*). Rights before publication.

The question of lectures delivered at schools, colleges, or universities is a similar one. The Act of 1835 (*m*) expressly leaves the law as to them where it was before the passing of the Act. That is to say, if they have been published there is no copyright in them except such as is derived from publication in print; if they have not been published, other persons are prohibited from publishing them by the common law. The question of publication has already been considered. It seems that sermons, being preached in edifices the doors of which are in theory open to all mankind, are published (*n*). So, also, where a lecture is delivered on behalf of the university, and as the authorized exposition of the university teaching, it may be that there is publication (*o*). But the decision of the House of Lords in *Caird* v. *Sime* (*p*) shows that the lectures of a university professor are not necessarily published by delivery to his class, indeed are probably delivered under such circumstances that no republication can take place without his consent. There the lectures which had been republished were those delivered Lectures at universities.

(*k*) (1825) 1 Hall & Tw. 28; see the history of the case in the report of *Caird* v. *Sime* (1887), 12 App. C. 326.

(*l*) These decisions seem in conflict with the decisions in *Boucicault* v. *Delafield* (1863), 1 H. & M. 597, and *Boucicault* v. *Chatterton* (1876), 5 Ch. D. 267, that a play acted in America to an audience admitted by payment was "published" so as to prevent rights in it being acquired in England.

(*m*) 5 & 6 Will. IV. c. 65.

(*n*) *Per* Lord Halsbury (1887), 12 App. C. at p. 338.

(*o*) *Ibid.* at p. 337.

(*p*) (1887) 12 App. C. 326; *cf.* *Abernethy* v. *Hutchinson* (1825), 1 Hall & Tw. 28.

Lectures at universities.

by Professor Caird, Professor of Moral Philosophy in the University of Glasgow, to his class in the university, admission to which was open to all matriculated students of the university on payment of a prescribed fee. It was held by the House of Lords that the delivery of lectures by the professor was only conditional publication; that the students attending them might take notes for their own information, but might not publish them; and publication of such a student's notes was restrained.

The nature of the common law right has already been dealt with. The question has been raised whether it is necessary that the lecture should be reduced to a written form to obtain protection. In *Abernethy* v. *Hutchinson* (*q*) Lord Eldon said: "Where a lecture is orally delivered it is difficult to say that an injunction could be granted upon the same principle upon which literary compositions are protected, because the Court must be satisfied that the publication complained of is an invasion of the written work; and this can only be done by comparing the composition with the piracy." This, however, merely seems to raise questions as to the sufficiency of the evidence, for Lord Eldon goes on to treat the publication for profit of notes of a lecture which had not been committed into writing by the lecturer as a breach of trust or of implied contract (*r*).

The remedies of the author of a lecture for infringement of his right, are:—

Remedies.

1. A statutory action for penalties if the statutory conditions of notice have been fulfilled (*s*).

2. An action for an injunction and for damages for breach of the common law right of an author before publication (*t*).

(*q*) (1825) 1 Hall & Tw. 39.
(*r*) *Cf. per* Kay, J. (1884), *Nicols* v. *Pitman*, 26 Ch. D. at p. 380.
(*s*) 5 & 6 Will. IV. c. 65, s. 5. (*t*) *Ante*, pp. 60–67.

CHAPTER IV.

COPYRIGHT IN WORKS COMMUNICATED TO THE PUBLIC BOTH ORALLY AND IN PRINT, SUCH AS PLAYS.

Introduction.—Faults of English Law of Dramatic Copyright.—History before statutory protection, 1833.—Statutory provisions.—Author's rights in dramatic compositions.—What is a dramatic piece?—What is a place of dramatic entertainment?—Infringements of author's rights.—Dramatization of novels.—Duration of protection.—Investitive facts.—Registration.—Transvestitive facts.—Divestitive facts.—Remedies for infringements.

Introduction.

THOUGH in strictness plays as merely acted, and lectures as merely delivered, should have been treated under the same head, it has been more convenient to group all that has to be said with regard to lectures in the last chapter, and to reserve the case of plays. The law as to lectures chiefly rests on the common law, whereas the law of the drama is almost entirely statutory. For statute law has dealt with both the performing right, or the right of representation on the stage (*a*), and the printing right (*b*). Both are in English law known as "*Copyright*," an extensive use of the term which only confuses; and it would be better to limit the term "Copyright" to the right of publishing in print, and to use for the performing or acting right either the term "Play-Right," as suggested by Drone, or "Stage-Right," as suggested by Charles Reade, the former being preferable.

(*a*) 3 & 4 Will. IV. c. 15. (*b*) 5 & 6 Vict. c. 45.

Faults of English law of Dramatic Copyright.

The English Law of Playright and Dramatic Copyright suffers from two great faults. In the first place, playright and copyright, which are merely protections of different modes of communicating the same intellectual results to the public, are treated in different ways, and may begin and end at different times. Secondly, that tendency of the English law, which in questions of infringement seems rather to consider whether new work has been added than whether old work has been taken, is specially prominent in the case of dramatization of novels.

History before Statute of 1833.

The first statute directly dealing with "Playright" in England is an Act of 1833 (*c*), commonly known as "Bulwer-Lytton's Act." Before that Act, playright rests on the Common Law. In *Macklin* v. *Richardson* (*d*) in 1770, the plaintiff was the author and proprietor of a popular farce called 'Love à la Mode,' which was often performed but had never been printed. The defendant published it from a shorthand report, and the Court granted an injunction, saying that the plaintiff had a right of profit from the performance of his composition, and also from printing and publishing it, and should be protected in both. This case decided that public representation did not forfeit the author's common law right to restrain unauthorized printing, and in *Morris* v. *Kelly* (*e*), where Lord Eldon restrained the unauthorized representation of a play which had been performed in public but not printed, it was further decided that

(*c*) 3 & 4 Will. IV. c. 15. By virtue of the Short Titles Act, 1896 (59 & 60 Vict. c. 14), is to be cited as "The Dramatic Copyright Act, 1833."

(*d*) (1770) Ambler, 694.

(*e*) (1820) 1 Jac. & W. 481.

History before Statute of 1833.

such representation did not forfeit the author's common law playright.

That playright stood apart from the Statute of Anne was decided in the case of *Murray* v. *Elliston* (*f*), where it was held that representation of an abridged version of Lord Byron's printed tragedy of 'Marino Faliero' did not infringe his statutory copyright, and in *Coleman* v. *Wathen* (*g*), which decided that representation was not publication within the meaning of the Statute of Anne (*h*).

Statutory provisions.

English dramatic law now rests on the Dramatic Copyright Act of 1833 (*i*), and the Copyright Act of 1842 (*j*). The first of these provided that:—

I. The author of any dramatic piece (*k*) (1) composed and not printed and published by the author thereof or his assigns, or (2) which should thereafter be composed but not printed, should have as his own property the liberty of representing such piece at any place of dramatic entertainment (*l*) in any part of the British Dominions.

II. As to any such piece (3) printed and published within ten years before the passing of the Act by the author or his assigns, or (4) which should thereafter be printed and published, the author should have, in case (3) from the passing of the Act, in case (4) from the time of publication, a similar playright for the limited term of twenty-eight years, or his life, whichever should be longest.

This Act therefore gave statutory playright in perpetuity in the case of pieces performed, but not printed;

(*f*) (1822) 5 B. & Ald. 657.
(*g*) (1793) 5 T. R. 245.
(*h*) 8 Anne, c. 19.
(*i*) 3 & 4 Will. IV. c. 15.
(*j*) 5 & 6 Vict. c. 45, ss. 20-24.
(*k*) Below, p. 80.
(*l*) Below, p. 82.

Statutory provisions.

playright for a term in the case of pieces printed or to be printed, and did not deal with copyright, or the right of printing.

The 20th section of the Act of 1842 (*l*), however, has thrown the law into confusion. It recites that it is expedient to *extend* the term of the sole liberty of representing dramatic pieces, *i.e.*, playright, given by the Dramatic Copyright Act, to the full term given by the Copyright Act, and enacts that the playright of any dramatic piece shall be the property of the author for the same term as that of book-copyright; and that the same provisions as to registration shall apply, except that the first public representation of any piece shall be deemed equivalent to the first publication of any book. By section 21, proprietors of playright are to have all the remedies provided in the former Act, and section 24, after enacting that owners of copyright in books should not sue for infringements before registration, further provides that this enactment is not to affect an unregistered owner of playright under the Dramatic Copyright Act.

There are two interpretations possible of the resulting law. Either:—1. The Legislature did not intend the Act to apply to pieces performed but not printed. Playright in these therefore remain perpetual; but the playright in printed plays is, as the Act recites, *extended* to forty-two years, or the life of the author + seven years, whichever shall be the longer. Or:—2. The Legislature intended the Act to apply to both printed and unprinted compositions. Misunderstanding the previous Act, they recited "*extension*" when their clause really *cut down* the term of protection. In this case, copyright and playright will be for the same term, and will begin to run respectively on the first publication of the piece as a book, and on its

(*l*) 5 & 6 Vict. c. 45.

first representation in public as a play, or possibly where publication in print comes first, both rights will commence on such publication (*m*). Statutory provisions.

The second view will probably be taken by a court of law as to the duration of playright in pieces not printed; but the question is by no means free from doubt. It is also probable, though there is no express decision to that effect, that the Court, following *Donaldson* v. *Beckett* (*n*), would hold the common law right destroyed by the statutory provisions after first performance in public. And in *Wall* v. *Taylor* (*o*), Field and Cave, JJ., held with reference to musical compositions (which stand on very much the same footing), that "the proprietor of a musical composition has no other right of performing than that given by the statute;" a statement, it is submitted, at any rate inaccurate as regards unpublished compositions.

Hence the *Author's Rights* are as follows:— Author's rights in dramatic compositions.

I. A dramatic piece in manuscript *neither printed nor represented* is the perpetual property of the author at common law. I. In play neither printed nor acted.

II. *If represented but not printed;* (1) As regards *playright*, the author has the sole playright for the statutory term dating from the first performance. (2) As regards *copyright*, the author has the right, which may be perpetual, of restraining unauthorized publication in print of his unpublished MSS. II. In play acted but not printed.

(*m*) This would be convenient, but it would seem to follow that public representation should also date as the beginning of playright, and of copyright. The difficulties of this subject will be appreciated by any one who tries to work out the results on American and English Copyright, of the facts in relation to any particular play.

(*n*) (1774) 2 Bro. Cases in Parl. 129.

(*o*) (1882) 9 Q. B. D. at p. 732.

III. In play printed but not acted.

III. *If printed but not represented*; (1) As regards *playright*, the author has the right which may be perpetual, of restraining unauthorized performances until he himself first performs it. This serves as an investitive fact of statutory playright (*p*). (2) As regards *copyright*, the author has it in his work from first publication for the statutory term.

Sir J. F. Stephen, however, in his 'Digest' was, with doubt, of opinion that playright (*q*) cannot be gained if the dramatic piece has been previously published in print, and the Copyright Commission in their report (*r*) also speak of the point as doubtful. With all the deference due to such authorities, the point seems clear. It is true that at common law before the statute, the case of *Murray* v. *Elliston* (*s*) appears to decide that representation of a printed work is not an infringement of its playright, but the authority of this case is weakened by the fact that the piece performed was an abridgment or adaptation. The statutes, however, seem to leave no doubt upon the matter. The Act of 1833 clearly gives playright for a term to the author of a printed dramatic composition, without imposing any condition that representation should precede publication in print, and the Act of 1842 contains nothing restricting the right.

The case on which the statement appears to be based, that of *Toole* v. *Young* (*t*), really turns on another point. A. published in print, a novel, nearly (*u*) in dramatic

(*p*) It is not clear that this is the right view; it may be that playright will be held to date from first publication in print.

(*q*) C. C. Rep. p. 63, ss. 14, 16.

(*r*) C. C. Rep. s. 73.

(*s*) (1822) 5 B. & Ald. 657.

(*t*) (1874) L. R. 9 Q. B. 523.

(*u*) Mr. Hollingshead's (A.'s) account of his novel was that "it was so arranged that it could be produced almost verbatim on the stage";

form; he subsequently dramatized it, or adapted it for dramatic performance, and sold the playright of the adaptation to B.; C. also adapted A.'s novel, and represented his dramatic adaptation. B. sued C., and it was held that C. had a right to dramatize A.'s novel, and that his representation of his dramatization did not infringe A.'s copyright in the novel, or B.'s playright in the authorized dramatic version. Author's rights in dramatic compositions.

Without going into the correctness of this decision on principle, or on precedent, it will be seen that it turned on the fact that intellectual labour, alteration, adaptation, was necessary to represent A.'s novel on the stage. But assume that A.'s work had been published, as was possible, in acting form, with all the dialogue and stage directions, so that it could be represented on the stage without any alterations; it is clear that its previous publication in print would not, at common law or by statute, divest A. of playright in his work. C. in representing it would be representing something on which he had bestowed no intellectual labour whatever, and as will be seen, it is only the presumed intellectual labour in dramatizations of novels that hinders them from being held infringements of playright or copyright. Lord Hatherly in *Tinsley* v. *Lacy* (*v*) clearly stated this. He said:—"The only way in which an author can prevent other persons from representing as a drama the whole or any part of a work of his composition, is himself to publish his work *in the form of a drama*, and so to bring himself within the scope of dramatic copyright." In consequence of the decision in *Toole* v.

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but some adapting work was evidently necessary, as he says "that the piratical author *turned it in a few hours* into an acting drama." (C. C. Ev. q. 2596.)

(*v*) (1863) 1 Hem. & Miller, 747, 751.

Author's rights in dramatic compositions.

Young (*w*), this publication in the form of a drama must precede all other publication in a printed form, such as a novel.

This view is confirmed by the case of *Chappell* v. *Boosey* (*x*). There the defendants were sued for performing in public a song published by the plaintiffs, and pleaded that by publication in print the plaintiffs had lost the performing right, citing Stephen's 'Digest' and the report of the Commission. North, J., held that publication in print did *not* divest playright, and that the two rights (play- and copy-right) were distinct in their times of commencement and terms of protection.

IV. Play first acted and then prin ed.

IV. A dramatic piece *first represented and then printed*; the author has:

(1.) *Playright* for the statutory term from first representation.

(2.) *Copyright* for the statutory term from first publication in print. During a certain time at the end of his term he will have copyright only.

V. Play first printed and then acted.

V. A dramatic piece *first printed and then represented*; the author has:

(1.) *Copyright* (statutory), from first publication in print.

(2.) *Playright* (statutory), apparently from first representation. During a certain time at the end of his term he will have playright only.

What is a dramatic piece?

The term "dramatic piece" is defined in the Act of 1842 as "Every tragedy, comedy, play, opera, farce, or

(*w*) (1874) L. R. 9 Q. B. 523.

(*x*) (1882) 21 Ch. D. 232; see also *per* Lord Blackburn in *Fairlie* v. *Boosey* (1879), 4 App. C. at p. 727.

other scenic . . . or dramatic entertainment." (*y*) In *Russell* v. *Smith* (*z*) Lord Denman defined it as "any piece which could be called dramatic in its widest sense, any piece which on being presented by any performer to an audience would produce the emotions which are the purpose of the regular drama." A song, 'The Ship on Fire,' containing a descriptive account of a recent wreck, was sung by a performer in plain clothes, accompanying himself at the piano, without any aid from scenery. The song was intended to express various emotions, and the performer assumed to a limited extent certain characters. It was held a "dramatic piece." So in the case of *Clark* v. *Bishop* (*a*), a song, 'Come to Peckham Rye,' sung in costume and accompanied by characteristic dances and gestures, was held a dramatic piece. The dramatic character consists in the *representative* (*b*) as opposed to the *narrative* element, and may exist without any aids to personation from scenery, costume, or other performers. It is in each case a question of degree or of fact. Thus, in one case (*c*), the jury found that a song, in which the dramatic element consisted in "laughing Ho-Ho," in mild imitation of the storm-fiend, was not a dramatic piece. So in *Fuller* v. *Blackpool Winter Gardens* (*d*), the Court of Appeal held that a song called 'Daisy Bell' was not a dramatic piece, but a musical composition, and was inclined to restrict the definition to pieces akin to "Tragedies, operas, comedies, etc." What is a dramatic piece?

(*y*) An adaptation, with additions, of a non-copyright piece may be the subject of copyright. *Tree* v. *Bowkett* (1896) 74 L. T. 77 (a case as to Trilby).

(*z*) (1848) 12 Q. B. 217, 236. (*a*) (1872) 25 L. T. N. S. 908.

(*b*) *Daly* v. *Palmer* (Am.) (1868), 6 Blatchford, 256, 264. In *Lee* v. *Simpson* (1847), 3 C. B. 871, the introduction to a pantomime was held a "dramatic piece."

(*c*) *Wall* v. *Martin* (1883), 11 Q. B. D. 102.

(*d*) (1895) 2 Q. B. 429, see *post*, p. 101.

What is a "place of dramatic entertainment"?

The definition of a "place of dramatic entertainment" was also considered in *Russell* v. *Smith* (*e*), where it was defined as "a place used *for the time* for the public representation for profit of a dramatic piece." In the case in question, the "place" was Crosby Hall, used for various educational and literary meetings and the like, and on that occasion used for an entertainment held to be dramatic. The clause "for profit" appears a wrong limitation (*f*); the statute gives the author the sole right of performing, and if the representation is unauthorized, that right is infringed, whether or not the performer makes a profit from the performance.

The importance of this term, however, is much diminished by the recent decision in the case of *Wall* v. *Taylor* (*g*). This was an action by the well-known Mr. Wall, to recover damages for unauthorized performance of a song in public. The plaintiff alleged that the song was also a dramatic composition. The defendants pleaded that the proviso of the Act of 1833, giving the sole right of performance at "places of dramatic entertainment," was extended by the Act of 1842 to musical performances, which therefore were only protected from unauthorized performances in respect of "places of dramatic entertainment." But it was held by the Court of Appeal, that the right conferred by the Act of 1842, both with reference to musical and dramatic compositions, was "the sole right of representing in public," and was not limited to "places of dramatic entertainment." The remedy by way of penalties under 3 & 4 Will. IV.,

(*e*) (1848) 12 Q. B. 217, 237.

(*f*) *Duck* v. *Bates* (1884), 13 Q. B. D. 843. In the case of books, it was held in *Novello* v. *Sudlow* (1852), 12 C. B. 177, that gratuitous distribution of unauthorized copies was an infringement of copyright.

(*g*) (1883) 11 Q. B. D. 102.

c. 15, only applies, however, to places of dramatic entertainment.

Infringements of the author's rights are:— Infringement of author's rights.

I. Unauthorized representation of a dramatic piece (*h*) or a substantial part thereof (*i*), in public during the statutory or common law term of playright.

II. Unauthorized publication in print of such piece (*h*) during the author's statutory or common law term of copyright.

This publication need not be for profit, but must be in a public place; and it has been held that the board-room of Guy's Hospital, where a play was performed free of charge for the amusement of the patients and nurses, was not such a public place (*j*). Knowledge that the representation is unauthorized is not necessary (*k*).

It is not an infringement of an author's playright to dramatize and represent a novel he has printed (*l*). To print such dramatization is an infringement of his copyright in the novel (*m*). Dramatization of novels.

If the novel dramatized be founded on a play, the acting of such dramatization is an infringement of the playright in the play (*n*), though not of the copyright in the novel. Printing such dramatization infringes both

(*h*) Representation of a piece substantially similar will not be an infringement, if, in fact, such piece is original and not derived directly, or indirectly (*Schlesinger* v. *Turner* (1890), 63 L. T. 764), from the plaintiff's play, and the similarity is merely a coincidence. *Reichardt* v. *Sapte* (1893), 2 Q. B. 308. Such a case will rarely happen.

(*i*) *Cf. Brady* v. *Daly* (Am.) (1899), 68 Davis, 148.

(*j*) *Duck* v. *Bates* (1884), 13 Q. B. D. 843.

(*k*) *Lee* v. *Simpson* (1847), 3 C. B. 871.

(*l*) *Reade* v. *Conquest*, first case (1861), 9 C. B. N. S. 755.

(*m*) *Tinsley* v. *Lacy* (1863), 1 Hem. & M. 747; and see *Warne* v. *Seebohm* (1888), 39 Ch. D. 73, and *post*, p. 85.

(*n*) *Reade* v. *Conquest*, second case (1862), 11 C. B. N. S. 479; *Schlesinger* v. *Turner* (1890), 63 L. T. 764.

Infringement of author's rights.

the copyright in the novel and the copyright in the play (*o*). But a dramatization of a novel does not necessarily infringe the playright of another dramatization of the same novel (*p*).

This curious mixture is the result of decided cases; but some possible combinations of facts have not yet been brought forward for adjudication. For instance, A. represents a play; B. founds a novel on that play; does B. by printing his novel violate A.'s copyright in his play? C. dramatizes B.'s novel; he thereby does not infringe B.'s copyright, but he apparently infringes A.'s playright (*q*); by printing his dramatization he infringes B.'s copyright; does he infringe A.'s copyright?

Novelization of dramas.

On the principles of English law, apparently the "novelization" of a play is not an infringement of the rights of its author. But if the printing of a dramatization infringes the copyright of the author of the novel, surely also the printing of a "novelization" should infringe the copyright of the author of the play. There is as much original work required in making a novel out of a play as in dramatizing; but the case seems never to have arisen in English Courts. The consent of the author is, however, in practice sometimes obtained (*r*).

All this confusion results from the English doctrine that the dramatization of a novel produces a new and original work capable of copyright; while the Courts are forced to recognize that it is not original by treating the printed dramatization as a possible infringement of the copyright in the novel.

(*o*) *Reade* v. *Lacy* (1861), 1 J. & H. 524.

(*p*) *Toole* v. *Young*, L. R. 9 Q. B. 523; *Schlesinger* v. *Bedford* (1890), 63 L. T. 762.

(*q*) *Reade* v. *Conquest*, 2nd case (1862), 11 C. B. N. S. 479.

(*r*) See Tom Taylor's evidence, C. C. Ev. q. 2652.

Novelization of dramas.

An author communicates to the public the results of intellectual labour. Whether in making other communications to the public any other person infringes his rights should be tested by the principle laid down as between plays and plays in *Chatterton* v. *Cave* (*s*): *Has there been a substantial and material taking of these results?* In the case of most dramatizations of novels there certainly has, and the law has recognized this by prohibiting in some cases the printing of such dramatizations. In acted plays, we have the text, the actors' abilities, and the stage accessories, costumes, and scenery; these last two being additions founded and based on the text. But the text is the most important part of the play, so important that it has been doubted whether there can be copyright in anything but the actual words of the play. Surely, then, in the case of dramatizations of novels there has been "a substantial and material taking" of the labour of an author, and where there has been such taking, every reason on which literary property is based is a reason for protection against such infringements. The English law here is another example of the English position referred to above, that addition condones subtraction; the question in the English Courts is, not so much:—"Has old and valuable work been taken?" as:—"Has new and valuable work been added?"

The unauthorized dramatization of novels, however, received a severe check in the decision in *Warne* v. *Seebohm* (*t*). There the defendant had dramatized Mrs. Burnett's story, 'Little Lord Fauntleroy,' and publicly represented his version. To do so, four MS. copies were made, one for the Lord Chamberlain, and three for the

(*s*) (1878) L. R. 10 C. P. 572, 575; 3 App. Cas. 483.
(*t*) (1888) 39 Ch. D. 73.

Dramatization of novels.

actors. This was held to be an infringement of the copyright in the book; an order was made that all passages copied, taken, or colourably imitated from the plaintiff's book should be delivered up, and an injunction against multiplying copies was granted. This decision, as was pointed out, could be evaded by purchasing copies of the plaintiff's book, and cutting out extracts for use in the MS.; but this would be difficult. As a copy of every play produced must be sent to the Lord Chamberlain (*u*), this decision would seem seriously to embarrass the unlicensed adapter.

Infringements.

It is an infringement of an author's playright to perform parts of his play or opera (*w*), as for instance single songs from an opera, subject to the principle laid down in *Chatterton* v. *Cave* (*x*), that the part taken must be substantial and material.

Infringement may also be committed by taking scenic effects and dramatic situations, without any accompanying words. Thus Brett, J., in *Chatterton* v. *Cave* (*x*), said:—"I think scenic effects and situations are more peculiarly the subject of copyright than the words themselves;" and in an American case (*y*) it was held that "written work consisting wholly of directions set in order for conveying the ideas of the author on a stage by means of characters who represent the narrative wholly by action, is as much a dramatic composition as any other." But on the other hand, in *Martinetti* v. *Maguire* (*z*), the 'Black Crook' was not protected from

(*u*) 6 & 7 Vict. c. 68, s. 12.

(*w*) *Planché* v. *Braham* (1837), 4 Bing. N. C. 17; *Brady* v. *Daly* (1899) 68 Davis, 148.

(*x*) (1878) 3 App. Cas. 483; *cf.* *Beere* v. *Ellis* (1889), 5 Times L. R. 330.

(*y*) *Daly* v. *Palmer* (1868), 6 Blatchford, 256, 264. This would apply to such a pantomime as *L'Enfant Prodigue*.

(*z*) (1867) 1 Deady, 216 (Am.).

piracy, apparently on the ground that it was a "mere spectacle." In this case, however, it was in evidence that great part of the scenery consisted of the "female form divine," and the learned judge's morality appears to have overpowered his grasp of the general law. Infringements.

Immorality and blasphemy in plays prevent protection from vesting; and it is also required that there should be some amount of original work in the play claiming protection. Dramatizations of novels have playright of their own. Playright can also be obtained in the adaptation of a play in which there is no playright, as in the case of *Hatton* v. *Kean* (*a*), where the defendant established a playright in adapted plays of Shakespeare. Copyright and playright can also be obtained in translations of a foreign play in which there is no copyright, but this does not hinder others from making their own translations from the common source.

The duration of the protection afforded is perpetual at common law. By statute, for both copyright (*b*) and playright (*c*), it is forty-two years from first publication, or author's life + seven years, whichever is longer. Duration of protection.

The investitive facts of the right are:—(*d*) Investitive facts.

I. *Of playright.*

At common law:

1. Intellectual production in some form permanent or capable of permanence.

Under the statute:

2. First representation in public, in the United

(*a*) (1859) 7 C. B. N. S. 268; *cf. Tree* v. *Bowkett* (Trilby) (1896) 74 L. T. 77.

(*b*) 5 & 6 Vict. c. 45, s. 3.

(*c*) 5 & 6 Vict. c. 45, s. 20.

(*d*) *Cf. Reichardt* v. *Sapte* (1893), 2 Q. B. 308.

Investitive facts.

Kingdom under the Act of 1833, in the British Dominions under the Act of 1886 (*e*).

II. *Of copyright.*

At common law:

1. Intellectual production in a permanent form.

Under the statute:

2. First printing and publication, in the United Kingdom under the Act of 1842, in the British Dominions under the Act of 1886 (*e*).
3. Registration under 5 & 6 Vict. c. 45, ss. 13, 24, a condition precedent to suing.

Under the Act of 1833, the dramatic composition must be communicated to the public, whether by printing or performance, for the first time in the United Kingdom. But the International Copyright Act of 1886 (*e*) extends this Act to dramatic pieces first produced in a British possession. The International Copyright Act of 1844 (*f*) provides that the authors of works "first published out of Her Majesty's dominions shall have no copyright" (or playright) "therein other than such, if any, as they may become entitled to under this Act." The object was to enable the English Government to make terms with foreign countries for the mutual recognition of national copyright, and several conventions were concluded under the Act. The question of its effect with regard to countries with which no convention existed was brought before the English Courts in the case of *Boucicault* v. *Delafield* (*g*). B., a British subject, wrote a play and performed it in public in the United States, with which country England had not a copyright convention. A. performed the play

(*e*) 49 & 50 Vict. c. 8.
(*f*) 7 & 8 Vict. c. 12, s. 19.
(*g*) (1863) 1 Hem. & Miller, 597.

in England. The question of the effect of first publication abroad thus arose, and B.'s counsel pleaded:—(1) that the Act only applied to foreigners, and not to British subjects, and therefore that an English author had the benefit of English copyright wherever he first published; (2) that "first published" in the Act only referred to publication by printing, and not to representation on the stage. On both these points, however, the Court decided against the plaintiff (*h*), thus settling that first publication outside Her Majesty's dominions, apart from conventions, prevents the author from acquiring copyright in England. The question was again raised in *Boucicault* v. *Chatterton* (*i*), on similar facts, there being no doubt that the only communication to the public abroad had been by representation on the stage. The Court of Appeal affirmed the law as laid down in *Boucicault* v. *Delafield*; thus confirming the views of the Lords in *Routledge* v. *Low* (*j*), that to obtain play- or copy-right in the United Kingdom, apart from copyright conventions, the author must make first publication, either by printing or performance in the United Kingdom, now (under the Act of 1886) the British Dominions. Investitive facts.

The law of the United States on this point is to the contrary effect, as was decided in the case of *Palmer* v. *De Witt* (*k*). R., a British subject residing in England, wrote a play and caused it to be performed for some time in London, but did not print it. A., an American

(*h*) The decision was weakened by an allegation during the case that the play had been *printed* as well as *performed* in America.

(*i*) (1876) 5 Ch. D. 267.

(*j*) (1868) L. R. 3 H. L. 100. Simultaneous publication in England and the United States will not affect the English or American right, and is frequently resorted to.

(*k*) (1872) 47 N. Y. 532.

Investitive facts.

citizen, printed and sold copies of it in New York. The Courts granted an injunction to restrain him on the ground that R.'s common law rights in the unpublished MS. had not been destroyed by performance in London.

One who employs another to write a play for him, and even goes so far as to suggest the subject, does not by that alone acquire playright; the playright is in the author, and a written assignment from the author to his employer will be necessary to transfer it. Thus where a theatrical manager paid an author to adapt a named piece (*l*), and where the proprietor of a music hall employed the conductor of his orchestra to write music for a ballet (*m*), in neither case did the employer obtain copyright in the work produced (*n*). Nor do minor alterations or additions, with or without the consent of the author, necessarily constitute joint authorship (*o*).

Registration.

Registration is necessary before infringement of copyright can be sued for (*p*); registration is not a condition precedent to an action for infringement of playright (*p*), though it is desirable as evidence of the right (*q*).

In the case of a play which has been printed, the proprietor of the copyright must make entry in the register of:—

1. The title of such play;
2. The time of first publication thereof;
3. The name and place of abode of the publisher thereof;

(*l*) *Shepherd* v. *Conquest* (1856), 17 C. B. 427.
(*m*) *Eaton* v. *Lake* (1888), 20 Q. B. D. 378.
(*n*) See pp. 130–134, *post*, as to copyright in works so produced.
(*o*) *Levy* v. *Rutley* (1871), L. R. 6 C. P. 523. *Cf. Shelley* v. *Ross* (1871), *ibid.* p. 531.
(*p*) 5 & 6 Vict. c. 45, s. 24.
(*q*) *Ibid.* s. 20. *Clark* v. *Bishop* (1872), 25 L. T. N. S. 908.

4. The name and place of abode of the proprietor of the copyright, or of any portion thereof (*r*): Registration.

on the form given in the schedule of the Act of 1842, a copy of which is supplied at Stationers' Hall. The publisher whose "name and abode" is registered must be the *first* publisher of the work (*s*). The place of abode of the publisher may be his place of business (*t*). A fee of 5*s*. is payable to the Registrar.

Such copyright may be assigned by entering in the register:—

1. The assignment;
2. The name and place of abode of the assignee.

A form for registration is given in the schedule, and a similar fee of 5*s*. is payable (*u*); but an assignee by a written instrument outside the register need only enter himself as proprietor in the register, without entering his assignment, or seeing that his assignor is registered.

In the case of a play acted, but not printed, it is sufficient to register:—

1. The title of the play.
2. The name and place of abode of the author.
3. The name and place of abode of the proprietor of the copyright.
4. The time and place of first representation or performance (*x*).

A play neither acted nor printed of course needs no registration, and registration is not necessary to protect playright (*y*).

(*r*) 5 & 6 Vict. c. 45, s. 13; see the notes on registration of books at pp. 147–152, *post*.

(*s*) *Coote* v. *Judd* (1883), 23 Ch. D. 727.

(*t*) *Nottage* v. *Jackson* (1883), 49 L. T. at p. 340.

(*u*) 5 & 6 Vict. c. 45, s. 13.

(*x*) *Ibid.* s. 20.

(*y*) *Vide post*, pp. 92, 104.

Transvestitive facts.

The transvestitive facts of copyright or playright are:—

1. The consent of the author, which must be in writing (*z*). The writing of the agent of an author will suffice as evidence of assignment, and the Secretary of the Society of Dramatic Authors has been treated as his agent (*a*). The transfer need not be witnessed (*b*), or under seal (*c*). A part owner cannot assign the whole copyright or playright without the consent of his co-owners, nor can he grant a valid licence for performance without his co-owners (*d*).

2. In the event of death intestate, copyright and playright descend as personal property (*e*).

3. Registration of the assignment is a condition precedent to the bringing of an action for infringement of copyright, but not of playright. By 5 & 6 Vict. c. 45, s. 22, an assignment of copyright does not transfer playright unless the intention to do so is expressly entered on the register. This section is the result of the decision in *Cumberland* v. *Planché* (*f*), where it was held

(*z*) 3 Will. IV., c. 15, s. 2; *Shepherd* v. *Conquest* (1856), 17 C. B. 427; *Eaton* v. *Lake* (1888), 20 Q. B. D. 378. *Cf. Roberts* v. *Bignell* (1887), 3 Times L. R. 552; as to what amounts to a consent in writing, see *Taylor* v. *Neville* (1878), 47 L. J. Q. B. 254. In *Lacy* v. *Toole* (1867), 15 L. T. 512, an agreement to "let A. have" a play was treated as an assignment. The "writing" includes "print." Interpretation Act (1889), 52 & 53 Vict. c. 63, s. 20.

(*a*) *Morton* v. *Copeland* (1855), 16 C. B. 517.

(*b*) *Cumberland* v. *Copeland* (1862), 1 Hurl. & C. 194.

(*c*) *Marsh* v. *Conquest* (1864), 17 C. B. N. S. 418.

(*d*) *Powell* v. *Head* (1879), 12 Ch. D. 686. But in *Lauri* v. *Renad* (1892), 3 Ch. 402, Kekewich, J., allowed an assignee from three out of four tenants in common to sue a stranger in defence of his right without joining the fourth tenant in common as plaintiff. The C. A. pronounced no opinion on the point.

(*e*) 5 & 6 Vict. c. 45, s. 25.

(*f*) (1834) 1 A. & E. 580.

that the assignment of the copyright of a drama passed the sole right of representing it, as incidental to the copyright. The section was, however, held in *Lacy* v. *Rhys* (*g*) not to apply to an unregistered deed expressly conveying both copy- and acting-right. Cockburn, C.J., during the argument suggested that possibly an unregistered assignee would not have the benefit of the Act of Victoria, but only of the Act of William IV. Transvestitive facts.

The Divestitive Facts of the Right are:— Divestitive facts.

1. Expiration of the statutory term, which apparently may be at different times for playright and copyright.

2. Waiver by the author, which (possibly) must under the Act of William IV. be in writing.

Remedies. I. *For Infringement of Playright.* 1. (*h*) A penalty (*i*) of forty shillings, or the full amount of benefit derived or damage sustained by the plaintiff from the infringement, whichever shall be greater, and a full and reasonable indemnity as to costs (*k*), to be recovered by the author from any one representing or causing to be represented without the authority of the author any dramatic piece. No one is liable to penalties unless he or his agent actually takes part in the representation (*l*). Thus owners of theatres, who let their Remedies for infringement.

(*g*) (1864) 4 B. & S. 873; and see *Marsh* v. *Conquest*, *supra*.

(*h*) 3 Will. IV. c. 15, s. 2.

(*i*) This sum is really liquidated damages, and therefore interrogatories can be administered to the defendant to prove infringements: *Adams* v. *Batley* (1887), 18 Q. B. D. 625; *cf. Saunders* v. *Wiel* (1891), 2 Q. B. 321.

(*k*) The provision for recovering double costs in 3 Will. IV. c. 15, s. 2, is repealed, and the words in the text substituted, by 5 & 6 Vict. c. 97, s. 2, and, though only forty shillings is recovered, the plaintiff is entitled to High Court costs in spite of the Rules of the Supreme Court. *Reeve* v. *Gibson* (1891), 1 Q. B. 652.

(*l*) *Russell* v. *Briant* (1849), 8 C. B. 836; *Lyon* v. *Knowles* (1863), 3 B. & S. 556. These cases were followed in *Kelly* v. *Gavin and*

Remedies for infringement.

theatre and apparatus to travelling companies, are not therefore liable for penalties for infringement incurred by such companies. But in *Marsh* v. *Conquest* (*m*) the proprietor of a theatre who let his theatre for one night to one of his company, his son, for a benefit was held liable. So far as musical compositions are concerned, other than operas or stage plays, proprietors (*n*), tenants or occupiers of theatres or other places of performance, are protected from actions for their performance unless they have wilfully caused or permitted such performance knowing it to be unauthorized (*o*). A release of one person liable to a penalty frees the other persons so liable; a covenant not to sue him does not (*p*).

Actions must be brought within a year of the infringement complained of (*q*). It is not necessary that the infringement should be committed knowingly (*r*).

2. An injunction to restrain unauthorized performance.

II. *For Infringements of Copyright.*

1. An action for damages under 5 & 6 Vict. c. 45, s. 23.

Lloyds (1902), 1 Ch. 631, which see as to the words "cause to be." But before the Act of 1888 in *Monaghan* v. *Taylor* (1886), 2 Times L. R. 685, and *Roberts* v. *Bignell* (1887), 3 Times L. R. 552, the proprietor of a music hall, who know that a song was being sung there, was held liable.

(*m*) (1864) 17 C. B. N. S. 418.

(*n*) In *French* v. *Day and Gregory* (1893), 9 T. L. R. 548, the manager, under proprietors, of a theatre was held not to have represented or caused to be represented a play performed at his theatre; *sed quære.*

(*o*) 51 & 52 Vict. c. 17, ss. 3, 4 (1888).

(*p*) *Duck* v. *Mayeu* (1892), 2 Q. B. 511.

(*q*) 3 Will. IV. c. 15, s. 3. This provision does not, like the corresponding provision in the Books Act, even purport to be repealed by the Public Authorities Protection Act, 56 & 57 Vict. c. 61, § 2. See *post*, p. 157.

(*r*) *Lee* v. *Simpson* (1847), 3 C. B. 871.

2. Seizure of piratical copies under 5 & 6 Vict. c. 45, s. 23, or damages in case of their non-delivery. Remedies for infringement.
3. An injunction to restrain unauthorized printing (s).

III. For infringements of the common law right in an unpublished or unrepresented play, a common law action for damages and an injunction.

Recommendations of the Copyright Commission :—

1. That the duration of both playright and copyright be the same as that of the term for books, life + thirty years (s. 74).

2. That publication either in print or by performance shall vest playright and copyright simultaneously for the proposed term (s. 75). (At present it is submitted that playright and copyright by statute have separate investitive facts, and may commence and end at separate times (*t*).)

3. That the right of dramatizing a novel be vested in its author for the term of his copyright (ss. 80–81).

4. That first performance of a dramatic piece out of the British dominions should not destroy the performing right in this country (s. 61).

(*s*) And see below, p. 156.

(*t*) *Chappell* v. *Boosey* (1882), 21 Ch. D. 232.

CHAPTER V.

MUSICAL COPYRIGHT.

Unpublished musical works.—History till 1842.—Statutory provisions.—Performing right in music.—Musical Copyright Act, 1882.—Rights of the author.—Registration.—Subject of copyright.—Infringements of copyright.—Assignments.—Remedies for infringement.—Musical Copyright Act, 1902.

MUSICAL compositions in the English law go hand in hand with the drama, probably on account of the double nature of each as adopted to printing and to public performance, and also because they shade into each other gradually through operas and songs in character. And on any musical composition questions may arise as to the copyrights or performing rights in the air, the words, or the accompaniment, which may be in different hands, while the words of the song may have the character of a dramatic piece (*a*).

Unpublished musical works.

Unpublished musical compositions have the common law protection extended to all unpublished work. As explained in the case of dramatic compositions, the author has protection at common law against publication until his first public performance of his work, when statutory "playright" begins; he has also protection at common law against reproductions in print until the first authorized publication of his work in print, when

(*a*) But on this, see the decision of the C. A. as to 'Daisy Bell,' in *Fuller* v. *Blackpool Winter Gardens* (1895), 2 Q. B. 429.

statutory copyright begins, the two rights being distinct, with different beginnings and different endings (*b*).

Unpublished musical works.

The first decision on the subject of statutory copyright is *Bach* v. *Longman* (*c*) in 1777, where Lord Mansfield held that a musical composition came within the Statute of Anne (*d*), and that its author was therefore entitled to protection from unauthorized printing. It is interesting to notice, as bearing on the history of privileges and patents granted by the Crown where the grantees felt that their alleged rights needed further protection, that this case recites that "by royal licence dated 15th December, 1763, his Majesty did grant unto the plaintiff his royal licence for the sole printing and publishing the works mentioned in the licence for fourteen years from the date of the same." This class of licence appears to have survived much longer than the licence for books, probably because the right of property was more doubtful. Licences for printing music had been granted in the reign of Elizabeth, as in 1598 (*e*), when a licence was granted to Thomas Morley "to print set song books in any language, to be sung in church or chamber, and to print ruled paper for printing songs;" infringements being punished by the forfeiture of £10.

History till 1842.

The decision in *Bach* v. *Longman* was followed with regard to copyright in music in several other cases (*f*), but as the Act under which they were decided has now been superseded by Talfourd's Act (*g*), which also

(*b*) *Chappell* v. *Boosey* (1882), 21 Ch. D. 232; see above, pp. 77–80.
(*c*) 2 Cowper, 623.
(*d*) 8 Anne, c. 19.
(*e*) Cal. S. P. Dom. 1598–1601, p. 94.
(*f*) *Storace* v. *Longman* (1788), 2 Camp. 27; *Clementi* v. *Golding* (1809), 2 Camp. 25; *Platt* v. *Button* (1815), 19 Vesey, 447; *Chappell* v. *Purday* (1841), 4 Y. & C. Exch. 485.
(*g*) 5 & 6 Vict. c. 45 (1842).

Statutory provisions.

extended to musical compositions the sole right of performance which Bulwer Lytton's Act (*h*) had given to plays, it is unnecessary to notice them more particularly.

Talfourd's Act in 1842 (*i*) defined "dramatic piece" to include "every tragedy, &c. . . . or other scenic, musical or dramatic entertainment." But the latter part of this definition has been interpreted by Brett, M.R., as only referring to a "whole concert or entertainment," and not to individual pieces in the programme (*j*). Section 20 expressly extends to musical compositions the benefit of that Act and the Act of 1833 (*k*).

The right of printing a musical composition rests upon the Act of 1842 (*l*), a "sheet of music" being included in the term "book" as defined by that Act (*m*). The right of performing a musical composition is to be collected from the provisions of the Act of 1833 (*k*), and the Act of 1842 (*l*), together with the Musical Copyright Acts, 1882 and 1888 (*n*). As the provisions with regard to musical compositions are almost identical with those just set out as applicable to plays, I do not propose to repeat them, but the reader is referred to the preceding chapter.

Performing rights in music.

It will be noted that there are certainly three distinct rights in a song:—the right to print the music, which may be in different hands as to the tune and accompaniment; the right to print the words; and the right to

(*h*) 3 & 4 Will. IV. c. 15 (1833).
(*i*) 5 & 6 Vict. c. 45.
(*j*) *Wall* v. *Taylor* (1883), 11 Q. B. D. 102, 108.
(*k*) 3 & 4 Will. IV. c. 15.
(*l*) 5 & 6 Vict. c. 45.
(*m*) A perforated roll for an Æolian organ is not a sheet of music, or a copy of one, nor would the barrel of a barrel-organ or musical-box be such a copy: *Boosey* v. *Whight* (1900), 1 Ch. 122.
(*n*) 45 & 46 Vict. c. 40; 51 & 52 Vict. c. 17; see *post*, p. 99.

perform the music. As these three rights may belong to different persons, great inconvenience and injustice arose through the fact that a statutory penalty of 40s. was imposed on every one performing a dramatic or musical composition in public without the consent of the owner of the copyright. This provision was made use of to obtain penalties from singers at country concerts and other entertainments who sang copyright songs or words in public in ignorance of the penalty attaching thereto. Their only means, indeed, of ascertaining the copyright character of such songs or words was by searching the London register, for no warning appeared on the copy of the song they had bought. And the popular feeling against this mode of procedure was heightened by the fact that these penalties were frequently not exacted by the author or composer of the song, but were often demanded by a so-called association, in reality a Mr. Wall, who had bought up the rights of relatives of the composers. Evidence was given before the Copyright Commission (*o*) that Mr. Wall's society were the assignees of, or acted as agents for the owners of, the copyright or the right in the words of, amongst others, songs of Wallace and Balfe; and that they refused to give any information as to the songs over which they held rights unless a payment of twenty-one guineas was made.

Performing rights in music.

To meet this objectionable course of procedure, the Musical Copyright Act, 1882 (*p*), was passed. Section 1 provides that the proprietor of the copyright in any musical composition first published after August 10,

Musical Copyright Act, 1882.

(*o*) C. C. Ev. qq. 2093, 2211, 2263, 2276, &c.; and *cf. In re Wall* (1888), 4 Times L. R. 749.

(*p*) 45 & 46 Vict. c. 40; *Fuller* v. *Blackpool Gardens* (1895), 2 Q. B. 429.

Musical Copyright Act, 1882.

1882, who shall be entitled to and desirous of retaining in his own hands exclusively the right of public performance, shall print on the title-page of every copy a notice that the right of public performance is reserved.

Section 2, which is very complicated, deals with the situation where the copyright, or right of printing, and the right of performance are in different hands, with the following result:—

I. In the case of music:—

(1.) First published after August 10, 1882:

(2.) Where the performing right and copyright have come into separate hands between August 10, 1882, and the date of first publication, *i.e.*, *before* first publication:

(3.) If the owner of the performing right desire to reserve rights of sole performance:—

(4.) He shall give the owner of the copyright notice in writing before the date of first publication, to print a notice on each copy that the right of performance is reserved; and

(5.) By section 3, if the owner of the copyright then fails to print such a notice, he shall be liable to pay £20 to the owner of the performing right.

II. In the case of music:—

(1.) First published after the 10th of August, 1882:

(2.) In which the performing right and copyright came into different hands *after* first publication thereof:

(3.) If the notice of reservation has been duly printed on each copy published *before* the separation of rights:

(4.) The proprietor of the performing right, if he desire to retain the sole right, shall give notice in writing to the owner of the copyright, *before* any further copies are printed, to print a notice on each copy that the right of performance is reserved.

(5.) On failure to print such a notice, the owner of the

copyright shall forfeit £20 to the owner of the performing right.

As the Act of 1882 still allowed the plaintiff to recover forty shillings for each infringement and gave him his costs if he recovered more than forty shillings, an amending Act was passed in 1888 (*q*) under which both the penalty and the costs were left in the absolute discretion of the Court or Judge trying the case, and further protection was given to innocent proprietors or tenants of places at which unauthorized performances of musical compositions took place (*r*). The question then arose what effect this had on the performance of a song, whose words had a dramatic character, so that the words by themselves might be considered as a dramatic piece. Kennedy, J., in *Fuller* v. *Blackpool Winter Gardens* (*s*) held that the words of 'Daisy Bell' were such a dramatic piece, and therefore that the protection of the Acts of 1882 and 1888 did not apply to them. The Court of Appeal differed from this view and doubted whether anything substantially a song could be also a dramatic piece. 'Daisy Bell' they held to be clearly not dramatic. Musical Copyright Act, 1888.

It was held in *Fuller* v. *Blackpool Winter Gardens* (*s*) that the failure to print such a notice, or the printing of a notice only reserving a limited right, as of performance at music halls, prevented the owner of the performing right from asserting any exclusive right, although the Act contained no express words to that effect.

Section 4 relates solely to costs, which it places in the discretion of the judge who tries the case, if the plaintiff does not recover more than forty shillings as penalty or damages. Under the previous Act (*t*) the

(*q*) 51 & 52 Vict. c. 17, ss. 1, 2.
(*r*) *Ibid.* s. 3.
(*s*) (1895) 2 Q. B. 429.
(*t*) 3 & 4 Will. IV. c. 15, s. 1, as amended by 5 & 6 Vict. c. 97, s. 2; *cf. Reeve* v. *Gibson* (1891), 1 Q. B. 652.

plaintiff recovered a full indemnity as to costs as of right (*u*).

Rights of the author.

The author of a musical composition and his assigns have:—

(1) Performing right.

(1.) The sole right of performing such compositions *in public* for forty-two years from the first performance, or for the life of the author and seven years after his death, whichever shall be the longer term.

This right is not limited to performance at places of dramatic entertainment (*v*), but extends to all public performances or representations. Brett, M.R., said in *Wall* v. *Taylor* (*v*):—"There must be a performance or representation according to the ordinary acceptation of those terms. Singing for one's own gratification without intending thereby to represent anything, or to amuse anyone else, would not, I think, be either a representation or performance according to the ordinary meaning of these terms, nor would the fact of some other person being in the room at the time of such singing make it so; but where to give effect to the song it is necessary that the singing should be made to represent something, or where it is performed for the amusement of other persons, then I think when this takes place it would be in such case a question of fact."

It is submitted that this must be taken with the further limitation that the performance, to be an infringement of the right of another must be such as to affect the commercial value of that right either by giving

(*u*) As under the International Copyright Acts foreign authors get the same rights as if their works were first produced in England, some difficulties arise as to whether the notice on their songs must be in the English language, or whether the language of the country of origin will suffice.

(*v*) *Wall* v. *Taylor* (1882), 11 Q. B. D. 107; *cf. Duck* v. *Bates* (1884), 13 Q. B. D. 843.

profit to the performer or depriving the proprietor of copyright of profit (*w*). Rights of the author.

(2.) He has the sole right of publishing such compositions in print for the same period (*x*), dating from first publication in print. (2) Copyright.

To obtain such a right, the work must be first published or performed in the British dominions (*y*), but if the opinion of Lords Cairns and Westbury in *Routledge* v. *Low* is right, the author need not even be temporarily residing in the British dominions at the time of publication (*z*). This, of course, does not apply to works which are the subject of International Copyright.

The work must be registered to protect copyright: but it will be sufficient to register in the case of a published musical composition (*a*):— Registration.

(1.) The title thereof.

(2.) The time of first publication.

(3.) The name and place of abode of the publisher thereof.

(4.) The name and place of abode of proprietor of the copyright. The place of business of the proprietor may be registered as his "place of abode" (*b*). And it seems even to be sufficient if an address where letters will find him or be forwarded to him is registered (*c*).

(*w*) *Duck* v. *Bates* (1884), 13 Q. B. D. 843.

(*x*) Forty-two years, or life of author + seven years.

(*y*) See 49 & 50 Vict. c. 33 s. 8, extending these rights to the colonies.

(*z*) *Jefferys* v. *Boosey* (1859), 4 H. L. C. 815; *Routledge* v. *Low* (1868), L. R. 3 H. L. 100; *vide post*, pp. 126–129. *Buxton* v. *James* (1851), 5 De G. & S. 80, must be read in the light of the two cases in the House of Lords. Publication in the United Kingdom and abroad may be simultaneous, without affecting the British Copyright.

(*a*) 5 & 6 Vict. c. 45, ss. 13, 20; and see pp. 147–150, *post*.

(*b*) *Nottage* v. *Jackson* (1883), 49 L. T. at p. 340.

(*c*) *Lover* v. *Davidson* (1856), 1 C. B. N. S. at p. 186.

Rights of the author.

If the musical composition has not been published, it will be sufficient to register the title, the name and place of abode of the proprietor and author or composer, and the time and place of its first representation or performance.

In the case of a pianoforte arrangement of an opera, the name of the arranger, and not of the composer of the opera, must be entered (*d*).

The Court of Queen's Bench in *Russell* v. *Smith* (*e*) held registration unnecessary to protect the performing right in a musical composition. The question is too technical for discussion here, but it may be doubted whether this decision is right.

Subject of copyright.

The subject of copyright is any original musical composition. A single sheet of music, though bound in a book with other pieces, is capable of copyright (*f*). Copyright may also be had in a piece of music, where the claimant has adapted words of his own to an old air, adding thereto a prelude and accompaniment (*g*). So where a non-copyright air was furnished with words and a preface by B., who also procured a friend to compose an accompaniment, the result, under the name of 'Pestal,' was held to be the subject of copyright (*h*).

There can be copyright in a pianoforte arrangement from a non-copyright opera (*i*), though it is open to any other person to make another arrangement direct from the opera. The fingering and editing of standard music

(*d*) *Wood* v. *Boosey* (1868), L. R. 3 Q. B. 223. For a complicated case of registration of International Copyright, see *Fairlie* v. *Boosey* (1879), 4 App. C. 711.

(*e*) (1848) 12 Q. B. at p. 237.

(*f*) *White* v. *Geroch* (1819), 2 B. & Ald. 298.

(*g*) *Lover* v. *Davidson* (1856), 1 C. B. N. S. 182.

(*h*) *Chappell* v. *Sheard* (1855), 2 K. & J. 117; *Leader* v. *Purday* (1849), 7 C. B. 4.

(*i*) *Wood* v. *Boosey* (1868), L. R. 3 Q. B. 223.

has been held by Charles, J., to be the subject of copyright in an unreported case.

Infringements of copyright.

Copyright will be infringed by any public performance or publication of a whole or part of the musical composition, or of a composition substantially the same as the original, *i.e.*, which, though adapted to a different purpose, can still be recognized by the ear (*k*). Such performance or publication must tend to damage the commercial value of the property.

Thus it is PIRACY:—

To perform songs out of a copyright opera (*Planché* v. *Braham* (*l*)).

To distribute gratuitously copies of a musical composition, as by distributing lithographed copies to a musical society (*Novello* v. *Sudlow* (*m*)).

To make a pianoforte arrangement from a copyright opera (*Wood* v. *Boosey* (*n*)).

To found quadrilles and waltzes on a copyright opera, though only parts of the melodies be taken (*D'Almaine* v. *Boosey* (*o*)).

To construct a full score from the non-copyright pianoforte arrangement of a copyright opera (*Boosey* v. *Fairlie* (*p*)).

It is not PIRACY:—

To make perforations on a roll which, used in conjunction with a mechanical instrument, will produce a copyright tune, or even to add to such

(*k*) *D'Almaine* v. *Boosey* (1835), 1 Younge & Collyer, 289.
(*l*) (1837) 4 Bing. N. C. 17.
(*m*) (1852) 12 C. B. 177.
(*n*) (1868) L. R. 3 Q. B. 223.
(*o*) (1835) 1 Y. & C. 289.
(*p*) (1879) 7 Ch. D. 301; 4 App. C. 711.

Infringements of copyright.

roll directions such as *forte*, *piano*, taken from the copyright music (*q*).

Assignments.

Any assignment must be in writing (*r*); and therefore a registered written assignment overrides a previous parol assignment (*Leyland* v. *Stewart* (*s*)).

Remedies for infringements.

The owner of the performing right in music can recover 40*s*., or the full value either of the benefit resulting to the infringer, or of the loss to the plaintiff, whichever shall be the greater (*t*), from each person infringing his performing right in public (*u*), but this is subject to the absolute discretion of the Court to reduce the penalty to a nominal amount or deprive him of costs (*v*), and to the protection given to innocent owners, tenants or occupiers of the place where the performance takes place (*w*), except in the case of musical compositions which are operas or stage plays (*x*).

The owner of the copyright has an action for damages after registration as provided in the case of books.

Injunctions can also be obtained to prevent piratical performance or printing (*y*).

Of late years the owners of musical copyright have suffered great loss by persistent piracies of popular songs. No printers' name was on these copies, contrary to

(*q*) *Boosey* v. *Whight* (1900), 1 Ch. 122.

(*r*) But a written assignment may be inferred from a long course of dealing only consistent with one. *Dennison* v. *Ashdown* (1897), 13 Times L. R. 226.

(*s*) (1876) 4 Ch. D. 419.

(*t*) 3 Will. IV. c. 15, s. 2.

(*u*) *Wall* v. *Taylor*, 11 Q. B. D. 102.

(*v*) 51 & 52 Vict. c. 17, ss. 1, 2, and pp. 101-102, *ante*.

(*w*) 51 & 52 Vict. c. 17, s. 3.

(*x*) *Ibid.* s. 4.

(*y*) See full details at pp. 93-95, *ante*, and pp. 155-157, *post*.

statute (z), and they were sold in the streets by hawkers who were not worth suing. The music publishers took the law into their own hands, and seized these pirated copies by force. The result of this was the passing of the Musical (Summary Proceedings) Copyright Act, 1902 (a). Remedies for infringements.

This gives power to a constable to seize, either by order of a Court of summary jurisdiction, or on the request in writing of the apparent owner of the copyright, pirated copies, to be conveyed before a Court of summary jurisdiction, and on proof that they are infringements of copyright to be forfeited or destroyed, or otherwise dealt with as the Court may think fit.

The Act is not very clear as to what is to happen in Court when the copies are brought there. It seems that the certificate of registration and the production of the original song, will be sufficient *primâ facie* proof that the songs are infringements of copyright. The question has been raised whether the order can be made *ex parte*, or whether a summons under the Summary Jurisdiction Act, 1848, s. 1, must be served on the hawker, before an order for destruction can be made. The Divisional Court in *ex parte Francis* (b) have decided that the summons is necessary, but it is to be hoped that the Court or the police will detain the copies or hand them over to the complainant until the hawker applies for them, when he can be served with a summons.

The Act is, however, still inadequate, as the hawker in the street only keeps a few copies with him. What is wanted is a power of search, and a provision that the hawker may be arrested, and fined or imprisoned

(z) 32 & 33 Vict. c. 24, Schedule 2.
(a) 2 Edw. VII. c. 15.
(b) *Ex parte Francis*, *Times* newspaper, Jan. 13, 1903.

unless he truly discloses to the Court the source from which he obtained the piracies, and satisfies the Court that he had no knowledge in selling them that they were piracies.

APPENDIX.

The only special recommendations of the Copyright Commission with regard to musical works, other than those already set out with reference to dramatic compositions, are:—

1. (*c*) That the author of the words of songs, as distinguished from the music, should have no copyright in their representation of publication with the music, except by special agreement.

2. (*d*) That to prevent abuse of the 40*s.* penalty for infringement of musical copyright, every musical composition should have printed on it a note of the reservation of the right of public performance, and the name and address of the person who may grant permission for such performance.

3. That unless such note was printed, the owner should not be able to recover any penalty or damages for infringement.

4. That the Court should have power to award compensation for damage suffered, instead of the minimum 40*s.* penalty, in case of infringement.

The second and third recommendations have been dealt with by the Musical Copyright Act of 1882 (*e*), and the fourth by the Act of 1888 (*f*).

(*c*) C. C. Rep. s. 75.
(*d*) C. C. Rep. s. 171.
(*e*) 45 & 46 Vict. c. 40, and above, p. 99.
(*f*) 51 & 52 Vict. c. 17, ss. 1, 2.

CHAPTER VI.

COPYRIGHT IN BOOKS.

Definitions.—Newspapers.—Maps.—Qualities required in copyright work.—Literary value.—Advertisements.—Titles of books.—Originality.—Translations.—Annotations.—New editions.—Publication in the United Kingdom.—Duration and extent of right.—Persons who may acquire the right.—Investitive facts.—Works written on commission.—Rights of author.—Infringements of copyright.—Literary piracy.—Abridgments.—Translations.—Literary larceny.—Duties of author.—Registration.—Transvestitive facts.—Remedies against infringements.—Remedies against author.

Definitions.

THE Act of 1842 defines "*Copyright*" as:—"The sole and exclusive liberty of printing or otherwise multiplying copies of any 'book;'" and the term "*book*" is defined as:—"every volume, part or division of a volume, pamphlet, sheet of letterpress, sheet of music, map, chart, or plan separately published" (*a*). Thus a folding card with verses on will be protected as a "book" (*b*), or a single leaf with an application form on it (*c*).

"*Separately published*" is not confined to publication as a separate book, but applies also to parts of a volume

(*a*) 5 & 6 Vict. c. 45, s. 2. In *White* v. *Geroch* (1819), 2 B. & Ald. 298, Abbott, C.J., laid down that any literary composition, whether large or small, was a book within the former Act.

(*b*) *Hildesheimer* v. *Dunn* (1891), 64 L. T. 452.

(*c*) *Southern* v. *Bailes*, unreported, before Chitty, J., Aug. 1894.

separate and clearly distinguished in the volume, as in the case of a volume of stories by different authors (*d*).

News-papers.

Newspapers.—In *Cox* v. *Land and Water Company* (*e*), where the proprietor of the *Field*, a newspaper whose first number was not registered under s. 18 of the Act of 1842, brought an action against the defendants for piracy, they pleaded that the newspaper was not registered, and consequently that the plaintiff could not sue. Malins, V.-C., held that a newspaper was not a "book" under s. 2; was not mentioned in s. 19; did, however, come under s. 18, but did not require registration, and that its right to protection rested either on s. 18, or on the "general rules of property," presumably the common law right. In support of his position he quoted the cases of *Mayhew* v. *Maxwell* (*f*) and *Strahan* v. *Graham* (*g*), in neither of which was there registration. But in both these cases the question was not as to general copyright, but of restraint from publication contrary to the terms of a special contract, and it was therefore held that registration was not necessary (*h*).

In 1881 a similar question came before Jessel, M.R., in *Walter* v. *Howe* (*i*), where the *Times*, an unregistered newspaper, published an article, and the defendant reprinted it. The question of copyright in the particular article was the material point, but the Master of the Rolls also held that a newspaper, being a "sheet of

(*d*) *Johnson* v. *Newnes* (1894), 3 Ch. at p. 669. See *Aflalo* v. *Bullen*, C. A., *Times*, Dec. 19, 1902.

(*e*) (1869) L. R. 9 Eq. 324.

(*f*) (1860) 1 J. & H. 312.

(*g*) (1867) 16 L. T. N. S. 87.

(*h*) With reference to *Sweet* v. *Benning* (1855), 16 C. B. 459, the V.-C. says, "I suppose the *Jurist* was not registered at all;" whereas the first page of the report of the case states that the *Jurist* was registered before action brought.

(*i*) (1881) 17 Ch. D. 708.

letterpress," was a "book" under s. 2 of the Act, and also a "periodical work" under s. 19, and that therefore under s. 19 its non-registration prevented the plaintiff from suing. He refused to follow the case of *Cox* v. *Land and Water Company* (*l*), saying that it practically repealed the Act of Parliament. Newspapers.

The decision in *Walter* v. *Howe* (*m*) has been approved by the Court of Appeal (*n*), and it must therefore be taken as settled that a newspaper is a book within s. 2 of the Act of 1842, though its registration and the copyright in any particular article therein are dealt with in special sections (*o*). Illustrations in a newspaper, whether on the same paper or on a loose sheet, will be protected as part of the "book" (*p*). It does not follow because A. is the registered proprietor of copyright in a newspaper that he is therefore proprietor of the copyright in any particular article therein; this must depend on his relations with the author of that particular article (*o*).

There may be copyright in the particular language or modes of expression in which news is conveyed, and therefore one newspaper proprietor can prevent another

(*l*) (1869) L. R. 9 Eq. 324. (*m*) (1881) 17 Ch. D. 708.

(*n*) *Trade Auxiliary Co.* v. *Middlesborough, &c., Association* (1889), 40 Ch. D. 425; see also *per* Lord Davey in *Walter* v. *Lane* (1900), A. C. at p. 551; and *per* North, J., *Cate* v. *Devon Newspaper Co.* (1889), 40 Ch. D. at p. 503.

(*o*) 5 & 6 Vict. c. 45, ss. 18, 19; and below, pp. 130–135. See also the decision in *Petty* v. *Taylor* (1897), 1 Ch. 465, that the proprietor of copyright in the letterpress, registered as the proprietor of copyright in the "book," has not from that alone copyright in illustrations bound up with the letterpress.

(*p*) *Comyns* v. *Hyde* (1895), 13 R. 172; following *Maple* v. *Junior Army and Navy Stores* (1882), 21 Ch. D. 369. Difficult questions may arise if the copy complained of, though a copy of the illustration in the book, is not made from the illustration but from the picture it reproduces.

Newspapers.

from copying special telegrams or articles from his paper (*q*), provided he can prove his copyright in each telegram or article (*r*). In *Exchange Telegraph Co.* v. *Gregory* (*s*) protection was granted to the "tape" telegrams of Stock Exchange prices.

Maps.

In *Stannard* v. *Lee* (*t*) the Court of Appeal held, reversing the decision of Bacon, V.-C., that *maps* were books under the Act of 1842, and not engravings under the Engravings Acts, and that they must therefore be registered. But a chart or plan which is really an instrument, apparatus, or tool, for achieving a certain practical purpose, such as a card for measuring and cutting out ladies' sleeves, cannot obtain literary copyright as a "map, chart, or plan," even if certain words or figures are printed on it (*u*).

Qualities required in copyright work.

For an intellectual work to be capable of protection as copyright it must be:—

I. *Innocent*, that is:—

1. *Not seditious or libellous* (*v*), (the libel being against the State).
2. *Not immoral* (*x*); a work bearing on the love adventures of a courtesan was not protected (*x*), and certain French photographs were held by

(*q*) *Walter* v. *Steinkopff* (1892), 3 Ch. 489; *cf.* the action of the *Pall Mall Gazette* in stopping reproductions of its telegrams as to Australian cricket.

(*r*) *Walter* v. *Steinkopff*, v.s.; and *cf.* 5 & 6 Vict. c. 42, ss. 18, 19; and *post*, pp. 130–135.

(*s*) (1896) 1 Q. B. 147.

(*t*) (1871) L. R. 6 Ch. 346.

(*u*) *Hollinrake* v. *Truswell* (1894), 3 Ch. 420; *cf. Boosey* v. *Whight* (1900), 1 Ch. 122.

(*v*) *Hime* v. *Dale* (1803), 2 Camp. 27; *Southey* v. *Sherwood* (1817), 2 Mer. 435.

(*x*) *Stockdale* v. *Onwhyn* (1826), 5 B. & C. 173.

the Court of Appeal indecent and not entitled to protection (*y*). Qualities required in copyright work.

3. *Not blasphemous* (*z*); thus Lord Eldon refused protection to Laurence's 'Lectures on Physiology,' as "hostile to revealed religion, and the doctrine of the immortality of the soul." The same Chancellor (*a*) refused protection to Lord Byron's 'Cain,' and in 1823 Sir J. Leach took a similar course with regard to 'Don Juan.' In the Scotch case of *Hopps* v. *Long* (1874) (*b*), a Unitarian discussion of the life of Jesus was considered copyright as a decent discussion not endangering the public peace, safety, or morality.

4. *Not fraudulent*, or professing to be what it is not with intent to deceive. Thus a work of devotion professing falsely to be translated from the work of a celebrated German writer (*c*), was not protected; but the proprietors of a catalogue were not deprived of copyright therein, because some of the articles mentioned were described as "patent," though the patent had expired (*d*). It has not yet been decided whether falsely

(*y*) *Baschet* v. *London Illustrated Standard Co.* (1900), 1 Ch. 73. If part of a book is immoral, the whole book has probably lost the protection of literary copyright; but an innocent photograph or print does not lose protection by being found in the same volume with an immoral one (*same case*).

(*z*) *Lawrence* v. *Smith* (1822), 1 Jacob, 471.

(*a*) *Murray* v. *Benbow* (1822), 1 Jacob, 474.

(*b*) Cited in Copinger, p. 94, 3rd edit.

(*c*) *Wright* v. *Tallis* (1845), 1 C. B. 893.

(*d*) *Hayward* v. *Lely* (1887), 56 L. T. at p. 421; *cf. Macfarlane* v. *Oak Foundry Co.* (1883), 10 Sc. Sess. C. 4th Ser. 801, where misdescription under the Designs or Patent Acts was held no defence to an action under the Copyright Acts.

Qualities required in copyright work.

describing a work as "registered" under the Copyright Acts is an answer to an action under those Acts which do not require registration as a condition precedent to an action; where the registration is required its absence is a defence, without reference to the false statement (*e*).

Literary value.

II. *The work must contain the expression in words or pictures or signs of ideas giving information or instruction or pleasure* (*f*). This limitation is not required in the case of unpublished MSS.; but the purpose of the Act is to protect "useful books," though very little "usefulness" or material value will suffice to obtain protection. In *Cable* v. *Marks* (*g*), in which an attempt was made to obtain copyright for a perforated card, with some verses on it, which, throwing the "Shadow of the Cross" on the wall, went by the name of the Christograph, Bacon, V.-C., held it "not a literary production in any sense of the words." In *Schove* v. *Schmincké* (*h*), Chitty, J., held that an album for holding photographs, seven of the pages of which bore pictures of castles with short letterpress descriptions, and which was called "The Castle Album," was not a "book" within the Act of 1842, not being "a literary work." In *Davis* v. *Comitti* (*i*) the same judge held that a card for the face of a barometer, utterly meaningless without the barometer, but with it a scientific instrument of some value, was not a "book" capable of copyright. In *Hollinrake* v. *Truswell* (*j*) the

(*e*) *Cf.* principles laid down in *Leather Co* v. *American Leather Co.* (1863), 4 De G. J. & S. 137.

(*f*) *Hollinrake* v. *Truswell* (1894), 3 Ch. 420 at pp. 424, 427, 428; *cf. Boosey* v. *Whight* (1900), 1 Ch. 122.

(*g*) (1882) 47 L. T. 432; 52 L. J. Ch. 107.

(*h*) (1886) 33 Ch. D. 546. (*i*) (1885) 52 L. T. 539.

(*j*) (1894) 3 Ch. 420. Similar charts had given rise to conflicting decisions in the United States; *cf. Drury* v. *Ewing* (1862), 1 Bond, 540; *Baker* v. *Selden* (1879), 11 Otto, 99.

Court of Appeal refused protection to a cardboard pattern sleeve containing directions for measuring and cutting out ladies' sleeves. This was followed in *Boosey* v. *Whight* (*k*), where on a perforated roll used in a mechanical instrument for producing sound, the defendants had printed directions for performance, such as "*piano*," "*forte*," taken from plaintiff's song. The roll was held not actionable, as being a mechanical device; the few printed words were treated as unimportant adjuncts. Literary value.

On the other hand, in *Hildesheimer* v. *Dunn* (*l*), a folding card containing a map of the lines of the hand and a description thereof in verse, was admitted to copyright; and Chitty, J., gave protection to a form of application on a single sheet of paper (*m*). But in *Chilton* v. *Progress Printing and Publishing Co.* (*n*) the Court of Appeal refused to protect a sporting prophet's "tips" for particular races, consisting simply of the name of a horse and the name of a race, on the ground that the mere names in their conjunction had nothing of a literary character, and were merely the expression of an opinion which could not be monopolized.

The law of literary copyright is not intended to protect ideas or inventions, except as embodied in words. Thus in the case of *Perris* v. *Hexamer* (*o*), the Supreme Court of the United States refused to allow the proprietor of the copyright in a map of New York published on a special system to prevent the publication of maps of Philadelphia on the same system.

(*k*) (1900) 1 Ch. 122.
(*l*) (1891) 64 L. T. 452.
(*m*) In *Southern* v. *Bailes*; unreported; before Chitty, J., Aug. 1894.
(*n*) (1895) 2 Ch. 29.
(*o*) (1878) 9 Otto, 674; *cf.* *Baker* v. *Selden* (1879), 11 Otto, 99, where the idea of a peculiar system of bookkeeping was refused protection.

Literary value.

Advertisements.

As a general rule there is no copyright in single advertisements or labels. In the American case of *Coffeen* v. *Brunton* (*p*), where the plaintiff's label on a medicine had been pirated, it was held that, not having complied with the patent laws, he had not property in the medicine; that he had no copyright in the label, as it was not a "book" within the provisions of the American statute; but that he had an equitable ground for protection if the defendant had represented his medicine to be the same as the plaintiff's to the injury of the plaintiff (*q*). In the English case of *Page* v. *Wisden* (*r*) copyright was refused to a cricket scoring sheet where the only novelty introduced by the plaintiff appeared to be a line for recording the runs at the fall of each wicket. There may be copyright in a collection or sheet of advertisements, or in an arrangement or compilation of headings to advertisements (*s*).

Lindley, L.J., has described (*t*) works entitled to copyright, as works which "the author, or composer, as he is called in s. 18, has bestowed some brainwork upon, and not a mere collection of copies of public documents. If they had been such mere collections there might have been some question, but there has been an abridgment and mental work and an amount of labour which entitles the author of the work . . . . to a copyright." Lord Herschell in the Scotch case of *Leslie* v. *Young* (*u*) held that a compiler from sources open to all can only claim and enforce copyright in his

(*p*) (1849) 4 McLean, 516.

(*q*) *Cf. Higgins* v. *Keuffel* (*Am.*) (1890), 33 Davis, 428.

(*r*) (1869) 20 L. T. 435.

(*s*) *Lamb* v. *Evans* (1893), 1 Ch. 218.

(*t*) *Trade Co.* v. *Middlesborough, &c., Association* (1889), 40 Ch. D. at p. 435.

(*u*) *Leslie* v. *Young* (1894), A. C. at p. 340.

compilation, if it is the result in some respect or other of independent work on his part, and if advantage has been taken by others of that independent labour. Where, therefore, A. had simply reprinted railway time tables with the omission of some stations and trains, B., who had reprinted from him the same tables, was exonerated by the House of Lords. A telegraph code has been held entitled to copyright (*v*). Literary value.

Catalogues will be protected as copyright, unless they are "merely a dry list of names" (*w*), or a simple announcement of the sale of goods which everybody might sell and announce for sale (*x*). But even in this case the verbatim copying of a simple list of goods, the compilation of the plaintiff, will be restrained (*y*). Catalogues.

In *Cobbett* v. *Woodward* (*z*), an injunction to restrain publication of an illustrated catalogue of furniture was refused as to the illustrations, but granted as to certain parts of the letterpress. In *Grace* v. *Newman* (*a*), however, the piracy of a stonemason's illustrated catalogue was restrained, and this case was followed by the Court of Appeal, *Cobbett* v. *Woodward* (*z*) being disapproved, in *Maple* v. *Junior Army and Navy Stores* (*b*), where an

(*v*) *Ager* v. *P. & O. Steam Nav. Co.* (1884), 26 Ch. D. 637.

(*w*) *Hotten* v. *Arthur* (1863), 1 H. & M. 603; some *dicta* in which, excluding copyright in postal directories, appear to go too far.

(*x*) *Maple* v. *Junior Army and Navy Stores* (1882), 21 Ch. D. 369.

(*y*) *Collis* v. *Cater* (1898), 78 L. T. 613; where the subject matter was a list of chemical drugs and patent remedies.

(*z*) (1872) L. R. 14 Eq. 407.

(*a*) (1875) L. R. 19 Eq. 6.

(*b*) (1882) 21 Ch. D. 369. *Marshall* v. *Bull*, C. A. (1901), 85 L. T. 77. See also *Bogue* v. *Houlston* (1852), 5 De G. & Sm. 267; *Hayward* v. *Lely* (1887), 56 L. T. 418; *Harris* v. *Smart* (1889), 5 Times L. R. 594; *Cooper* v. *Stephens* (1895), 1 Ch. 567; approved in *Marshall* v. *Bull*, v.s. The difficulty in catalogue cases is to ensure that all editions are properly registered; see *post*, pp. 124–126, as to new

Literary value.

illustrated catalogue of furniture was protected as to the illustrations, though it was held there was no copyright in the letterpress, which was a simple announcement of the sale of goods which every one might sell and announce for sale (*c*).

Titles of books.

With respect to *Titles*, the case of *Dicks* v. *Yates* (*d*), in the Court of Appeal, must be taken as finally deciding that, except in very rare cases, there cannot be any copyright in the title of a book; and the remedy for its use by other people, if any exists, will be akin to that for common law fraud (*e*). In that case the title claimed was 'Splendid Misery'; the plaintiff's novel was published in *Every Week;* the defendant's, an entirely different novel, written by Miss Braddon, in the *World.* The defendant proved that a novel bearing a similar title had been published in the early part of the century. In refusing an injunction, Jessel, M.R., after commenting on the lack of originality in the title, said:—"I do not say that there could not be copyright in a title, as for instance in a whole page of title, or something of that kind requiring invention. I am of opinion that there cannot .be copyright at all in these common English words. Their adoption as the title of a novel might make a trade-mark, and entitle the owner of the novel to say:—' *You cannot sell a novel under the same title so as to lead the public to believe they are buying my novel when they are actually buying yours.*'" James, L.J., said:—

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editions. The copyright in the illustrations is not necessarily the property of the owner of the copyright in the letterpress, though he be registered as the proprietor of copyright in the "book." *Petty* v. *Taylor* (1897), 1 Ch. 465.

(*c*) But see *Collis* v. *Cater* (1898), 78 L. T. 613.

(*d*) (1881) 18 Ch. D. 76, 89.

(*e*) See above, pp. 55–60.

"Where a man sells a work under the name or title of another man, or another man's work, that is not an invasion of copyright, it is a common law fraud:"—and at the end of the case, "there cannot be in general any copyright in the title or name of a book," in which opinion the Master of the Rolls concurred. This case may be regarded as putting on the right ground the law as to protection of titles, and settling a long and confused controversy. Titles of books.

The Court will interfere, if at all, on the ground of injury to the property denoted by the title, by its use to denote a work liable to be mistaken for the plaintiff's. Fraud is unnecessary as a ground for interference; it will be sufficient if injury results or is likely to result from the similarity (*f*).

The law of the *United States* is similar. In *Osgood* v. *Allen* (*g*) the Court said:—"The right secured by the Act however is the property in the literary composition, the product of the mind and genius of the author, and not the name and title given to it. When the title itself is original, and the product of an author's own mind, and is appropriated by infringement, as well as the whole or part of the literary composition itself, in protecting the other portions . . . Courts would probably protect the title. But no case can be found either in England or this country in which, under the law of copyright, Courts have protected the title alone, separate from the book which it is used to designate."

III. *Originality.* In the much-discussed decision in *Walter* v. *Lane* (*h*) the verbatim reporter of Lord Originality.

(*f*) See above, pp. 55–60; and the general principles laid down in *Reddaway* v. *Banham* (1896), A. C. 199; (camel-hair belting).

(*g*) 1 Holmes, 185, 191.

(*h*) (1900) A. C. 539.

Origin-ality.

Rosebery's speeches obtained a copyright in his report, apparently even against Lord Rosebery. This appears to show that it is not necessary that the work in which copyright is claimed should be "original," in the sense that its "author" should have invented or supplied either a single word or idea of the book, or the arrangement of the words. He may have copied the literary composition of another from that other's recitation without adding anything but the written reproduction of the spoken words. The House of Lords do appear to think that the words composing the book must not have been published in print before, to which extent the work must be original. It is idle to discuss whether decisions of the House of Lords are right; otherwise there is much to be said for the view of the Court of Appeal and Lord Robertson that a mere copyist does not produce a "book" within the Copyright Act, and that the phonograph is not an "author."

Where there is a common source of information or ideas, itself not copyright, it is open to all to use it, and to obtain copyright in the results of labour so bestowed (*i*). From the nature of the case results obtained by different workers having a similar end must be very similar, but the likeness of one man's work to that of his predecessor in the same field does not hinder it from obtaining copyright, provided it is the result of his independent labours. He is, however, only allowed a very limited use of the copyright labours of his predecessors. Thus in *Kelly* v. *Morris* (*j*), a case having reference to directories,

(*i*) See *post*, pp. 144–147.

(*j*) (1866) L. R. 1 Eq. 697, 701; *cf. Trade Co.* v. *Middlesborough Association*, 40 Ch. D. 425; *Cate* v. *Devon Newspaper Co.*, *ibid.* p. 500; cases as to lists of bills of sale obtained from public departments.

two of which, if correct, must be nearly identical, Page Wood, V-C., laid down the law as follows:—"In the case of a dictionary, map, guide-book, or directory, where there are certain common objects of information, which must, if described correctly, be described in the same words, a subsequent compiler is bound to set about doing for himself that which the first compiler has done; in case of a road book he must count the milestones for himself . . . generally he is not entitled to take one word of the information previously published without independently working out the matter for himself, so as to arrive at the same result from the same common sources of information, and the only use he can legitimately make of a previous publication is to verify his own calculations and results when obtained." Originality.

This passage must, however, be read as explained by Giffard, L.J., in *Morris* v. *Wright* (*k*), where, after reading the above passage, he said:—"If this passage goes further than I take it to mean, I cannot doubt it goes beyond what the law authorizes, and beyond the decision of the Lord Chancellor and myself in the late case of *Pike* v. *Nicholas* (*l*). It does not mean that he may not look into the book for the purpose of ascertaining where a particular person lived and whether it was worth his while to call upon that person or not; but it means that he may not take that particular slip and show that to the person and get his authority as to putting that particular slip in." . . . But where the only use which the plaintiff has made of common sources is to reprint them, as in the case of railway time tables, he will not be able to prevent another person from copying his reprint; though the case will be different where he

(*k*) (1870) L. R. 5 Ch. at p. 285.
(*l*) (1870) L. R. 5 Ch. 251.

Originality.

has done substantial and original work, as in the compilation of circular routes or tours (*m*).

So in *Lewis* v. *Fullarton* (*n*), in reference to a gazetteer, the Master of the Rolls said:—"Any man is entitled to publish a topographical dictionary, and to avail himself of the labours of all former writers whose works are not subject to copyright, and of all public sources of information; but while all are entitled to resort to public sources of information, none are entitled to save themselves trouble and expense by availing themselves for their own profit of other men's works still subject to copyright and entitled to protection."

The case of *Jarrold* v. *Houlston* (*o*) furnishes a good application of these principles. There the plaintiff had published a 'Guide to Science' in the form of question and answer dealing with the common phenomena of nature. The defendant published a similar work under a different title. The Court held (*p*) that the plaintiff's work had an original value, and was copyright, as reducing certain common matter to a systematic form of instruction; but that another person might originate another work in the same general form provided he did so from his own resources, and made the work he so originated a work of his own by his own labour bestowed on it. He might, however:—

(1.) Use all common sources of information.

(2.) Use the work of another as a guide to these common sources.

(*m*) *Leslie* v. *Young* (1894), A. C. 335.

(*n*) (1839) 2 Beav. 6.

(*o*) (1857) 3 K. & J. 708; *cf. Ager* v. *P. & O. Co.* (1884), 26 Ch. D. 637.

(*p*) In this case it was also held that conveying information by way of question and answer was not an original arrangement which could be copyrighted.

(3.) Use another work to test the completeness of his own. Originality.

There may be copyright in an arrangement or selection of non-copyright matters, as a selection of poems (*q*); or a set of illustrative non-copyright quotations (*r*).

There may also be copyright in a work, every word of which is found in another work, as in two street directories, if each is the result of independent labour and inquiry on the non-copyright material (*s*).

There is copyright in each independent *Translation* of a non-copyright work (*t*), if it appears to have been made from the original by independent labour. So there may be copyright in *compilations*, if independent work gives an original result. In *Sweet* v. *Benning* (*u*) it was held that there was copyright in certain original parts of a law reporter's work, such as the digested headnotes and abridged speeches of counsel. It is doubtful whether there is copyright in the verbatim reports of the judgments of the Court (*v*). Translations.

An author republishing a non-copyright work with *annotations* and additions, may obtain copyright in his additions, if they are of a substantial nature. Thus, in Annotations.

(*q*) *Macmillan* v. *Suresh Chunder Deb* (1890), 17 Indian L. R. (Calcutta) 951.

(*r*) *Moffatt* v. *Gill and Marshall* (1902), 18 Times L. R. 547; *Black* v. *Murray* (1870), 9 Sc. Sess. C. 3rd Series, 341.

(*s*) *Cf. Baily* v. *Taylor* (1829), 3 L. J. O. S. Ch. 66.

(*t*) *Wyatt* v. *Barnard* (1814), 3 Ves. & B. 77.

(*u*) (1855) 16 C. B. 459. See also *Butterworth* v. *Robinson* (1801), 5 Vesey, 709; *Wheaton* v. *Peters* (Am.) (1834), 8 Peters, 591; *Gray* v. *Russell* (1839), 1 Story, 11, 21.

(*v*) The Supreme Court of the United States has held that neither a judge nor the State as his assignee can get copyright in his judgments. *Banks* v. *Manchester* (1888), 21 Davis, 244. As to the reporter, see *Walter* v. *Lane* (1900), A. C. 539.

Annotations.

Cary v. *Longman* (*w*), where the plaintiff had published Paterson's 'Roadbook,' with original additions, Lord Kenyon held it clear that he had a copyright in such additions and alterations, many of which were material and valuable; but that he certainly had no title to that part of the work which he had taken from Mr. Paterson. In an American case (*x*), the plaintiff claimed and obtained copyright in his annotations to Wheaton's 'International Law,' though they consisted largely of compilations from and references to official documents.

New editions.

The question as to the effect of a publication of a *new edition*, with alterations, on the original copyright, arose in the Scotch case of *Black* v. *Murray* (*y*). There the plaintiffs had reprinted, with notes, illustrative quotations, and alterations in the text, a work the copyright in which had expired, and sued for an infringement of their copyright in the reprint. The Lord President said:—

"A new edition of a work may be a mere reprint of an old edition, and plainly that would not entitle the author to a new term of copyright running from the date of the last edition. On the other hand, the new edition may be so enlarged and improved as to constitute in reality a new work, and that just as clearly will entitle the author to a copyright running from the date of the new edition. The difficulty will be to lay down any general rule as to what amount of addition, or alteration, or new matter will entitle a second or new

(*w*) (1801) 1 East, 358; *Leslie* v. *Young* (1894), A. C. 335. But compare *Cary* v. *Faden* (1799), 5 Vesey, 24. See *Gray* v. *Russell*, v.s.

(*x*) *Lawrence* v. *Dana* (1869), 2 Am. L. T. R. N. S. 402.

(*y*) (1870) 9 Sc. Sess. Cas., 3rd Ser., 341; *cf. Thomas* v. *Turner* (1887), 33 Ch. D. 292.

edition of a book to the privilege of copyright, or whether the copyright extends to the book as amended or improved, or is confined only to the additions and improvements themselves, distinguished from the rest of the book." New editions

Kindersley, V.-C., dealt with the same question in the English case of *Murray* v. *Bogue* (*z*). He said: "Publishing another edition of his work does not affect an author's copyright in his first edition; but if he prints a second edition, not a mere reprint of the first, but containing material alterations and additions, *quoad* these it is a new work, and to enable him to sue in respect of any infringement of his rights in those portions of the second edition which are new, he must register the edition before suing. The extent, however, of the alterations is immaterial; to whatever extent a new edition is made a new work, the new part cannot be protected by suit until registration; but that effect of the Act has no operation as to the old parts (of the second edition); as to them the copyright is left as it was."

An author therefore has copyright in the new matter of a second edition for the statutory term from its first publication, in the old matter only from its original publication. This results in obsolete editions becoming common property, while revised ones are still the subject of copyright, but exposed to the competition of former editions to the detriment of the public; and it has been suggested that this should be remedied by continuing the copyright of all scientific and historical works to the lapse of the statutory term of the last edition in which substantial improvements have been made.

The additions must be of some material value to secure copyright. Thus in the Scotch case of *Hedder-*

(*z*) (1852) 1 Drewry, 353, 365.

New editions.

wick v. *Griffin* (*a*), Scotch publishers issued a complete edition of the works of Dr. Channing, an American divine, with some slight revision by himself: but the Court held that the original matter introduced by the revision was too slight to obtain protection.

In *Thomas* v. *Turner* (*b*) the remarks of Cotton, L.J., shew that a new edition without substantial alterations is not an original work, and therefore not a book in which there is copyright or which can be registered. The copyright and the registration are of the preceding edition.

Place of publication.

All the members of the House of Lords who decided *Routledge* v. *Low* (*c*) were of opinion that publication of a book to secure copyright must take place in the United Kingdom; and Lords Cranworth and Westbury expressly say that such publication must be the first publication. It would seem to follow that if an author publishes a book in the United States and afterwards publishes it in London, he cannot claim copyright, for he has not published in London an original work, but one identical with a publication in which there is admittedly no English copyright.

This, however, was doubted by the Court of Appeal in *Reid* v. *Maxwell* (*d*), in which part of a novel claimed as English copyright had been previously published in America. The Court declined to decide the point, though intimating their opinion that in the special circumstances of that case the English copyright had not been lost by

(*a*) (1841) 3 Sc. Sess. C. 2nd Ser. 383.

(*b*) (1887) 33 Ch. D. 292.

(*c*) (1868) L. R. 3 H. L. 100, *per* Lord Cairns, p. 108; Lord Cranworth, p. 112; Lord Chelmsford, p. 116; Lord Westbury, p. 118. But now see 49 & 50 Vict. c. 33, s. 8.

(*d*) (1886) 2 Times L. R. 790.

prior publication in America. It is difficult, however, to see what answer could be made to a defendant sued for infringement of copyright and pleading:—"I have not copied the book you registered, but have gone to the same non-copyright source as yourselves, namely, the prior publication in America;" and it is submitted that the point is really decided by *Routledge* v. *Low* (*e*). Further, the International Copyright Act (1844) (*f*), which was not cited to the Court of Appeal, seems conclusive against this view. Sect. 19 provides that the author of any book which should be first published out of Her Majesty's dominions, should have no copyright except under the International Copyright Act. This leaves open the question of the effect of prior publication in Her Majesty's dominions, but out of the United Kingdom; though the Lords in *Routledge* v. *Low* (*e*) held that publication in the United Kingdom was necessary. Now, however, the Act of 1886 provides that first publication in the British dominions gives the benefit of the British Copyright Acts (*g*). Place of publication.

Duration of Right (*h*).—Forty-two years from first publication, or the author's life and seven years from his death, whichever term shall be the longer (*i*). In the case of works published after their author's death, copyright dates from publication, and belongs to the proprietor of the author's manuscript from which the book is published, and his assigns. Duration and extent of right.

(*e*) (1868) L. R. 3 H. L. 100.
(*f*) 7 & 8 Vict. c. 12, s. 19.
(*g*) 49 & 50 Vict. c. 33, s. 8.
(*h*) 5 & 6 Vict. c. 45, s. 3.

(*i*) Semble in case of joint authors, the term dates from the last death. *Cf. Murzials* v. *Gibbons* (1874), L. R. 9 Ch. 518. As to their respective rights, see *Powell* v. *Head* (1879), 12 Ch. D. 686; *Lauri* v. *Renad* (1892), 3 Ch. 402.

Persons who may acquire the right.

Extent of Right (*j*).—Throughout the British dominions (thus extending to the colonies as well as the United Kingdom).

Persons who may acquire the Right.—1. British subjects wherever resident at the time of publication.

2. Alien friends resident in the British dominions at the time of publication.

3. (Possibly) Alien friends wherever resident.

The last two classes rest on the authority of *Routledge* v. *Low* (*k*), which as to the 3rd head is in conflict with *Jefferys* v. *Boosey* (*l*). This last case was decided on the construction of the Copyright Statutes before 1831, the date of publication of the work in which copyright was claimed. The work was assigned in manuscript by an alien friend resident abroad, and first published in England, *the author continuing his foreign residence*; it was decided that neither statute nor common law copyright extended to such a publication.

In *Routledge* v. *Low* (*k*), which was decided on the construction of the Act of 1842, A., a domiciled subject of the United States, before publishing her work went to reside for a short time in Canada, by arrangement with her publishers, Messrs. L., who thereupon published the work in London, the copyright being assigned to them and due registration taking place. Defendants reprinted the book, and Messrs. L. sued them for infringement of copyright. The case was taken to the House of Lords, and was heard before Lords Cairns, Westbury, Cranworth, and Chelmsford, who agreed that publication in the United Kingdom, together with temporary residence

(*j*) 5 & 6 Vict. c. 45, s. 29.
(*k*) (1868) L. R. 3 H. L. 100.
(*l*) (1854) 4 H. L. C. 815.

of the author in Her Majesty's dominions at the time of publication, conferred copyright on a foreigner. Lords Cairns and Westbury further held that residence in Her Majesty's dominions was not a necessary condition, and that publication in the United Kingdom was sufficient; Lords Chelmsford and Cranworth, however, expressed doubt as to this, and the matter must be considered doubtful (*m*). Copyright, however, is personal property, and under the Naturalization Act (*n*) an alien friend may acquire and hold personal property in the same way in all respects as a British subject. Now residence in the British dominions is not a necessary condition of a British subject's acquiring copyright, and from this, as pointed out by the late Mr. Justice Stephen (*o*), it seems probable that the view of the law taken by Lord Cairns is the right one.

Persons who may acquire the right.

The Investitive Facts of Copyright are:—

Investitive facts.

I. Publication:—(*p*)

1. Of a book capable of copyright.
2. In the United Kingdom under the Act of 1842, or in the British Dominions under the Act of 1886 (*q*).
3. By either:—
   - (a.) A British subject resident anywhere.
   - (b.) An alien friend resident in British dominions.
   - (c.) (Probably) by an alien friend resident abroad (*r*).

(*m*) The Law officers of the Crown advised the Government after the passing of the United States Act of 1891 on the lines of the judgments of Lords Cairns and Westbury, and the United States have acted on the faith of this opinion. But see p. 231, *post*.

(*n*) 33 Vict. c. 14, s. 2.

(*o*) C. C. Rep. p. 69, note.

(*p*) As to where a book or paper is published, see *McFarlane* v. *Hulton* (1899), 1 Ch. 884.

(*q*) 49 & 50 Vict. c. 33, s. 8.

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

Investitive facts.

4. Which book has not been previously published (*s*)—

(a.) In a foreign country.

(b.) In the United Kingdom.

(c.) (Probably) in the rest of Her Majesty's dominions (*t*).

II. Licence to republish granted by the Judicial Committee of the Privy Council acts as a partial investment of copyright in the grantee (*u*).

III. Registration at Stationers' Hall is not an investitive fact of copyright, but vests the right to sue to protect such copyright (*w*).

It is probable that the Crown still has special copyright in perpetuity in the authorized version of the Bible, the Book of Common Prayer, and possibly in Acts of Parliament (*x*). The origin of this has been dealt with elsewhere (*y*). A statutory copyright might also exist in Government publications, as the 'Report of the Challenger,' though difficulties may arise in enforcing such copyright (*z*).

Works and articles written on commission.

The question of copyright in works written on commission, articles in encyclopædias, reviews, magazines,

(*s*) 7 & 8 Vict. c. 12, s. 19.

(*t*) *Routledge* v. *Low* (*v.s.*); but 7 & 8 Vict. c. 12, s. 19, uses the language, "first published *out of Her Majesty's Dominions*."

(*u*) 5 & 6 Vict. c. 45, s. 5.

(*w*) *Ibid.* s. 24.

(*x*) *Baskett* v. *University of Cambridge* (1758), 1 W. Bl. 105; *Stationers' Co.* v. *Carnan* (1775), 2 W. Bl. 1002.

(*y*) See above, p. 6. Rights in the authorized version of the Bible are claimed by the King's Printer, and the Universities of Oxford and Cambridge under charters, interpreted by an unreported decision of the House of Lords. See *In re The Red Letter New Testament* (1900), 17 Times L. R. 1.

(*z*) *Cf. Nicol* v. *Stockdale* (1785), 3 Swanston, 687. A statutory right in the nature of copyright in the British Pharmacopœia is by 25 & 26 Vict. c. 91, s. 2, granted to the Medical Council.

or newspapers (*a*), is one of some complication, and is dealt with by special clauses of the Act of 1842 (*b*). The rights of the parties may be summarized as follows: Works and articles written on commission.

1. In absence of any agreement, express or implied, as to copyright, and *a fortiori*, if the right of republication of such article is reserved by the author, the author has the copyright in such work or article (*c*). The author must register his work, the date of publication of the first instalment being the date of first publication, but he need not publish it in a separate form, or apart from its periodical publication (*d*).

2. If a publisher or other person (*e*) has employed any person to compose any work or article;

(1.) On the terms that the copyright therein shall belong to such publisher (*f*);

(2.) And shall have paid for such composition (*g*); he will occupy the following position:—

(*a*) It is now decided that newspapers come under sections 18, 19 of the Act of 1842. *Walter* v. *Howe* (1881), 17 Ch. D. 708; *Trade Auxiliary Co.* v. *Middlesborough Association* (1889), 40 Ch. D. 425; above, pp. 110, 111.

(*b*) 5 & 6 Vict. c. 45, ss. 18, 19.

(*c*) Sect. 18, and *cf. Hereford* v. *Griffin* (1848), 16 Sim. 190; *Johnson* v. *Newnes* (1894), 3 Ch. 663; *Aflalo* v. *Lawrence and Bullen* (1902), 1 Ch. 264; affirmed C. A., *Times*, Dec. 19, 1902.

(*d*) *Johnson* v. *Newnes* (*v.s.*).

(*e*) Two or more persons may give a joint commission and acquire rights under s. 18. *Trade Auxiliary Co.* v. *Middlesborough Association* (1899), 40 Ch. D. 425; *Cate* v. *Devon Newspaper Co.*, *ibid.* p. 500. A. may employ B. to employ C., and A. will have copyright. *Stubbs* v. *Howard* (1895), 11 Times L. R. 515.

(*f*) *Sweet* v. *Benning* (1855), 16 C. B. 459; *Hereford* v. *Griffin* (1848), 16 Sim. 190; *Walter* v. *Howe* (1881), 17 Ch. D. 708; *Lamb* v. *Evans* (1893), 1 Ch. 219; *Aflalo* v. *Lawrence and Bullen* (1902), 1 Ch. 264; affirmed C. A., *Times*, Dec. 19, 1902.

(*g*) *Richardson* v. *Gilbert* (1851), 1 Sim. N. S. 336 (where it was held that a contract to pay is not sufficient); *Trade Auxiliary Co.* v. *Jackson* (1887), 4 Times L. R. 130. Proof that the editor of a

Works and articles written on commission.

He will have copyright in the whole work, encyclopædia, magazine, newspaper, &c., so produced, as if he were the actual author thereof (*h*). In other words, in the absence of express agreement, the publisher has the sole right to reprint the article as part of the work for which it was written for forty-two years from its first publication, or for his life and seven years afterwards, whichever may be the longer. But he may not reprint it in a separate form at any time without the consent of the author (*i*); and the author, in the absence of express agreement, may not reprint it in a separate form without the consent of the publisher, till twenty-eight years from first publication (*j*).

It follows that, in cases where the copyright is in the proprietor, for the first twenty-eight years after publication the work or article may not be reprinted in a separate form without the consent both of proprietor and author.

And the right of the author to republish in a separate form after the lapse or twenty-eight years from first publication is limited to reviews, magazines, and other periodical works of a like nature, and does not apply to

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magazine has been paid, without proof that the writer of a particular article has been paid, will not suffice. *Brown* v. *Cooke* (1846), 16 L. J. Ch. 140. As the proprietor does not acquire copyright till payment, it follows that payment must precede both registration and bringing an action. *Trade Auxiliary Co.* v. *Middlesborough* (1889), 40 Ch. D. at p. 429.

(*h*) *Cf. Hildesheimer* v. *Dunn* (1891), 64 L. T. at p. 454.

(*i*) The author's right during this period to prevent such a separate publication by the proprietor is not "copyright," and does not require registration before it can be enforced. *Mayhew* v. *Maxwell* (1860), 1 J. & H. 312. But the author has no right to prevent separate publication of his article by persons other than the proprietor, till the twenty-eight years have elapsed.

(*j*) 5 & 6 Vict. c. 45, ss. 18, 19.

encyclopædias and works produced entirely by one author on commission (*k*).

Works and articles written on commission.

The two points in this rather complicated provision which have occasioned most litigation are:—(1.) The question under what circumstances an employment on the terms that the copyright shall belong to the employer will be implied; and:—(2.) The question what constitutes "publication in a separate form."

On the first question, Sir George Jessel, in *Walter* v. *Howe* (*l*), refused to imply, from evidence that the author of an obituary notice of Lord Beaconsfield was paid by *The Times* newspaper for his article, an agreement that the copyright should belong to the proprietor of *The Times*; and in *Bishop of Hereford* v. *Griffin* (*m*), Shadwell, V.-C., declined to make a similar implication, where the Bishop had written an article for an encyclopædia for payment, nothing being said about copyright; a custom of trade was however alleged that it should belong to the proprietor. Kay, J., in *Trade Auxiliary Co.* v. *Jackson* (*n*), would not imply any such terms in the case of persons employed to abstract bills of sale. On the other hand, in *Sweet* v. *Benning* (*o*), in 1855, the full Court of Common Pleas unhesitatingly implied such a condition from evidence that barristers were paid to report legal decisions for *The Jurist* newspaper,

(*k*) This exception rests on the omissions in the proviso in sect. 18. *Cf. Hereford* v. *Griffin* (1848), 16 Simons at p. 194. As to works produced on commission, *cf. Hazlitt* v. *Templeman* (1866), 13 L. T. N. S. 593.

(*l*) (1881) 17 Ch. D. 708.

(*m*) (1848) 16 Simons, 190. *Cf. Aflalo* v. *Lawrence and Bullen* (1902), 1 Ch. 264; affirmed C. A., *Times*, Dec. 19, 1902.

(*n*) (1887) 4 Times L. R. 130. The plaintiffs supplied their omission by express evidence in the *Middlesborough Case* (1889), 40 Ch. D. 425.

(*o*) (1855) 16 C. B. 459.

Works and articles written on commission.

nothing being said about the copyright; and from the language used in the argument would have inferred similar terms in the case of *The Times*. *Sweet* v. *Benning* was not cited to Jessel, M.R., in *Walter* v. *Howe* (*p*), and the question must be one of inference from facts in each case; but *Sweet* v. *Benning* certainly shows that it is not essential to the copyright of the employer that it should have been expressly conferred on him; in other words, such an agreement may be implied from the relation of the parties. This view was also taken by the Court of Appeal in *Lamb* v. *Evans* (*q*).

On the question of "publication in separate form," in *Mayhew* v. *Marwell* (*r*), the proprietor of the 'Welcome Guest' journal (price one penny) published a 'Christmas number of the Welcome Guest' (price twopence), containing six stories, one by the plaintiff. Two years later the publisher proposed to issue the six stories and one other, price two shillings. He argued that he was merely reprinting the Christmas number with another story. Page Wood, V.-C., held that there was not a mere reprint of the Christmas number, which would be legitimate, and accordingly restrained the publication. In *Smith* v. *Johnson* (*s*), the proprietor of the 'London Journal' had published therein three tales by the plaintiff, and began to publish a "supplementary number of the 'London Journal,'" in which selected tales from the 'London Journal,' including the plaintiff's, were reprinted, and this was also restrained by injunction. "Publication in a separate form" means, therefore, not published separate from all other matter; but publication

(*p*) (1881) 17 Ch. D. 708.
(*q*) (1893) 1 Ch. at pp. 224, 227, 233.
(*r*) (1860) 1 J. & H. 312.
(*s*) (1863) 4 Giff. 632.

in a different form and with a different context from the original issue.

The Rights of the proprietor of Copyright are (*t*) :— Rights of proprietor of copy right.

1. Solely and exclusively by himself or his assigns or persons thereto in writing authorized by him, to print or otherwise multiply (*u*) copies of his book in the British dominions (*v*).

2. Solely and exclusively by himself or his assigns or persons thereto in writing authorized by him, to sell, publish, or expose to sale or hire, copies of his book in the British dominions (*w*).

3. Solely and exclusively by himself or his assigns or persons thereto in writing authorized by him, to import for sale or hire copies of his book printed abroad into the British dominions (*x*).

Infringements of Copyright have been well and shortly summarized by James, L.J., in *Dicks* v. *Yates* (*y*), as follows:— Infringements of copyright.

"Literary property can be invaded in three ways, and in three ways only:—

(*t*) 5 & 6 Vict. c. 45, ss. 2, 3, 15.

(*u*) Thus reproduction by lithography: *Novello* v. *Sudlow* (1852), 12 C. B. 177; or in shorthand: *Nicols* v. *Pitman* (1884), 26 Ch. D. 374; manuscript or type-written copies: *Warne* v. *Seebohm* (1888), 39 Ch. D. 73, will be infringements. *Semble*, also, that a copy or copies imprinted on a phonograph or printed in the blind raised alphabet would be a "multiplication."

(*v*) Sects. 2, 29. As to the offence of "causing to be printed," see *Kelly's Directories* v. *Gavin and Lloyds* (1902), 1 Ch. 631.

(*w*) Sects. 2, 15, 29.

(*x*) Sects. 2, 15. In an unreported appeal from a County Court, a Divisional Court held that importation must be proved to be "for sale or hire" to constitute an offence under this provision. *Quære*, whether this decision was not wrong, the importer having "otherwise multiplied" under section 2. *Cf. Novello* v. *Sudlow* (1852), 12 C. B. 177.

(*y*) (1881) 18 Ch. D. 76, 90.

Infringements of copyright.

1. Where a publisher in this country publishes an unauthorized edition of a work in which copyright exists, or where a man introduces for sale a foreign reprint of such a work, that is open *Piracy*.

2. Where a man pretending to be the author of a book illegitimately appropriates the fruits of a previous author's literary labour, that is *Literary Larceny*.

Those are the only two modes of invasion against which the Copyright Acts have protected an author.

3. There is another mode which, to my mind, is wholly irrespective of any copyright legislation, and that is where a man sells a work under the name and title of another man or another man's work. That is not an invasion of copyright; it is *common law fraud*, and can be redressed by common law remedies" (z).

Literary piracy.

I. As to open *Piracy* of the whole of a work, there is very little to say; it generally occurs, as in *Routledge* v. *Low* (a), where there is some doubt as to the legal right; the case of *Walter* v. *Howe* (b) was a case of successful moral piracy not forbidden by the law. Partial piracy however is more common, as in the case of extracts from an acknowledged source. In *Sweet* v. *Benning* (c), a case of verbatim extracts from law reports, Jervis, C.J., spoke of "the fair right of extract which the law allows for the purpose of comment, criticism, or illustration," but said that in the case before him there was no thought or skill brought to bear on the matter complained of; it was "a mere mechanical stringing together of marginal or side-notes which the labour of

(z) See above, pp. 55–59.
(a) (1868) L. R. 3 H. L. 100.
(b) (1881) 17 Ch. D. 708.
(c) (1855) 16 C. B. 459, 481.

the author had fashioned ready to the compiler's hands." In *Campbell* v. *Scott* (*d*) the defendant had published a volume of 790 pages, thirty-four of which were taken up with a critical essay on English poetry, and the remaining 756 were filled with complete pieces and extracts as illustrative specimens. Six poems and extracts, 733 lines in all, were taken from copyright works of the plaintiff; and he obtained an injunction against their publication, on the ground that no sufficient critical labour or original work on the defendant's part was shown to justify his selection. So in *Roworth* v. *Wilkes* (*e*), where seventy-five out of 118 pages, composing a work on fencing, had been inserted in a large encyclopædia, the extract forming a material part of the plaintiff's work, he obtained a verdict. Literary piracy.

Honest and *bonâ fide* extraction, with no intention to steal, will not necessarily protect the taker; thus in *Scott* v. *Stanford* (*f*), A. was in the habit of collecting and publishing, at a cost of three guineas, a statistical return of London imports of coal; B., *bonâ fide*, and with a full acknowledgment of his indebtedness to A., published these returns as part of a work on the mineral statistics of the United Kingdom. The extracted matter formed a third of defendant's work. Page Wood, V.-C., granted an injunction, saying, "if in effect a large and vital portion of the plaintiff's work and labour had been appropriated and published in a form that will materially injure his copyright, *mere honest intention on the part of the appropriator will not suffice*, as the Court can only look at the result, and not at the intention; the appropriator must be presumed to intend all that the publication of

(*d*) (1842) 11 Simons, 31.
(*e*) (1807) 1 Campbell, 94.
(*f*) (1867) L. R. 3 Eq. 718.

Literary piracy.

his work effects. . . . No man is entitled to avail himself of the (copyright) labours of another for the purpose of conveying to the public the same information, although he may append additional information to that already published."

This shows that the *animus furandi* is not essential to piracy, though some previous cases lay stress on its importance. If however there are signs of its presence, attempts to conceal indebtedness, colourable alterations, or servile imitations, such as the copying of mistakes, a smaller amount of appropriation will suffice to make the offence. If the part taken is substantial in merit, its mere physical smallness will not protect the infringer, especially if it is used, not for critical purposes, but so as to compete with the original publication (*g*).

Abridgments.

The absence of recent cases on the subject in the English law renders the position of *Abridgments* a little uncertain. It has been decided however that there are fair abridgments which are not infringements of copyright, and unfair abridgments which are, but the line between them is not very distinct. In *Gyles* v. *Wilcox* (*h*), in 1740, the first reported case on the subject, where the original consisted of 275 sheets, and the abridgment of thirty-five, Lord Hardwicke said: "Where books are colourably shortened only, they are a mere evasion of the statute, and cannot be called abridgments. But this must not be carried so far as to restrain persons from making a real and fair abridgment, for an abridgment may, with great propriety, be called a new book, because

(*g*) *Cf. Leslie* v. *Young* (1894), A. C. 335; *Cooper* v. *Stephens* (1895), 1 Ch. 567; *Marshall* v. *Bull* (1901), 85 L. T. 77; *Moffatt* v. *Gill* (1902), 18 Times L. R. 547; *Bradbury* v. *Hotten* (1872), L. R. 8 Ex. 1.

(*h*) (1740) 2 Atkyns, 141.

not only of the paper and print, but the invention, learning, and judgment of the author are shown in them, and in many cases are extremely useful." One of the chief early cases on the subject is that of *Dodsley* v. *Kinnersley* (*i*) in 1761, relating to the celebrated abridgment of 'Rasselas,' in which the compiler "left out all the moral reflections." The Court held that no certain line could be drawn to distinguish a fair abridgment, and seemed to hint that the quantity printed, and the possible injury to the book abridged, were the points to be considered. In an *Anonymous Case* (*k*) in 1774, where Newbery abridged Hawkesworth's Voyages, Apsley, L.C., having consulted with Mr. Justice Blackstone, expressed his views at some length. He held that, "to constitute a true and proper abridgment of a work the whole must be preserved in its sense, and then the act of abridgment is an act of understanding employed in carrying a larger work into a smaller compass, and rendering it less expensive and more convenient, both to the time and use of the reader, which made an abridgment in the nature of a new and meritorious work. That this had been done by Mr. Newbery, whose edition might be read in a fourth part of the time, and all the substance preserved and conveyed in language as good or better than the original and in a more agreeable and useful manner. That he and Mr. Justice Blackstone were agreed that an abridgment where the understanding is employed in retrenching unnecessary and uninteresting circumstances which rather deaden the narration (!), is not an act of plagiarism upon the original work, nor against any property of the author in it; but an allowable and meritorious work." Abridgments.

Later cases, however, have not taken quite so favourable

(*i*) (1761) Amb. 403. *Cf. Bell* v. *Walker* (1785), 1 Bro. C. C. 451.
(*k*) (1774) Lofft, 775.

Abridgments.

a view of the merits of the abridger. In *D'Almaine* v. *Boosey* (*l*), a musical case, Lord Lyndhurst, speaking on the general question, said:—"An abridgment is in its nature original, the compiler intends to make of it a new use, not that which the author proposed to make. *An abridgment must be bonâ fide, because if it contains many chapters of the original work or such as made that work most saleable, the maker of the abridgment commits a piracy.*" And in *Dickens* v. *Lee* (*m*), Knight Bruce, V.-C., expressed himself with great doubt. He said:—"I am not aware that a man has the right to abridge the work of another: on the other hand, I do not mean to say that there may not be an abridgment which may be lawful, which may be protected; but to say that one man has the right to abridge, and so publish in an abridged form, the work of another without more is going much beyond my notion of what the law of this country is;" but again, "there may be such an use of another man's publications as, involving the exercise of a new mental operation, may fairly and legitimately involve it."

Law as to abridgments not clear.

These cases do not easily yield a clear rule; the later ones materially narrow the former, and it is doubtful what decision one of the higher Courts might come to in the absence of any recent authority. A mere mechanical abridgment, or one containing the most saleable part of the author's work, will not apparently be allowed; but it seems that there may be an abridgment which by the amount of intellectual work expended on it will be protected, possibly if it is of such a different size and character as in no way to compete with the original author's work (*n*). This however is all that can be said,

(*l*) (1835) 1 Younge & Collyer, Exch. 288, 301.
(*m*) (1844) 8 Jurist, 183.
(*n*) In the Fine Arts however abridgments or reductions have been

and the Copyright Commission have recognized the unsatisfactory state of the law by recommending that no copyright work be abridged without the author's consent. Abridgments.

The law of the *United States* is practically the same. The Courts, following the English cases, have reluctantly held, "contrary to principle," that a fair abridgment is not piracy. In *Gray* v. *Russell* (*o*) however the question was fairly put: "Will the abridgment in its present form prejudice or supersede the original work?" And in another case (*p*) McLean, J., said with justice: "An abridgment, if fairly made, contains the principle of the original work, and this constitutes its value." But the decisions have followed the English cases. In *Folsom* v. *Marsh* (*q*), Story, J., explained the nature of a fair and *bonâ fide* abridgment as follows: "It is clear that a mere selection or different arrangement of parts of the original work, so as to bring the whole into a smaller compass, will not be held to be such an abridgment. There must be real substantial condensation of the materials, and intellectual labour and judgment bestowed thereon, and not merely the facile use of the scissors, or extracts of the essential parts constituting the chief value of the work." And this perhaps expresses satisfactorily the present position of the English law. United States.

The question of *Translations*, as infringements of copyright, naturally will rarely arise in England apart from the International question. There is no market in Translations.

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prevented. In *Gambart* v. *Ball* (1863) (14 C. B. N. S. 306), the sale of a *reduced* photograph of a painting was forbidden; and in *Bradbury* v. *Hotten* (1872) (L. R. 8 Ex. 1), *reduced* copies of cartoons in *Punch* met the same fate.

(*o*) (1839) 1 Story, 11.

(*p*) (1847) *Story's Exors.* v. *Holcombe*, 4 McLean, 306.

(*q*) (1841) 2 Story, 100.

Translations.

England for the translation into a foreign tongue of an English work. The questions might however arise in the case of a translation from English into Welsh or Gaelic, or into one of the Indian vernacular tongues. On principle however such a translation would seem to be an infringement of copyright in the original, but it may be that the Courts would draw a distinction between translations of poetry or prose, having a literary merit and style, and translations merely mechanical, as of educational or scientific works. The question arose indirectly in *Burnett* v. *Chetwood* (*r*) in 1720, where the author of a Latin work applied to restrain the publication of an English translation, and the Lord Chancellor decided the case on the curious ground that the book was not fit to be published in English, but said that "a translation might not be the same with the representing the original, on account that the translator has bestowed his care and pains on it, and so not within the prohibition of the Act." In *Murray* v. *Bogue* (*s*) however the Court said that if A. had published an English book, B. in Germany had translated it into German, and C. in England had retranslated B.'s translation into English, the law would protect A.'s book from C.'s retranslation. As a matter of inference it would also be protected from B.'s translation if published in England. The Indian Courts have held that a translation of a mathematical work into one of the Indian tongues is not an infringement of copyright (*t*). It is curious that no question as to a translation from English into Welsh has ever arisen.

United States.

The Courts of the *United States*, before the Revised

(*r*) (1720) 2 Merivale, 441.
(*s*) (1752) 1 Drewry, 353, 368.
(*t*) *Macmillan* v. *Shamsal* (1895) 19 Indian L. R. Bombay, 557.

Statutes of 1870 and 1874, had decided very positively against the author's claim to protection. In *Stowe* v. *Thomas* (*u*) in 1853, A. wrote and copyrighted a work in English; she also had a German translation made, and copyrighted it. B. also translated the original work into German, and the Court refused to restrain him from publishing what Grier, J., declared to be "a transcript or copy of her thoughts or conceptions, but in no correct sense capable of being called a copy of her book" (!) He continued: "The author's exclusive property in the creations of his mind cannot be vested in him as abstractions, but only in the concrete form which he has given them and the language in which he has clothed them. When he has sold his book, the only property which he reserves to himself, or which the law gives him, is the exclusive right to multiply the copies of that particular combination of characters which exhibits to the eye of another the ideas intended to be conveyed." It need hardly be pointed out that this extraordinary doctrine would protect all piracy which did not consist in literal extracts; it would prohibit the literary plagiarist from compilations by scissors and paste, but allow him to construct his piracy by aid of a dictionary of synonyms. Translations.

The Revised Statutes of the *United States* (*v*) however allow the author to reserve the rights of translation, and, if he does so, protect him against unauthorized translations.

II. *Literary Larceny*, where parts of the work are stolen verbatim, or under colourable disguise, to form part of another work. The test applied by English law Literary larceny.

(*u*) (1853) 2 Am. Law Reg. 210.
(*v*) Sect. 4952.

Literary larceny.

is generally that laid down by Lord Eldon (*x*), that if there is "a legitimate use of a publication in the fair exercise of a mental operation deserving the character of an original work," there is no piracy. The English law lays too much stress on new matter added, too little on old matter taken. If lack of originality is raised as a defence by an alleged copier, the matter added is of importance; but in a question of piracy raised by previous writers, the matter taken is the point to be considered.

The English view of the matter received a good illustration in the case of *Spiers* v. *Brown* (*y*). The defendant admitted that he had made considerable use of the plaintiff's dictionary in the compilation of his own, but alleged that he had corrected errors, compared it with other dictionaries, and really used independent labour in his compilation. Page Wood, V.-C., said that where a work of an entirely original character was concerned, questions of copyright were very simple; but that there was a class of cases where the work related to a subject common to all mankind, and where the modes of expression and language were necessarily common. Then, applying Lord Eldon's test, he came to the conclusion that "though a good deal had been taken from the plaintiff, a good deal of labour had been bestowed on what was taken; and therefore there was no infringement of copyright."

Piracy from original works is usually, as said by Lord Hatherley, easy to detect; the difficulty lies in the cases where there are common materials, and the question is

(*x*) *Wilkins* v. *Aikin* (1810), 17 Vesey, 422. See also *Longman* v. *Winchester* (1809), 16 Vesey, 269; *Matthewson* v. *Stockdale* (1806), 12 Vesey, 270.

(*y*) (1858) 6 W. R. 352: commonly known as "the French dictionary case."

whether one worker on them has availed himself unfairly of the results of his fellow-worker's labour. *Where the work is of a nature such that its sources are common to all, so that independent work for a similar purpose must end in similar results, each worker has copyright in the result of his independent labour and research; and his work is not an infringement of the results obtained by another, unless he has simply copied those results instead of going to the original sources of information.* Literary larceny. Principle.

These principles are illustrated by the case of *Pike* v. *Nicholas* (*z*). The plaintiff had written a work in competition for a prize at the Eisteddfod, on the origin of the English people, which had obtained honourable mention and was published; the defendant had written a work on the same subject for a similar competition. He referred to plaintiff's work as an authority, and admitted that he had used it as a guide to older authorities. James, V-C., held his work to be an infringement of the plaintiff's right, but on appeal the Lords Justices held that common features of structure were inevitable and allowable when two men wrote upon a common subject; that an author who has been led by a former writer to refer to older works may without piracy quote passages from them, to which he has been referred by their quotation in his predecessor's work, and that on the whole there was not sufficient evidence of unfair use to constitute an infringement.

A similar illustration is found in the "directory case" of *Morris* v. *Wright* (*a*), where it was held that the compiler of a new directory was not justified in using slips

(*z*) (1869) L. R. 5 Ch. 251; *cf. ante*, pp. 120–123.

(*a*) (1870) L. R. 5 Ch. 279. *Cf. Ager* v. *P. & O. Co.* (1884), 26 Ch. D. 637, piracy from a telegraph code; *Leslie* v. *Young* (1894), A. C. 335, piracy from railway time tables.

Literary larceny.

cut out from one previously published, for the purpose of deriving information from them for his own work without any original inquiry, but that he might use them for the purpose of directing him to the parties from whom such information was to be obtained.

The question of piracy or no piracy must depend on a number of differing considerations of detail in each particular case, and principles laid down can be but vague. To Lord Eldon's test (*b*) however may be added the *dictum* in *Bramwell* v. *Halcomb* (*c*), that in questions of piracy "it is not only quantity but value that is always looked to," which is well expanded in the American case of *Folsom* v. *Marsh* (*d*) as follows: "It is certainly not necessary, to constitute an invasion of copyright, that the whole of a work should be copied, or even a large portion of it, in form or substance. If so much is taken that the value of the original is sensibly diminished, or the labours of the original author are substantially to an injurious extent appropriated by another, that is sufficient in point of law to constitute a piracy *pro tanto*. It is no defence that one has appropriated part and not the whole of the property. Neither does it necessarily depend on the quantity taken, but on other considerations, the value of the materials taken, and their importance to the sale of the original work. . . . *We must look then to the nature and object of the selections made, the quantity and value of the materials used, and the degree to which the use may prejudice the sale, or diminish the profits, or supersede the object of the original work.*" Lord Herschell, in *Leslie* v. *Young* (*e*), required "a substantial

(*b*) *Wilkins* v. *Aikin* (1810), 17 Vesey, 422; see above, p. 144.

(*c*) (1836) 3 My. & Cr. 737.

(*d*) (1841) 2 Story, 100, 115; *cf.* *Cooper* v. *Stephens* (1895), 1 Ch. at p. 572; *Marshall* v. *Bull* (1901), 85 L. T. 77.

(*e*) (1895) A. C. at p. 341.

appropriation by the one party of the independent labour of the other." And the whole question is neatly summed-up in the American case of *Emerson* v. *Davies* (*f*) as follows:— Literary larceny.

"The clear result of the authorities in cases of this nature is, that the true test of piracy or not is to ascertain whether the defendant has in fact used the plan, arrangement, and illustrations of the plaintiff as the model of his own book, with colourable alterations and variations only to conceal the use thereof; or whether his work is the result of his own labour, skill, and use of common materials open to all men, and the resemblances are either accidental, or arising from the nature of the subject."

It may be added that the unauthorized reproduction of copies need not be for sale, or for the benefit of the reproducer. It is sufficient if it tends to injure the plaintiff. In *Novello* v. *Sudlow* (*g*) gratuitous distribution was held an infringement of copyright. Neither is knowledge necessary to constitute a breach of copyright except in the case of sale, etc. of books unlawfully imported or printed by another (*h*).

Duties of Author.

1. To register his book in the form required by the Act (*i*) at Stationers' Hall, as a condition precedent to suing to protect his copyright (*k*). The copyright commences on publication, but cannot be enforced till after Registration.

(*f*) (1845) 3 Story, 768, 793.

(*g*) (1852) 12 C. B. 177. See also *Duck* v. *Bates* (1884), 13 Q. B. D. *per* Esher, M.R., at pp. 846, 847; Fry, L.J., p. 852.

(*h*) 5 & 6 Vict. c. 45, s. 15; and *cf.* *Cooper* v. *Whittingham* (1880), 15 Ch. D. 501.

(*i*) 5 & 6 Vict. c. 45, s. 13. (*k*) *Ibid.*, s. 24.

Registration.

registration (*l*). The registration need not precede the infringement complained of (*m*). As there is no copyright till publication, registration cannot precede publication (*n*).

The entry at Stationers' Hall must state correctly the following particulars (*o*):—

(1.) The title of the book.

Thus where a catalogue of shop fittings was registered under the title, "Illustrated Book of Shop Fittings," and those words did not appear in the catalogue, but "Illustrated Catalogue and Price List" did, the registration was held bad (*p*). It seems that if a "book" had no title, a description would suffice.

(2.) The time of the first publication thereof.

Under this head must be entered the day, month, and year of first publication (*q*). Where the work registered is substantially a reprint of earlier editions, the date of publication of the first edition must be entered (*r*); but if there is a substantial amount of new matter in the

(*l*) Registration on the same day as, but before, the issue of the writ will suffice: *Warne* v. *Laurence* (1886), 54 L. T. 371.

(*m*) *Goulaud* v. *Wallace* (1877), 36 L. T. 704.

(*n*) *Correspondent Co.* v. *Saunders* (1865), 12 L. T. N. S. 540; *Maxwell* v. *Hogg* (1867), L. R. 2 Ch. at p. 317; *Henderson* v. *Maxwell* (1877), 5 Ch. D. 892. Registration before publication has no effect in protecting the title selected for a forthcoming book. (See above, p. 118.)

(*o*) 5 & 6 Vict. c. 45, s. 13.

(*p*) *Harris* v. *Smart* (1889), 5 Times L. R. 594: *cf. Collingridge* v. *Emmott* (1887), 57 L. T. 864.

(*q*) *Mathieson* v. *Harrod* (1868), L. R. 7 Eq. 270; *Page* v. *Wisden* (1869), 20 L. T. 435; *Collingridge* v. *Emmott* (1887), 57 L. T. 864; *cf. Low* v. *Routledge* (1864), 10 L. T. N. S. 838; *Wood* v. *Boosey* (1867), L. R. 2 Q. B. 340; *sed cf. Boosey* v. *Davidson* (1849), 4 D. & L. 147. In publication in serial form, followed by publication as a book, the serial date of publication of the first serial part should be given. *Cf. Johnson* v. *Nevnes* (1894), 3 Ch. 663.

(*r*) *Thomas* v. *Turner* (1886), 33 Ch. D. 292.

edition registered, the date of publication of that edition will be a good entry as to the new matter (*s*). Registration.

(3.) The name and place of abode of the publisher.

The "first publisher" is to be registered (*t*), and the trade name of his firm will suffice (*u*). The place of abode may be the place of business (*x*). It is intended to provide an address at which the person named may be communicated with (*y*).

(4.) The name and place of abode (*z*) of the proprietor of the copyright.

The present proprietor is to be registered. It is unnecessary to give the name of the first proprietor, and trace title from him (*a*).

The proprietor of the copyright in a newspaper, magazine, periodical work, or encyclopædia, must register (*b*):—

(1.) The title.

(2). The date of publication of the first number or part (*c*).

(*s*) *Hayward* v. *Lely* (1886), 56 L. T. 418.

(*t*) *Weldon* v. *Dicks* (1878), 10 Ch. D. 247; *Coote* v. *Judd* (1883), 23 Ch. D. 727.

(*u*) *Weldon* v. *Dicks*, *u.s.*

(*x*) *Nottage* v. *Jackson* (1883), 49 L. T. at p. 340.

(*y*) *Per* Crasswell, J., *Lover* v. *Davidson* (1856), 1 C. B. N. S. at p. 186.

(*z*) See head (3) above.

(*a*) *Weldon* v. *Dicks*, *u.s.* *Cf.* *Hildesheimer* v. *Dunn* (1891), 64 L. T. 452. *Liverpool Brokers' Association* v. *Commercial Press* (1897), 2 Q. B. 1. The registration of an agent or nominee of, not a trustee for, the proprietor is bad. *Petty* v. *Taylor* (1897), 1 Ch. 465.

(*b*) 5 & 6 Vict. c. 45, s. 19. This registration of the first number will also be applicable to a story or series of stories published in parts, the first part being registered; *cf.* *Johnson* v. *Nevues* (1894), 3 Ch. 663.

(*c*). If the work was first published before July 1, 1842, it is sufficient to register the date of publication of the first number published after that date. The day of publication must be given. (Above, p. 148.)

Registration.

(3.) The name and place of abode of the proprietor.

(4.) The name and place of abode of the first publisher, if he is not the proprietor.

This registration protects each subsequent number as it is published; but not numbers yet unpublished. An injunction cannot therefore be granted restraining copying from future numbers, the copyright in which only arises on publication (*d*). Similarly the particular article for which protection is claimed must be shown to be capable of copyright (*e*). It seems that though rival papers may go straight to the original sources of information, or may copy opinions expressed by other papers (*f*), they are not at liberty to copy the telegrams of special correspondents, or special scientific or literary articles on the plea that news is common to all (*e*).

Certified copies of the entry in the register, supplied by the Stationers' Company on payment of five shillings, are to be received in evidence in all Courts, and are *primâ facie* proof of the proprietorship or assignment of copyright therein expressed (*g*), subject to be rebutted by other evidence. The defendant in any proceedings for infringement of copyright in books must give the plaintiff a notice in writing of any objections on which he means to rely at the trial, and if he alleges a different author, first publisher, or proprietor than the entry, or another date of first publication, he must state in his notice whom he alleges to be such author, first publisher

(*d*) See per North, J., *Cate* v. *Devon Newspaper Co.* (1889), 40 Ch. D. at p. 507: See also *Platt* v. *Walter* (1867), 17 L. T. N. S. 157. *Sed cf.* Kekewich, J., in *Bradbury* v. *Sharp* (1891), W. N. 143, where future numbers of *Punch* were protected.

(*e*) *Walter* v. *Steinkopf* (1895), 3 Ch. 489.

(*f*) *Chilton* v. *Progress Printing Co.* (1895), 2 Ch. 29, where the Court refused to prevent the copying of a sporting prophet's selections.

(*g*) 5 & 6 Vict. c. 45 s. 11.

or proprietor, or what date he alleges for first publication and the title of the book then published, and he will not be allowed to take any other objection than that named in the notice (*h*). It will probably be sufficient in the present state of pleading to embody the objections in the defence (*i*). Registration.

Authorities differ as to whether it is open to the defendant to take an objection to the plaintiff's registration arising on the plaintiff's own evidence, though he has given no notice of such objection as required by the statute. In several cases this has not been allowed (*k*), in others the defendant has been heard (*l*). It will always be safer to take every objection to registration in the defence, and in view of the words of the Act, which are "no other objection shall be allowed to be made on behalf of such defendant than the objection stated in such notice," it would seem that though the point arises on the plaintiff's evidence, the defendant is precluded by statute from taking it unless he has given notice of his objection beforehand (*m*).

If any particular in the registration of copyright or of any assignment thereof is proved to be inaccurate and misleading (*n*), the plaintiff will fail in this particular

(*h*) See the clause itself, which is very complicated: 5 & 6 Vict. c. 45, s. 16.

(*i*) *Cf. Finnegan* v. *James* (1874), L. R. 19 Eq. 72; notice of the objection in an affidavit in the cause will not do: *Hayward* v. *Lely* (1886), 56 L. T. 418.

(*k*) *Collette* v. *Goode* (1878), 7 Ch. D. 842, *per* Fry, J.; *Leader* v. *Purday* (1849), 7 C. B. 4, where the case hardly comes up to the headnote; *Hole* v. *Bradbury* (1879), *per* Fry, J., 12 Ch. D. 887.

(*l*) *Coote* v. *Judd* (1883), 23 Ch. D. 727, per Bacon, V.-C.; *Hayward* v. *Lely* (1886), 56 L. T. 418 (*per* Kay, J., on terms); *cf. Lucas* v. *Cooke* (1880), 13 Ch. D. 872, *per* Fry, J.

(*m*) On the form of the notice of objection, see *Boosey* v. *Davidson* (1846), 4 D. & L. 147; *Boosey* v. *Purday* (1846), 10 Jur. 1038.

(*n*) It seems that superfluous entries may be registered: *Fairlie* v. *Boosey* (1879), 4 App. C. 711; but not if they are misleading.

Registration

action, though he may make a new registration and succeed in a fresh action. But inaccurate or unfounded entries can be dealt with in a more summary way. If made wilfully, the person making a false entry is guilty of an indictable misdemeanour (*o*); while under any circumstances any person who deems himself aggrieved by any entry may apply to the King's Bench Division by motion for an order that such entry may be expunged or varied (*p*).

A definition of "a person aggrieved" was furnished by Hannen, J., in *Graves' Case* (*q*): "A person to be aggrieved within the meaning of the section must show that the entry is inconsistent with some right that he sets up in himself or in some other person, or that the entry would really interfere with some intended action on the part of the person making the application." The judgment of Blackburn, J., in the same case, suggests that the applicant must have some substantial objection, and one going to the merits of the registered proprietor's title, and that merely technical flaws in the registration will not suffice to support an application.

It does not seem necessary that the applicant should have any right in the nature of copyright in the work registered; to hold this would render the section inapplicable to persons registering works which really were not the copyright of any one, and which other persons had been selling for years. This view is supported by the remarks of Parke, B., in *Chappell* v. *Purday* (*r*): "The legislature has not stated what

(*o*) 5 & 6 Vict. c. 45, s. 12.

(*p*) *Ibid.* s. 14: as to whether there is any appeal from such order see *The Young Duchess* (1891), 8 T. L. R. 41.

(*q*) (1869) L. R. 4 Q. B. at p. 724.

(*r*) (1843) 12 M. & W. at p. 307; *cf. ex parte Hutchins and Romer* (1878), 4 Q. B. D. 90, 483.

persons are to be considered as 'aggrieved' by the entry, but I think that term applies to those only whose title conflicts with the plaintiff's. Any person wishing to publish a work may deny another's claim of monopoly in that work, and may on that account be considered as a party aggrieved." Registration.

The relief must be specifically asked for by motion, and cannot be granted as an auxiliary remedy in an action for infringement, unless specifically claimed in the pleadings (*s*). It can be made on the motion of the person who has made the entry (*t*). The order will not usually be made on affidavit, except in a clear case, but an issue will be directed to ascertain the facts. Sometimes the party who has registered has consented not to use the entries on the trial of the action or issue (*u*); and in one case (*x*), the Court of Queen's Bench made an order without his consent that he should not use these entries at the trial of the issue, but this view was immediately dissented from by the Court of Common Pleas (*y*), and was also contrary to the view of the Court of Exchequer (*z*).

It appears to be the duty of the Registrar of the Stationers' Company under the Act to register all entries, correct in form, which are tendered to him, leaving parties aggrieved to their remedy under the Statute. A practice has however grown up of lodging notices of injunctions relating to particular books with the Registrar; and where executors desire to register, the Registrar requires the production of probate. It is doubtful

(*s*) *Hole* v. *Bradbury* (1879), 12 Ch. D. 886 at p. 899.
(*t*) *Ex parte Poulton* (1884), 53 L. J. Q. B. 320.
(*u*) As in *Chappell* v. *Purday* (1843), 12 M. & W. 303.
(*x*) *Ex parte Davidson* (1853), 2 E. & B. 577.
(*y*) *Ex parte Davidson* (1856), 18 C. B. 297.
(*z*) *Chappell* v. *Purday* (1843), 12 M. & W. 303.

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however whether the Registrar can with advantage assume the judicial functions which these practices imply, and a mandamus would probably issue against him if he refused to register.

Presentation copies.

A second duty of the Author, through his publisher, is to present a certain number of copies of his book of a certain quality to certain libraries specified in the Act (*a*).

Transvestitive facts.

Copyright can be assigned, but the assignment must be in writing (*b*). To allow the assignee to sue, he must be registered. He can be registered either simply as proprietor, in which case his predecessors need not be registered, and the assignment itself need not be registered. Or he can be registered as assignee, in which case the registration is the assignment, the original proprietor, who must himself be registered, entering the assignment, and the name and place of abode of the assignee in the register (*c*). A defect in either entry will prevent the assignee from suing (*d*).

A right to publish need not confer any interest in the copyright (*e*), and difficult questions may then arise whether it depends on a revocable license (*f*), and if so,

(*a*) *i.e.* A copy of the best class of every book and new edition to the British Museum, within a month of first publication. A copy of the class of which the largest number are printed for sale, within one month after demand in writing, to the following libraries: Bodleian at Oxford, University at Cambridge; Advocates' Library, Edinburgh; Trinity College, Dublin: 5 & 6 Vict. c. 45, ss. 6–9.

(*b*) *Leyland* v. *Stewart* (1876), 4 Ch. D. 419.

(*c*) The above passage, from the words "To allow," was approved by Kennedy, J., as a correct statement of the law in *Liverpool Brokers' Association* v. *Commercial Press* (1897), 2 Q. B., at p. 4, and a *dictum* of Cockburn, C.J., to the contrary in *Wood* v. *Boosey* (1867), L. R. 2 Q. B., at p. 352, was disapproved.

(*d*) *Low* v. *Routledge* (1864), 10 L. T. N. S. 838.

(*e*) *Reade* v. *Bentley* (1858), 4 K. & J. 656; *Heap* v. *Hartley* (1889), 42 Ch. D. 461.

(*f*) Cf. *Wood* v. *Ledbitter* (1845), 13 M. & W. 838.

whether there is any cause of action for the revocation (*g*); or on an irrevocable license or indefeasible contract to allow publication (*h*). The question appears to depend on the particular contract in each case (*i*). It is submitted that the licensee cannot sue third parties in his own name, or be registered as proprietor (*j*). Transvestitive facts.

Lord St. Leonards, in *Jefferys* v. *Boosey* (*k*), expressed a strong opinion that copyright was one and indivisible; "a right which may be transferred, but cannot be divided." The Act of 1842 (*l*) however clearly contemplates partial assignments; and s. 13 expressly authorizes a registered proprietor to assign a portion of his copyright by entry in the register. Lord St. Leonards' difficulties have therefore been provided for by statute.

Remedies for Rights infringed. I. *Of Proprietors of Copyright.*

1. (*m*) Action of detinue by registered proprietor after demand in writing, for copies of his books unlawfully printed or imported, or damages for their detention. Remedies against infringements.

2. (*m*) Action of trover for damages for conversion of such books.

(*g*) *Kerrison* v. *Smith* (1897), 2 Q. B. 445.
(*h*) *Guyot* v. *Thomson* (1894), 3 Ch. 388.
(*i*) Cf. *Reade* v. *Bentley*, *v.s.* with *Guyot* v. *Thomson*, *v.s.*
(*j*) See *post*, p. 192.
(*k*) (1854) 4 H. L. C. 992, and Jervis, C.J., in *Shepherd* v. *Conquest* (1856), 17 C. B. 437, states that in this many of the judges agreed.
(*l*) 5 & 6 Vict. c. 45, s. 13.
(*m*) 5 & 6 Vict. c. 45, s. 23: *Muddock* v. *Blackwood* (1898), 1 Ch. 58. *Quære*; whether "unlawfully printed" means any more than "without consent in writing of the proprietor;" but see the discussion of a similar phrase in *Tuck* v. *Priester* (1887), 19 Q. B. D. pp. 633, 637, 644.

Remedies against infringements.

3. (*o*) Seizure and destruction by custom-house officer of books unlawfully imported; fine of £10 and double the value of the books on the importer; of which £5 is to go to the officer, the rest to the proprietor of the copyright. Cases to be heard before the justices of the peace for the county or place in which such book shall be found.

4. (*p*) Action for damages for infringement of copyright by unlawful printing.

5. Action for damages for importing unlawfully printed books for sale or hire (*p*): (knowledge of the nature of the books is not necessary to constitute this offence) (*q*).

6. Action for damages for selling, publishing, or exposing for sale or hire, or having in one's possession for sale or hire, unlawfully printed or imported books, *knowing them to be such* (*r*).

7. Action for an injunction to restrain committal of such breaches of copyright (*s*).

Measure of Damages.—The rule has been suggested that the defendant must account for each copy of his work sold as if it had been the plaintiff's, and pay the amount of profit which would have resulted from the sale of so many copies of the plaintiff's work (*t*). It would seem that this cannot be generally applied, for it is absurd to suppose that the sale of one thousand copies at one shilling each, has prevented the sale of exactly the same number of copies at one sovereign each. People who might give the shilling would not necessarily give

(*o*) 5 & 6 Vict. c. 45, s. 17.

(*p*) *Ibid.* s. 15.

(*q*) *Cooper* v. *Whittingham* (1880), 15 Ch. D. 501.

(*r*) 5 & 6 Vict. c. 45, s. 15.

(*s*) This may be granted though only one copy has been wrongfully dealt with: *Cooper* v. *Whittingham* (1880), 15 Ch. D. 501; *Butterworth* v. *Kelly* (1888), 4 Times L. R. 430.

(*t*) *Pike* v. *Nicholas* (1869), L. R. 5 Ch. 251, 260.

the sovereign. So also the amount of profit made by the defendant (*u*) is not necessarily the amount of damage sustained by the plaintiff, as in a case where the defendant distributes copies free. The Court must endeavour to ascertain what the plaintiff has lost by the infringement, taking all the circumstances of the case into consideration (*v*). Remedies against infringements.

Costs.—The "full costs" provided by the statute (*w*), are only the ordinary party and party costs (*x*).

Limitation of Actions.—Legal proceedings must be commenced within twelve months of the date of the offence (*y*).

II. *Remedies against Author or Publisher.*—1. *For non-delivery of copies* within one month after demand in writing made by the libraries, or in certain cases within one month after publication, a fine not exceeding £5, and the value of the book, recoverable summarily (*z*). Remedies against author

2. *For non-registration*, loss of actions to protect copyright, until registration takes place (*a*).

(*u*) Which was given in *Muddock* v. *Blackwood* (1898), 1 Ch. 58.

(*v*) This substantially represents the view expressed by Cozens-Hardy, J., in an unreported case.

(*w*) 5 & 6 Vict. c. 45, s. 26.

(*x*) *Avery* v. *Wood* (1891), 3 Ch. 115.

(*y*) 5 & 6 Vict. c. 45, s. 26. Some confusion has been caused by the fact that the Public Authorities Protection Act, 1893, includes in its schedule of repealed sections, section 26 of the Copyright Act, 1842 (see *Muddock* v. *Blackwood* (1898), 1 Ch. 58). But section 2 of the Act of 1893 only repeals the scheduled Acts so far as they relate to "any proceeding to which this Act applies"; and section 1 refers only to actions commenced against persons sued for acts done in alleged pursuance of statutes or public duties. It would seem that if any person publishes a book as a public officer, or under a public duty, any action against him for infringing copyright must be commenced within six months, and to that extent only section 26 of the Copyright Act, 1842, is repealed.

(*z*) *Ibid.* ss. 6, 8, 10.

(*a*) *Ibid.* s. 24.

Remedies against author.

3. *For false Registration*,—(a)—*if wilful*, it is a misdemeanour, indictable criminally (*b*);—(b)—if *bonâ fide*, alteration of the entry by the Court on the motion of the person aggrieved (*c*).

There are a number of special penalties for infringement of University copyrights. These are practically obsolete, Oxford having only a few copyrights, including a recent bequest by Dr. Jowett, Cambridge none.

Amendments proposed by the Commission of 1878 *with regard to Copyright in Books.*

Recommendations of Copyright Commission.

1. That the law on the subject be codified (§ 13).

2. That the term of copyright be extended to the author's life and thirty years after, in the case of works published with the author's name; thirty years from publication in the case of posthumous and anonymous works and encyclopædias, the author of an anonymous work to obtain full privileges by printing an edition with his name attached (§§ 40, 41).

3. That the term of twenty-eight years during which the author of an article in a periodical cannot republish without the *entrepreneur's* consent be reduced to three years (§ 43).

4. That during such three years the author shall have a right to sue to prevent unauthorized publications. At present only the proprietor can sue (§ 44).

5. That all special privileges to University copyright be abolished (§ 48).

6. That publication within Her Majesty's dominions shall vest Imperial copyright, instead of, as now, publication in the United Kingdom only (§ 58) (*d*).

7. That first publication by a British author out of the British dominions shall not divest his power of obtaining copyright in this country, provided he republishes in the British dominions within three years of first publication (§ 61).

8. That aliens resident out of Her Majesty's dominions, but first publishing in them, be allowed copyright (§ 64) (*e*).

9. That no abridgments of copyright works be allowed without the author's consent (§ 69).

(*b*) 5 & 6 Vict. c. 45, s. 12.
(*c*) *Ibid.* s. 14; *ante*, pp. 152, 153.
(*d*) See now 49 & 50 Vict. c. 33, § 8.
(*e*) See pp. 128, 129, *ante*.

10. That a definition of the copyright parts of a newspaper, distinguishing between announcements of fact and literary work, be included in the statute (§ 88). Recommendations of Copyright Commission.

As to Registration.

11. That registration of published works be made compulsory (§ 139). As to registration.

12. That, if registration be continued at Stationers' Hall, effective power to regulate it be given to the Stationers' Company (§ 144).

13. That registration be effected by a deposit of a copy of the book at the British Museum, and the taking of an official receipt (§ 145).

14. That the registry and registrar be under Government control, and responsible to Government (§ 148).

15. That if the registry cannot be placed at the British Museum it be transferred to a Government office (§ 150).

16. That no owner of copyright should be able to sue for infringements of his copyright preceding registration, or for penalties for dealing with the results of such infringements even after registration, unless such registration has taken place within a month of publication (§§ 152, 154).

17. That compulsory presentation of copies to libraries be abolished, except in the case of the British Museum (§ 164).

18. That a copy of each issue of every newspaper be deposited at the British Museum.

19. That the provisions for piracy of books be extended to oral lectures pirated in print (§ 181).

CHAPTER VII.

ARTISTIC COPYRIGHT.

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English statutes.

THE English Law as to Copyright in Works of Fine Art is even more complicated than the law which establishes literary property. Three separate sets of statutes deal with copyright in prints and engravings, sculptures, and paintings, drawings, and photographs respectively, and deal with them in a very confusing way. The law as to engravings is to be found in 8 Geo. II. c. 13, amended by 7 Geo. III. c. 38, and 17 Geo. III. c. 57, and in 6 & 7 Will. IV. c. 59, and 15 & 16 Vict. c. 12, s. 14. Sculptures are regulated by 54 Geo. III. c. 56, and paintings, drawings and photographs by 25 & 26 Vict. c. 68. Codifying and amending bills have from time to time been brought before Parliament, but hitherto without success. A committee of the St. John's Wood Art Club and the Royal Academy have recently framed a bill in the interests of artists, which has been before a Committee of the House of Lords, who have caused to be drafted an Artistic Bill of their own. But unless as a Government measure there seems little chance of its passing, and the Government do not seem inclined to

take in hand so intricate and controversial a subject. Before endeavouring to reduce into order the existing chaos of legislation, there is, however, the question of property in unpublished works of art. English statutes.

NOTE.—The six Acts, which formerly regulated Copyright in Designs, have been repealed by the Patents Act, 1883 (46 & 47 Vict. c. 57), which provides new law on the subject; see ss. 47–61, and Edmunds on Copyright in Designs, London, 1895.

SECTION I.

Unpublished Works.

Unpublished works of art.—Cases on the subject: *Prince Albert* v. *Strange*.—*Jefferys* v. *Boosey*.—*Turner* v. *Robinson*.—Statute of 1862.—Later cases.—Result.—What is publication? *Turner* v. *Robinson*.—General conclusions.

The owner of a picture, engraving, drawing, photograph, sculpture, or other work of fine art, has a right before publication to prevent any copy being made of it (*a*). Unpublished works of art.

The Act of 1862 (*b*), which was passed two years after the last of the cases cited as authorities, commences with the preamble: "Whereas by law, as now established, the authors of paintings, drawings, and photographs *have no copyright* in such their works." The explanation would seem to be that the phrase "copyright" is used in the restricted sense in which it had been used in the great case of *Jefferys* v. *Boosey* (*c*), (1854), "the exclusive right of multiplying copies of a work already

(*a*) *Turner* v. *Robinson* (1860), 10 Ir. Ch. Rep. 121, 510; *Prince Albert* v. *Strange* (1849), 1 MacN. & G. 25.

(*b*) 25 & 26 Vict. c. 68.

(*c*) (1854) 4 H. L. C. 815, at p. 954.

Unpublished works of art.

published." However, in a case at *Nisi Prius*, before Day, J., in 1883 (*d*), that learned judge expressed considerable doubt as to the effect of the preamble. Stephen, J., also, in his digest of the law appended to the report of the Copyright Commission, when speaking of (*e*) "the assumption on which the Act is based, that apart from it there is no copyright in paintings, etc.," said: "This assumption is however not absolutely correct . . . It can hardly have been intended to abolish the common law principles as to unpublished compositions by this statute, but I am not sure that that is not its effect."

It is therefore desirable to go a little more in detail into the authority for the original proposition.

Cases: *Prince Albert* v. *Strange.*

It is unnecessary to refer again to the cases in support of unpublished literary property, which however are based on the same principle (*f*). The question first arose as to works of art in the celebrated case of *Prince Albert* v. *Strange* (*g*).

In that case the Queen and Prince Albert had been in the habit of making etchings and drawings for their own amusement, and of having copies struck off from the etched plates by workmen. They had no intention of publishing these works, and designed the copies for their private use and for presentation to a few intimate friends. The workman they employed struck off copies on his own account, and retained them; he afterwards parted with the collection he had thus formed, which finally came into the hands of Strange, who proposed to exhibit it to the public, and to publish a descriptive catalogue. Prince Albert applied for an injunction as

(*d*) *Seligsen* v. *Legge*, June 22, 1883.
(*e*) C. C. Rep. p. 75, note. (*f*) Above, pp. 60–67.
(*g*) (1849) 2 De G. & Sm. 652: (on appeal), 1 MacN. & G. 25.

to both the exhibition and the catalogue, which was granted by Vice-Chancellor Shadwell, whose order was affirmed on appeal by Lord Cottenham. The Lord Chancellor based his decision on the two grounds of property infringed, and breach of trust. He said (*h*):— "The property of an author or composer of any work, whether of literature, art, or science, in such work, unpublished and kept for his private use or pleasure, cannot be disputed, after the many decisions in which that proposition has been affirmed or assumed, I say assumed, because in most of the cases which have been decided, the question was not as to the original right of the author, but whether what had taken place did not amount to a waiver of such right . . . a question which could not have arisen if there had not been such original right or property;" and, again, "the exclusive rights in the author of unpublished compositions, which depend entirely upon the common law right of property." The Lord Chancellor also laid stress on the breach of trust in the workman who printed the copies, in retaining some impressions for himself, and finally granted the injunction on both grounds, the right of property infringed, and the breach of trust (*i*).

Cases: *Prince Albert* v. *Strange*.

The next case which may indirectly throw some light on the question is the case of *Jefferys* v. *Boosey* (*k*), in which, though the main question was as to whether English copyright could exist in the work of a foreign author, first published in England by his assignee, yet the Law Lords, after hearing the judges, were led to deal with the question of copyright at common law.

Jefferys v. *Boosey* (1854).

(*h*) 1 MacN. & G. 42.
(*i*) *Cf. Tuck* v. *Priester* (1887), 19 Q. B. D. 629.
(*k*) (1854) 4 H. L. C. 815.

Cases: *Jefferys* v. *Boosey* (1854).

And Lord Cranworth, the Lord Chancellor, at the beginning of his judgment, says (p. 954): "The right now in question is not the right to publish, or to abstain from publishing, a work not yet published at all, *but the exclusive right of multiplying copies of a work already published.* Copyright *thus defined*, if not the creature, as I believe it to be, of our own statute law, is now entirely regulated by it." Lord Brougham, again, says (p. 962): "The right of the author before publication we may take to be unquestioned . . . But if he makes his composition public, can he retain the exclusive right which he had before?" Lord St. Leonards also holds (p. 977) "that no common law right to copyright exists after publication," and again (p. 979): "The common law does give a man who has composed a work a right to that composition, just as he had 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 for ever copying his own composition, *after he has published it to the world*, is a totally different thing."

All the *dicta* therefore in *Jefferys* v. *Boosey* are addressed to the proposition that copyright *after publication* rests entirely on the statute law; the common-law property before publication is unhesitatingly admitted, and nothing is said to qualify the direct decision in *Prince Albert* v. *Strange* (*l*).

Turner v. *Robinson.*

And the later Irish case of *Turner* v. *Robinson* (*m*) (1860), as affirmed on appeal, while of most importance in considering what constitutes publication, also fully confirms the common law right. The question in that case is not whether the right exists, but whether it has

(*l*) (1849) 1 MacN. & G. 25.
(*m*) (1860) 10 Ir. Ch. 121, 510.

been waived or lost. The defendant's counsel commence their argument (p. 511) by the admission that the owner of a work has a right "to keep it secret." The Lord Chancellor confirms this, and remarks on the ambiguity of the word "copyright," as applicable both to the common law right of ownership before publication, and the statutory right of control after publication. *Turner* v. *Robinson.*

Down to 1862 therefore there are clear decisions of the highest authority for a common law right of property, sometimes called "copyright," in unpublished artistic works; and the only authority to the contrary is the preamble of the statute of 1862 (*n*):—"Whereas by law as now established, the authors of paintings, drawings, and photographs have no copyright in such their works." This is, as a statement of the existing law, untrue, unless "copyright" is used in the limited sense in which it was used in *Jefferys* v. *Boosey* and which was referred to in *Turner* v. *Robinson*, viz. the exclusive right to multiply copies of a work after publication. Statute of 1862.

And it is submitted that the preamble must be clearly interpreted in that sense rather than in the broader sense, which would state incorrectly the result of three decisions of the highest authority within the previous thirteen years, and in effect reverse those decisions.

The case of *Tuck* v. *Priester* (*o*) also shows that the doubts expressed by Mr. Justice Stephen and Mr. Justice Day were unfounded. The judgment of Lindley, L.J., in that case makes it clear that "copyright" in the preamble of the statute of 1862, means the exclusive right of multiplying copies of a work already published which is the creature of statute, while what is sometimes called

(*n*) 25 & 26 Vict. c. 68.
(*o*) (1887) 19 Q. B. D. 629.

Common law right.

"copyright at common law" is really an incident of property, and not "copyright" in the strict sense.

The right to prevent copies being made of an unpublished work may be in different hands from the work itself. Such a separation was admitted in the cases of *Duke of Queensbury* v. *Shebbeare* (*p*), and *Thompson* v. *Stanhope* (*q*), in each of which the property in the work, or a copy of it, was distinguished from a right to publish it, and it was held that the proprietor of the right to publish could restrain the proprietor of the manuscript from printing it. It is true that in each of these cases the proprietor of the right to publish was also the author, but it is submitted that if he were not, it would make no difference. Possibly where the proprietor of the right to publish is not the author, he can only exercise his right through the author, or by an action against the author, but the result is the same.

Result.

In recapitulation therefore, the author or proprietor of an unpublished work of art has by the common law of England the right to prevent any copy of such work being made or published without his consent.

What is publication?

This right ceases on publication, after which the position of the author or proprietor is regulated entirely by the statute law. Before therefore dealing with the statutory provisions on the subject, we may consider the rather difficult question of what constitutes publication.

And, curiously enough, the English law is almost devoid of authority on the subject. Sir J. F. Stephen, in his Digest, says (*r*): "As to what amounts to a publication of a work of art, I know of no precise authority."

(*p*) (1758) 2 Eden, 329.
(*q*) (1774) Amb. 737.
(*r*) C. C. Rep. p. 90.

This probably overlooks the Irish case of *Turner* v. *Robinson* (*s*), and there are also one or two scattered *dicta* on the subject, but the point is certainly by no means clear. What is publication?

Turner v. *Robinson* was decided on appeal in Ireland by the Lord Chancellor, the Master of the Rolls, and the Lord Justice of Appeal in 1860, two years before the English Act which gave copyright to paintings. The facts of the case were shortly these. In 1856, Henry Wallis painted a picture representing the 'Death of Chatterton,' and in the same year sold it to Egg; in 1859 Turner purchased from Egg "the sole right to engrave and publish an engraving of the picture," with possession of the picture for a certain time for the purpose of exhibiting it to obtain subscriptions for his engravings. While Turner was thus exhibiting it in Dublin, Robinson, the defendant, having seen the picture at the exhibition, arranged models to represent the picture in his studio, and from them obtained a stereoscopic photograph, which he offered for sale. Turner applied for an injunction to restrain the sale. There was no statutory copyright in pictures existing; the only ground therefore for the injunction must be at common law, and the defendant's counsel accepted the position that a common law right existed, but contended that it had been lost by publication. The sole question before the Court was whether the prior dealings with the picture constituted a publication, and these prior dealings were as follows:— *Turner* v. *Robinson*.

The picture had been exhibited by Wallis at the Royal Academy in 1856. Alleged publications

In the same year, by Wallis's permission, a wood engraving of the picture had been published in the 'National Magazine,' with a descriptive article.

(*s*) (1860) I. R. 10 Ch. 121, 510.

Turner v. *Robinson.*

The picture had also been exhibited at the Manchester Exhibition in 1857, and by Turner in Dublin in 1859.

With regard to the exhibition at the Academy and at Manchester, it appeared that, at each gallery, copying the pictures exhibited was absolutely forbidden, and with regard to the exhibition at Dublin, though there was no express rule as to copying, the plaintiff had published a general notice against photographic infringements of his pictures before the exhibition commenced.

These facts were held both by the Master of the Rolls and the Court of Appeal not to constitute such publication as divested the common law copyright; they agreed that there had been in the case of the exhibitions limited or conditional publication, the condition being that the inspection by members of the public was not to be used by them for the purpose of reproducing copies of the picture; but they held that such a limited publication was not fatal to the plaintiff's rights. As to the wood engraving, the Master of the Rolls held that its publication could not affect the copyright in the picture, though the artist or proprietor of the picture could not sue if the engraving were pirated.

The judgments contain no very clear principle of publication; but it would seem that it must consist in unconditional exhibition of a work to the public, or such of the public as choose to come to inspect it (*t*).

In *Blank* v. *Footman* (*u*), showing a design to two customers and asking for orders was held publication of the design, but in *Turner* v. *Robinson* (*v*) the fact that

(*t*) *Blanchett* v. *Ingram*, 3 Times L. R. 686.

(*u*) (1888) 39 Ch. D. 678. See also *per* Lord Langdale in *Dalglish* v. *Jarvie* (1850), 2 MacN. & G. 231, 235.

(*v*) (1860) Ir. Rep. 10 Ch. 510. See also *Britain* v. *Hanks* (1902), 18 Times L. R. 525.

persons who came to see the picture were asked for subscriptions to an engraving of it, was not treated as publication. The Sculpture Act (*x*) gives copyright from "the first putting forth and publishing" the sculpture in question, which is explained by the Lord Chancellor in *Turner* v. *Robinson* (*y*) as "the moment when the eye of the public first rests upon it." Similarly copyright under the Engraving Acts dates from "first publication" of the engravings, which appear to mean exposure to the public, whether for sale or not. *Mayall* v. *Higbey* (*z*) (1862) seems to be an authority for the proposition that a loan of photographs, in order that engravings may be made from them and published, does not amount to publication of the photographs. Publication.

On the other hand, the Act of 1862 (*a*), giving statutory copyright to paintings and drawings, the term being for the life of the author and seven years after his death, throws some difficulties in the way of the above conception of publication as putting an end to copyright at common law. The copyright which is created by that statute belongs to "the author of every original painting, drawing, or photograph," wherever made, and apparently quite independent of the question of publication. For the mere making of a painting, which is kept in privacy in the same way as a manuscript poem, cannot be called "publication" without great straining of language. We are reduced apparently to these two alternatives :— General conclusions.

1. Either there is a common law copyright in all works of art till publication; and a statutory copyright com-

(*x*) 54 Geo. III. c. 56.

(*y*) (1860) Ir. Rep. 10 Ch. 510. See also *Britain* v. *Hanks* (1902), 18 Times L. R. 525.

(*z*) 6 L. T. N. S. 362.

(*a*) 25 & 26 Vict. c. 68.

General conclusions.

mencing in the case of sculptures, engraving, and prints on their publication, and in the case of drawings, paintings, and photographs on their making, thus giving in the latter case, as in the case of lectures, an overlapping statutory or common law right till publication.

2. Or there is in sculptures, engravings, and prints a common law copyright till their publication, when statutory copyright commences; while in paintings, drawings, and photographs there is no common law copyright; there is a statutory copyright commencing on their making, but requiring their registration before it can be enforced.

It is submitted that the former is the more correct view of the law, as best agreeing with the principles of unpublished property, which undoubtedly applied, before the Act of 1862, to paintings, drawings, and photographs until their publication (*b*).

Section II.

English Law as to Engravings and Prints.

Statutes.—Subject-matter of right.—Nature of right.—Investitive facts.—Transvestitive facts.—Divestitive facts.—Infringements of copyright.—Copies in pen and pencil.—Principle of infringement.—Remedies for infringement.

Statutes.

The statutes at present regulating copyright in engravings and similar works of art are :—

8 Geo. II. c. 13 (1735).
7 Geo. III. c. 38 (1766).
17 Geo. III. c. 57 (1777).
6 & 7 Will. IV. c. 59 (1836), and
15 & 16 Vict. c. 12, s. 14 (1852).

(*b*) Questions of a similar nature came under discussion in the American cases of *Oertel* v. *Wood* (1870), 40 How. Pr. N.Y. 10; and *Oertel* v. *Jacoby* (1872), 44 How. Pr. N.Y. 179, cited by Drone, p. 287, note, in which contradictory decisions were given.

But as the Act of 1862 gives "the sole right of engraving" pictures and drawings, it is easier to secure protection for engravings under its provisions, by protecting the copyright of the original picture and drawing. Statutes.

A "*print*" is defined as being "any historical print or prints, or any other print or prints of any portrait, conversation, landscape or architecture [map, chart or plan], or any other print or prints whatsoever" (*c*). It includes "prints taken by lithography, or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely" (*d*). Subject matter of right.

It was decided in the case of *Stannard* v. *Lee* (*e*) by the Court of Appeal, reversing the decision of Bacon, V.-C. (*f*), that maps being defined as "books" in the Act of 1842 (*g*), are no longer to be treated as works of art, but as literary works, and must therefore be registered under the Act of 1842. Bacon, V.-C., expressed subsequently in *Stannard* v. *Harrison* (*h*) his dissent from that decision.

There is probably no copyright in obscene, blasphemous, seditious, or libellous prints. (*Fores* v. *Johnes* (*i*).)

Any person has the sole right or liberty of multiplying, by any mechanical or other process, copies of any print, which he has:— Nature of the right.

(I.) Invented or designed, graved, etched or worked in mezzotinto or chiaro-oscuro.

(*c*) 7 Geo. III. c. 38, s. 1. "A conversation"—"a kind of genre picture representing a group of figures;" Murray's Dict., *sub voce.*

(*d*) 15 & 16 Vict. c. 12, s. 14.

(*e*) (1871) 24 L. T. N. S. 459.

(*f*) (1870) 23 L. T. N. S. 306.

(*g*) 5 & 6 Vict. c. 45, s. 2.

(*h*) (1871) 24 L. T. N. S. 570.

(*i*) (1802) 4 Esp. 97. *Baschet* v. *London Standard Co.* (1900), 1 Ch. 73.

Nature of the right.

(II.) Or from his own work, design, or invention has caused or procured to be designed, &c.

(III.) Or which he has engraved or caused to be engraved, &c., from any picture, drawing, model or sculpture, whether ancient or modern (*k*).

Any process by which pictures or engravings may be imitated or copied may come within the express words the legislature have used (*l*). Thus the words include the right of producing reduced photographic copies of an engraving (*m*).

Where it was proved that the plaintiff gave an engraver a rough sketch of a map, with directions as to its size and contents, and furnished him with information to be recorded on it from time to time, he was held entitled to the copyright in the engraving, as being one who from his own invention had caused it to be designed (*n*).

The right is a separable one; that is to say, the right of producing engravings "of one size" can be assigned, the right of producing all other sizes of prints remaining in the original proprietor (*o*).

Electrotype blocks.—The right to make prints from blocks which have been purchased has recently caused some litigation, usually at the instance of the owner of the copyright in the drawing engraved on the block, or in the catalogue in which the drawing originally appeared. In *Cooper* v. *Stephens* (*p*) it was held that the sale of an

(*k*) 8 Geo. II. c. 13, s. 1; 7 Geo. III. c. 38, ss. 1, 2; Stephen's Digest, s. 22; C. C. Rep. p. 67.

(*l*) Kelly, C.B., in *Graves* v. *Ashford* (1867), L. R. 2 C. P. 410, 421.

(*m*) *Gambart* v. *Ball* (1863), 14 C. B. N. S. 306.

(*n*) *Stannard* v. *Harrison* (1871), 24 L. T. N. S. 570.

(*o*) *Lucas* v. *Cooke* (1880), 13 Ch. D. 872.

(*p*) (1895) 1 Ch. 567. Followed and approved in *Marshall* v. *Bull* (1901), 85 L. T. 77.

electrotype block to a purchaser to use for his advertisements conferred no such right on a person to whom he lent the block for reproduction, as against the owner of the copyright. The subject however is full of difficulties. Nature of the right.

The duration of the right is for twenty-eight years from the day of first publication of the print (*q*). Duration of right.

The *Investitive Fact* of copyright in engravings is publication of such a work as specified above. Investitive facts.

To be the subject of copyright the print must be engraved, etched, drawn, or designed in Great Britain. Mere publication in Great Britain will not suffice (*r*).

There is no limitation as to the nationality of the engraver or designer.

No formalities as to registration are required. The day of first publication, with the name of the proprietor must be truly engraved on each plate and printed on each print (*s*).

Both the date and the name of the proprietor must appear on the plate and print, but it is sufficient if the proprietor be named; he need not also be described as "proprietor."

Thus, "Newton del. 1st May 1826, Gladwin sculp.," was held a compliance with the requirements of the Act (*t*); as was also, "London, published by Henry Graves & Company, May 1st 1861, Printsellers to the Queen, 6 Pall Mall" (*u*).

(*q*) 7 Geo. III. c. 38, s. 6.

(*r*) 17 Geo. III. c. 57, s. 1; *Page* v. *Townsend* (1832), 5 Simons, 395. This prevents United States prints obtaining English copyright under this Act.

(*s*) 8 Geo. II. c. 13, s. 1; *Brooks* v. *Cock* (1835), 4 N. & M. 652. *Query* whether this is necessary for foreign prints claiming the benefit of this Act under the International Copyright Act.

(*t*) *Newton* v. *Cowie* (1827), 4 Bing. 234.

(*u*) *Graves* v. *Ashford* (1867), L. R. 2 C. P. 410.

Investitive facts.

If the engravings are included as illustrations in a book, and the book is registered under the Act of 1842 (*x*), the requirements as to name of proprietor and date of publication need not be complied with (*y*).

Maps, charts and plans can be registered as books, and need not comply with the formalities of the Engraving Acts (*z*). So also if the picture from which the engraving is made is registered under the Act of 1862, the engraving will be protected under that Act.

Trans-vestitive facts.

A licence to reproduce an engraving, to bind the proprietor, must be in writing, and signed by the proprietor, in the presence of and attested by two or more credible witnesses (*a*).

Divestitive facts.

Divestitive Facts of Copyright:—

1. Waiver, which must be in writing (*a*).
2. Expiration of the statutory term.

Infringements of Right.

Infringements of right.

The question to be decided is whether the defendant's print is substantially a copy of the plaintiff's, and published without the plaintiff's consent (*b*); a copy has been also defined as "that which comes so near the original as to give to every person seeing it the idea created by the original" (*c*). If the making of such a copy without licence is proved, it is immaterial whether

(*x*) 5 & 6 Vict. c. 42, pp. 147–150 *ante*.

(*y*) *Bogue* v. *Houlston* (1852), 5 De G. & S. 267; *Maple* v. *Jun. Army and Navy Stores* (1882), 21 Ch. D. 369; *Comyns* v. *Hyde* (1895), 13 R. 172.

(*z*) *Stannard* v. *Lee* (1871), 24 L. T. N. S. 459 (C. A.).

(*a*) 17 Geo. III. c. 57.

(*b*) *Moore* v. *Clarke* (1842), 9 M. & W. 692.

(*c*) *West* v. *Francis* (1822), 5 B. & Ald. 737; see this *dictum* discussed in *Hanfstaengl* v. *Baines & Co.* (1895), A. C. 20.

the seller or maker knew that the copy was pirated or not (*d*). Infringements of right.

In the above statement these limitations must, however, be made. The object of the Acts is twofold:—

(1.) The protection of the reputation of the engraver.

(2.) His protection against any invasion of his commercial property in the print.

The work complained of as an infringement must therefore be a copy, either exact or colourable, of the plaintiff's engraving, or, if the engraving is from a picture, of that part of the plaintiff's engraving which constitutes the real merit and labour of the engraver (*e*).

It is not therefore a piracy of an engraving to make another engraving from the original picture, though it may be a piracy of the picture (*f*).

Similarly it has been held that a Berlin wool pattern made from an engraving is not a violation of copyright in the engraving (*g*).

In *Dicks* v. *Brooks* (*e*) in the Court of Appeal, Baggallay, L.J., expressed a doubt whether or not a chromo-lithograph was an infringement of a print; and Bramwell, L.J., said: "I do not say that if this were an ordinary engraving with no picture in the case, a lithograph taken

(*d*) *West* v. *Francis* (*v.s.*); *Gambart* v. *Sumner* (1859), 5 H. & N. 5.

(*e*) *Dicks* v. *Brooks* (1880), 15 Ch. D. 22, which must be read in light of the fact that the copyright of the picture of the Huguenots was in other hands, and the plaintiff could not therefore claim protection for the design apart from the engraving. A photograph is an infringement: *Graves* v. *Ashford* (1867), L. R. 2 C. P. 410; see *per* Kelly, C.J., at p. 421.

(*f*) *De Berenger* v. *Wheeble* (1819), 2 Stark N. P. C. 548.

(*g*) *Dicks* v. *Brooks* (1880), 15 Ch. D. 22. The exhibition of a larger coloured diorama made from a print did not infringe the copyright in the print, under the earlier acts, owing to the absence of the word "exhibiting." It would now. (*Martin* v. *Wright* (1833), 6 Simons, 297.)

from it would not be a copy. I think that a photograph taken from it would be a copy."

Copies in pen and pencil.

The cases are not very clear as to how far copying by pen or pencil is an infringement. Erle, C.J., laid down the rule in *Gambart* v. *Ball* (*h*), as prohibiting any mode of copying or multiplication of copies which depreciates the commercial value of the engraving to its proprietor. The distinction therefore seems a question of degree. Several of the judges seem to have felt great difficulty as to the case of individual copies made, as it were, for private use. Baggallay, L.J., in *Dicks* v. *Brooks* (*i*), said "the statutes cannot have been intended to apply to a lady copying a print or a part of a print upon a china plate, or to a person who for his own amusement makes an etching, drawing, or water-colour sketch from an engraving;" and Willes, J., in *Gambart* v. *Ball* (*k*), "felt a difficulty as to copying by hand," and "was not disposed to concur if it had been necessary, in the view we take of the statute, to hold that a copy made by pen or pencil would be an infringement;" while Byles, J., also suggested doubts as to the case of "a man's making and selling a pen-and-ink copy of a print," and "transferring the design to a carpet, or a piece of Berlin woolwork, or a porcelain table service," without solving the doubts he suggested.

The later case of *Dicks* v. *Brooks* (*l*) has dealt with the last suggestion of Byles, J., and it is submitted that the true line of distinction on the other points is whether the copies, howsoever made, will compete commercially with the engraving by tending to

(*h*) (1863) 14 C. B. N. S. 306.
(*i*) (1880) 15 Ch. D. p. 36.
(*k*) (1863) 14 C. B. N. S. p. 318.
(*l*) (1880) 15 Ch. D. 22.

lessen its sale. A skilful copyist in pen and ink or pencil might find a large market for his sketches, and it is submitted that if made for sale, or sold, they would be infringements of the copyright in the engraving of which they were copies. On the other hand, it could hardly be held that a young lady making one copy of an engraving for her own amusement was infringing copyright, although she might happen to sell her copy afterwards. Copies in pen and pencil.

The principle of infringement seems to be that any unlicensed copy of an engraving which may affect the sale or commercial value of the print copied will be held an infringement of copyright; but that a reproduction of the design, which cannot be held either likely to affect the sale of the engraving or such as to reproduce the engraving, can be prevented only by the proprietor of the copyright in the picture. Principle of infringement.

Copyright in a print is therefore infringed by :—

1. In any manner copying and selling, or causing to be copied and sold, a copyright print, [provided that the copy is of the print, and is such as to affect its commercial value].

2. Importing or causing to be imported for sale any such copy.

3. Publishing, selling, or otherwise disposing of or causing to be published, sold, &c., any such copy (*m*).

If the consent of the owner of copyright is pleaded, it must be produced in writing, signed by him, and attested by two witnesses (*n*).

The assignee of copyright in a print is not compelled

(*m*) 8 Geo. II. c. 13; Stephen's Digest, s. 37; C. C. Rep. 85.
(*n*) 17 Geo. III. c. 57.

Principle of infringements.

to prove a *written* assignment, in order to recover damages against the infringer.

The sale of engravings printed surreptitiously from the proprietor's plate is not an infringement of copyright, but a breach of contract or of trust (*o*).

Remedies for infringements.

Remedies for Infringements.

The proprietor of copyright has:—

1. An action for damages against the offender (*p*).

The Engraving Acts give a successful plaintiff "full costs," but this only means party and party costs (*q*).

Any member of the public has:—

2. An action for penalties; viz., 5*s*. for each print found in the offender's possession, half to go to the Crown and half to the person suing for the penalty. The plate and prints are to be forfeited to the proprietor of the copyright, who shall destroy the same (*r*).

This penalty is payable per print, and not per parcel or set of prints (*s*).

The action for penalties must be brought within six months after the commission of the offence (*t*).

(*o*) *Murray* v. *Heath* (1831), 1 B. & Ad. 804. See also *Tuck* v. *Priester* (1887), 19 Q. B. D. 629; *Pollard* v. *Photographic Co.* (1889), 40 Ch. D. 345; *Prince Albert* v. *Strange* (1849), 1 Mac. & G. 25; and above, p. 54; as to property in the blocks of engravings, see *Levi* v. *Champion* (1887), 3 Times L. R. 286; *Hole* v. *Bradbury* (1879), 12 Ch. D. 886.

(*p*) 17 Geo. III. c. 57. (*q*) *Avery* v. *Wood* (1891), 3 Ch. 115.

(*r*) 8 Geo. II. c. 13, s. 1; 7 Geo. III. c. 38, s. 5.

(*s*) *Ex parte Beal* (1868), L. R. 3 Q. B. 387, followed in *Hildesheimer* v. *Faulkner* (1901), 2 Ch. 552.

(*t*) 7 Geo. III. c. 38, s. 6. Any action under 8 Geo. II. c. 13, must be brought within three months; and under 17 Geo. III. c. 57, within six years. *Graves* v. *Mercer* (Irish) (1868), 16 W. R. 790. As to the effect of the Public Authorities Protection Act, 1893, on 8 Geo. II. c. 13, see note on p. 157.

The penalties recoverable and copies liable to forfeiture under these Acts may be recovered in England or Ireland either by action or by summary procedure before two magistrates having jurisdiction where the party offending resides, and in Scotland as set out in the Act (*u*). Remedies for infringements.

This mode of procedure is open to the two objections set out more fully hereafter, viz.:—(1), that it is very difficult to proceed in the "places of residence" of the hawkers, who by selling piratical engravings and photographs are the chief instruments in infringements; and (2), that no power of search for, or seizure of piratical copies is given to any one, and the section therefore loses much of its effect.

Section III.

Paintings, Drawings, and Photographs.

Statutes.—Subject-matter of the right.—Nature of the right.—Investitive facts.—Registration.—Transvestitive facts.—*Tuck* v. *Canton*.—Divestitive facts.—Infringements of the right.—Remedies and penalties.

Statutory copyright in paintings, drawings, and photographs was first given by the Act of 1862 (*x*), the preamble of which recited, that "by law as now established, the authors of paintings, drawings, and photographs have no copyright in such their works." The meaning of this has been already discussed (*y*); it is submitted that it only refers to the sole right of multiplying copies after publication of the original work, as defined in The Act of 1862.

(*u*) 25 & 26 Vict. c. 68, s. 8.
(*x*) 25 & 26 Vict. c. 68.
(*y*) Above, pp. 161–166.

The Act of 1862.

Jefferys v. *Boosey* (*z*), and that a right to prevent copying a work of art exists at common law until publication. The statute covers classes of works which stand on a slightly different footing; paintings and drawings are naturally classed with sculptures, as works of which the original has most value, while copies are either rare, or inadequately represent the original; photographs, on the other hand, naturally fall with engravings into the class of works where mechanical reproduction gives a large number of copies of almost equal value, and the original negative or plate is analogous to the type from which a book is printed.

Subject matter of the right.

Copyright may exist in every original painting, drawing, and photograph which shall be or shall have been made anywhere by a British subject, or person resident within the dominions of the Crown, and which shall not have been sold or disposed of before the 29th July, 1862 (*a*).

If a drawing is merely a reproduction with improvements of a previous drawing, it is not an "original drawing" within the Act. If the additions and improvements are substantial, there may be copyright in them alone, as in the case of new editions of books (*b*).

The phrase "original photograph" is rather contradictory, as all photographs are, in one sense, "copies" of something, but it has been decided that there is copyright in a photograph taken from a picture (*c*). Of

(*z*) (1854) 4 H. L. C. 815.

(*a*) 25 & 26 Vict. c. 68, s. 1. As to the effect of this provision on International copyright, see p. 181; and on copyright in American engravings, see p. 231. Copyright may be lost for immorality: *Baschet* v. *London Standard* (1900), 1 Ch. 73.

(*b*) *Thomas* v. *Turner* (1886), 33 Ch. D. 292.

(*c*) *Graves' Case* (1869), L. R. 4 Q. B. 715.

course, if there is no copyright in the picture copied, a second photograph taken from it will not infringe the copyright of the first photograph, and will have copyright of its own. Subject matter of the right.

It is submitted that if pictures, sold before the 29th July, 1862, have never been published, copyright at common law, at any rate, exists in them until publication.

A curious difficulty, at present unsolved, arises on the wording of s. 1. Statutory copyright begins on the making of the picture (*d*); but the making of the picture need not be in the British dominions, for the section contemplates the picture's being made elsewhere. The author must however be "a British subject, or resident within the dominions of the Crown." Take first the case of a British subject who paints a picture in Germany. He obtains statutory copyright under the Act of 1862. But by s. 19 of the International Copyright Act, 1844 (*e*), the author of any work of art, of a class defined in an order of council (*f*), first published out of Her Majesty's dominions, shall have no copyright therein except under the International Copyright Act. If then a British subject, having painted his picture abroad, publishes it abroad, does he lose by publication, under the Act of 1844, the statutory copyright he had acquired under the Act of 1862? This can hardly have been intended, but it is difficult to see any other construction. Further, a foreigner resident in the British dominions can acquire copyright; but when is the "residence" to be looked at? The Act of 1862 (*g*),

(*d*) *Tuck* v. *Priester* (1887), 19 Q. B. D. 629.
(*e*) 7 & 8 Vict. c. 12, s. 19.
(*f*) Joint operation of s. 19 and s. 2.
(*g*) 25 & 26 Vict. c. 68, s. 1.

Subject matter of the right.

contemplates that his work may be made abroad, and it is very difficult to read the statute in any way which does not apply the words "made elsewhere" to a painting made by a resident within the dominions of the Crown. If so the residence must be at some other time than the making of the picture. Publication has been suggested as the time when residence is important, but some works of art are never published, and the result would be to leave the copyright uncertain till publication. The most satisfactory view would be to confine copyright to (1) works made anywhere by a British subject; (2) works made in the British dominions by a foreigner; but the legislature does not seem to have said so, and the question is a very difficult one.

Nature of the right.

Nature of the Right.—Copyright in a painting, drawing, or photograph, is the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing, and the design thereof, or such photograph and the negative thereof, by any means and in any size (*h*).

This is subject to the provisions of s. 2 of the Act of 1862 (*i*), which provides that nothing in the Act shall prejudice the right of any person to copy or use any work in which there shall be no copyright, or to represent any scene or object, notwithstanding that there may be copyright in some representations of such scene or object. In such a case, however, the artist must go to the scene or object itself, and not simply copy another man's representation of that scene. He may paint two lovers in Huguenot costumes, saying good-bye, but he must not copy or colourably imitate Sir J. Millais' well-known picture of "The Huguenots." The principle is

(*h*) 25 & 26 Vict. c. 68, s. 1.
(*i*) 25 & 26 Vict. c. 68, s. 2.

the same as that in the case of books, such as directories, dictionaries, and guide books (*k*). The judgment of Wills, J., in *Kenrick* v. *Lawrence* (*l*), it is respectfully submitted, cannot be intended to contravene this principle, and must be treated as turning on the special facts of the case. Nature of the right.

It has been suggested that the right is merely *eodem genere*, *i.e.*, that, to use the words of Blackburn, J., in the case of *Ex parte Beal* (*m*), "the enactment might merely mean" (to forbid) "the imitation of a painting by a painting, of a drawing by a drawing, and of a photograph by a photograph, and that a photograph of a drawing would not be within the meaning of the Legislature." But the Court in that case unanimously rejected this in favour of the wider interpretation, making "reproduction of the design" the only thing necessary to constitute an infringement of the right.

The words of s. 1 of the Act of 1862 are apparently framed to give as wide a right as possible, the sole right of copying "a picture or the design thereof by any means and in any size." But the decisions of the Courts in the series of "Living pictures" cases (*n*), in which the well-

(*k*) *Vide, ante*, pp. 120–123, 144–147, and see the discussion of the section by Lindley, L.J., in *Hanfstaengl* v. *Empire Palace* (1894), 3 Ch. at p. 127.

(*l*) (1890), 25 Q. B. D. 99; see *Hildesheimer* v. *Dunn* (1891), 64 L. T. 452.

(*m*) (1868) L. R. 3 Q. B. 387, 394.

(*n*) The chronology of these cases is as follows:—

The management of the Empire Theatre bought certain photographs of Hanfstaengl's, and, in February, 1894, represented them on the stage as *tableaux vivants*—living persons posing in front of painted backgrounds and solid properties. Two newspapers, the *Daily Graphic* and the *Westminster Budget*, inserted sketches of these tableaux in their papers; the artist of the *Budget* having as to one of these pictures a photograph of Hanfstaengl's to help his memory. Hanfstaengl issued a writ against the Empire Palace and the *Daily Graphic*

Nature of the right.

known German art publisher, Herr Hanfstaengl, attacked various forms of reproduction of his pictures originating in their representation as *tableaux vivants* on the stage of

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(Baines & Co.), as joint defendants, and a second against the *Westminster Budget* (George Newnes).

1. An interlocutory application against the Empire Palace was heard by Stirling, J., in February, 1894, and dismissed on the ground that the living figures were not infringements of the copyright in the pictures, whilst the defendants undertook to keep an account as to the backgrounds. Hanfstaengl appealed, and on February 21, 1894, the Court of Appeal affirmed the decision of Stirling, J., on the same grounds. The judgment of the Court of Appeal is reported in (1894) 2 Ch. 1; that of Stirling, J., is reported in 70 L. T. 459, and *verbatim* in the Appendix to the proceedings in the House of Lords referred to below.

2. An interlocutory application against the *Daily Graphic*, together with a similar one against the *Westminster Budget*, came on before Stirling, J., on March 16, 1894, and on April 6 he granted an interlocutory injunction against both defendants, on the ground that the sketches complained of were infringements by English law, and that the plaintiff had under German law and the Berne Convention a right to restrain them. The *Westminster Budget* did not appeal against this decision; the *Daily Graphic* did, and the appeal was heard on May 30, 31, being treated by consent as the trial of the action against the *Daily Graphic*. The C. A., on June 11, 1894, reversed the decision of Stirling, J., and, holding that the sketches complained of were not by English law copies of the picture or the design thereof, gave judgment for the *Daily Graphic*. The decisions of the two Courts are reported (1894) 3 Ch. 109.

3. Hanfstaengl appealed to the House of Lords against the decision against him in the *Daily Graphic* case; the appeal was heard on December 3, 1894, and on December 17 the House affirmed the decision of the C. A. on the same grounds. The decision is reported (1895) A. C. 20.

4. The final hearings of the cases against the Empire in respect of the backgrounds and against the *Westminster Budget*, which had stood over pending the hearing in the House of Lords, came on before Stirling, J., who gave judgment for the *Westminster Budget*, following the decision in the House of Lords; and, after reserving judgment, on April 25, 1895, gave judgment for the plaintiff against the Empire Palace, holding that three of the backgrounds were copies of material parts of the plaintiff's paintings, and as to two of them that the plaintiff had proved his title to sue. These decisions are reported in 11 Times L. R. pp. 314, 368.

the Empire Theatre, have materially limited the protection conferred. The words "the design thereof" were limited by Lord Watson in the House of Lords (*o*) to "the particular forms and arrangements, whether of lines or colouring, which the copyright author has selected as the vehicle for conveying his idea to those who see his work." No other judge defined "design" except by saying that it did not mean the "idea" created by the picture or drawing, but Lord Watson also said:—"The use of the word 'design' was intended to reach invasions of copyright which might possibly escape the imputation of being copies or colourable imitations of the work itself, and yet appropriated and incorporated the substance of what is described as the design of the work (*p*);" or, *per* Davey, L.J. (*q*):—"These words are probably inserted in order to bring within the protection of the Act a copy through a different medium—for instance a black and white copy of a picture made by the engraver, the photographer, or the draughtsman; but it must still be the design of the picture and not a mere outline or descriptive sketch of it." This view of Davey, L.J., appears to give no effect to the words "by any means," and to suggest that an exact outline of the picture would not be a copy of its design, though it would be in Lord Watson's definition. The result of the decision appears to be to embark the Courts on an endless task of determining whether or not a sketch actually made from a picture, and intended to convey the idea of that picture, is yet sufficiently rough and inexact not to be considered a copy of the picture or its design.

Nature of the right.

But this point falls more naturally under the head of infringements of copyright.

(*o*) (1895) A. C. at pp. 27, 28. (*p*) *Ibid.* at p. 26.
(*q*) (1894) 3 Ch. at p. 134.

The right is treated as personal or movable estate (*r*).

Duration of the right.

Copyright in paintings, drawings, or photographs lasts for the natural life of the author, and seven years after his death, if the necessary conditions are complied with (*s*).

Investitive facts.

The investitive facts of copyright in paintings, drawings, and photographs are :—

(1.) Of the right.—The making of a work, the subject of copyright, by a British subject or a person resident within the British dominions (*t*).

(2.) Of the remedy :—No action shall be sustainable, nor any penalty be recoverable in respect of anything done, before registration at Stationers' Hall of the work in respect of which copyright is claimed under the Act (*u*).

Registration.

The Act of 1862 differs from the Literary Copyright Act (*v*), in requiring registration to precede the infringement complained of, instead of simply preceding the suing for such an infringement. The copyright, however, as in the Act of 1842, does not commence on registration, but on the making of the work of art (*x*).

It is sufficient for the proprietor of copyright by assignment, to register his own assignment, without any registration of the original copyright, or preceding

(*r*) 25 & 26 Vict. c. 68, s. 3.

(*s*) *Ibid.* s. 1.

(*t*) *Ibid.* s. 1. An entry claiming copyright for a work made by a foreign author not resident in England will be expunged. *Geisendorfer* v. *Mendelssohn* (1896), 13 Times L. R. 91. As to works executed on commission, see below, p. 192, and see above, p. 181, on the difficulties of this section.

(*u*) *Ibid.* s. 4 ; *cf. Tuck* v. *Priester* (1887), 19 Q. B. D. 629.

(*v*) 5 & 6 Vict. c. 45.

(*x*) *Tuck* v. *Priester* (1887), 19 Q. B. D. 629.

assignments (*y*). Once registration has been effected all subsequent assignments must be registered (*z*). Registration.

If the author registers, the statute apparently only requires him to register his name and place of abode, with a short description of the nature and subject of his work.

If an assignment is registered, the entry must contain:—

(1.) The date of assignment.
(2.) The names of parties thereto.
(3.) Name and place of abode of assignee.
(4.) Name and place of abode of author of work.
(5.) Short description of name and subject of work.
(6.) Optional, a sketch, outline, or photograph of such work.

The person to sue for an infringement must be the proprietor when the infringement is committed, and he must be registered (*a*). Thus in *London Printing Alliance* v. *Cox* (*b*), the plaintiff on the register was not the owner, and the plaintiff who was the owner was not on the register, and the Court of Appeal held the action failed.

Name.—It will be sufficient to register the firm or trade-name of the proprietors instead of the name of the individual partners (*c*).

(*y*) *Graves' Case* (1869), L. R. 4 Q. B. 715.

(*z*) 25 & 26 Vict. c. 68, s. 4; *cf. Troitzsch* v. *Rees* (1887), 3 Times L. R. 773.

(*a*) *Liverpool Brokers'* v. *Commercial Press* (1897), 2 Q. B. 1. It is not enough that an agent or nominee of the legal owner be registered, but a trustee for the beneficial owner may be. *Petty* v. *Taylor* (1897), 1 Ch. 465.

(*b*) (1891) 3 Ch. 291; *cf. Dupuy* v. *Dilkes* (1879), 48 L. J. Ch. 682.

(*c*) *Rock* v. *Lazarus* (1872), L. R. 15 Eq. 104; *Kenrick* v. *Lawrence* (1890), 25 Q. B. D. at p. 106.

Registration.

Place of Abode.—It was decided in *Nottage* v. *Jackson* (*d*) that the place of business of art publishers may be for the purposes of registration their place of abode; the object of the information being to tell searchers in the register where the owner of the copyright is to be found.

Short description of Name and Subject.—What is required here has been laid down by Blackburn, J., in the case of *Ex parte Beal* (*e*), as follows: "I do not think that it is necessary to make the description so precise as the registration of a specification of a patent, in order that all may know what it is they are prohibited from copying; or such as to give information to persons who had never heard or known of the picture, what it was they were not to copy. . . . The object of the Legislature, as pointed out by the statute, is that there shall be such a description of the picture as to enable a person who has it before him to judge whether or not the registration applied to the picture he was about to copy. It will be sufficient to describe the subject by some conventional name, and the particulars of the subject need not be given in detail." For example, the titles: 'Ordered on Foreign Service,' representing an officer taking leave of a lady; 'My First Sermon,' representing a little child awake, sitting in a pew; and 'My Second Sermon,' representing the same child asleep, were held sufficient for registration, the name alone being used (*f*). Some doubt was expressed in the same case as to the sufficiency of the registration of the name only, of pictures entitled 'A Distinguished Member of the Royal Humane Society,' representing a dog; and 'A Piper and Pair of Nutcrackers,' representing a

(*d*) Weekly Notes, August 11, 1883; 49 L. T. at p. 340.
(*e*) (1868) L. R. 3 Q. B. 387, 392.
(*f*) *Ex parte Beal* (1868), L. R. 3 Q. B. 387, 392.

bullfinch and two squirrels; and though the point was raised subsequently in *Graves' Case* (*g*), the case was decided on another issue.

Author of Photo-graph.

Author of a Photograph.—The question as to the person answering this description was raised in the case of *Nottage* v. *Jackson* (*h*). The large photographic firms had been in the habit of registering the firm or the employer as the "author," and many thousands of photographs had been registered in this way. At last the question as to the sufficiency of such registration came before the Courts, and Field, J., held that such a registration was invalid, his ruling being affirmed by the Court of Appeal. All the judges rather shrank from the problem of finding the "author" of a photograph, though they were agreed that the photographers had not found him. It was suggested however by the Master of the Rolls, that the person who is actually present when the photograph is taken, who superintends the arrangements, places the person to be photographed, and gives the necessary orders, is probably the "author" of the photograph. His name therefore should be registered as such author, and his life will furnish the term of copyright. This ridiculous result follows from the practice of draftsmen, condemned by the Master of the Rolls, of using words in a sense in which no one else uses them.

It follows that the person who suggests a subject and directs an artist to draw it is at any rate not the sole "author" for purposes of registration, and it will be safer to register the actual artist as sole "author," and

(*g*) (1869) L. R. 4 Q. B. 715.

(*h*) (1883) 11 Q. B. D. 627; *cf. Wooderson* v. *Tuck* (1887), 4 Times L. R. 57; where the same point proved fatal to registration. In *Melville* v. *Mirror Co.* (1895), 2 Ch. 531, the person who supervised the operation and not the actual operator was held the "author."

Registration.

the person giving the commission for the drawing as "proprietor" (*i*).

The provisions of the Copyright Act (*k*) as to the manner of keeping the register of books, and its production in evidence, apply also to the register of works of art, the fee for making any entry therein being however reduced to one shilling.

Amongst these provisions is one (*l*), that if any person shall deem himself aggrieved by any entry in the register, he may apply to one of the Superior Courts for an order that such entry may be expunged or varied. "A person aggrieved" was defined by Hannen, J., as "a person who can show that the entry is inconsistent with some right that he sets up in himself, or in some other person, or that the entry would really interfere with some intended action on the part of the person making the application" (*m*).

In the case of illustrated newspapers, the provisions as to registration of periodical works in the Act of 1842 apply (*n*); and registration of the first number of the newspaper protects all original drawings appearing in subsequent numbers (*o*). It would seem, however, that if a newspaper reproduces a picture, and the copyright of the picture is not registered, it is open to any one to copy the picture, though not to copy the reproduction in the paper (*p*).

(*i*) *Kenrick* v. *Lawrence* (1890), 25 Q. B. D. at p. 106.

(*k*) 5 & 6 Vict. c. 45, ss. 11–13; 25 & 26 Vict. c. 68, s. 5.

(*l*) 5 & 6 Vict. c. 45, s. 14.

(*m*) *Graves' Case* (1869), L. R. 4 Q. B. 715, 724; see the section fully discussed, *ante*, pp. 152–153.

(*n*) 5 & 6 Vict. c. 45, s. 19; and above, p. 149.

(*o*) The drawing need not be literally annexed to the paper, if it is part of the paper, though a loose sheet, such as the illustration of a Christmas number. *Cf. Comyns* v. *Hyde* (1895), 13 R. 172.

(*p*) *Cf. Lucas* v. *Cooke* (1880), 13 Ch. D. 872; *Graves' Case* (1869), L. R. 4 Q. B. 715.

The *Transvestitive Fact* of Copyright is:— Transvestitive facts.

Assignment in writing, signed by the proprietor of the copyright, or his agent appointed in writing for that purpose. Such an assignment must be registered before the assignee can sue for infringements (*q*).

It has been however decided in the case of *Tuck* v. *Canton* (*r*) that a document, said not to be an assignment of the entire copyright, but a licence to imitate the picture in chromo-lithography, or any form of colour-printing, does not need registration under the statute. This decision however seems open to very grave doubt. The document in question ran: "The sole right to reproduce the picture and chromos, or in any other form of colour printing, to be vested in you for the term of two years," and, on certain other conditions, absolutely. This seems a clear assignment of part of the copyright; the Act therefore requires it to be in writing (s. 3); and the words of section 4 direct registration "of every assignment of every copyright to which any person shall be entitled under this Act." It is the 3rd section, therefore, which creates a copyright assignable at law, and it is submitted that without that section even a partial assignment could not take place so as to enable the assignee to sue in person; that therefore the right of the plaintiff in that case was a copyright "to which he was entitled under the Act," and that it therefore required registration under the 4th section. Moreover, the decision seems open to this further objection; the registered proprietor of copyright may assign all his copyright in parts, or give licences covering all methods of reproduction, so that no right remains in

(*q*) 25 & 26 Vict. c. 68, ss. 3, 4; *Liverpool Brokers'* v. *Commercial Press* (1897), 2 Q. B. 1, which refers to *Tuck* v. *Canton*, *vide sub.*

(*r*) (1882) 51 L. J. Q. B. 363.

Trans-vestitive facts.

him; yet none of these will need to be registered, and so the purpose of the Act may be defeated.

If *Tuck* v. *Canton* (*s*) is rightly decided a partial assignment, or a licence to reproduce in a certain manner, need not be registered.

A licensee is always exposed to the risk of an action by a person to whom his licensor has assigned the copyright (*t*).

When the original painting, or drawing, or negative of a photograph is first sold, disposed of, or made, or executed for or on behalf of any other person for a good or valuable consideration, the vendor or maker does not retain copyright therein unless there is an express agreement in writing at or before such sale or deposition, signed by the purchaser or person giving the order, reserving to the vendor the copyright therein (*u*).

Similarly on such a scale, the vendee will not be entitled to the copyright without an agreement in writing, signed at or before the sale, by the vendor, granting the copyright to the vendee (*u*).

The effect of this is, that when a picture, drawing, or negative of a photograph first changes hands without any agreement in writing as to the copyright, all copyright in the picture is lost, unless the picture is made for or on behalf of any other person for a good and valuable consideration; that is to say, is executed on commission, in which case the copyright belongs to the person giving

(*s*) 51 L. J. Q. B. 363; in *Sweet* v. *Cator* (1841), 11 Sim. 581, where Messrs. Sweet were allowed to sue as licensees from Lord St. Leonards, it is not stated whether they were registered, and they were ordered to sue in the name of the author.

(*t*) As in *London Printing Alliance* v. *Cox* (1891), 3 Ch. 291. As to licenses, see *ante*, p. 155.

(*u*) 25 & 26 Vict. c. 68, s. 1; *cf. Levi* v. *Champion* (1887), 3 Times L. R. 257.

the commission, unless there is an express reservation in writing of copyright by the artist. Trans-vestitive facts.

Another curious point arises in this section. Where a person (A.) gives an order for a photograph or engraving to a commercial firm (B.), who thereupon order one of their paid servants (C.) to execute the order, it has been suggested that C. makes the work of art for B. for valuable consideration, and that the copyright therefore passes from C., who appears to be the "author," within the meaning of *Nottage* v. *Jackson* (*x*), to B., without writing. It is further suggested that to get the copyright from B. to A. writing is then needed, the effect of the section being exhausted in the first transference. Stirling, J., intimated an opinion against this contention in *Wooderson* v. *Tuck* (*y*), and the answer probably is that both B. and C. are treated as making for valuable consideration for or on behalf of A. In some London firms, a partner of the firm is the "author" of the photographs taken for the firm, and it seems that his share of the partnership profits would be sufficient valuable consideration to vest the copyright in the firm, apart from any question of private employers. It seems clear that if B. merely give an order to their paid servant C., without any outside customer's suggestion, they will become proprietors of the copyright without more (*z*).

Photographs.—In the ordinary case of photographs taken for a paying customer the photographer will be restrained from multiplication of copies both on the ground of copyright, if the sitter is registered as proprietor, the photograph being taken on his behalf for a valuable consideration (*a*); and even if he is not

(*x*) (1883) 11 Q. B. D. 627. (*y*) (1887) 4 Times L. R. 57.
(*z*) *Cf. Kenrick* v. *Lawrence* (1890), 25 Q. B. D. at p. 105.
(*a*) 25 & 26 Vict. c. 68, s. 1.

Transvestitive facts.

registered, on the ground of implied contract or confidence (*b*). Where the photographer asks for the sitting, and the sitter pays nothing for it or for copies of the photograph, the copyright will clearly be the photographer's (*c*), if he is the author as explained above (*d*). Where the sitter pays for some copies, though at a reduced rate, the case becomes more doubtful, and each case must turn on its special facts (*e*). There may be cases where the copyright is the sitter's, but the photographer has a licence to exhibit and sell copies. The question in each case is:—"Was the negative taken for or on behalf of the sitter for a valuable consideration?" If so, the copyright is the sitter's; if not, it is the author's (*d*). And it would seem that if the photograph is taken at the request of the photographer, even though the sitter afterwards pays for copies, it is taken on behalf of the photographer, and the copyright is his.

Divestitive facts.

The *Divestitive Facts* of Copyright are:—

1. Lapse of the term of copyright.

2. First sale of the work without a written agreement (*f*).

3. Waiver of rights, which must probably be in writing (*g*).

Infringements of the right.

Infringements of Right.—The elements for infringement of copyright, are:—

1. A reproduction of the picture or its design or

(*b*) *Pollard* v. *Photographic Co.* (1889), 40 Ch. D. 345.

(*c*) *Ellis* v. *Marshall & Co.* (1895), 11 Times L. R. 522; *Melville* v. *Mirror of Life Co.* (1895), 2 Ch. 531.

(*d*) See p. 189.

(*e*) *Cf. Ellis* v. *Ogden* (1894), 11 Times L. R. 50, which is however badly reported.

(*f*) 25 & 26 Vict. c. 68, s. 1, *et ante*, p. 192.

(*g*) *Ibid.* s. 3.

part thereof (*h*) by any means and in any size (*i*). Infringements of the right.

The decisions in the various Living Picture cases (*j*) have caused the question to be:—What is a copy of a work of art or the design thereof? Now that it has been decided by the House of Lords that where A. intends to reproduce the work of B., and C. intends to reproduce A.'s reproduction, C.'s work need not be a copy of B.'s work, or of the design thereof, the defendant in any copyright case may raise the point that his attempt at copying is so rough and sketchy that it is not a copy of the work or its design, or, in the words of Lord Davey (*k*), is merely "a descriptive sketch." In the numerous judgments delivered on the point a certain number of points seem to have been agreed.

Thus the fact that the picture complained of has not been copied directly from the plaintiff's work, but from a legitimate reproduction of it, or a reproduction which the plaintiff cannot prevent, is not in itself a defence, though it may be considered in deciding whether the picture is a copy (*l*). Why it may be so considered if it is no defence is not very clear.

The defendant's ignorance that he has been dealing with a copyright picture will be no defence, though this fact may be considered in deciding whether

(*h*) *London Stereoscopic Co.* v. *Kelly* (1888), 5 Times L. R. 169; where the head was copied from a full-length photograph. *Brooks* v. *Religious Tract Society* (1897), W. N. 25.

(*i*) *E.g.* an enlargement, as in *Bolton* v. *Aldin* (1895), 65 L. J. Q. B. 120; or a reduction, as in *Gambart* v. *Ball* (1863), 14 C. B. N.S. 306; *Bradbury* v. *Hotten* (1872), L. R. 8 Ex. 1.

(*j*) See note, *ante*, p. 183.

(*k*) (1894) 3 Ch. at p. 134.

(*l*) *per* Stirling, J. (1894), 3 Ch. 116; Lindley, L.J., *ibid.* p. 127; Lopes, L.J., *ibid.* pp. 131, 132. Lord Watson (1895), A. C. p. 28; Lord Shand, *ibid.* p. 30.

Infringements of the right.

defendant's picture is a copy or not: (*m*)—why, is not clear.

It is immaterial that the defendant's picture is a bad or inartistic copy (*n*), or whether it is made for profit or not (*o*): but it must be something in the nature of a picture; a *tableau vivant*, or, it seems, a statue or bas-relief will not be infringements (*p*).

2. Interference by such reproduction with either the artist's reputation, or the commercial value of his work (*q*).

It should be borne in mind that in the case of a picture which has been engraved or otherwise reproduced, there are two methods of procedure against infringements: one for infringement of the copyright in the painting, when the formalities of the Act of 1862 (*r*) must be complied with; the other, in accordance with the provisions of the Engraving Acts (*s*), for infringement of copyright in the engraving. To sustain this latter it must be proved that the piratical copy is made from the engraving; as a second engraving made direct from the

(*m*) *per* Lindley, L.J. (1894), 3 Ch. at p. 127; Lopes, L.J., *ibid.* at p. 131; Lord Ashbourne (1895), A. C. at p. 29. See also *Green* v. *Irish Independent* (1899), 1 Ir. 386; overruling the decision of the Irish Master of the Rolls to the contrary effect.

(*n*) *per* Lord Watson (1895), A. C. 26.

(*o*) *per* Kay, L.J. (1894), 2 Ch. at p. 9.

(*p*) *per* Lindley, Kay, and Smith, L.JJ. (1894), 2 Ch. pp. 6, 8, 10.

(*q*) *Ex parte Beal* (1868), L. R. 3 Q. B. 387; *Dicks* v. *Brooks* (1880), 15 Ch. D. 22; approved in the Living Pictures cases (see note, *ante*, p. 183) by Lopes, L.J. (1894), 3 Ch. 131; Davey, L.J., *ibid.* p. 133; and Lord Macnaghten (1895), A. C. at p. 29. It is not, however, necessary that the reproduction should actually compete with the plaintiff's work (see *per* Lindley, L.J. (1894), 3 Ch. at p. 130, and Stirling, J., *ibid.* at p. 117).

(*r*) 25 & 26 Vict. c. 68.

(*s*) See above, p. 170.

picture does not infringe the copyright in the first engraving. Infringements of the right.

In the case of *Tuck* v. *Canton* (*t*), where the assignee of the right to reproduce a picture in chromo-lithography sued an infringer of his right, it was objected that his prints did not comply with the provisions of the Engraving Acts, and Mathew, J., held that as the assignment was of the right of reproducing the picture, the plaintiff might sue for infringement of his right to reproduce the picture in a particular way, and so avoid the question as to his print. This appears to be inconsistent with the case of *Lucas* v. *Cooke* (*u*), in which case the partial assignment was of the right to produce an engraving in one size, while the infringement was a chromo-lithograph, and Fry, J., held that the plaintiff, not being the owner of the copyright in the picture, must show that the infringement was derived from his engraving in order to succeed in his suit.

The proprietor of copyright has the following remedies:— Remedies and penalties.

I. *Action for Penalties* (*v*).—Every one who, without the consent of the proprietor:—

1. Repeats, copies, colourably imitates, or otherwise multiplies, for sale, hire, or exhibition and distribution, or causes to be repeated, etc., any copyright work or the design thereof;

2. Knowing any copy to be unlawfully made (*x*), imports into the United Kingdom, sells, publishes, lets to hire, exhibits, distributes; or offers for sale, etc.; or

(*t*) (1882) 51 L. J. Q. B. 363, and above, p. 191.
(*u*) (1879) 13 Ch. D. 872.
(*v*) 25 & 26 Vict. c. 68, s. 6.
(*x*) *Cf. Tuck* v. *Priester* (1887), 19 Q. B. D. at pp. 638, 644.

Remedies and penalties.

causes or procures to be imported, etc., any such copy :—

Forfeits a sum not exceeding £10 per copy (*y*) to the owner of the copyright.

All such copies and the negatives of piratical photographs are to be forfeited to the proprietor of the copyright (*z*).

The Custom House officers are authorized to seize all piratical copies imported without the consent of the owner of the copyright (*a*).

Sale after registration, of copies made before registration, will be a sale of copies unlawfully made, inasmuch as copyright exists before registration (*b*). But, section 11 being a penal section, the Court of Appeal have refused to hold that copies made abroad before registration were unlawfully made, although their decision made the provisions against importing almost nugatory, and though they thought that "unlawfully" probably meant "without the consent of the proprietor" (*b*).

II. *Action for Damages* (*c*) :—against any person who without the consent of the proprietor of copyright :—

(*y*) One sale of ten copies will involve ten penalties: *Ex parte Beal*, L. R. 3 Q. B. 387; *cf. Ellis* v. *Marshall* (1895), 11 Times L. R. 552, where Charles, J., held himself bound to give at least a farthing a copy on 25,000 copies of a newspaper. But in *Hildesheimer* v. *Faulkner* (1901), 2 Ch. 552, the Court of Appeal held that though there were ten offences, the Court might assess one penalty to cover the ten, and was not bound to give a coin as penalty for each offence. They declined to follow the opinion of the Irish Court of Appeal to the contrary effect, in *Green* v. *Irish Independent Co.* (1899), 1 I. R. 386. It is understood that the case of *Nicholls* v. *Parker* (1902), 18 Times L. R. 459, is under appeal to the House of Lords to test the soundness of the decision in *Hildesheimer* v. *Faulkner*, v.s.

(*z*) 25 & 26 Vict. c. 68, s. 6.

(*a*) *Ibid.* s. 10.

(*b*) *Tuck* v. *Priester* (1887), 19 Q. B. D. 627.

(*c*) 25 & 26 Vict. c. 68, s. 11; the section is very long, and I have shortened it.

1. Repeats, colourably imitates, or otherwise multiplies for sale, hire, exhibition or distribution :—or

Remedies and penalties.

2. Imports into any part of the United Kingdom :—or

3. Sells, publishes, exhibits or distributes :—any copy or imitation of a work of art or of the design thereof.

All such copies are to be delivered to the proprietor.

This remedy is in addition to the action of penalties.

III. An injunction to restrain future infringements.

IV. An account of copies illegally dealt with by the defendant.

Every person who :

1. Fraudulently signs, or causes to be signed, any name, initial, or monogram, upon any painting ;

2. Fraudulently sells, or exhibits any painting having thereon the signature of a person who did not execute such work ;

3. Fraudulently utters any colourable copy of any painting, etc., whether copyright or not, as the work of the author of the original ;

4. Fraudulently makes or sells any altered copy of a painting, etc., which has left the possession of the author as an unaltered copy :—

Forfeits a sum not exceeding £10, or double the full price at which such fraudulent copies were offered for sale ; such copies are forfeited to the person or his assigns or representatives to whom such work is fraudulently ascribed (*d*). To enable these penalties to be recovered, the person to whom the painting, etc., is fraudulently attributed must have been living within twenty years previous to the alleged infringement.

The case of *R.* v. *Closs* (*e*) shows that, apart from this statute, such signature would not be forgery, but

(*d*) 25 & 26 Vict. c. 68, s. 7.
(*e*) (1857) 27 L. J. M. C. 54.

Remedies and penalties.

might be a cheat at common law, if it was alleged that through the false token the prisoner sold the picture and obtained the money.

All penalties and forfeitures may be recovered:

In England and Ireland—

1. By action.
2. By summary proceeding before any two justices having jurisdiction where the party offending *resides*.

In Scotland as provided by the Act (*f*).

The proprietor may recover also, in addition to the penalties, damages and forfeiture of the copies by an action against the infringers (*g*).

These penalties are not mere debts, but in the nature of a punishment, so as to prevent them being barred by a composition deed with defendant's creditors (*h*).

The original picture or drawing need not be produced in Court, but the alleged piracies may be proved to be copies of it by comparison with photographs of the picture or the oral evidence of persons who have seen it (*i*).

Limitation of actions.

There is no special time fixed within which actions must be brought, as is the case in the other Copyright Acts.

(*f*) 25 & 26 Vict. c. 68, s. 8.

(*g*) *Ibid.* s. 11.

(*h*) *Ex parte Graves, In re Prince* (1868), L. R. 3 Ch. 642. Their penal character, therefore, prevents interrogatories being administered in an action to recover them: *Martin* v. *Treacher* (1886), 16 Q. B. D. 505. Difficulties may arise where the plaintiff claims damages in respect to which he may use interrogatories, and penalties, in respect to which he may not. Though s. 9 of the Act gives the Court power to order inspection, this will probably not be applied in an action for penalties. *Cf. Whiteley* v. *Barley* (1887), 56 L. J. Q. B. 312.

(*i*) *Lucas* v. *Williams* (1892), 2 Q. B. 113.

Section IV.

Copyright in Sculpture.

Statutes.—Nature of the right.—Investitive facts.—Infringements of the right.—Remedies for infringements.

Statutes. Statutory copyright in sculpture was first given in England in 1798 (*k*); and much strengthened in 1814 (*l*). The former Act has been repealed (*m*), and the law on the question is now to be found in the Act of 1814 (*n*). As appeared in the evidence of Mr. Woolner before the Copyright Commission, the copyright in sculpture was not of great importance; very few cases are reported under any of the Acts, and a few scattered *obiter dicta* are found in cases dealing with other classes of artistic property. The first case is that of *Gahagan* v. *Cooper* (*o*) (1811), for piracy of a bust of C. J. Fox, where, owing to the bad wording of the Act of 1798, the plaintiff failed, Lord Ellenborough saying:—"These artists must again apply to Parliament for protection; and they had better not model the new Act themselves, as they seem to have done the old."

Some fatality however seems to attend the draftsmanship of Acts relating to sculpture. The Act of 1814 (*p*) contains in its first clause a definition of works

(*k*) 38 Geo. III. 71.
(*l*) 54 Geo. III. c. 56.
(*m*) 24 & 25 Vict. c. 101.
(*n*) The provisions as to Copyright in Sculpture contained in 13 & 14 Vict. c. 104, ss. 6, 7, have been repealed by the Patents Act, 1883, 46 & 47 Vict. c. 57, ss. 60, 113, as to all sculptures made after the 25th of August, 1883.
(*o*) 3 Camp. 111.
(*p*) 54 Geo. III. c. 56, s. 1.

Statutes.

protected, of which Sir James Stephen says (*q*): "This section is a miracle of intricacy and verbosity. It also contains an 'of,' which may be a misprint, as it seems to make nonsense of several lines, and a most puzzling 'such' . . . The section forms a sentence of thirty-eight lines, the first half of which is repeated in the second half in so intricate a way that the draftsman appears to have lost himself in the middle of it. It admits of a doubt whether a cast from nature of an animal is the subject of copyright at all, and whether it must not be a cast from a cast from nature."

Nature of right.

The subject-matter of the right is any "new and original sculptures, models, copies, or casts," or a large number of things enumerated at great length in the Act. What a "new and original copy" may be is not very clear, but it is hardly worth while attempting to elucidate an Act on which very few cases have arisen in nearly seventy years. The list however includes "any subject being matter of invention in sculpture," and in *Caproni* v. *Alberti* (*r*) certain casts of leaves, flowers, and fruit, for use in drawing, were held to come within this term. On evidence that the making of particular wax models from which toy soldiers were made demanded considerable artistic skill, Wright, J., has given tin soldiers the protection of the Sculpture Act (*s*).

Persons entitled to the right.

The persons entitled to the right are: Whoever makes or causes to be made any sculpture the subject-matter of copyright, or purchases such right from its proprietor by deed in writing signed by the proprietor in the presence of and attested by two witnesses (*t*). At present

(*q*) C. C. Rep. p. 75, note.
(*r*) (1891) 65 L. T. 785.
(*s*) *Britain* v. *Hanks* (1902), 18 Times L. R. 525.
(*t*) 54 Geo. III. c. 56, ss. 1, 4.

therefore a person giving a commission to a sculptor to make a statue, does not, as in the case of a picture, get the copyright without more (*u*). A deed signed by the sculptor is necessary. Persons entitled to the right.

The duration of the right is fourteen years from the first putting forth or publishing the sculpture in question (*v*), with a further term of fourteen years if the maker of the original sculpture shall be living at the end of the first fourteen years (*w*). Duration of the right.

The *investitive fact* of copyright in sculpture is "Publication, or first putting forth." What constitutes publication has been treated of in *Turner* v. *Robinson* (*x*) by Lord Chancellor Brady, where he says: "The *terminus a quo* from which the protection to works of sculpture commences, is the publication of the work, that is from the moment the eye of the public is allowed to rest on it. Many large works in this branch of art which decorate public squares and other places are of course so published; but there are others not designed for such a purpose, which could never be published in any other way than by exhibition; therefore I apprehend that these works of sculpture must be considered as 'published' by exhibition at such places as the Royal Academy and Manchester, so as to entitle them to the protection of the statutes from the date of such publication." Investitive fact.

Infringements of the right (*y*) are: Making or importing, or causing to be made or imported or exposed for sale, or otherwise disposed of, any pirated copy or cast Infringements of the right.

(*u*) *Ante*, p. 192.
(*v*) 54 Geo. III. c. 56, s. 1.
(*w*) *Ibid.* s. 6.
(*x*) 11 Ir. Ch. 510, 516. See *Britain* v. *Hanks* (*v.s.*).
(*y*) 54 Geo. III. c. 56, s. 3.

Infringements of the right.

of anything protected by the Act, whether by moulding, copying from, or imitating in any way, the original, to the damage of the proprietor of the work so pirated.

It seems that a drawing or painting of a statue would not infringe copyright in the statue, and conversely that a statue or bas-relief representing a picture would not infringe copyright in the picture (*z*). Representing a statue as a *tableau vivant* would not infringe copyright therein (*z*).

Remedies.

The remedies for infringements (*a*) are (1):—an action for damages.

(2.) If the sculpture has been registered in accordance with s. 6 of the Designs Act (*b*), and all copies published after registration have been marked with the word "registered" and the date of registration; the proprietor may for every infringement after registration recover a penalty not less than £5 or more than £30; either by action or by summary proceeding before two justices having jurisdiction where the offender resides. In this case the penalty inflicted shall be leviable by distress (*c*).

Limitations of actions.

All actions must be brought within six months of the discovery of the offence complained of (*d*).

It is a condition precedent of the right and remedy that the proprietor shall put his name and the date, (what date is not clear,) on every sculpture, cast, etc., before it shall be put forth or published (*e*).

(*z*) *Hanfstaengl* v. *Empire Theatre* (1894), 2 Ch. 1.

(*a*) 54 Geo. III. c. 56, s. 3.

(*b*) 13 & 14 Vict. c. 104, ss. 6, 7. This remedy, owing to the repeal of the Designs Act by the Patents Act, 1883, only applies to copyright sculptures published before 25th August, 1883.

(*c*) As provided in 5 & 6 Vict. c. 100, s. 8.

(*d*) 54 Geo. III. c. 56, s. 5.

(*e*) *Ibid.* s. 1. The International Act of 1844 (7 Vict. c. 12) recites that this Act provides that the date of publication is to be put on

APPENDIX.

General recommendations of Commission as to artistic copyright.

The recommendations of the Copyright Commission as to the Law of Artistic Copyright are as follows:—

1. That the law with respect to the different branches of artistic work should be as far as possible assimilated; when distinctions are made, they are between the processes of indefinite multiplication such as photographs and engravings, and those classes of works of individual value such as paintings, drawings, and sculpture (C. C. R. §§ 94, 118).

2. That the term of copyright for all works of fine art except photographs be the life of the artist and thirty years after his death. For photographs it is to be thirty years from publication, except when part of a book, when the term of literary copyright is to apply (C. C. R. §§ 95, 119).

3. That it should be open to British subjects and aliens domiciled in the British dominions to obtain copyright in works wherever published (C. C. R. § 96).

4. That other aliens should only obtain national copyright for works first published in the British dominions (C. C. R. § 98).

5. That every form of copying sculpture, whether by sculpture, modelling, photography, drawing, engraving, or otherwise, should be considered an infringement of copyright, unless the sculpture was merely an accessory in the copying of a scene (C. C. R. § 99).

6. That copies of non-copyright statues should be susceptible of copyright (C. C. R. § 100).

7. It being found impossible to distinguish between portraits and other pictures, or to decide what constitutes a work executed on commission, the Commission recommend that in the absence of a written agreement to the contrary the copyright in a picture or drawing (§ 117) should follow the ownership of the picture, belonging to the purchaser, or person for whom the picture is made (C. C. R. §§ 108–110, 115).

8. That the copyright in engravings or photographs should belong to the owner of the plate or negative, but in the case of works executed on commission no work should be exhibited or sold without the sanction of the person who ordered them (C. C. R. §§ 121, 122).

9. That, if he has not the power at present, an artist be empowered

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each statue; but the Act does not say so. In *Britain* v. *Hanks* (1902), 18 Times L. R. 525, Wright, J., treated as sufficient an approximately accurate date, and the name of a firm, when the artist was one of the partners. It is not safe to assume that other judges will take a similarly lenient view of the statute. In other branches of copyright the requirements as to registration have been strictly enforced.

General recommendations of Commission as to artistic copyright.

to sell his sketches and studies for a finished picture without infringing the copyright in the picture.

10. With regard to the registration of paintings and drawings, that it be optional so long as the property in the picture, and the copyright, are vested in the same person, but that if they are separated, registration should be compulsory.

11. That in these cases the register should contain :—

(a) The date of the agreement separating copyright.
(b) Names of parties thereto.
(c) Names and places of abode of artist and proprietor of copyright.
(d) Description of nature and subject of work, and if described, a sketch (C. C. R. § 151).

12. That registration of engravings, prints, and photographs be compulsory (C. C. R. § 159).

13. The Commission, while wishing to strengthen the power to seize piratical copies, do not feel able to recommend that a magistrate should have power to issue a search warrant for houses on evidence of reasonable cause to suspect the existence of piratical copies therein (C. C. R. § 175).

14. They recommend that power be given to seize piratical copies on the persons of hawkers, etc., by peace officers without warrant, acting under the orders and responsibility of the proprietor of copyright or his agent (C. C. R. § 178).

Recommendation of the Copyright Commission as to engravings.

Besides these general recommendations as to uniformity of law in all branches of Fine Art, the Commission specially recommend with regard to engravings :—

1. That the transfer of copyright in engravings should be on the same basis as that of photographs, *i.e.* that the copyright in a print should belong to the owner of the plate from which it is printed, but that, in the case of engravings, etc., made on commission, no copies be sold or exhibited without the sanction of the person who ordered them (§§ 121, 122).

2. That engravings and prints be subject to compulsory registration, as in the case of books, *i.e.* that no action shall be brought in respect of anything made or done before registration, or in respect of any dealings, after registration, with anything so made or done before registration, unless registration has been effected within a month of publication (§§ 154, 159).

3. The general provisions giving power to search for and seize piratical copies are to be applied to engravings and prints.

The Commission, while assimilating the law as to sculpture, to that of paintings and drawings, specially recommend :—

1. That every form of copying sculpture, whether by sculpture, modelling, photography, drawing, engraving, or otherwise, should be included in the protection of copyright. A proviso is added to this that if the sculpture is only copied as an accessory in a scene, such copying shall not be an infringement (C. C. R. § 99). Recommendation of the Copyright Commission as to sculptures.

2. That copyright should exist in copies or casts from the antique (C. C. R. § 100).

3. That the powers to search for and seize piratical copies of sculptures should be the same as those recommended for paintings and other works of fine art (C. C. R. § 180).

The Commission therefore propose in effect the extension of copyright in sculpture; this recommendation is based mainly on the damage to the reputation of the sculptor by incorrect copying, and the money value of photographs of sculptures. Of recent years, the increase of cheap methods of reproduction has led to increased importance being attached to copyright in sculpture. Recommendations of Commission.

CHAPTER VIII.

COLONIAL COPYRIGHT.

History and present position of Colonial Copyright.—Act of 1886.

History and present position of colonial copyright.

ALTHOUGH the relations of the English law of Copyright to special colonial laws, and the position of colonial authors and publishers, have only as yet been brought into prominence in practice with regard to Canada, questions of importance must sooner or later arise with regard to all the colonies (*a*).

Legislation on the subject at present has the following results. The imperial Act of 1842, in conjunction with the decision of the House of Lords in *Routledge* v. *Low* (*b*), provided that Imperial Copyright in books could only be secured by publication in the United Kingdom, but, when secured, extended over the whole of the British dominions (*c*). A colonial author publishing his book in the colony, if there was any colonial law of copyright, obtained the copyright provided by that law, which only extended over the colony of publication. If there was no colonial law, he had no protection. This was naturally a great grievance to the colonial author and publisher.

(*a*) See generally C. C. Rep. ss. 187–201; C.C. Ev. qq. 5345–5387, 5800–5841.

(*b*) (1868) L. R. 3 H. L. 100.

(*c*) 5 & 6 Vict. c. 45, s. 29.

History and present position of colonial copyright.

But further, the colonial public suffered from the unsuitable or insufficient supply of English copyright works. The scattered population of an infant colony, lacking the distributive organizations of advanced civilization, were unable to purchase the high-priced editions which the mechanism of circulating libraries enabled English authors and publishers to issue. Yet colonial publishers were debarred from printing cheap and suitable editions of English works unless the author's consent were obtained, and were prevented from importing the cheap foreign reprints which other countries, especially the United States and Germany, provided. English publishers naturally did not consider it worth while to publish a cheap colonial edition, whose import into the United Kingdom might spoil their English market.

The special pressure of the North American colonies on these grounds led in 1847 to the passing of the *Foreign Reprints Act* (*d*), which enabled the Crown to suspend the Act of 1842 so as to admit foreign reprints into particular colonies, if proper provision were made for securing remuneration to the authors of these reprinted books, by collecting a duty or royalty on their import. Though this Act was passed to meet the special case of Canada, nineteen colonies had at the time of the Copyright Commission under it obtained the benefit of special Orders in Council, by making what were supposed to be suitable arraugements for the protection of British authors. From 1866 to 1876 (*e*) Canada paid to the British Government under this Act the sum of £1084 13s. 3½*d*., the remaining eighteen colonies only contributing £70 19s. 11*d*., seven of them paying nothing at all. It was admitted that the measures for protection were absolutely inefficient,

(*d*) 10 & 11 Vict. c. 95.
(*e*) C. C. Rep. s. 193.

and that large numbers of reprints were smuggled in without paying duty.

History and present position of colonial copyright.

The decision in *Routledge* v. *Low* (*f*) in 1868 called attention to the unsatisfactory position of colonial authors and publishers, and the Canadian Government in 1869 proposed that Canadian publishers should be allowed to reprint the books of English authors without their consent, on paying them a royalty of 12½ per cent. on the published price. After much discussion however this proposal fell to the ground, and in 1875 the Canadian Legislature passed a Copyright Act giving power to any person domiciled either in Canada or any part of the British dominions, or in any country having a copyright treaty with Great Britain, to obtain copyright in Canada for twenty-eight years, with a second term of fourteen years by either publication or republication of his work in Canada. This colonial copyright was concurrent, but not conterminous, with the imperial right. Under the Act, up to November, 1876, thirty-one works of British authors were published with their consent in Canada, at a price not only far lower than that of the English copyright edition, but also lower than that of the competing reprints from the United States, which were thus practically excluded from Canada.

In consequence of doubts as to the effect of the Imperial Act of 1842 on the Canadian Act, a special English Act in 1878 gave power to her Majesty to assent to the Canadian Act (*g*); and, a question having arisen as to whether these Canadian reprints should be allowed to enter the United Kingdom, a clause was added prohibiting such foreign imports (*h*).

(*f*) (1868) L. R. 3 H. L. 100. (*g*) 38 & 39 Vict. c. 53.

(*h*) A vigorous discussion has been going on since 1889 as to proposals by the Canadian Government to give Canadian Copyright

Colonial copyright has received a considerable extension from the International Act of 1886 (*i*), which provides that the English Copyright Acts shall apply to a literary or artistic work first produced in a British possession in like manner as they apply to a work first produced in the United Kingdom. It follows that a book produced in the Australian colonies obtains at once the same copyright throughout the British dominions that it would have enjoyed if first produced in England (*k*). It is not clear that the author of a work of art is in a similar happy position; if his work had been first produced in the United Kingdom, he would have obtained under the Act of 1862 (*l*) a copyright unlimited by the section conferring it, but limited in its remedies to the United Kingdom (*m*). But if the author is a British subject, or resident within the dominions of the Crown, he has already such a copyright under the Act of 1862 (*n*), without need of recourse to the Act of 1886. The Act of 1862 did not give colonial works of art copyright in other colonies; and the Act of 1886 cannot therefore do so, unless the provision at the end of s. 9 of the Act of 1886, "that this Act shall apply to every British possession as if it were part of the United Kingdom," can be construed as extending the copyright conferred by the Act of 1862 in the case of colonial works of art, to the British dominions, a construction which seems

History and present position of colonial copyright.

Act of 1886.

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only to works actually printed in Canada. The question is one of policy rather than law, and the whole of the correspondence on the subject was printed in a Bluebook (1895, C. 7783). An Act has recently been passed by the Dominion Parliament (63 & 64 Vict. (Canada), c. 25).

(*i*) 49 & 50 Vict. c. 33, s. 8.
(*k*) 5 & 6 Vict. c. 45, s. 29.
(*l*) 25 & 26 Vict. c. 68, s. 1.
(*m*) *Ibid. Cf.* ss. 6, 8, 9, 10, 11.
(*n*) 25 & 26 Vict. c. 68, s. 1.

History and present position of colonial copyright.

strained and improbable. It seems to follow that the Act of 1886 gives nothing to artistic works produced in the colonies that they had not already.

If the colonial law provides for registration of literary or artistic works, the English provisions as to registration are not to apply (*o*), and duly certified extracts from the Colonial Register are to be admissible in evidence in English Courts (*p*). No copies of any colonial book need be delivered to libraries in England (*q*). In the case of existing colonial legislation the English Acts may be modified by Order in Council; and fresh colonial legislation may be passed and hold good within the limits of the colony passing it (*r*).

Another result of the Act of 1886 (*s*) is that works produced in the colonies enjoy the benefit of copyright in the foreign countries of the Copyright Union established under the Berne Convention (*t*), and that works produced in those foreign countries have copyright in the colonies under the Order in Council of November 28, 1887 (*u*).

A very important question as to copyright in the colonies of British works arises under the Customs Consolidation Act (*x*). Under the Act of 1842 (*y*) copyright in such works extends to "every part of the British

(*o*) 45 & 46 Vict. c. 33, s. 8, sub-s. 1 (c).
(*p*) *Ibid.* sub-s. 2. (*q*) *Ibid.* sub-s. 1 (b).
(*r*) *Ibid.* sub-ss. 3, 4.
(*s*) Sect. 9 and Berne Convention, Art. 19.
(*t*) See Chap. IX., *post*, p. 227.
(*u*) *Ibid. post*, p. 224. See also the Orders in Council as to Austria and the Colonies; *London Gazette*, May 8, 1894, and Feb. 8, 1895, applying to all colonies except India, Canada, The Cape, New South Wales, and Tasmania.
(*x*) 39 & 40 Vict. c. 36, s. 152.
(*y*) 5 & 6 Vict. c. 42, s. 29. See also The Revenue Act, 52 & 53 Vict. c. 42, s. 1.

dominions." But s. 152 of the Customs Act reads thus :— "Any books wherein the copyright shall be subsisting, first composed or written or printed in the United Kingdom, and printed or reprinted in any other country, shall be and are hereby absolutely prohibited to be imported into the British possessions abroad (z): provided always that no such books shall be prohibited to be imported as aforesaid unless the proprietor of such copyright or his agent shall have given notice in writing to the Commissioners of Customs that such copyright subsists, and in such notice shall have stated when the copyright will expire." This read literally appears to deprive English authors of their copyright unless and until they have given notices to the Commissioners of Customs, thus repealing in effect ss. 17 and 29 of the Act of 1842. It appears very doubtful whether it is really more than a direction that the Customs need not trouble to inquire into copyright unless they have notices from the owner of the copyright. But English authors and publishers will certainly be safer if they give to the Commissioners of Customs in the United Kingdom the notices required by the Act.

History and present position of colonial copyright.

(z) This prohibition is nearly the same as that already contained in s. 17 of 5 & 6 Vict. c. 42.

CHAPTER IX.

INTERNATIONAL COPYRIGHT.

History of International Copyright.—Berne Convention.—Rights of foreign authors in British dominions.—Rights of British authors in foreign countries.—The attitude of the United States.—The Chace Act.

History of International copyright.

UNTIL the year 1886, International Copyright in the British dominions, that is to say, copyright in works first published out of the British dominions, rested on an Act of 1844 (*a*), under which the Queen was empowered by Order in Council to extend to literary or artistic works first published in any foreign country the benefits of the English Copyright Acts on certain terms and for certain periods specified in the Act and Orders in Council made under it. In pursuance of these provisions a large number of Orders in Council were promulgated (*b*), and the various European countries had also numerous copyright treaties *inter se*. This resulted in considerable complications, the rights of an author in foreign countries varying according to the particular treaty or Order in

(*a*) 7 & 8 Vict. c. 12, amended by 15 & 16 Vict. c. 12 (France) and 38 Vict. c. 12. See especially s. 19 of 7 & 8 Vict. c. 12, which may conflict with s. 1 of 25 & 26 Vict. c. 68, as to pictures made abroad by British subjects.

(*b*) See Index to *London Gazette*, heading "Copyright Abroad," and Appendix to Copinger on Copyright.

Council with that country, and in 1885 an attempt was made by several of the great powers of Europe to secure uniformity through their dominions. A Conference of European Powers was summoned at Berne in 1885, at which a draft Convention was agreed to, and the Conference then adjourned to enable the parties thereto to obtain from their respective Legislatures Acts giving effect to the draft Convention. In the United Kingdom accordingly power was obtained from Parliament by an Act of 1886 (*c*), enabling the Queen to issue Orders in Council embodying the chief features in the new Convention. The Conference then reassembled at Berne, and on September 5, 1887, the "Berne Convention" was signed: on November 28, 1887, an English Order in Council was issued (*d*), which is to be construed as if it formed part of the Act of 1886 (*e*), and came into operation on December 6, 1887 (*f*). This order adopted in full the Berne Convention (*g*), a translation of which is incorporated in a schedule; and repealed all the existing Orders in Council (*h*), which are also enumerated in a schedule (*i*). The result is that, in the countries whose governments are parties to the Berne Convention, a comparatively uniform system of International Copyright now prevails.

History of International copyright. Berne Convention.

The system established by the Act of 1886, the Order in Council of November 28, 1887, and the Berne Convention of September 5, 1887, is the following.

It applies to the following countries: The British

(c) 49 & 50 Vict. c. 33.
(d) Appendix, pp. 293–305.
(e) Order, s. 8.
(f) *Ibid.* s. 9.
(g) *Ibid.* s. 1.
(h) *Ibid.* s. 7.
(i) *Ibid.* Schedule II.

Berne Convention.

Empire (*k*), Belgium, France, Germany, Italy, Spain, Switzerland, Luxembourg (*l*), Monaco (*m*), Norway (*n*), Japan (*o*), Tunis, and Hayti, which are called the "Copyright Union" (*p*).

Pursuant to Article 7 of the Final Protocol of the Berne Convention, a Conference was held at Paris in the spring of 1896, which resulted, on May 4, 1896, in an Additional Act modifying the Convention of 1887 (*q*), ratified at Paris on March 7, 1898, and adopted by Order in Council of March 8, 1898.

Austria and Hungary have a separate Convention, which proceeds on the same lines as the Berne Convention, and applies to the United Kingdom and all colonies except India, Canada, The Cape, New South Wales, and Tasmania (*r*).

Rights of foreign authors in British dominions.

The rights of foreign authors in the British dominions rest upon the Order in Council of November 28, 1887, which incorporates the Berne Convention (*s*), and is made under the authority of the Act of 1886 (*t*), as modified by the Additional Act, and Order in Council of March 8, 1898 (*q*).

The rights of English authors in the foreign countries of the Copyright Union rest upon the Berne Convention as modified by the Additional Act of Paris (*q*), together

(*k*) *Cf.* 49 & 50 Vict. c. 33, s. 9, with Art. 19 of the Convention, *et ante*, p. 211.

(*l*) By Order in Council, August 14, 1888.

(*m*) By Order in Council, October 15, 1889.

(*n*) By Order in Council, August 1, 1896.

(*o*) By Order in Council, August 8, 1899.

(*p*) Order in Council, s. 2; Berne Convention, Art. 1.

(*q*) See Appendix, p. 305, and Treaty Series, No. 14 (1897), C. 8681.

(*r*) Convention, April 24, 1893; Order in Council, April 30, 1894 (*London Gazette*, May 8), extended by Order in Council, February 2, 1895 (*London Gazette*, February 8).

(*s*) Order in Council, s. 1. (*t*) 49 & 50 Vict. c. 33.

with any legislation which has been found necessary in any particular country to give effect to that convention, similar to the English Act of 1886. An English author seeking to prevent infringements of his copyright in foreign countries must apply to the foreign and not to the English Courts. Thus in *Morocco Bound Syndicate* v. *Harris* (*u*), the English Court refused to restrain a British subject from performing the plaintiff's British play in Germany. Rights of foreign authors in British dominions.

The author of any literary or artistic work (*v*) first produced after December 6, 1887, in one of these countries, has, if he is a citizen of one of these countries, and subject to the provisions of the International Copyright Acts, the Order in Council, and the Convention as modified by the Additional Act, the same copyright in the British dominions (*w*) as if the work had been first produced in the United Kingdom (*x*). If the author of a work produced in one of the countries of the Union is not a citizen or subject of any of those countries, the privilege of copyright under the Convention is obtained by the publisher of the work, but presumably he only obtains it as trustee for the author (*y*).

A question of great importance has been raised and not yet finally decided as to the effect of section 2, subsection 3, of the Act of 1886, which reads as follows:—"(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

(*u*) (1895) 1 Ch. 535.

(*v*) Defined, Berne Convention, Art. 4.

(*w*) *Cf.* 49 & 50 Vict. c. 33, s. 9, with Art. 19 of the Convention, *et ante*, p. 211.

(*x*) Order, s. 3.

(*y*) Convention, Arts. 2, 3; Order in Council, s. 4.

Right of foreign authors in British dominions.

work was first produced." This is substantially repeated in section 3 of the Order in Council. The effect of this provision in its widest sense is to render it necessary in each case to examine the law of the country of origin, and then to compare the English law and the law of the country of origin, and if the English law appears to give greater rights, to cut them down to the level of the country of origin.

There was no trace of such a restriction in the International legislation prior to 1886; the Berne Convention, whose object as stated in its preamble was to protect "effectually, and in as uniform a manner as possible," the rights of authors, only provides in Article 2 that the enjoyment in any country of the rights which its law grants to natives cannot exceed the term of protection accorded in the country of origin. This only deals with the length of protection and not with its extent. It appears from *Hanfstaengl* v. *American Tobacco Company* (*z*) that the Courts will interpret the Act of 1886 so as to give effect to the Convention unless they are compelled to depart from it by the plainness of the words. The suggested meaning of the proviso quoted from the Act will undoubtedly depart from the Convention in limiting the protection given to foreign authors in a way in which it is not limited in the Convention, and also in introducing not the uniformity aimed at by the Convention, but the most puzzling diversity, inasmuch as every foreign author will enjoy in England a different copyright according to his nationality, his exact rights being derived from the English law as modified by that of his own country.

It is however difficult to give any intelligible meaning to the terms "greater right," which does not defeat the

(*z*) (1895) 1 Q. B. 347.

Convention. The most plausible meaning suggested is that these words were intended to deal with such cases as those contained in clauses 1 and 2 of the Final Protocol, pointing to countries which give no copyright to photographs, or ballets, and are designed to make sure that a foreign author shall not enjoy copyright in a work in which he would have no copyright at all in his own country. But the fatality which seems to attend the drafting of Copyright Acts has been specially destructive in this case. There are dicta in the series of Living Picture cases (*a*) which support the view that the words "greater right" must be given their full meaning, but it did not become necessary formally to decide the point. The Berne Convention defines the country of origin of the work as the country where the work was first published, and the Court of Appeal construed the expression "produced" in section 2, sub-section 3, of the Act of 1886, as having the same meaning, in order to give effect to the Convention in spite of the definition in section 11 of the Act (*b*).

Rights of foreign authors in British dominions.

In the case of literary or artistic works first produced before December 6, 1887, in one of these foreign countries and still the subject of copyright in such country on the coming into force of the Convention (*c*), such works are the subject of copyright as if the International Copyright Acts and Order in Council had been in force at the date of their production, subject to a proviso for the protection of existing rights and interests to be referred to hereafter (*d*). It has been suggested that this construction of section 6 of the Act of 1886 is too

Works produced before the Berne Convention.

(*a*) See note, *ante*, p. 183.
(*b*) *Hanfstaengl* v. *American Tobacco Co.* (1895), 1 Q. B. 347.
(*c*) Convention, Art. 14, Act of 1886, s. 6.
(*d*) Act of 1886, s. 6: *post*, p. 221.

Works produced before the Berne Convention.

wide, and that it only refers to works produced after its passing, and before the date at which the Order in Council in question comes into operation, and not to works produced before the passing of the Act. This contention has been held erroneous by Charles, J., in *Hanfstaengl* v. *Holloway* (*e*), where, in the case of a picture made in Germany before 1886, and the subject of German copyright when the Convention came into force, the learned judge held the representatives of the painter entitled to protection in England. The only other authority bearing on the question is *Lauri* v. *Renad* (*f*). In that case L. was the assignee of the rights of the authors of a French play and certain translations thereof. Under the English statutes before 1886, the right of translating that play had become common property in England, but not in France, in the year 1884. The Court of Appeal *held* that the Act of 1886, together with the Berne Convention and Order in Council, did not revive or recreate an expired copyright. Lindley and Bowen, L.JJ., expressly declined to decide to what extent the Act was retrospective; Kay, L.J., suggested that, as to translations, the Act of 1886 did not extend further than to works produced after the passing of the Act of 1886, and before the coming into operation of the Order in Council; and treated the work in question as having fallen into the public domain, so far as the right to translate it was concerned. This decision clearly does not touch the point decided in *Hanfstaengl* v. *Holloway* (*g*); but it is respectfully submitted that the decision was wrong. The 14th Article of the Convention makes the Convention apply "to all

(*e*) (1893) 2 Q. B. 1.
(*f*) (1892) 3 Ch. 402.
(*g*) (1893) 2 Q. B. 1.

works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin," and the Act of 1886 is passed, as its preamble recites, to carry the Convention into effect. "*Le Voyage en Suisse*" had not in 1887 fallen into the public domain in France, its country of origin; the fact that it could in 1886 have been translated in England, which was not its country of origin, appears immaterial, except to justify the proviso to section 6 of the Act of 1886, which was not applicable in *Lauri* v. *Renad* (*h*). It appears from the same reasoning to be immaterial that the author of a work produced before 1886 had not acquired English copyright, by failing to register within a year of first publication, as required by the earlier Copyright Act and Orders in Council, provided that in 1887 his work was the subject of copyright in the country of origin so as to come within section 14 of the Convention. This, indeed, was the state of facts in *Hanfstaengl* v. *Holloway* (*i*).

Works produced before the Berne Convention.

It was obvious that this construction of the Act of 1886 might work hardship on Englishmen who had produced, and invested capital in, a work not then the subject of English copyright, but which acquired English copyright by the Act of 1886. The proviso to section 6 of that Act was therefore enacted to meet such cases. Under that section it will be a defence for any person sued for a breach of copyright in a foreign work to show: (1.) That before December 2, 1887 (*j*), he produced (*k*) the work in question in the United Kingdom, without contravening any existing copyright (*l*).

Protection of existing interests.

(*h*) (1892) 3 Ch. 402. (*i*) (1893) 2 Q. B. 1.

(*j*) Being the date of the publication of the Order in Council.

(*k*) Defined in s. 11 of the Act of 1886.

(*l*) "Lawfully" so defined by Smith, J., in *Moul* v. *Groenings* (1891), 2 Q. B. at p. 448.

Protection of existing interests.

(2.) That on December 2, 1887, he had rights or interests arising from or in connection with such production which were at that date subsisting and valuable.

(3.) That the relief claimed by the plaintiff under section 6 of the Act of 1886 would diminish or prejudice those rights or interests as existing on that date.

The second condition has been the subject of careful discussion in the cases of *Moul* v. *Groenings* (*m*), *Schauer* v. *Field* (*n*), and *Hanfstaengl* v. *Holloway* (*o*). The result is that the term "*rights*" must be confined to legal rights, such as the adaptor's right in an original adaptation or translation of a play (*p*), or to the right to the sole use of a trade-mark (*q*), as distinguished from the right to do an act in the popular sense that no one can prevent one from doing it.

The term *interests* applies to the cases where persons, without having any legal right to produce a work, have yet on December 2, 1887, invested capital or skill in the production of the work, the return for which they will lose if their production of the work is stopped. Thus, in *Moul* v. *Groenings* (*r*), a bandmaster, who had, before December 2, 1887, bought a copy of a polka for five shillings, made band parts, and trained his band to perform it, was held to have on that date a subsisting and valuable interest sufficient to defeat the foreign author's attempt to prevent his further performing it. In *Schauer* v. *Field* (*s*), a candle manufacturer who had registered the plaintiff's picture as a trade-mark before December 2,

(*m*) (1891) 2 Q. B. 443.
(*n*) (1893) 1 Ch. 35.
(*o*) (1893) 2 Q. B. 1.
(*p*) See in *Moul* v. *Groenings*, at p. 449.
(*q*) As in *Schauer* v. *Field*, *v.s.*
(*r*) (1891) 2 Q. B. 443.
(*s*) (1893) 1 Ch. 35.

1887, was held to have on that date a subsisting and valuable interest in advertising what was substantially his trade-mark after that date. On the other hand, in *Hanfstaengl* v. *Holloway* (*t*), a pill manufacturer, who had printed in England before 1887 a picture of the plaintiff's as an advertisement of his pills, and distributed all the copies so printed, was *held* not therefore entitled to print in Germany further editions of the picture from fresh stones after 1887. Protection of existing interests.

It should be noted that the defendant may rely on subsisting and valuable interests in persons other than himself if the relief asked by the plaintiff would prejudice those interests. Thus, in *Moul* v. *Groenings* (*u*), it was suggested that the English printer of the music must be considered, and in *Hanfstaengl* v. *Holloway* (*v*) an attempt was made to protect the defendants by alleged interests in the printer and publisher.

In *Moul* v. *Groenings*, Smith, J. (*w*), and in *Hanfstaengl* v. *Holloway* (*v*), Charles, J., treated "interest" as meaning pecuniary interest. From this, Chitty, J., in *Schauer* v. *Field* (*x*) appears to dissent, but the term "valuable interest" appears clearly to contemplate some money value or investment. It would further seem that continued production after 1887 will only be allowed until the valuable interest of money invested is recouped, and that a person who has bought a book and published one edition before 1887, will not therefore be allowed to publish twenty editions after 1887, if the first edition has paid its expenses.

(*t*) (1893) 2 Q. B. 1.
(*u*) (1891) 2 Q. B. 443.
(*v*) (1893) 2 Q. B. 1.
(*w*) (1891) 2 Q. B. at p. 450.
(*x*) (1893) 1 Ch. at p. 41.

Duration. The duration of this copyright will be for either the English period of copyright or that in the country where it is produced, whichever is the shortest (*y*).

Person entitled. The person entitled to this copyright will be the author or his assigns, or in cases where the author is not a subject or citizen of any of the foreign countries of the Copyright Union, the publisher will, for the purposes of any legal proceedings in the United Kingdom, be deemed to be entitled to the copyright as if he were the author, but without prejudice to the rights of such author and publisher between themselves (*z*).

Extent. The extent of this copyright is throughout the British dominions (*a*), the nature of the right being that existing in the United Kingdom (*b*), (and not according to colonial statutes).

Formalities. The Act of 1886, s. 4, provides that the provisions of the International Copyright Acts as to registration and delivery of copies of works shall only apply so far as is provided by the Order in Council. The Order in Council contains no such provision, and the provisions of the International Copyright Acts as to registration and delivery of copies therefore do not apply (*c*).

(*y*) 49 & 50 Vict. c. 33, s. 2, sub-s. 3, and Order in Council, s. 3. The special legislation of some countries, prolonging the copyright in particular works, will not avail in England, if the new period exceeds the English period.

(*z*) Act of 1886, s. 2, sub-s. 2; Order in Council, s. 4; Convention, Art. 3, as modified by Art. 3 of Act of Paris.

(*a*) Act of 1886, s. 9.

(*b*) Order, s. 3.

(*c*) *Hanfstaengl* v. *American Tobacco Co.* (1895), 1 Q. B. 347; affirming *Hanfstaengl* v. *Holloway* (1893), 2 Q. B. 1, in which Charles, J., declined to follow the opinion expressed by Stirling, J., in *Fishburn* v. *Hollingshead* (1891), 2 Ch. 371, that registration under the English Acts was still necessary to entitle the foreign author to sue in England. The point, which is complicated, arises thus:—The "International Copyright Acts," as defined in the Act of 1886, are 7 & 8

A difficult question may arise whether the provision that the foreign author is to enjoy the rights which the law grants to natives, expressly excluding the provisions as to Registration and deposit of copies, requires him to comply with other provisions which are conditions precedent of the English author's acquiring a right. For instance, must a foreign engraving have on it the date of first publication and name of the proprietor (*d*)? Must a foreign work of sculpture have on it the name of the proprietor and a date (*e*)? Must foreign music bear on the title-page a notice to the effect that the right of public performance is reserved (*f*)? It is submitted that Formalities.

Vict. c. 12; 15 & 16 Vict. c. 12; 38 & 39 Vict. c. 12; and 25 & 26 Vict. c. 68, s. 12; and the provisions of those Acts with regard to the registry and delivery of copies are to be found in 7 & 8 Vict. c. 12, ss. 6–9. Sect. 6 especially provides for a registration and delivery of one copy of the foreign work. This proviso by the joint operation of 49 & 50 Vict. c. 33, s. 6, and the Order in Council of November 28, 1887, does not apply; but it was suggested that as a foreign work is to have the same rights as if produced in the United Kingdom, the provisions of the English Acts as to registration and delivery of copies must still apply. This suggestion, if accurate, would make the position of the foreign author worse under the new Order than under the old system; but it has now been held inaccurate. It is clear that the provisions of the International Act of 1884 as to registration and delivery of copies superseded the separate provisions of the various Copyright Acts whose benefits were extended to foreign works by the Act of 1844, and that, having complied with the International provisions as to registration and delivery of copies, it was not further necessary to comply with the English provisions also. In practice only one registration was made, and that under the International Act. It follows that where the International Act of 1886 dispenses with the International provisions as to registration altogether, it is no more necessary now than it was under the Act of 1844 to comply with the more onerous English provisions.

(*d*) *Ante*, p. 173.

(*e*) *Ante*, p. 204.

(*f*) *Ante*, p. 99. In this case, however, there is practically no difficulty, as section 9 of the Berne Convention has a similar requirement.

Formalities. these formalities are not imposed upon the foreign author, who is given the same rights as the native author has, without being subject to his duties.

The provisions relating to the proof of the existence of copyright in a foreign plaintiff suing under the Order in Council of November 28, 1887, are a little obscure, and are to be gathered from s. 7 of the Act of 1886; s. 3 of the Order in Council, and Arts. 2 and 11 of the Berne Convention (*g*).

Translations. A foreign author has also the right for ten years after the first publication of his book in the foreign countries

(*g*) By s. 3 of the Order in Council, the foreign author shall have the same rights as if the work had been first produced in the United Kingdom; but this, as has been seen (note *c*, *ante*), does not impose on him the necessity of registering under the Eng ish Copyright Acts. By Art. 2 of the Convention 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 by Art. 11 it is provided that an author whose name is indicated on the work (in anonymous works, the publisher), in the accustomed manner 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: provided that if necessary the tribunals may require 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. And s. 7 of the Act of 1886 appears to provide for the authentication and reception in English Courts of certificates for this purpose. It would seem that a foreign author provided with a certificate, duly authenticated under s. 7 of the Act of 1886, of compliance with the conditions and formalities prescribed by law in the country of origin is certainly entitled to sue; but it would also seem under Art. 11 of the Convention that the mere fact of his name appearing as author on the work will throw upon the other side the burden of proving that the conditions and formalities of the country of origin have not been complied with. In the same way, it is submitted that an English author will be perfectly safe in suing in a foreign Court with a certificate of his registration at Stationers' Hall according to the appropriate English Act; but that under Art. 11 of the Convention the mere fact of his name appearing as author on the work will throw on the other side the burden of proving that he has not complied with the formalities required by English law.

of the Copyright Union of preventing the production in or importation into the British dominions (*h*) of any unauthorized translation of his work (*i*). If at the end of ten years he has not published an authorized translation (*k*) in the English language, he loses this right; but if he has published such a translation the right is coexistent with his copyright (*i*). Translations.

An author or artist belonging to one of the countries of the Union publishing his literary or artistic work for the first time in the United Kingdom has, in every other country of the Copyright Union, the same right as the law of that country gives to natives (*l*). Rights of British authors in foreign countries.

To enjoy these rights the British author must accomplish the conditions and formalities prescribed by law in the country of origin, *i.e.* the United Kingdom (*m*); *i.e.* he must register if required by the appropriate English Statutes (*n*).

The duration of this right is the same as that provided by the law of the country of origin; if the work is simultaneously published in several countries, that in which the shortest term of protection is accorded by law, is treated as the country of origin. The right extends throughout the countries which are parties to the Copyright Union, and their colonies or foreign possessions, if such country has declared its accession to the Convention in respect of its colonies.

(*h*) 49 & 50 Vict. c. 33, s. 9.

(*i*) This appears to be the effect of section 5 of the Act of 1886; and Art. 5 of the Additional Act of Paris, amending Art. 5 of the Berne Convention, appears to have the same effect. The original Article of the Convention was capable of a different meaning.

(*k*) Which must be literal and full: *Wood* v. *Chart* (1870), L. R. 10 Eq. 193.

(*l*) Convention, Art. 2, amended by Act of Paris.

(*m*) Convention, Art. 2.

(*n*) See note (*c*), *ante*, p. 224.

Rights of British authors in foreign countries.

Works published by English authors before the date of the Convention, have, subject to any restrictive provisions made or to be made under the Convention (*o*), the same rights as if the Convention had been in force at the date of their first publication (*p*).

An English author has also the right for ten years after first publication of his work of preventing any translation of his work from being produced in any of the countries of the Copyright Union (*q*); on the expiration of this term his sole right ceases, unless he has produced during that period a translation in the language of the country in which he is claiming protection (*r*).

The only provisions as to registration and delivery of copies appear to be those requiring compliance with the formalities of the country of origin (*s*). The question of proof of copyright in a foreign country has already been dealt with (*t*).

It only remains to add that Article 17 of the Convention and the Final Protocol contemplate the revision of the Convention by subsequent conference. This was acted upon by the Conference in Paris in 1896, ratified in 1898, and further meetings are contemplated.

Copyright in the United States.

Copyright in the United States.

The enactment in 1891 of the Chace Act as part of the law of the United States has rendered it possible for authors not citizens of or resident in the United States

(*o*) Final Protocol, s. 4, p. 302, amended by Act of Paris, p. 306.
(*p*) Convention, Art. 14.
(*q*) Convention, Art. 5, as amended by Act of Paris.
(*r*) Convention, Art. 5, 6, as amended by Act of Paris.
(*s*) Convention, Art. 2, *et ante*, note (*g*), p. 226.
(*t*) Convention, Art. 11, *et ante*, note (*g*), p. 226.

to obtain copyright therein for their literary and artistic works. The Act itself is printed in full at the end of this chapter (*u*); its main outlines are as follows :— Copyright in the United States.

After July 1, 1891 (*v*), any citizen or subject of a foreign country, which has been declared by proclamation by the President of the United States, either :— (1) to permit to citizens of the United States the benefit of copyright on substantially the same basis as its own citizens:

or :—(2) to be a party to an international agreement which provides for reciprocity in the granting of copyright, and to which the United States may become at its will a party (*w*) :—can obtain copyright in the United States by complying with the following conditions (*x*).

I. On or before the day of first publication he must deliver to the Librarian of Congress a printed copy of the title of the literary or dramatic work, or a description of the artistic work (*y*).

II. Not later than the day of first publication, he shall deliver to the Librarian of Congress, two copies of the literary or dramatic work, engraving, photograph or similar work, or a photograph of the artistic work (*z*).

(*u*) Further information as to the details of the law of the United States can be found in Mr. E. J. MacGillivray's work "The Law of Copyright," pp. 235–300. Especially the United States Courts require some originality, intellectual labour, and literary merit, in the work they protect. *Mott* v. *Clow* (1897), 53 U. S. App. 461; MacGillivray pp. 237, *et seq.*

(*v*) Sect. 12.

(*w*) Sect. 13 : The Berne Convention is such an agreement.

(*x*) Sect. 4952, s. 13.

(*y*) Sect. 4956.

(*z*) This deposit is probably in itself publication. See *Jewellers' Agency* v. *Jewellers' Company* (1898), 155 N. Y. 241. MacGillivray, p. 261. And therefore English publication should be simultaneous with United States deposit.

Copyright in the United States.

Provided that in the case of a book, photograph, chromo or lithograph, these two copies shall have been printed in the United States (*a*).

The duration of such copyright is for forty-two years, provided that at the end of twenty-eight years certain formalities are complied with (*b*).

The person obtaining such copyright is protected from piracy in the United States (*c*), or from importations into the United States (*d*).

An English author desiring to obtain copyright in the United States must publish (*e*) his work simultaneously in the United Kingdom and the United States, the latter publication being of a book printed in the States. In the case of a play which has not been printed in England, protection can be obtained in the United States, under the author's common law right of protecting unpublished matter, acting a play not being deemed publication thereof by the Courts of the United States (*f*).

Even if the play is printed in England, the copies which must then be delivered in the States need not be printed in the States; as the proviso to that effect *only applies to books, and not to dramatic compositions* (*g*).

An American author desiring to obtain copyright in England must publish in England and the States

(*a*) Sect. 4956. It has been decided by the United States' Courts that dramatic works or music need not be printed in the United States. *Littleton* v. *Oliver* (1894), 62 Fed. Rep. 597; MacGillivray, p. 254.

(*b*) Sect. 4954.

(*c*) Sect. 4964.

(*d*) Sect. 4956.

(*e*) See note (*z*), *ante*, p. 229.

(*f*) *Palmer* v. *De Witt* (1872), 47 N. Y. 532.

(*g*) Sect. 4956.

simultaneously (*h*). He need not be resident in England at the time (*i*). Copyright in the United States.

The English Courts treat acting abroad as publication (*j*). The American dramatist must, therefore, either publish in print or perform his play in England simultaneously with its production in the States, to obtain English copyright. In so doing the American author must comply with the same formalities of registration and delivery of copies as an English author.

The President has declared the United Kingdom, France, Belgium, Switzerland, Denmark, Italy, Germany, Portugal, Spain, Mexico, and Chili, to come within the Chace Act. Citizens or subjects of foreign countries not coming within the President's proclamation cannot obtain United States copyright, even though their countries are parties to the Berne Convention (*k*). Indeed as the Chace Act has omitted the old words giving copyright to residents in America, though not United States citizens, it would seem that even a resident in America cannot obtain copyright for a work published in the States, unless he is a citizen of a country within the President's proclamation.

The unfortunate fatality that attends all copyright legislation has however appeared here also. The English law officers advised that works published in England could acquire copyright though their authors were resident in America, but they appear to have overlooked

(*h*) See note (*j*), *ante*, p. 89.

(*i*) *Routledge* v. *Low* (1868), L. R. 3 H. L. 100; judgments of Lord Cairns and Lord Westbury. The English Law Officers have given an opinion that these judgments represent the law of England, on which the President has declared the United Kingdom a country fulfilling the conditions of the Chace Act.

(*j*) *Boucicault* v. *Delafield* (1863), 1 H. & M. 597; *Boucicault* v. *Chatterton* (1876), 5. Ch. D. 267.

(*k*) Sect. 13.

Copyright in the United States.

the peculiar wording of the English Art Act of 1862, by which a work of art to acquire English copyright must be the work either of a British subject or one resident within the dominions of the Crown. Thus works of art produced by United States subjects in the United States are shut out from English copyright, though English works of art produced in England by British subjects can obtain United States copyright. This is a deplorable blot on the international agreement which should be removed as soon as possible.

REVISED STATUTES OF THE UNITED STATES OF AMERICA.

Title LX.—Patents and Copyrights. Chapter III.—Copyrights (*a*).

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

Sect. 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.

"Sect. 4954. The author, inventor, or designer, if he be still living (*d*), 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

(*a*) As amended by Acts of Congress, June 18, 1874; March 3, 1891; March 2, 1895; January 6, 1897; and March 3, 1897.

(*b*) *Omits:* "Any citizen of the United States or resident therein, who shall be." The effect of this in conjunction with sect. 13 appears to be to exclude residents in the United States who are not subjects of the United States, or of one of the foreign countries covered by the President's proclamation under sect. 13, from copyright.

(*c*) The words in italics throughout the statute are new.

(*d*) *Omits:* "And a citizen of the United States or resident therein."

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."

Sect. 4955 allows copyrights to be assigned by writings, to be recorded within sixty days after execution, in default of which they shall be void against purchasers or mortgagees for value without notice.

"Sect. 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* (*e*), 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* (*f*), *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* 560 *inclusive, in section* 2 *of the Act entitled 'An Act to reduce the revenue and equalize the duties on imports and for 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*

(*e*) These words replace the words "or other article."

(*f*) The words "map, chart, dramatic or musical composition" are omitted here, thus, as has been decided, relieving their authors from the necessity of having their work printed within the United States; the word "lithograph," which is not used earlier in the section, appears instead of the words "engraving . . . cut or print."

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

Sect. 4957 gives the form of entry to be made by the Librarian of Congress.

"Sect. 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.*"

"Sect. 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 (*g*), 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.*"

Sect. 4960 provides for penalties of twenty-five dollars for failure to comply with sects. 4956 and 4959.

Sect. 4961 requires the postmaster to give a receipt for copyright books or titles posted.

Sect. 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, in 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: "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."*

"Sect. 4963. Every person who shall insert or impress such notice, or words of the same purport (*h*), 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."

"Sect. 4964. Every person who, after the recording of the title of any book, and the depositing of two copies of such book, as provided by this Act, shall, *contrary to the provisions of this Act*, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, *dramatize, translate*, or import, or knowing the same to be so printed, published, *dramatized, translated*, or imported, sell or expose to sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay

(*g*) *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."

(*h*) "Such notice" refers to sect. 4962.

such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction."

"Sect. 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" (*i*).

Sect. 4966 fixes the damages for publicly performing copyright plays without the consent of the proprietor at not less than 100 dollars for the first, and fifty dollars for every subsequent performance.

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

Sect. 4968 requires actions for forfeiture or penalties to be brought within two years after the cause of action has arisen.

Sect. 11. (*l*) *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.*

(*i*) The amendment of March 2, 1895, fixes the damages for infringement of copyright in a photograph; if it is not of a work of art a penalty of from 100 to 5000 dollars; if it is of a work of art, a penalty of 250 to 10,000 dollars.

(*k*) *Omits*: "If such author or proprietor is a citizen of the United States, or resident therein." It can hardly have been intended by this, combined with sect. 13, to destroy the common law right of authors not citizens of the United States or of countries covered by the President's proclamation, but the statute would appear to have this effect.

(*l*) Sections of the Chace Act in 1891.

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

Sect. 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.*

[Under sect. 13 above, the President on July 1, 1891, issued a proclamation which recited the section, and that satisfactory official assurances had been given in Belgium, France, Great Britain, the British possessions and Switzerland that the law of those countries permitted citizens of the United States the same benefit of copyright as to their own citizens; and proclaimed that the first condition specified in section 13 was fulfilled in respect to the citizens and subjects of Belgium, France, Great Britain (*m*), and Switzerland. Similar proclamations have been issued as follows:—

German Empire . . .	April 15, 1892.
Italy	Oct. 31, 1892.
Denmark	May 8, 1893.
Portugal	July 20, 1893.
Spain	July 12, 1895.
Mexico	Feb. 27, 1896.
Chili	May 25, 1896.]

(*m*) As regards Great Britain the official assurance is understood to have been given by the Government in reliance on an opinion of the Law Officers that a citizen of the United States could obtain British copyright by publishing a work here, while residing in the United States. The Law Officers appear to have followed the opinions of Lord Cairns and Lord Westbury in *Routledge* v. *Low* (1868), L. R. 3 H. L. 100, disregarding the contrary opinions of Lords Cranworth and Chelmsford. There has, however, been no formal decision of the English Courts to this effect; and see as to works of art, p. 231, *ante*.

APPENDIX OF STATUTES.

8 Geo. II. c. 13 (*a*).

An Act for 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 (*b*).

Whereas divers Persons have by their own Genius, Industry, Pains, and Expense, invented and engraved, or worked in Mezzotinto or Chiaro Oscuro, Sets of historical and other Prints, in hopes to have reaped the sole Benefit of their Labours: Preamble.

And whereas Printsellers, and other Persons, have of late, without the Consent of the Inventors, Designers, and Proprietors of such Prints, frequently taken the Liberty of copying, engraving, and publishing, or causing to be copied, engraved, and published, base Copies of such Works, Designs, and Prints, to the very great Prejudice and Detriment of the Inventors, Designers, and Proprietors thereof:

For Remedy thereof, and for preventing such Practices for the future, be it enacted, &c., That from and after June 24, 1735, every Person who shall invent and design, engrave, etch, or work in Mezzotinto or Chiaro Oscuro, or, from his own Works and Invention, shall cause to be designed and engraved, etched or worked in Mezzotinto or Chiaro Oscuro, any historical or other Print or Prints, shall have the sole Right and Liberty of printing and reprinting the same for the Term of Fourteen Years, to commence from the Day of the first Publishing thereof, which shall be truly engraved with the Name of the Proprietor on each Plate, and printed on every such Print or Prints (*c*); and that if any Printseller, or other Person whatsoever, from and

After 24 June, 1735, the property of historical and other prints vested in the Inventor for 14 Years.

Proprietor's Name to be affixed to each Print.

(*a*) Chap. VII., sect. II., pp. 170–179.

(*b*) Known as "The Engraving Copyright Act, 1734." See Short Titles Act, 1896.

(*c*) Page 173, *Newton* v. *Cowie*, 4 Bing. 234; *Graves* v. *Ashford*, L. R. 2 C. P. 410.

Penalty on Print-sellers or others printing same.

after June 24, 1735, within the Time limited by this Act, shall engrave, etch, or work, as aforesaid, or in any other Manner copy and sell, or cause to be engraved, etched, or copied and sold, in the Whole or in Part, by varying, adding to, or diminishing from the main Design, or shall print, reprint, or import for Sale, or cause to be printed, reprinted, or imported for Sale, any such Print or Prints, or any Parts thereof, without the Consent of the Proprietor or Proprietors thereof first had and obtained in Writing, signed by him or them respectively, in the Presence of Two or more credible Witnesses, or knowing the same to be so printed or reprinted without the consent of the Proprietor or Proprietors, shall publish, sell, or expose to Sale, or otherwise, or in any other Manner dispose of, or cause to be published, sold, or exposed to Sale, or otherwise, or in any other Manner disposed of, any such Print or Prints without such Consent first had and obtained as aforesaid, then such Offender or Offenders shall forfeit the Plate or Plates on which such Print or Prints are or shall be copied, and all and every Sheet or Sheets (being part of or whereon such Print or Prints are or shall be so copied or printed) to the Proprietor or Proprietors of such original Print or Prints, who shall forthwith destroy and damask the same; and further, that every such Offender or Offenders shall forfeit Five Shillings for every Print which shall be found in his, her, or their Custody, either printed or published, and exposed to Sale, or otherwise disposed of contrary to the true Intent and Meaning of this Act, the One Moiety thereof to the King's most Excellent Majesty, His Heirs and Successors, and the other Moiety thereof to any Person or Persons that shall sue for the same to be recovered in any of His Majesty's Courts of Record at Westminster, by Action of Debt, Bill, Plaint, or Information, in which no Wager of Law, Essoign, Privilege, or Protection, or more than One Imparlance, shall be allowed:

Not to extend to Purchasers of Plates from the original Proprietors.

II. Provided, nevertheless, That it shall and may be lawful for any Person or Persons, who shall hereafter purchase any Plate or Plates for printing, from the original Proprietors thereof, to print and reprint from the said Plates without incurring any of the Penalties in this Act mentioned.

Limitation of Actions.

General Issue.

III. And if any Action or Suit shall be commenced or brought against any Person or Persons whatsoever, for doing or causing to be done any Thing in pursuance of this Act, the same shall be brought within the Space of Three Months after so doing (*d*); and the Defendant and Defendants, in such Action or Suit, shall or may plead the General Issue, and give the special Matter in Evidence; and if upon such Action or Suit a Verdict shall be given for the Defendant or

(*d*) This three months' limitation does not apply to the action for damages under 17 Geo. III. c. 57: *Graves* v. *Mercer* (1868), 16 W. R. 790.

Defendants, or if the Plaintiff or Plaintiffs become nonsuited, or discontinue his, her, or their Action or Actions, then the Defendant or Defendants shall have and recover full Costs (*d*), for the Recovery whereof he shall have the same Remedy as any other Defendant or Defendants, in any other Case, hath or have by Law: (*e*)

IV. Provided always, That if any Action or Suit shall be commenced or brought against any Person or Persons, for any Offence committed against this Act, the same shall be brought within the Space of Three Months after the Discovery of every such Offence, and not afterwards; any Thing in this Act contained to the contrary notwithstanding.

Section V. repealed by 30 & 31 *Vict. c.* 59; *Section VI. by* 50 & 51 *Vict. c.* 59.

7 GEO. III. c. 38 (*f*).

An Act to amend and render more effectual an Act (8 *Geo. II. c.* 13), *for Encouragement of the Arts of Designing, Engraving, and Etching Historical and other Prints* (*g*).

Preamble, reciting Act 8 G. 2, c. 13.

The original Inventors, Designers or Engravers, &c. of Historical and other Prints, and such who shall cause Prints to be done from Works, &c., of their own Invention, and also such as shall engrave, &c., any Print taken from any Picture, Drawing, Model, or Sculpture, are entitled to the Bene-

WHEREAS an Act of Parliament (8 Geo. II. c. 13), has been found ineffectual for the Purposes thereby intended: Be it enacted, That from and after January 1, 1767, all and every Person and Persons who shall invent or design, engrave, etch, or work in Mezzotinto or Chiaro Oscuro, or, from his own Work, Design or Invention, shall cause or procure to be designed, engraved, etched, or worked in Mezzotinto or Chiaro Oscuro, any Historical Print or Prints, or any Print or Prints of any Portrait, Conversation, Landscape, or Architecture, Map, Chart, or Plan, or any other Print or Prints whatsoever, shall have, and are hereby declared to have, the Benefit and Protection of the said Act, and this Act, under the Restrictions and Limitations hereinafter mentioned.

II. And from and after January 1, 1767, all and every Person and Persons who shall engrave, etch, or work in Mezzotinto or Chiaro Oscuro, or cause to be engraved, etched, or worked, any Print taken from any Picture, Drawing, Model, or Sculpture, either ancient or modern, shall have, and are hereby declared to have, the Benefit and Protection of the said Act, and this Act, for the Term hereinafter

(*d*) *Avery* v. *Wood* (1891), 3 Ch. 75. This means ordinary party and party costs.

(*e*) Repealed in part by Public Authorities Protection Act, 1893. See note, *ante*, p. 157.

(*f*) Chap. VII., sect. II., pp. 170–179. *Cf. Dicks* v. *Brooks* (1880), 15 Ch. D 22.

(*g*) To be known as "The Engraving Copyright Act, 1766" (Short Titles Act, 1896). Remainder of title repealed by S. L. R. Act, 1887, but interesting in its references to Hogarth's widow.

fit and Protection of the recited and present Act; and those who shall engrave or import for Sale Copies of such Prints are liable to Penalties.

mentioned, in like Manner as if such Print had been graved or drawn from the Original Design of such Graver, Etcher, or Draughtsman; and if any Person shall engrave, print, and publish, or import for Sale, any Copy of any such Print, contrary to the true Intent and Meaning of this and the said former Act, every such Person shall be liable to the Penalties contained in the said Act, to be recovered as therein and hereinafter is mentioned.

Sections III. and IV. repealed by 30 & 31 *Vict.* c. 59.

V. And all and every the Penalties and Penalty inflicted by the said Act, and extended, and meant to be extended, to the several Cases comprised in this Act, shall and may be sued for and recovered in like Manner, and under the like Restrictions and Limitations, as in and by the said Act is declared and appointed; and the Plaintiff or common Informer in every such Action (in case such Plaintiff or common Informer shall recover any of the Penalties incurred by this or the said former Act) shall recover the same, together with his full Costs of Suit (*g*).

VI. Provided also, That the Party prosecuting shall commence his Prosecution within the Space of Six Calendar Months after the Offence committed.

The Right intended to be secured by this and the former Act, vested in the Proprietors for the Term of 28 Years from the first Publication.

VII. And the sole Right and Liberty of printing and reprinting intended to be secured and protected by the said former Act and this Act, shall be extended, continued, and be vested in the respective Proprietors, for the Space of Twenty-eight Years, to commence from the Day of the first Publishing of any of the Works respectively hereinbefore and in the said former Act mentioned.

Limitation of Actions.

VIII. And if any Action or Suit shall be commenced or brought against any Person or Persons whatsoever for doing, or causing to be done, any thing in pursuance of this Act, the same shall be brought within the Space of Six Calendar Months after the Fact committed: and the Defendant or Defendants in any such Action or Suit shall or may plead the General Issue, and give the Special Matter in Evidence; and if, upon such Action or Suit, a Verdict shall be given for the Defendant or Defendants, or if the Plaintiff or Plaintiffs become non-suited, or discontinue his, her, or their Action or Actions, then the Defendant or Defendants shall have and recover full Costs (*g*); for the Recovery whereof he shall have the same Remedy as any other Defendant or Defendants, in any other Case, hath or have by Law. (*h*)

15 GEO. III. c. 53. The Copyright Act, 1775 (University Copyright).

(*g*) *Arery* v. *Wood* (1891), 3 Ch. 115. This means ordinary party and party costs.

(*h*) See note (*e*), p. 241, *ante*.

17 GEO. III. c. 57 (*i*).

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 (j).

Recital of 8 G. 2. c. 13; and 7 G. 3, c. 38.

WHEREAS (by) an Act of Parliament (8 *Geo. II.* c. 13), And whereas by an Act of Parliament (7 *Geo. III.* c. 38) it was (among other Things) enacted, that, from and after January 1, 1767, all and every Person or Persons who should engrave, etch, or work in Mezzotinto or Chiaro Oscuro, or cause to be engraved, etched or worked, any Print taken from any Picture, Drawing, Model, or Sculpture, either ancient or modern, should have, and were thereby declared to have, the Benefit and Protection of the said former Act, and that Act, for the Term thereinafter mentioned, in like Manner as if such Print had been graved or drawn from the Original Design of such Graver, Etcher, or Draughtsman: And whereas the said Acts have not effectually answered the Purposes for which they were intended, and it is necessary, for the Encouragement of Artists, and for securing to them the Property of and in their Works, and for the Advancement and Improvement of the aforesaid Arts, that such further Provisions should be made as are hereinafter mentioned and contained; be it enacted, that, from and after June 24, 1777, if any Engraver, Etcher, Printseller, or other Person, shall, within the Time limited by the aforesaid Acts, or either of them, engrave, etch, or work, or cause or procure to be engraved, etched, or worked, in Mezzotinto or Chiaro Oscuro, or otherwise, or in any other Manner copy in the Whole, or in Part, by varying, adding to, or diminishing from, the main Design, or shall print, reprint, or import for Sale, or cause or procure to be printed, reprinted, or imported for Sale, or shall publish, sell, or otherwise dispose of, or cause or procure to be published, sold, or otherwise disposed of, any Copy or Copies of any historical Print or Prints or any Print or Prints of any Portrait, Conversation, Landscape, or Architecture, Map, Chart, or Plan, or any other Print or Prints whatsoever, which hath or have been, or shall be engraved, etched, drawn, or designed, in any Part of Great Britain, without the express Consent of the Proprietor or Proprietors thereof first had and obtained in Writing, signed by him, her, or them respectively, with his, her, or their own Hand or Hands, in the Presence of and attested by two or more credible Witnesses, then every such Proprietor or Proprietors shall and may by and in a special Action upon the Case, to be brought

After June 24. 1777, if any Engraver,&c., shall, within the Time limited by the aforesaid Acts. engrave or etch, &c., any Print, without the Consent of the Proprietor, he shall be liable to damages.

(*i*) Chap. VII., sect. II., pp. 170-179.
(*j*) Known as "The Prints Copyright Act, 1777" (Short Titles Act, 1896).

against the Person or Persons so offending, recover such Damages as a Jury on the Trial of such Action, or on the Execution of a Writ of Inquiry thereon, shall give or assess (*k*).

54 Geo. III. c. 56 (*l*).

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 (*m*). [18th May, 1814.]

Whereas by an Act (38 *Geo. III.*, *c.* 71), the sole Right and Property in Models and Casts were vested in the original Proprietors, for a Time therein specified: And whereas the Provisions of the said Act having been found ineffectual for the Purposes thereby intended, it is expedient to amend the same, and to make other Provisions and Regulations for the Encouragement of Artists, and to secure to them the Profits of and in their Works, and for the Advancement of the said Arts: be it enacted, That from and after the passing of this Act, every Person or Persons who shall make or cause to be made any new and original Sculpture, or Model, or Copy, or Cast, of the Human Figure, or Human Figures, or of any Bust or Busts, or of any Part or Parts of the Human Figure, clothed in Drapery or otherwise, or of any Animal or Animals, or of any Part or Parts of any Animal combined with the Human Figure or otherwise, or of any Subject being Matter of Invention in Sculpture or of any Alto or Basso-Relievo representing any of the Matters or Things hereinbefore mentioned, of any Cast from Nature of the Human Figure, or of any Part or Parts of the Human Figure, or of any Cast from Nature of any Animal, or of any Part or Parts of any Animal, or of any such Subject containing or representing any of the Matters and Things hereinbefore mentioned, whether separate or combined, shall have the sole Right and Property of all and in every such new and original Sculpture, Model, Copy, and Cast of the Human Figure or Human Figures, and of all and in every such Bust or Busts, and of all and in every such Part or Parts of the Human Figure, clothed in Drapery or otherwise, and of all and in every such new and original Sculpture, Model, Copy and Cast, representing any Animal or Animals, and of all and in every such Work representing any Part or Parts of any Animal combined with the Human Figure or otherwise, and of all and in every such new and original Sculpture,

The sole Right and Property of all new and original Sculpture, Models, Copies, and Casts, vested in the Proprietors, for 14 Years.

(*k*) See Statute Law Revision Act, 1861 (24 & 25 Vict. c. 101).
(*l*) Chap. VII., sect. IV., pp. 201–204.
(*m*) "The Sculpture Copyright Act, 1814" (see Short Titles Act, 1896).

Model, Copy and Cast of any Subject, being Matter of Invention in Sculpture (*n*), and of all and in every such new and original Sculpture, Model, Copy and Cast in Alto or Basso-Relievo, representing any of the Matters or Things hereinbefore mentioned, and of every such Cast from Nature, for the Term of Fourteen Years from first putting forth or publishing the same (*o*); provided, in all and in every Case, the Proprietor or Proprietors do cause his, her, or their Name or Names, with the Date (*p*), to be put on all and every such new and original Sculpture, Model, Copy or Cast, and on every such Cast from Nature, before the same shall be put forth or published.

Works published under the recited Act, vested in the Proprietors for 14 Years.

II. And the sole Right and Property of all Works, which have been put forth or published under the Protection of the said recited Act, shall be extended, continued to and vested in the respective Proprietors thereof, for the Term of Fourteen Years, to commence from the Date when such last-mentioned Works respectively were put forth or published.

Persons putting forth pirated Copies or pirated Casts, may be prosecuted.

III. And if any Person or Persons shall, within such Term of Fourteen Years, make or import, or cause to be made or imported, or exposed to Sale, or otherwise disposed of, any pirated Copy or pirated Cast of any such new and original Sculpture, or Model or Copy, or Cast of the Human Figure or Human Figures, or of any such Bust or Busts, or of any such Part or Parts of the Human Figure clothed in Drapery or otherwise, or of any such Work of any Animal or Animals, or of any such Part or Parts of any Animal or Animals combined with the Human Figure or otherwise, or of any such Subject being Matter of Invention in Sculpture, or of any such Alto or Basso-Relievo representing any of the Matters or Things hereinbefore mentioned, or of any such Cast from Nature as aforesaid, whether such pirated Copy or pirated Cast be produced by moulding or copying from, or imitating in any way, any of the Matters or Things put forth or published under the Protection of this Act, or of any Works which have been put forth or published under the Protection of the said recited Act, the Right and Property whereof is and are secured, extended and protected by this Act, in any of the Cases as aforesaid, to the Detriment, Damage, or Loss of the original or respective Proprietor or Proprietors of any such Works so pirated; then and in all such Cases the said Proprietor or Proprietors, or their Assignee or Assignees, shall and may, by and in a Special Action upon the Case to be brought against the Person or Persons so offending, receive such Damages as a

Damages and Double Costs.

(*n*) *Caproni* v. *Alberti* (1892), 65 L. T. 785.

(*o*) *Turner* v. *Robinson* (1860), 10 Ir. Ch. 510.

(*p*) What date is not stated! But see 7 & 8 Vict. c. 12, p. 264. In *Britain* v. *Hanks* (1902), 18 Times L. R. 525, Wright, J., allowed an approximate date of first exhibition, and the name of the firm in which the artist was partner. This is much laxer than the decisions on registration of books and pictures. See p. 205, *ante*.

Jury on a Trial of such Action shall give or assess, *together with Double Costs of Suit* (*q*).

Purchasers of Copyright secured in the same.

IV. Provided nevertheless, That no Person or Persons who shall or may hereafter purchase the Right or Property of any new and original Sculpture or Model, or Copy or Cast, or of any Cast from Nature, or of any of the Matters and Things published under or protected by virtue of this Act, of the Proprietor or Proprietors, expressed in a Deed in Writing signed by him, her, or them respectively, with his, her, or their own Hand or Hands, in the Presence of and attested by Two or more credible Witnesses, shall be subject to any Action for copying or casting, or vending the same, any Thing contained in this Act to the contrary notwithstanding.

Limitation of Actions.

V. Provided always, That all Actions to be brought as aforesaid, against any Person or Persons for any Offence committed against this Act, shall be commenced within Six Calendar Months next after the Discovery of every such Offence, and not afterwards.

An additional Term of 14 Years, in case the Maker of the original Sculpture, &c., shall be living.

VI. Provided always, That from and immediately after the Expiration of the said Term of Fourteen Years, the sole Right of making and disposing of such new and original Sculpture, or Model, or Copy, or Cast of any of the Matters or Things hereinbefore mentioned, shall return to the Person or Persons who originally made or caused to be made the same, if he or they shall be then living, for the further Term of Fourteen Years. . . . (*r*).

3 WILL. IV. c. 15 (*s*).

An Act to amend the Laws relating to Dramatic Literary Property (*t*).

[10th June, 1833.]

54 G. 3, c. 156.

WHEREAS by an Act (54 Geo. 3, c. 156), it was amongst other Things provided and enacted, that from and after the passing of the said Act the Author of any Book or Books composed, and not printed or published, or which should thereafter be composed and printed and published, and his Assignee or Assigns, should have the sole Liberty of printing and reprinting such Book or Books for the full Term of Twenty-eight Years, to commence from the Day of first publishing the same, and also, if the Author should be living at the End of that Period, for the Residue of his natural Life: And whereas it is expedient

(*q*) "A full and reasonable indemnity," substituted by 5 & 6 Vict. c. 97, s. 2. *Cf. Reere* v. *Gibson* (1891), 1 Q. B. 652.

(*r*) Rest of section repealed, S. L. R. Act, 1873.

(*s*) Chap. IV., pp. 73–95.

(*t*) "The Dramatic Copyright Act, 1833" (see Short Titles Act, 1896). Commonly known as "Bulwer-Lytton's Act."

to extend the Provisions of the said Act: Be it therefore enacted, That from and after the passing of this Act the Author of any Tragedy, Comedy, Play, Opera, Farce, or any other Dramatic Piece of Entertainment (*u*), composed, and not printed and published by the Author thereof or his Assignee, or which hereafter shall be composed, and not printed or published by the Author thereof or his Assignee, or the Assignee of such Author, shall have as his own Property the sole Liberty of representing, or causing to be represented, at any Place or Places of Dramatic Entertainment (*v*) whatsoever, in any part of the United Kingdom of *Great Britain* and *Ireland*, in the Isles of *Man*, *Jersey*, and *Guernsey*, or in any part of the *British* Dominions, any such Production as aforesaid, not printed and published by the Author thereof or his Assignee, and shall be deemed and taken to be the Proprietor thereof; and the Author of any such Production, printed and published within Ten Years before the passing of this Act by the Author thereof or his Assignee, or which shall hereafter be so printed and published, or the Assignee of such Author, shall, from the Time of passing this Act, or from the Time of such Publication respectively, until the End of Twenty-eight Years from the Day of such first Publication of the same, and also, if the Author or Authors, or the Survivor of the Authors, shall be living at the End of that Period, during the Residue of his natural Life (*w*), have as his own Property the sole Liberty of representing, or causing to be represented, the same at any such Place of Dramatic Entertainment as aforesaid, and shall be deemed and taken to be the Proprietor thereof: Provided nevertheless, that nothing in this Act contained shall prejudice, alter, or affect the Right or Authority of any Person to represent or cause to be represented, at any Place or Places of Dramatic Entertainment whatsoever, any such Production as aforesaid, in all Cases in which the Author thereof or his Assignee shall, previously to the passing of this Act, have given his Consent to or authorized such representation, but that such sole Liberty of the Author or his Assignee shall be subject to such Right or Authority.

The Author of any Dramatic Piece shall have as his Property the sole Liberty of representing it or causing it to be represented at any Place of Dramatic Entertainment.

Proviso as to Cases where previous to the passing of this Act, a Consent has been given.

II. If any Person shall, during the Continuance of such sole Liberty as aforesaid, contrary to the Intent of this Act, or Right of the Author or his Assignee, represent or cause to be represented, without the Consent in Writing (*x*) of the Author or other Proprietor first had and obtained, at any Place of Dramatic Entertainment within the Limits aforesaid, any such Production as aforesaid, or any Part thereof, every such Offender shall be liable for each and every such Representation to the Payment of an Amount not less than Forty Shillings, or to the

Penalty on Persons performing Pieces contrary to this Act.

(*u*) See p. 81, *ante*, and *Fuller* v. *Blackpool Co.* (1895), 2 Q. B. 429.
(*v*) See p. 82, *ante*.
(*w*) See 5 & 6 Vict. c. 45, s. 20.
(*x*) Includes printing: Interpret. Act (1889), 52 & 53 Vict. c. 63, s. 20; *Fuller* v. *Blackpool Co.* (1895), 2 Q. B. 429.

full Amount of the Benefit or Advantage arising from such Representation, or the Injury or Loss sustained by the Plaintiff therefrom, whichever shall be the greater Damages (*y*), to the Author or other Proprietor of such Production so represented contrary to the true Intent and Meaning of this Act, to be recovered, *together with Double Costs of Suit* (*z*), by such Author or other Proprietors, in any Court having Jurisdiction in such Cases in that Part of the said United Kingdom or of the British Dominions in which the Offence shall be committed; and in every such Proceeding where the sole Liberty of such Author or his Assignee as aforesaid shall be subject to such Right or Authority as aforesaid, it shall be sufficient for the Plaintiff to state that he has such sole Liberty, without stating the same to be subject to such Right or Authority, or otherwise mentioning the same.

Limitation of Actions.

III. Provided nevertheless, That all Actions or Proceedings for any Offence or Injury that shall be committed against this Act shall be brought, sued, and commenced within Twelve Calendar Months next after such Offence committed, or else the same shall be void and of no effect.

Section IV. See Interpretation Act, 1889; *and S. L. R. Act*, 1888.

5 & 6 WILL. IV. c. 65 (*a*).

An Act for preventing the Publication of Lectures without Consent (*b*).
[9th September, 1835.]

Authors of Lectures, or their Assigns, to have the sole Right of publishing them.

WHEREAS Printers, Publishers, and other Persons have frequently taken the Liberty of printing and publishing Lectures delivered upon divers Subjects, without the Consent of the Authors of such Lectures, or the Persons delivering the same in public, to the great Detriment of such Authors and Lecturers: Be it enacted, That from and after September 1, 1835, the Author of any Lecture or Lectures, or the Person to whom he hath sold or otherwise conveyed the Copy thereof, in order to deliver the same in any School, Seminary, Institution, or other Place, or for any other Purpose, shall have the sole Right and Liberty of Printing and publishing such Lecture or Lectures; and that

(*y*) But now see 51 & 52 Vict. c. 17, *post*, p. 292, as to musical compositions.

(*z*) "A full and reasonable indemnity" substituted by 5 & 6 Vict. c. 97, s. 2; *cf. Reeve* v. *Gibson* (1891), 1 Q. B. 652.

(*a*) Chap. III., pp. 68–72, *ante*.

(*b*) "The Lectures Copyright Act, 1835" (see Short Titles Act, 1896). The preamble and some omitted words in this Act have been repealed by the Statute Law Revision Acts of 1888 and 1890.

if any Person shall, by taking down the same in Short Hand or otherwise in Writing, or in any other Way, obtain or make a Copy of such Lecture or Lectures, and shall print or lithograph or otherwise copy and publish the same, or cause the same to be printed, lithographed, or otherwise copied and published, without Leave of the Author thereof, or of the Person to whom the Author thereof hath sold or otherwise conveyed the same, and every Person who, knowing the same to have been printed or copied and published without such Consent, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such Lecture or Lectures, shall forfeit such printed or otherwise copied Lecture or Lectures, or Parts thereof, together with One Penny for every Sheet thereof which shall be found in his Custody, either printed, lithographed, or copied, or printing, lithographing, or copying, published or exposed to sale, contrary to the true Intent and Meaning of this Act, the one Moiety thereof to His Majesty, and the other Moiety thereof to any Person who shall sue for the same, to be recovered in any of His Majesty's Courts of Record in Westminster, by Action.

Penalty on other Persons publishing, &c., Lectures without leave.

Penalty on Printers or Publishers of Newspapers publishing Lectures without Leave.

II. Any Printer or Publisher of any Newspaper who shall, without such Leave as aforesaid, print and publish in such Newspaper any Lecture or Lectures, shall be deemed and taken to be a Person printing and publishing without Leave within the Provisions of this Act, and liable to the aforesaid Forfeitures and Penalties in respect of such printing and publishing.

Persons having Leave to attend Lectures not on that Account licensed to publish them.

III. No Person allowed for certain Fee and Reward, or otherwise, to attend and be present at any Lecture delivered in any Place, shall be deemed and taken to be licensed or to have Leave to print, copy, and publish such Lectures only because of having Leave to attend such Lecture or Lectures.

Act not to prohibit the publishing of Lectures after Expiration of the Copyright.

IV. Provided always, That nothing in this Act shall extend to prohibit any Person from printing, copying, and publishing any Lecture or Lectures which have or shall have been printed and published with Leave of the Authors thereof or their Assignees, and whereof the Time hath or shall have expired within which the sole Right to print and publish the same is given by an Act (8 *Anne*, c. 19), and by another Act (54 *Geo. III.*, c. 156), or to any Lectures which have been printed or published before the passing of this Act.

Act not to extend to Lectures delivered in unlicensed Places, &c.

V. Provided further, That nothing in this Act shall extend to any Lecture or Lectures, or the printing, copying, or publishing any Lecture or Lectures, or Parts thereof, of the delivering of which Notice in Writing shall not have been given to Two Justices living within Five Miles from the Place where such Lecture or Lectures shall be delivered Two Days at the least before delivering the same, or to any Lecture or Lectures delivered in any University or public School or College, or on any public Foundation, or by any Individual in virtue of or according

to any Gift, Endowment, or Foundation; and that the Law relating thereto shall remain the same as if this Act had not been passed (*c*).

1836. *The Prints and Engravings Copyright Act*, 1836 (*Extending Acts to Ireland*).

5 & 6 VICT. c. 45 (*d*).

An Act to amend the Law of Copyright.

[1st July, 1842.]

Repeal of former Acts; 8 Anne, c. 19. 41 G. 3, c. 107. 54 G. 3, c. 156.

WHEREAS it is expedient to amend the Law relating to Copyright, and to afford greater Encouragement to the Production of literary Works of lasting Benefit to the World (*e*): Be it enacted, That from the passing of this Act an Act (8 Anne, c. 19), and also an Act (41 Geo. 3, c. 107), and also an Act (54 Geo. 3, c. 156), be and the same are hereby repealed.

Interpretation of Act.

II. In the Construction of this Act the Word "Book" shall be construed to mean and include every Volume, Part or Division of a Volume, Pamphlet, Sheet of Letterpress, Sheet of Music, Map, Chart, or Plan (*f*) separately published; the Words "Dramatic Piece" shall be construed to mean and include every Tragedy, Comedy, Play, Opera, Farce, or other scenic, musical, or dramatic Entertainment (*g*); the Word "Copyright" shall be construed to mean the sole and exclusive Liberty of printing or otherwise multiplying (*h*) Copies of any Subject to which the said Word is herein applied; the Words "personal Representative" shall be construed to mean and include every Executor, Administrator, and next of Kin entitled to Administration; the Word "Assigns" shall be construed to mean and include every Person in whom the Interest of an Author in Copyright shall be vested, whether derived from such Author before or after the Publication of any Book, and whether acquired by Sale, Gift, Bequest, or by Operation of Law, or otherwise; the Words "*British* Dominions" shall be construed to mean and include all parts of the United Kingdom of *Great Britain* and *Ireland*, the Islands of *Jersey* and *Guernsey*, all parts of the *East* and *West Indies*, and all the Colonies, Settlements,

(*c*) *Caird* v. *Sime* (1887), 12 App. Cas. 326.

(*d*) "The Copyright Act, 1842" (see Short Titles Act, 1896). Known as "Talfourd's Act": see Chap. VI., p. 109, *ante*. The preamble and various omitted words in this Act have been repealed by various Statute Law Revision Acts.

(*e*) See *per* Jessel, M.R., in *Maple's case* (1882), 21 Ch. D. at p. 378.

(*f*) *Hollinrake* v. *Truswell* (1894), 3 Ch. 420.

(*g*) *Wall* v. *Taylor* (1883), 11 Q. B. D. at p. 108.

(*h*) *Novello* v. *Sudlow* (1852), 12 C. B. 177.

and Possessions of the Crown which now are or hereafter may be acquired.

Endurance of Term of Copyright in any Book hereafter to be published in the Lifetime of the Author; if published after the Author's Death.

III. The Copyright in every Book which shall after the passing of this Act be published in the Lifetime of its Author shall endure for the Natural Life of such Author, and for the further Term of Seven Years, commencing at the Time of his Death, and shall be the property of such Author and his Assigns: Provided always, that if the said Term of Seven Years shall expire before the End of Forty-two Years from the first Publication of such Book, the Copyright shall in that Case endure for such Period of Forty-two Years; and the Copyright in every Book which shall be published after the Death of its Author shall endure for the Term of Forty-two Years from the first Publication thereof, and shall be the Property of the Proprietor of the Author's Manuscript from which such Book shall be first published, and his Assigns.

IV. (*Relates to books published before* 1842.)

Judicial Committee of the Privy Council may license the Republication of Books which the Proprietor refuses to republish after Death of the Author.

V. And whereas it is expedient to provide against the Suppression of Books of Importance to the Public; be it enacted, That it shall be lawful for the Judicial Committee of Her Majesty's Privy Council, on Complaint made to them that the Proprietor of the Copyright in any Book after the Death of its Author has refused to republish or to allow the Republication of the same, and that by reason of such Refusal such Book may be withheld from the Public, to grant a Licence to such Complainant to publish such Book, in such manner and subject to such Conditions as they may think fit, and it shall be lawful for such Complainant to publish such Book according to such Licence.

Copies of Books published after the passing of this Act, and of all subsequent Editions, to be delivered within certain Times at the British Museum.

VI. And be it enacted, That a printed Copy of the whole of every Book which shall be published after the passing of this Act, together with all Maps, Prints, or other Engravings belonging thereto, finished and coloured in the same Manner as the best Copies of the same shall be published, and also of any second or subsequent Edition which shall be so published with any Additions or Alterations, whether the same shall be in Letter Press, or in the Maps, Prints, or other Engravings belonging thereto, and whether the first Edition of such Book shall have been published before or after the passing of this Act, and also of any second or subsequent Edition of every Book of which the first or some preceding Edition shall not have been delivered for the Use of the *British Museum*, bound, sewed, or stitched together, and upon the best Paper on which the same shall be printed, shall, within One Calendar Month after the Day on which any such Book shall first be sold, published, or offered for Sale within the Bills of Mortality, or within Three Calendar Months if the same shall first be sold, published, or offered for Sale in any other Part of the United Kingdom, or within Twelve Calendar Months after the same shall first be sold, published, or offered for Sale in any other Part of the *British*

Dominions, be delivered, on Behalf of the Publisher thereof, at the *British Museum*.

Mode of delivering at the British Museum.

VII. Every Copy of any Book which under the Provisions of this Act ought to be delivered as aforesaid shall be delivered at the *British Museum* between the Hours of Ten in the Forenoon and Four in the Afternoon on any Day except *Sunday*, *Ash Wednesday*, *Good Friday*, and *Christmas Day*, to one of the Officers of the said Museum, or to some Person authorized by the Trustees of the said Museum to receive the same, and such Officer or other Person receiving such copy is hereby required to give a Receipt in Writing for the same, and such Delivery shall to all Intents and Purposes be deemed to be good and sufficient Delivery under the Provisions of this Act.

A Copy of every Book to be delivered within a Month after Demand to the Officer of the Stationers' Company, for the following Libraries; the Bodleian at Oxford, the Public Library at Cambridge, the Faculty of Advocates at Edinburgh, and that of Trinity College, Dublin.

VIII. A Copy of the whole of every Book, and of any second or subsequent Edition of every Book containing Additions and Alterations, together with all Maps and Prints belonging thereto, which after the passing of this Act shall be published, shall, on Demand thereof in Writing, left at the Place of Abode of the Publisher thereof at any Time within Twelve Months next after the Publication thereof, under the Hand of the Officer of the Company of Stationers who shall from Time to Time be appointed by the said Company for the Purposes of this Act, or under the Hand of any other Person thereto authorized by the Persons or Bodies Politic and Corporate, Proprietors and Managers of the Libraries following (*videlicet*), the *Bodleian* Library at *Oxford*, the Public Library at *Cambridge*, the Library of the Faculty of Advocates at *Edinburgh*, the Library of Trinity College at *Dublin*, be delivered, upon the Paper of which the largest Number of Copies of such Book or Edition shall be printed for Sale, in the like Condition as the Copies prepared for Sale, by the Publisher thereof respectively, within One Month after Demand made thereof in Writing as aforesaid, to the said Officer of the said Company of Stationers for the Time being, which Copies the said Officer shall and he is hereby required to receive at the Hall of the said Company, for the Use of the Library for which such Demand shall be made within such Twelve Months as aforesaid; and the said Officer is hereby required to give a Receipt in Writing for the same, and within One Month after any such Book shall be so delivered to him as aforesaid to deliver the same for the Use of such Library.

Publishers may deliver the Copies to the Libraries, instead of at the Stationers' Company.

IX. Provided also, That if any Publisher shall be desirous of delivering the Copy of such Book as shall be demanded on behalf of any of the said Libraries at such Library, it shall be lawful for him to deliver the same at such Library, free of Expense, to such Librarian or other person authorized to receive the same (who is hereby required in such Case to receive and give a Receipt in Writing for the same), and such Delivery shall to all Intents and Purposes of this Act be held as equivalent to a Delivery to the said Officers of the Stationers' Company.

X. If any Publisher of any such Book, or of any second or subsequent Edition of any such Book, shall neglect to deliver the same, pursuant to this Act, he shall for every such Default forfeit, besides the Value of such Copy of such Book or Edition which he ought to have delivered, a Sum not exceeding Five Pounds, to be recovered by the Librarian or other Officer (properly authorized) of the Library for the Use whereof such Copy should have been Delivered, in a summary Way, on Conviction before Two Justices of the Peace for the County or Place where the Publisher making default shall reside, or by Action of Debt or other Proceeding of the like Nature, at the Suit of such Librarian or other Officer, in any Court of Record in the United Kingdom, in which Action, if the Plaintiff should obtain a Verdict, he shall recover his Costs reasonably incurred, to be taxed as between Attorney and Client.

Penalty for Default in delivering Copies for the use of the Libraries.

XI. (*i*) A Book of Registry, wherein may be registered, as hereinafter enacted, the Proprietorship in the Copyright of Books, and Assignments thereof, and in Dramatic and Musical Pieces, whether in Manuscript or otherwise, and Licences affecting such Copyright, shall be kept at the Hall of the Stationers' Company, by the Officer appointed by the said Company for the Purposes of this Act, and shall at all convenient Times be open to the Inspection of any Person, on Payment of One Shilling for every Entry which shall be searched for or inspected in the said Book; and that such Officer shall, whenever thereunto reasonably required, give a Copy of any Entry in such Book, certified under his Hand, and impressed with the Stamp of the said Company, to be provided by them for that Purpose, and which they are hereby required to provide, to any Person requiring the same, on payment to him of the Sum of Five Shillings; and such Copies so certified and impressed shall be received in Evidence in all Courts, and in all summary Proceedings, and shall be *primâ facie* Proof of the Proprietorship or Assignment of Copyright or Licence as therein expressed, but subject to be rebutted by other Evidence, and in the Case of Dramatic or Musical Pieces shall be *primâ facie* Proof of the Right of Representation or Performance, subject to be rebutted as aforesaid.

Book of Registry to be kept at Stationers' Hall.

XII. If any Person shall wilfully make or cause to be made any false Entry in the Registry Book of the Stationers' Company, or shall wilfully produce or cause to be tendered in Evidence any Paper falsely purporting to be a Copy of any Entry in the said Book, he shall be guilty of an indictable Misdemeanour, and shall be punished accordingly.

Making false Entry in the Book of Registry, a Misdemeanour.

XIII. (*i*) After the passing of this Act it shall be lawful for the Proprietor of a Copyright in any Book heretofore published, or in any Book hereafter to be published, to make Entry in the Registry

Entries of Copyright may be made in

(*i*) See pp. 147–152, *ante*.

the Book of Registry.

Book of the Stationers' Company of the title of such Book, the time of the first Publication thereof, the Name and Place of Abode of the Publisher (*k*) thereof, and the Name and Place of Abode of the Proprietor of the Copyright of the said Book or of any Portion of such Copyright in the Form of that Behalf given in the Schedule to this Act annexed, upon Payment of the Sum of Five Shillings to the Officer of the said Company; and it shall be lawful for every such Registered Proprietor to assign his Interest, or any Portion of his Interest therein, by making Entry in the said Book of Registry of such Assignment, and of the Name and Place of Abode of the Assignee thereof, in the Form given in that Behalf in the said Schedule, on Payment of the like Sum; and such Assignment so entered shall be effectual in Law to all Intents and Purposes whatsoever, without being subject to any Stamp or Duty, and shall be of the same Force and Effect as if such Assignment had been made by Deed.

Persons aggrieved by any Entry in the Book of Registry may apply to a Court of Law in Term, or Judge in Vacation, who may order such Entry to be varied or expunged.

XIV. (*l*) If any Person shall deem himself aggrieved by any Entry made under colour of this Act in the said Book of Registry, It shall be lawful for such Person to apply by Motion to the Court of Queen's Bench, for an order that such Entry may be expunged or varied; and upon any such Application such Court shall make such Order for expunging, varying, or confirming such Entry, either with or without Costs, as to such Court shall seem just; and the Officer appointed by the Stationers' Company for the Purposes of this Act, shall, on the Production to him of any such Order for expunging or varying any such Entry, expunge or vary the same according to the Requisitions of such Order.

Remedy for the Piracy of Books by Action on the Case.

XV. If any Person shall, in any Part of the *British* Dominions, print or cause to be printed (*m*), either for Sale or Exportation, any Book in which there shall be subsisting Copyright, without the Consent in Writing of the Proprietor thereof, or shall import for Sale or Hire any such Book so having been unlawfully printed from Parts beyond the Sea, or knowing such Book to have been so unlawfully printed or imported, shall sell, publish, or expose to Sale or Hire, or cause to be sold, published, or exposed to Sale or Hire, or shall have in his Possession, for Sale or Hire, any such Book so unlawfully printed or imported, without such Consent as aforesaid, such Offender shall be liable to a special Action on the Case at the Suit of the Proprietor of such Copyright, to be brought in any Court of Record in that Part of the *British* Dominions in which the Offence shall be

(*k*) Note that the form in the Schedule substitutes "place of publication" for "place of abode of publisher."

(*l*) See pp. 152–154, *ante*. For repeals in this section see Statute Law Revision Act, 1893.

(*m*) *Kelly* v. *Lloyds* (1901), 1 Ch. 374.

committed: Provided always, that in *Scotland* such Offender shall be liable to an Action in the Court of Session in *Scotland*, which shall and may be brought and prosecuted in the same Manner in which any other Action of Damages to the like Amount may be brought and prosecuted there.

In Actions for Piracy the Defendant to give Notice of the Objections to the Plaintiff's Title on which he means to rely.

XVI. (*n*) In any Action brought within the *British* Dominions against any Person for printing any such Book for Sale, Hire, or Exportation, or for importing, selling, publishing, or exposing to Sale or Hire, or causing to be imported, sold, published, or exposed to Sale or Hire, any such Book, the Defendant, on pleading thereto, shall give to the Plaintiff a Notice in Writing of any Objections on which he means to rely on the Trial of such Action; and if the Nature of his Defence be, that the Plaintiff in such Action was not the Author or first Publisher of the Book in which he shall by such Action claim Copyright, or is not the Proprietor of the Copyright therein, or that some other Person than the Plaintiff was the Author or first Publisher of such Book, or is the Proprietor of the Copyright therein, then the Defendant shall specify in such Notice the Name of the Person who he alleges to have been the Author or first Publisher of such Book, or the Proprietor of the Copyright therein, together with the Title of such Book, and the Time when and the Place where such Book was first published, otherwise the Defendant in such Action shall not at the Trial or Hearing of such Action be allowed to give any Evidence that the Plaintiff in such Action was not the Author or first Publisher of the Book in which he claims such Copyright as aforesaid, or that he was not the Proprietor of the Copyright therein; and at such Trial or Hearing no other Objection shall be allowed to be made on behalf of such Defendant than the Objections stated in such Notice, or that any other Person was the Author or first Publisher of such Book, or the Proprietor of the Copyright therein, than the Person specified in such Notice, or give in Evidence in support of his Defence any other Book than one substantially corresponding in Title, Time, and Place of Publication with the Title, Time, and Place specified in such Notice.

No Person except the Proprietor, &c., shall import into the British Dominions for Sale or Hire any Book first composed,

XVII. It shall not be lawful for any Person, not being the Proprietor of the Copyright, or some Persor authorized by him, to import into any Part of the United Kingdom, or into any other Part of the *British* Dominions, for Sale or Hire, any printed Book first composed or written or printed and published in any Part of the said United Kingdom, wherein there shall be Copyright, and reprinted in any Country or Place whatsoever out of the *British* Dominions; and if any Person, not being such Proprietor or Person authorized as aforesaid, shall import or bring, or cause to be imported or brought, for Sale or Hire, any such printed Book, into any Part of the *British* Dominions, contrary

(*n*) See pp. 150, 151, *ante*.

&c., within the United Kingdom, and re-printed elsewhere under Penalty of Forfeiture thereof, and of 10*l.* and Double the Value.

to the true Intent and Meaning of this Act, or shall knowingly sell, publish, or expose to Sale or let to Hire, or have in his Possession for Sale or Hire, any such Book, then every such Book shall be forfeited, and shall be seized by any Officer of Customs or Excise, and the same shall be destroyed by such Officer; and every Person so offending, being duly convicted thereof before Two Justices of the Peace for the County or Place in which such Book shall be found, shall also for every such Offence forfeit the Sum of Ten Pounds, and Double the Value of every Copy of such Book which he shall so import or cause to be imported into any Part of the *British* Dominions, or shall knowingly sell, publish, or expose to Sale or let to Hire, or shall cause to be sold, published, or exposed to Sale or let to Hire, or shall have in his Possession for Sale or Hire, contrary to the true Intent and Meaning of this Act, Five Pounds to the Use of such Officer of Customs or Excise, and the Remainder of the Penalty to the Use of the Proprietor of the Copyright in such Book (*o*).

Books may be seized by Officers of Customs or Excise.

As to the Copyright in Encyclopædias, Periodicals, and Works published in a Series, Reviews, or Magazines.

XVIII. (*p*) When any Publisher or other Person shall, before or at the time of the passing of this Act, have projected, conducted, and carried on, or shall hereafter project, conduct, and carry on, or be the Proprietor of any Encyclopædia, Review, Magazine, Periodical Work, or Work published in a Series of Books or Parts, or any Book whatsoever, and shall have employed or shall employ any Persons to compose the same, or any Volumes, Parts, Essays, Articles, or portions thereof, for Publication in or as Part of the same, and such Work, Volumes, Parts, Essays, Articles, or Portions, shall have been or shall hereafter be composed under such Employment, on the Terms that the Copyright therein shall belong to such Proprietor, Projector, Publisher, or Conductor, and paid for by such Proprietor, Projector, Publisher, or Conductor, the Copyright in every such Encyclopædia, Review, Magazine, Periodical Work, and Work published in a Series of Books or Parts, and in every Volume, Part, Essay, Article, and portion so composed and paid for, shall be the Property of such Proprietor, Projector, Publisher, or other Conductor, who shall enjoy the same rights as if he were the actual Author thereof, and shall have such Term of Copyright therein as is given to the Authors of Books by this Act; except only that in the case of Essays, Articles, or Portions forming Part of and first published in Reviews, Magazines, or other Periodical works of a like Nature, after the Term of Twenty-eight Years from the first Publication thereof respectively the Right of publishing the same in a separate Form shall revert to the Author for the Remainder of the Term given by this Act: Provided always, that during the Term of Twenty-eight Years the said Proprietor, Projector,

(*o*) As to Canada: see 38 & 39 Vict. c. 53, s. 4, and p. 210. See also 15 & 16 Vict. c. 12, s. 9.

(*p*) See pp. 131–134, *ante*.

Publisher or Conductor shall not publish any such Essay, Article, or Portion separately or singly without the consent previously obtained of the Author thereof, or his Assigns: Provided also, that nothing herein contained shall alter or affect the Right of any Person who shall have been or who shall be so employed as aforesaid to publish any such his Composition in a separate Form, who by any Contract, express or implied, may have reserved or may hereafter reserve to himself such Right; but every Author reserving, retaining, or having such Right shall be entitled to the Copyright in such Composition when published in a separate Form, according to this Act, without prejudice to the Right of such Proprietor, Projector, Publisher, or Conductor as aforesaid.

Proviso for Authors who have reserved the Right of publishing their Articles in a separate Form.

XIX. (*q*) The Proprietor of the Copyright in any Encyclopædia, Review, Magazine, Periodical Work, or other Work published in a Series of Books or Parts, shall be entitled to all the Benefits of the Registration at Stationers' Hall under this Act, on entering in the said Book of Registry the Title of such Encyclopædia, Review, Periodical Work, or other Work, published in a Series of Books or Parts, the Time of the first Publication of the First Volume, Number, or Part thereof, or of the first Number or Volume first published after the passing of this Act in any such Work which shall have been published heretofore, and the Name and Place of Abode of the Proprietor thereof, and of the Publisher thereof, when such Publisher shall not also be the Proprietor thereof.

Proprietors of Encyclopædias, Periodicals, and Works published in a Series may enter at once at Stationers' Hall, and thereon have the Benefit of the Registration of the whole.

XX. (*r*) And whereas an Act was passed (3 Will. 4, c. 15) to amend the Law relating to Dramatic Literary Property, and it is expedient to extend the Term of the sole Liberty of representing Dramatic Pieces given by that Act to the full Time by this Act provided for the Continuance of Copyright: And whereas it is expedient to extend to Musical Compositions the Benefits of that Act and also of this Act; the Provisions of the said Act of His late Majesty, and of this Act, shall apply to Musical Compositions, and the sole Liberty of representing or performing, or causing or permitting to be represented or performed, any Dramatic Piece or Musical Composition, shall endure and be the Property of the Author thereof, and his Assigns, for the Term in this Act provided for the Duration of Copyright in Books; and the Provisions hereinbefore enacted in respect of the Property of such Copyright, and of registering the same, shall apply to the Liberty of representing or performing any Dramatic Piece or Musical Composition, as if the same were herein expressly re-enacted and applied thereto, save and except that the first public Representation or Performance of any Dramatic Piece or Musical Composition shall be deemed equivalent, in the Construction of this Act, to the first Publication of any Book: Provided always, that in case of any Dramatic

The Provisions of 3 & 4 W. 4, c. 15, extended to Musical Compositions, and the Term of Copyright, as provided by this Act, applied to the Liberty of representing Dramatic Pieces and Musical Compositions.

(*q*) See p. 149, *ante*.

(*r*) See pp. 76, 96, *ante*.

Piece or Musical Composition in Manuscript, it shall be sufficient for the Person having the sole Liberty of representing or performing, or causing to be represented or performed, the same, to register only the Title thereof, the Name and Place of Abode of the Author or Composer thereof, the Name and Place of Abode of the Proprietor thereof, and the Time and Place of its first Representation or Performance.

Proprietors of Right of Dramatic Representations shall have all the Remedies given by 3 W. 4, c. 15.

XXI. The Person who shall at any Time have the sole Liberty of representing such Dramatic Piece or Musical Composition shall have and enjoy the Remedies given and provided in the said Act (3 Will. 4, c. 15) passed to amend the Laws relating to Dramatic Literary Property, during the whole of his Interest therein, as fully as if the same were re-enacted in this Act.

Assignment of Copyright of a Dramatic Piece not to convey the Right of Representation.

XXII. No Assignment of the Copyright of any Book consisting of or containing a Dramatic Piece or Musical Composition shall be holden to convey to the Assignee the Right of representing or performing such Dramatic Piece or Musical Composition, unless an Entry in the said Registry Book shall be made of such Assignment, wherein shall be expressed the Intention of the Parties that such Right should pass by such Assignment.

Books pirated shall become the Property of the Proprietor of the Copyright, and may be recovered by Action.

XXIII. (s) All Copies of any Book wherein there shall be Copyright, and of which Entry shall have been made in the said Registry Book, and which shall have been unlawfully printed or imported without the Consent of the registered Proprietor of such Copyright, in Writing under his Hand first obtained, shall be deemed to be the Property of the Proprietor of such Copyright, and who shall be registered as such, and such registered Proprietor shall, after Demand thereof in Writing, be entitled to sue for and recover the same, or Damages for the Detention thereof, in an Action of Detinue, from any Party who shall detain the same, or to sue for and recover Damages for the Conversion thereof in an Action of Trover.

No Proprietor of Copyright commencing after this Act shall sue or proceed for any Infringement before making

XXIV. No Proprietor of Copyright in any Book which shall be first published after the passing of this Act shall maintain any Action or Suit, at Law or in Equity, or any summary Proceeding, in respect of any Infringement of such Copyright, unless he shall, before commencing such Action, Suit, or Proceeding, have caused an Entry to be made, in the Book of Registry of the Stationers' Company, of such Book, pursuant to this Act (*t*): Provided always, that the Omission to make such Entry shall not affect the Copyright in any Book, but only the Right to sue or proceed in respect of the Infringement thereof as aforesaid: Provided also, that nothing herein contained shall prejudice the Remedies which the Proprietor of the sole Liberty of representing any Dramatic Piece shall have by virtue of the Act (3 Will. 4, c. 15)

(*s*) *Muddock* v. *Blackwood* (1898), 1 Ch. 58. Piratical parts of a book otherwise innocent may be separated and delivered. *Boosey* v. *Whight* (1899), 81 L. T. 265.

(*t*) See ss. 11, 13, *ante*.

to amend the Laws relating to Dramatic Literary Property, or of this Act, although no Entry shall be made in the Book of Registry aforesaid. Entry in the Book of Registry.

XXV. All Copyright shall be deemed Personal Property, and shall be transmissible by Bequest, or in case of Intestacy, shall be subject to the same Law of Distribution as other Personal Property, and in *Scotland* shall be deemed to be Personal and Moveable Estate. Proviso for Dramatic Pieces.

XXVI. If any Action or Suit shall be commenced or brought against any Person or Persons whomsoever for doing or causing to be done anything in pursuance of this Act, the Defendant or Defendants in such Action may plead the General Issue, and give the special Matter in Evidence; and if upon such Action a Verdict shall be given for the Defendant, or the Plaintiff shall become nonsuited, or discontinue his Action, then the Defendant shall have and recover his full Costs (*u*), for which he shall have the same Remedy as a Defendant in any Case by Law hath; and all Actions, Suits, Bills, Indictments, or Informations, for any Offence that shall be committed against this Act shall be brought, sued, and commenced within Twelve Calendar Months next after such Offence committed, or else the same shall be void and of none effect; provided that such Limitation of Time shall not extend or be construed to extend to any Actions, Suits, or other Proceedings which under the Authority of this Act shall or may be brought, sued, or commenced for or in respect of any Copies of Books to be delivered for the Use of the *British Museum*, or of any One of the Four Libraries hereinbefore mentioned (*v*). Copyright shall be Personal Property. Limitation of Actions; not to extend to Actions, &c., in respect of the Delivery of Books.

XXVII. Provided always, That nothing in this Act contained shall affect or alter the Rights of the Two Universities of *Oxford* and *Cambridge*, the Colleges or Houses of Learning within the same, the Four Universities in *Scotland*, the College of the Holy and Undivided Trinity of Queen *Elizabeth* near *Dublin*, and the several Colleges of *Eton*, *Westminster*, and *Winchester*, in any Copyrights heretofore and now vested or hereafter to be vested in such Universities and Colleges respectively, anything to the contrary herein contained notwithstanding. Saving the Rights of the Universities and the Colleges of Eton, Westminster, and Winchester.

XXVIII. Provided also, That nothing in this Act contained shall affect, alter, or vary any Right subsisting at the Time of passing of this Act, except as herein expressly enacted; and all Contracts, Agreements, and Obligations made and entered into before the passing of this Act, and all Remedies relating thereto, shall remain in full force, anything herein contained to the contrary notwithstanding. Saving all subsisting Rights, Contracts, and Engagements.

XXIX. (*w*) This Act shall extend to the United Kingdom of *Great Britain* and *Ireland*, and to every Part of the *British* Dominions. Extent of the Act.

XXX. (*Repealed by S. L. R. Act*, 1874.)

(*u*) *I.e.* the usual costs between party and party; *Avery* v. *Wood* (1891), 3 Ch. 115.

(*v*) See Public Authorities Protection Act, 1893; and note (*y*), *ante*, p. 157.

(*w*) See Chaps. VIII., IX., *ante*.

SCHEDULE to which the preceding Act refers.

No. 1.

FORM of MINUTE of CONSENT to be entered at Stationers' Hall

WE, the undersigned, *A. B.* of the Author of a certain Book, intituled *Y. Z.* [*or* the personal Representative of the Author, *as the case may be*], and *C. D.* of do hereby certify, That we have consented and agreed to accept the Benefits of the Act passed in the Fifth Year of the Reign of Her Majesty Queen Victoria, cap. , for the Extension of the Term of Copyright therein provided by the said Act, and hereby declare that such extended Term of Copyright therein is the Property of the said *A. B.* or *C. D.*

Dated this Day of 18 .

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

To the Registering Officer appointed by the Stationers' Company.

No. 2.

FORM of REQUIRING ENTRY of PROPRIETORSHIP.

I *A. B.* of do hereby certify, That I am the Proprietor of the Copyright of a Book, intituled *Y. Z.*, and I hereby require you to make Entry in the Register Book of the Stationers' Company of my Proprietorship of such Copyright, according to the Particulars underwritten.

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

Dated this Day of 18 .

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

(*x*) See note (*k*) *ante*, p. 254.

No. 3.

ORIGINAL ENTRY of PROPRIETORSHIP of COPYRIGHT of a BOOK.

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

No. 4.

FORM of CONCURRENCE of the PARTY assigning in any BOOK previously registered.

I *A. B.* of being the Assigner of the Copyright of the Book hereunder described, do hereby require you to make Entry of the Assignment of Copyright therein.

Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
Y. Z.	*A. B.*	*C. D.*

Dated this Day of 18.

(Signed) *A. B.*

(*y*) See note (*k*) *ante*, p. 254.

No. 5.

FORM of ENTRY of ASSIGNMENT of COPYRIGHT in any BOOK previously registered.

Date of Entry.	Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
	[*Set out the Title of the Book, and refer to the Page of the Registry Book in which the original Entry of the Copyright thereof is made.*]	*A. B.*	*C. D.*

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7 VICT. c. 12 (z).

An Act to amend the Law relating to International Copyright (*a*).

[10th May, 1844.]

WHEREAS (*b*) by an Act (1 & 2 Vict. c. 59), hereinafter designated as "the International Copyright Act," Her Majesty was empowered by Order in Council to direct that the Authors of Books which should after a future Time, to be specified in such Order in Council, be published in any Foreign Country, to be specified in such Order in Council, and their Executors, Administrators, and Assigns, should have the sole Liberty of printing and reprinting such Books within the *British* Dominions for such Term as Her Majesty should by such Order in Council direct, not exceeding the Term which Authors, being *British* Subjects, were then (that is to say), at the Time of passing the said Act, entitled to in respect of Books first published in the United Kingdom; and the said Act contains divers Enactments securing to Authors and their Representatives the Copyright in the Books to which any such Order in Council should extend: And whereas an Act (5 & 6 Vict. c. 45) was passed, designated as "the Copyright Amendment

(*z*) See Chap. IX., *ante*, and 49 & 50 Vict. c. 33, *post*.

(*a*) "The International Copyright Act, 1844" (see Short Titles Act, 1896).

(*b*) The whole of this preamble is repealed by the Statute Law Revision Act, 1891. It is printed here, as parts of it have sometimes to be referred to as a legislative exposition of the meaning of the Acts recited.

Act," repealing various Acts therein mentioned relating to the Copyright of printed Books, and extending, defining, and securing to Authors and their Representatives the Copyright of Books: And whereas an Act was passed (3 & 4 Will. 4, c. 15), hereinafter designated as "the Dramatic Literary Property Act," whereby the sole Liberty of representing or causing to be represented any Dramatic Piece in any Place of Dramatic Entertainment in any Part of the *British* Dominions, which should be composed and not printed or published by the Author thereof or his Assignee, was secured to such Author or his Assignee; and by the said Act it was enacted, that the Author of any such production which should thereafter be printed and published, or his Assignee, should have the like sole Liberty of Representation until the End of Twenty-eight Years from the first Publication thereof: And whereas by the said Copyright Amendment Act, the Provisions of the said Dramatic Literary Property Act and of the said Copyright Amendment Act were made applicable to Musical Compositions; and it was thereby also enacted, that the sole Liberty of representing or performing, or causing or permitting to be represented or performed, in any Part of the *British* Dominions, any Dramatic Piece or Musical Composition, should endure and be the Property of the Author thereof and his Assigns for the Term in the said Copyright Amendment Act provided for the Duration of the Copyright in Books, and that the Provisions therein enacted in respect of the Property of such Copyright should apply to the Liberty of representing or performing any Dramatic Piece or Musical Composition: And whereas under the Four several Acts next mentioned; viz. 8 Geo. 2, c. 13, 7 Geo. 3, c. 38, 17 Geo. 3, c. 57, 6 & 7 Will. 4, c. 59; hereinafter designated as the Engraving Copyright Acts, every Person who invents or designs, engraves, etches, or works in Mezzotinto or Chiaro Oscuro, or from his own Work, Design, or Invention causes or procures to be designed, engraved, etched, or worked in Mezzotinto or Chiaro Oscuro any historical Print or Prints, or any Print or Prints of any Portrait, Conversation, Landscape, or Architecture, Map, Chart, or Plan, or any other Print or Prints whatsoever, and every Person who engraves, etches, or works in Mezzotinto or Chiaro Oscuro, or causes to be engraved, etched, or worked, any Print taken from any Picture, Drawing, Model, or Sculpture, either ancient or modern, notwithstanding such Print shall not have been graven or drawn from the original Design of such Graver, Etcher, or Draftsman, is entitled to the Copyright of such Print for the Term of Twenty-eight Years from the first publishing thereof; and by the said several Engraving Copyright Acts it is provided that the Name of the Proprietor shall be truly engraved on each Plate, and printed on every such Print, and Remedies are provided for the Infringement of such Copyright; And whereas under an Act (38 Geo. 3, c. 71), and an Act (54 Geo. 3, c. 56) (which Acts are hereinafter designated as the Sculpture Copyright Acts), every Person who makes or causes to be made any new and

original Sculpture, or Model or Copy or Cast of the Human Figure, any Bust or Part of the Human Figure clothed in Drapery or otherwise, any Animal or Part of any Animal combined with the Human Figure or otherwise, any Subject, being Matter of Invention in Sculpture, any Alto or Basso-Relievo, representing any of the Matters aforesaid, or any Cast from Nature of the Human Figure or Part thereof, or of any Animal or Part thereof, or of any such Subject representing any of the Matters aforesaid, whether separate or combined, is entitled to the Copyright in such new and original Sculpture, Model, Copy, and Cast, for Fourteen Years from first putting forth and publishing the same, and for an additional Period of Fourteen Years in case the original Maker is living at the End of the first Period; and by the said Acts it is provided that the Name of the Proprietor, with the Date of the Publication thereof, is to be put on all such Sculptures, Models, Copies, and Casts, and Remedies are provided for the Infringement of such Copyright: And whereas the Powers vested in Her Majesty by the said International Copyright Act are insufficient to enable Her Majesty to confer upon Authors of Books first published in Foreign Countries Copyright of the like Duration, and with the like Remedies for the Infringement thereof, which are conferred and provided by the said Copyright Amendment Act with respect to Authors of Books first published in the *British* Dominions; and the said International Copyright Act does not empower Her Majesty to confer any exclusive Right of representing or performing Dramatic Pieces or Musical Compositions first published in Foreign Countries upon the Authors thereof, nor to extend the Privilege of Copyright to Prints and Sculptures first published abroad; and it is expedient to vest increased Powers in Her Majesty in this respect, and for that Purpose to repeal the said International Copyright Act, and to give such other Powers to Her Majesty, and to make such further Provisions, as are hereinafter contained: Be it enacted, That the International Copyright Act shall be and the same is hereby repealed.

Repeal of International Copyright Act.

Her Majesty, by Order in Council, may direct that Authors, &c., of Works first published in Foreign Countries shall have Copyright therein within Her Majesty's Dominions.

II. It shall be lawful for Her Majesty, by any Order of Her Majesty in Council, to direct that, as respects all or any particular Class or Classes of the following Works (namely), Books, Prints, Articles of Sculpture, and other Works of Art, to be defined in such Order, which shall after a future Time, to be specified in such Order, be first published in any Foreign Country to be named in such Order, the Authors, Inventors, Designers, Engravers, and Makers thereof respectively, their respective Executors, Administrators, and Assigns, shall have the Privilege of Copyright therein during such Period or respective Periods as shall be defined in such Order, not exceeding, however, as to any of the above-mentioned Works, the Term of Copyright which Authors, Inventors, Designers, Engravers, and Makers of the like Works respectively first published in the United Kingdom may be then entitled to under the hereinbefore recited Acts respectively, or under any Acts which may hereafter be passed in that behalf.

III. In case any such Order shall apply to Books, all and singular the Enactments of the said Copyright Amendment Act, and of any other Act for the Time being in force with relation to the Copyright in Books first published in this Country, shall, from and after the Time so to be specified in that Behalf in such Order, and subject to such Limitation as to the Duration of the Copyright as shall be therein contained, apply to and be in force in respect of the Books to which such Order shall extend, and which shall have been registered as hereinafter is provided, in such and the same Manner as if such Books were first published in the United Kingdom, save and except such of the said Enactments, or such Parts thereof, as shall be excepted in such Order, and save and except such of the said Enactments as relate to the Delivery of Copies of Books at the *British Museum*, and to or for the Use of the other Libraries mentioned in the said Copyright Amendment Act.

If the Order applies to Books, the Copyright Law as to Books first published in this Country shall apply to the Books to which the Order relates, with certain Exceptions.

IV. In case any such Order shall apply to Prints, Articles of Sculpture, or to any such other Works of Art as aforesaid, all and singular the Enactments of the said Engraving Copyright Acts and the said Sculpture Copyright Acts, or of any other Act for the Time being in force with relation to the Copyright in Prints or Articles of Sculpture first published in this Country, and of any Act for the Time being in force with relation to the Copyright in any similar Works of Art first published in this Country, shall, from and after the Time so to be specified in that Behalf in such Order, and subject to such Limitation as to the Duration of the Copyright as shall be therein contained respectively, apply to and be in force in respect of the Prints, Articles of Sculpture, and other Works of Art to which such Order shall extend, and which shall have been registered as hereinafter is provided, in such and the same Manner as if such Articles and other Works of Art were first published in the United Kingdom, save and except such of the said Enactments or such Parts thereof as shall be excepted in such Order.

If the Order applies to Prints, Sculptures, &c., the Copyright Law as to Prints or Sculptures first published in this Country shall apply to the Prints, Sculptures, &c., to which such Order relates.

V. It shall be lawful for Her Majesty, by any Order of Her Majesty in Council, to direct that the Authors of Dramatic Pieces and Musical Compositions which shall after a future Time, to be specified in such Order, be first publicly represented or performed in any Foreign Country to be named in such Order, shall have the sole Liberty of representing or performing in any Part of the *British* Dominions such Dramatic Pieces or Musical Compositions during such Period as shall be defined in such Order, not exceeding the Period during which Authors of Dramatic Pieces and Musical Compositions first publicly represented or performed in the United Kingdom may for the Time be entitled by Law to the sole Liberty of representing and performing the same; and from and after the Time so specified in any such last-mentioned Order the Enactments of the said Dramatic Literary Property Act and of the said Copyright Amendment Act, and

Her Majesty may, by Order in Council, direct that Authors and Composers of Dramatic Pieces and Musical Compositions first publicly repre-

sented and performed in Foreign Countries shall have similar Rights in the British Dominions.

of any other Act for the Time being in force with relation to the Liberty of publicly representing and performing Dramatic Pieces or Musical Compositions, shall, subject to such Limitation as to the Duration of the Right conferred by any such Order as shall be therein contained, apply to and be in force in respect of the Dramatic Pieces and Musical Compositions to which such Order shall extend, and which shall have been registered as hereinafter is provided, in such and the same Manner as if such Dramatic Pieces and Musical Compositions had been first publicly represented and performed in the *British* Dominions, save and except such of the said Enactments or such Parts thereof as shall be excepted in such Order.

Particulars to be observed as to Registry and to Delivery of Copies.

VI. (*c*) Provided always, That no Author of any Book, Dramatic Piece or Musical Composition, or his Executors, Administrators, or Assigns, and no Inventor, Designer, or Engraver of any Print, or Maker of any Article of Sculpture, or other Work of Art, his Executors, Administrators, or Assigns, shall be entitled to the Benefit of this Act, or of any Order in Council to be issued in pursuance thereof, unless, within a Time or Times to be in that Behalf prescribed in each such Order in Council, such Book, Dramatic Piece, Musical Composition, Print, Article of Sculpture, or other Work of Art, shall have been so registered, and such Copy thereof shall have been so delivered as hereinafter is mentioned; (that is to say,) as regards such Book, and also such Dramatic Piece or Musical Composition, (in the event of the same having been printed,) the Title to the Copy thereof, the Name and Place of Abode of the Author or Composer thereof, the Name and Place of Abode of the Proprietor of the Copyright thereof, the Time and Place of the first Publication, Representation, or Performance thereof, as the Case may be, in the Foreign Country named in the Order in Council under which the Benefits of this Act shall be claimed, shall be entered in the Register Book of the Company of Stationers in *London*, and One Printed Copy of the whole of such Book, and of such Dramatic Piece or Musical Composition, in the event of the same having been printed, and of every Volume thereof, upon the best Paper upon which the largest Number of Impressions of the Book, Dramatic Piece, or Musical Composition shall have been printed for Sale, together with all Maps and Prints relating thereto, shall be delivered to the Officer of the Company of Stationers at the Hall of the said Company; and as regards Dramatic Pieces and Musical Compositions in Manuscript, the Title to the same, the Name and Place of Abode of the Author or Composer thereof, the Name and Place of Abode of the Proprietor of the Right of representing or performing the same, and the Time and Place of the first Representation or Performance thereof in the Country named in the Order in Council

(*c*) See p. 224, *ante*, and 49 & 50 Vict. c. 33, s. 4, *post*.

under which the Benefit of the Act shall be claimed, shall be entered in the said Register Book of the said Company of Stationers in *London*; and as regards Prints, the Title thereof, the Name and Place of Abode of the Inventor, Designer, or Engraver thereof, the Name of the Proprietor of the Copyright therein, and the Time and Place of the first Publication thereof in the Foreign Country named in the Order in Council under which the Benefits of the Act shall be claimed, shall be entered in the said Register Book of the said Company of Stationers in *London*, and a Copy of such Print, upon the best Paper upon which the largest Number or Impressions of the Print shall have been printed for Sale, shall be delivered to the Officer of the Company of Stationers at the Hall of the said Company; and as regards any such Article of Sculpture, or any such other Work of Art as aforesaid, a descriptive Title thereof, the Name and Place of Abode of the Maker thereof, the Name of the Proprietor of the Copyright therein, and the Time and Place of its first Publication in the Foreign Country named in the Order in Council under which the Benefit of this Act shall be claimed, shall be entered in the said Register Book of the said Company of Stationers in *London*; and the Officer of the said Company of Stationers receiving such Copies so to be delivered as aforesaid shall give a Receipt in Writing for the same, and such Delivery shall to all Intents and Purposes be a sufficient Delivery under the Provisions of this Act.

In case of Books published anonymously, the Name of the Publisher to be sufficient.

VII. Provided always, That if a Book be published anonymously it shall be sufficient to insert in the Entry thereof in such Register Book the Name and Place of Abode of the first Publisher thereof, instead of the Name and Place of Abode of the Author thereof, together with a Declaration that such Entry is made either on behalf of the Author or on behalf of such first Publisher, as the Case may require.

The Provisions of the Copyright Amendment Act as regards entries in the Register Book of the Company of Stationers, &c., to apply to Entries under this Act.

VIII. (*d*) The several Enactments in the said Copyright Amendment Act contained with relation to keeping the said Register Book, and the Inspection thereof, the Searches therein, and the Delivery of certified and stamped Copies thereof, the Reception of such Copies in Evidence, the making of false Entries in the said Book, and the Production in Evidence of Papers falsely purporting to be Copies of Entries in the said Book, the Applications to the Courts and Judges by Persons aggrieved by Entries in the said Book, and the expunging and varying such Entries, shall apply to the Books, Dramatic Pieces, and Musical Compositions, Prints, Articles of Sculpture, and other Works of Art, to which any Order in Council issued in pursuance of this Act shall extend, and to the Entries and Assignments of Copyright and Proprietorship therein, in such and the same Manner as if such Enactments were here expressly enacted in relation thereto, save and except that the Forms of Entry prescribed by the said Copyright Amendment Act may be varied to meet the Circumstances of the Case, and that the

(*d*) See 49 & 50 Vict. c. 33, s. 4.

Sum to be demanded by the Officer of the said Company of Stationers for making any Entry required by this Act shall be One Shilling only.

As to expunging or varying Entry grounded in wrongful first Publication.

IX. Every Entry made in pursuance of this Act of a first Publication shall be *primâ facie* Proof of a rightful first Publication; but if there be a wrongful first Publication, and any Party have availed himself thereof to obtain an Entry of a spurious Work, no Order for expunging or varying such Entry shall be made unless it be proved to the Satisfaction of the Court or of the Judge taking cognizance of the Application for expunging or varying such Entry, first, with respect to a wrongful Publication in a Country to which the Author or first Publisher does not belong, and in regard to which there does not subsist with this Country any Treaty of International Copyright, that the Party making the Application was the Author or first Publisher, as the Case requires; second, with respect to a wrongful first Publication either in the Country where a rightful first Publication has taken place, or in regard to which there subsists with this Country a Treaty of International Copyright, that a Court of competent Jurisdiction in any such Country where such wrongful first Publication has taken place has given Judgment in favour of the Right of the Party claiming to be the Author or first Publisher.

Copies of Books wherein Copyright is subsisting under this Act printed in Foreign Countries other than those wherein the Book was first published prohibited to be imported.

X. All Copies of Books wherein there shall be any subsisting Copyright under or by virtue of this Act, or of any Order in Council made in pursuance thereof, printed or reprinted in any Foreign Country except that in which such Books were first published, shall be and the same are hereby absolutely prohibited to be imported into any part of the *British* Dominions, except by or with the Consent of the registered Proprietor of the Copyright thereof, or his Agent authorized in Writing, and if imported contrary to this Prohibition the same and the Importers thereof shall be subject to the Enactments in force relating to Goods prohibited to be imported by any Act relating to the Customs; and as respects any such Copies so prohibited to be imported, and also as respects any Copies unlawfully printed in any Place whatsoever of any Books wherein there shall be any such subsisting Copyright as aforesaid, any Person who shall in any part of the *British* Dominions import such prohibited or unlawfully printed Copies, or who, knowing such Copies to be so unlawfully imported or unlawfully printed, shall sell, publish, or expose to sale or hire, or shall cause to be sold, published, or exposed to sale or hire, or have in his Possession for sale or hire, any such Copies so unlawfully imported or unlawfully printed, such Offender shall be liable to a special Action on the Case at the Suit of the Proprietor of such Copyright, to be brought and prosecuted in the same Courts and in the same Manner, and with the like Restrictions upon the Proceedings of the Defendant, as are respectively prescribed in the said Copyright Amendment Act with relation to Actions thereby authorized to be brought by Proprietors of Copyright against Persons importing or selling Books unlawfully printed in the *British* Dominions.

XI. The said Officer of the said Company of Stationers shall receive at the Hall of the said Company every Book, Volume, or Print so to be delivered as aforesaid, and within One Calendar Month after receiving such Book, Volume, or Print, shall deposit the same in the Library of the *British Museum*. Officer of Stationers' Company to deposit Books, &c., in the British Museum.

XII. Provided always, That it shall not be requisite to deliver to the said Officer of the said Stationers' Company any printed Copy of the Second or of any subsequent Edition of any Book or Books so delivered as aforesaid, unless the same shall contain Additions or Alterations. Second or subsequent Editions.

XIII. The respective Terms to be specified by such Orders in Council respectively for the Continuance of the Privilege to be granted in respect of Works to be first published in Foreign Countries may be different for Works first published in different Foreign Countries and for different Classes of such Works; and the Times to be prescribed for the Entries to be made in the Register Book of the Stationers' Company, and for the Deliveries of the Books and other Articles to the said Officer of the Stationers' Company, as hereinbefore is mentioned, may be different for different Foreign Countries and for different Classes of Books or other Articles. Orders in Council may specify different Periods for different Foreign Countries and for different Classes of Works.

XIV. (*Repealed by* 49 & 50 Vict. c. 33, s. 12.)

XV. Every Order in Council to be made under the Authority of this Act shall as soon as may be after the making thereof by Her Majesty in Council be published in the *London Gazette*, and from the Time of such Publication shall have the same Effect as if every Part thereof were included in this Act. Orders in Council to be published in *Gazette*, and to have same Effect as this Act.

XVI. A Copy of every Order of Her Majesty in Council made under this Act shall be laid before both Houses of Parliament within Six Weeks after issuing the same, if Parliament be then sitting, and if not, then within Six Weeks after the Commencement of the then next Session of Parliament. Orders in Council to be laid before Parliament.

XVII. and XVIII. (*Repealed by* 49 & 50 Vict. c. 33, s. 12.)

XIX. (*e*) Neither the Author of any Book, nor the Author or Composer of any Dramatic Piece or Musical Composition, nor the Inventor, Designer, or Engraver of any Print, nor the Maker of any Article of Sculpture, or of such other Work of Art as aforesaid, which shall after the passing of this Act be first published out of Her Majesty's Dominions, shall have any Copyright therein respectively, or any exclusive Right to the public Representation or Performance thereof, otherwise than such (if any) as he may become entitled to under this Act. Authors of Works first published in Foreign Countries not entitled to Copyright except under this Act.

XX. In the Construction of this Act the Word "Book" shall be construed to include "Volume," "Pamphlet," "Sheet of Letter-press," "Sheet of Music," "Map," "Chart," or "Plan;" and the Expression

(*e*) See pp. 88, 127, *ante*.

Interpretation Clause.

"Articles of Sculpture" shall mean all such Sculptures, Models, Copies, and Casts as are described in the said Sculpture Copyright Acts, and in respect of which the Privileges of Copyright are thereby conferred; and the Words "printing" and "reprinting" shall include engraving and any other Method of multiplying Copies; and the Expressions "Order of Her Majesty in Council," "Order in Council," and "Order," shall respectively mean Order of Her Majesty acting by and with the Advice of Her Majesty's Most Honourable Privy Council; and the Expression "Officer of the Company of Stationers" shall mean the Officer appointed by the said Company of Stationers for the Purposes of the said Copyright Amendment Act.

XXI. (*Repealed by S. L. R. Act*, 1874.)

10 & 11 Vict. c. 95 (*f*).

An Act to amend the Law relating to the Protection in the Colonies of Works entitled to Copyright in the United Kingdom.

[22nd July, 1847.]

WHEREAS by an Act (5 & 6 Vict. c. 45) it is enacted, That it shall not be lawful for any Person not being the Proprietor of the Copyright, or some Person authorized by him, to import into any Part of the United Kingdom, or into any other Part of the *British* Dominions, for Sale or Hire, any printed Book first composed or written or printed or published in any part of the United Kingdom wherein there shall be Copyright, and reprinted in any Country or Place whatsoever out of the *British* Dominions: And wherens by an Act (8 & 9 Vict. c. 93), Books wherein the Copyright is subsisting, first composed or written or printed in the United Kingdom, and printed or reprinted in any other Country, are absolutely prohibited to be imported into the *British* Possessions abroad: And whereas by the said last-recited Act it is enacted, that all Laws, Bye-Laws, Usages, or Customs in practice, or endeavoured or pretended to be in force or practice in any of the *British* Possessions in *America*, which are in anywise repugnant to the said Act or to any Act of Parliament made or to be made in the United Kingdom, so far as such Act shall relate to and mention the said Possessions, are and shall be null and void to all Intents and Purposes whatsoever.

Her Majesty may suspend in certain Cases the Prohibitions against

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

(*f*) Chap. VIII., p. 208, *ante*. "The Colonial Copyright Act, 1847" (see Short Titles Act, 1896).

it may be submitted to Her Majesty, and in case Her Majesty shall be of opinion that such Act or Ordinance is sufficient for the Purpose of securing to *British* Authors reasonable Protection within such Possession, it shall be lawful for Her Majesty, if She think fit so to do, to express Her Royal Approval of such Act or Ordinance, and thereupon to issue an Order in Council declaring that so long as the Provisions of such Act or Ordinance continue in force within such Colony the Prohibitions contained in the aforesaid Acts, and 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; and thereupon such Act or Ordinance shall come into operation, except so far as may be otherwise provided therein, or as may be otherwise directed by such Order in Council, anything in the said last-recited Act or in any other Act to the contrary notwithstanding.

the Admission of pirated Books into the Colonies in certain Cases.

Orders in Council to be published in *Gazette*.

II. Every such Order in Council shall, within One Week after the issuing thereof, be published in the *London Gazette*, and a Copy thereof, and of every such Colonial Act or Ordinance so approved as aforesaid by Her Majesty, shall be laid before both Houses of Parliament within Six Weeks after the issuing of such Order, if Parliament be then sitting, or if Parliament be not then sitting, then within Six Weeks after the opening of the next Session of Parliament.

Orders in Council and the Colonial Acts or Ordinances to be laid before Parliament.

15 VICT. c. 12 (*g*).

An Act to extend and explain the International Copyright Acts; and to explain the Acts relating to Copyright in Engravings.

[28th May, 1852.]

PREAMBLE. (*Repealed by* S. L. R. Act, 1892.)

II., III., IV., and V. (*Repealed by* 49 & 50 Vict. c. 33, s. 12.)

Adaptations, &c., of Dramatic Pieces to the English Stage not prevented.

VI. Nothing herein contained shall be so construed as to prevent fair Imitations or Adaptations to the *English* Stage of any Dramatic Piece or Musical Composition published in any Foreign Country (*h*).

VII. Notwithstanding anything in the said International Copyright Act or in this Act contained, any Article of political Discussion which has been published in any Newspaper or Periodical in a Foreign Country may, if the Source from which the same is taken be acknowledged, be republished or translated in any Newspaper or Periodical in

All Articles in Newspapers, &c., relating to Politics

(*g*) Chap. IX., pp. 214–232, *ante*. "The International Copyright Act, 1852" (see Short Titles Act, 1896.)

(*h*) See 38 & 39 Vict. c. 12, and Order in Council, November 28th, 1887, s. 6, *post*, p. 295.

this Country; and any Article relating to any other Subject which has been so published as aforesaid may, if the Source from which the same is taken be acknowledged, be republished or translated in like Manner, unless the Author has signified his Intention of preserving the Copyright therein, and the Right of translating the same in some conspicuous Part of the Newspaper or Periodical in which the same was first published, in which Case, the same shall receive the same Protection as is by virtue of the International Copyright Act or this Act extended to Books.

may be republished or translated; and also all similar Articles on any Subject unless the Author has notified his Intention to reserve the Right.

VIII. (*Repealed by* 49 & 50 Vict. c. 33, s. 12.)

Pirated Copies prohibited to be imported, except with Consent of Proprietor.

IX. All Copies of any Works of Literature or Art wherein there is any subsisting Copyright by virtue of the International Copyright Act and this Act, or of any Order in Council made in pursuance of such Acts or either of them, and which are printed, reprinted, or made in any Foreign Country except that in which such Work shall be first published, and all unauthorized Translations of any Book or Dramatic Piece the Publication or public Representation in the *British* Dominions of Translations whereof, not authorized as in this Act mentioned, shall for the Time being be prevented under any Order in Council made in pursuance of this Act, are hereby absolutely prohibited to be imported into any Part of the *British* Dominions, except by or with the Consent of the registered Proprietor of the Copyright of such Work or of such Book or Piece, or his Agent authorized in Writing; and the Provision of 5 & 6 Vict. c. 45, for the Forfeiture, Seizure, and Destruction of any printed Book first published in the United Kingdom wherein there shall be Copyright, and reprinted in any Country out of the *British* Dominions, and imported into any Part of the *British* Dominions by any Person not being the Proprietor of the Copyright, or a Person authorized by such Proprietor, shall extend and be applicable to all Copies of any Works of Literature and Art, and to all Translations the Importation whereof into any Part of the *British* Dominions is prohibited under this Act.

Provisions of 5 & 6 Vict. c. 45, as to Forfeiture, &c., of pirated Works, &c., to extend to Works prohibited to be imported under this Act.

Foregoing Provisions and 7 & 8 Vict. c. 12, to be read as One Act.

X. The Provisions hereinbefore contained shall be incorporated with the International Copyright Act, and shall be read and construed therewith as One Act.

XI. (*Repealed by* 49 & 50 Vict. c. 33, s. 12.)

XII. and XIII. (As to customs duties payable on imported books.)

XIV. (*i*) And whereas by the Four Acts of Parliament following, viz., 8 Geo. 2, c. 13, 7 Geo. 3, c. 38, 17 Geo. 3, c. 57, 6 & 7 Will. 4, c. 59, Provision is made for securing to every Person who invents, or designs, engraves, etches, or works in Mezzotinto or Chiaro-oscuro, or, from his own Work, Design, or Invention, causes or procures to be designed, engraved, etched, or worked in Mezzotinto or Chiaro-oscuro, any Historical Print or Prints, or any Print or Prints of any Portrait,

(*i*) Chap. VII., sect. II., *ante*.

Conversation, Landscape, or Architecture, Map, Chart, or Plan, or any other Print or Prints whatsoever, and to every Person who engraves, etches, or works in Mezzotinto or Chiaro-oscuro, or causes to be engraved, etched, or worked any Print taken from any Picture, Drawing, Model, or Sculpture, notwithstanding such Print has not been graven or drawn from his own original Design, certain Copyrights therein defined: And whereas Doubts are entertained whether the Provisions of the said Acts extend to Lithographs and certain other Impressions, and it is expedient to remove such Doubts:

For Removal of Doubts as to the Provisions of the said Acts including Lithographs, Prints, &c.

It is hereby declared, That the Provisions of the said Acts are intended to include Prints taken by Lithography, or any other mechanical Process by which Prints or Impressions of Drawings or Designs are capable of being multiplied indefinitely, and the said Acts shall be construed accordingly.

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 (*j*). [29th July, 1862.]

WHEREAS by Law, as now established, the Authors of Paintings, Drawings, and Photographs have no Copyright in such their Works (*k*), and it is expedient that the Law should in that respect be amended: Be it enacted:

Copyright in Works hereafter made or sold to vest in the Author for his Life and for Seven Years after his Death.

1. (*k*) The Author, being a *British* Subject or resident within the Dominions of the Crown (*l*), of every original Painting, Drawing, and Photograph (*m*) which shall be or shall have been made either in the *British* Dominions or elsewhere (*n*), and which shall not have been sold or disposed of before the Commencement of this Act, and his Assigns, shall have the sole and exclusive Right of copying, engraving, reproducing, and multiplying such Painting or Drawing, and the Design thereof (*o*), or such Photograph, and the Negative thereof, by any Means and of any size, for the Term of the natural Life of such Author, and Seven Years after his Death; provided that when any Painting or Drawing, or the Negative of any Photograph, shall for the First Time after the passing of this Act be sold or disposed of, or shall be

(*j*) "The Fine Arts Copyright Act, 1862" (see Short Titles Act, 1896).
(*k*) Pages 161, 179, *ante*; *Tuck* v. *Priester* (1887), 19 Q. B. D. 629.
(*l*) See p. 181, *ante*.
(*m*) *Nottage* v. *Jackson* (1883), 11 Q. B. D. 627.
(*n*) See p. 181, *ante*.
(*o*) See pp. 185, 195, *ante*, and the "Living pictures" cases; see note on p. 183.

made or executed for or on behalf of any other Person for a good or a valuable Consideration (*p*), the Person so selling or disposing of or making or executing the same shall not retain the Copyright thereof, unless it be expressly reserved to him by Agreement in Writing, signed at or before the Time of such sale or disposition, by the Vendee or Assignee of such Painting or Drawing, or of such Negative of a Photograph, or by the Person for or on whose Behalf the same shall be so made or executed, but the Copyright shall belong to the Vendee or Assignee of such Painting or Drawing, or of such Negative of a Photograph, or to the Person for or on whose Behalf the same shall have been made or executed; nor shall the Vendee or Assignee thereof be entitled to any such Copyright, unless, at or before the Time of such Sale or Disposition, an Agreement in Writing, signed by the Person so selling or disposing of the same, or by his Agent duly authorized, shall have been made to that Effect (*q*).

Copyright not to prevent the Representation of the same Subjects in other Works.

2. Nothing herein contained shall prejudice the Right of any Person to copy or use any Work in which there shall be no Copyright, or to represent any Scene or Object, notwithstanding that there may be Copyright in some Representation of such Scene or Object (*r*).

Assignments, Licences, &c., to be in Writing.

3. All Copyright under this Act shall be deemed Personal or Moveable Estate, and shall be assignable at Law, and every Assignment thereof, and every Licence to use or copy by any Means or Process the Design or Work which shall be the subject of such Copyright, shall be made by some Note or Memorandum in Writing, to be signed by the Proprietor of the Copyright, or by his Agent appointed for that purpose in Writing.

Register of Proprietors of Copyright in Paintings, Drawings, and Photographs to be kept at Stationers' Hall as in 5 & 6 Vict. c. 45.

4. There shall be kept at the Hall of the Stationers' Company, by the Officer appointed by the said Company for the Purposes of the Act (5 & 6 Vict. c. 45), a Book or Books, entitled "The Register of Proprietors of Copyright in Paintings, Drawings, and Photographs," wherein shall be entered a Memorandum of every Copyright to which any Person shall be entitled under this Act, and also of every subsequent Assignment of any such Copyright; and such Memorandum shall contain a Statement of the Date of such Agreement or Assignment, and of the Names of the Parties thereto, and of the Name and Place of Abode of the Person in whom such Copyright shall be vested by virtue thereof, and of the Name and Place of Abode of the Author of the Work in which there shall be such Copyright, together with a short Description of the Nature and Subject of such Work, and in addition thereto, if the Person registering shall so desire, a Sketch, Outline, or Photograph of the said Work, and no Proprietor of any

(*p*) *Ellis* v. *Marshall* (1895), 11 T. L. R. 522.
(*q*) See p. 192, *ante*.
(*r*) *Hanfstaengl* v. *Empire Palace* (1894), 3 Ch. at p. 127, *per* Lindley L.J., and p. 182, *ante*.

such Copyright shall be entitled to the Benefit of this Act until such Registration, and no action shall be sustainable nor any Penalty be recoverable in respect of anything done before Registration (*s*).

Certain Enactments of 5 & 6 Vict. c. 45 to apply to the Books to be kept under this Act.

5. The several Enactments in the said Act (5 & 6 Vict. c. 45), with relation to keeping the Register Book thereby required, and the Inspection thereof, the Searches therein and the Delivery of certified and stamped Copies thereof, the Reception of such Copies in Evidence, the making of false Entries in the said Book, and the Production in Evidence of Papers falsely purporting to be Copies of Entries in the said Book, the Application to the Courts and Judges by Persons aggrieved by Entries in the said Book, and the expunging and varying such Entries shall apply to the Book or Books to be kept by virtue of this Act, and to the Entries and Assignments of Copyright and Proprietorship therein under this Act, in such and the same Manner as if such Enactments were here expressly enacted in relation thereto, save and except that the Forms of Entry prescribed by the said Act may be varied to meet the Circumstances of the Case, and that the Sum to be demanded by the officer of the said Company of Stationers for making any entry required by this Act shall be One Shilling only.

Penalties on Infringement of Copyright.

6. If the Author of any Painting, Drawing, or Photograph in which there shall be subsisting Copyright, after having sold or disposed of such Copyright, or if any other Person, not being the Proprietor for the Time being of Copyright in any Painting, Drawing, or Photograph, shall, without the Consent of such Proprietor, repeat, copy, colourably imitate, or otherwise multiply for Sale, Hire, Exhibition, or Distribution, or cause or procure to be repeated, copied, colourably imitated, or otherwise multiplied for Sale, Hire, Exhibition, or Distribution, any such Work or the Design thereof, or, knowing that any such Repetition, Copy, or other Imitation has been unlawfully made (*t*) shall import into any Part of the United Kingdom, or sell, publish, let to Hire, exhibit, or distribute, or offer for Sale, Hire, Exhibition, or Distribution, or cause or procure to be imported, sold, published, let to Hire, distributed, or offered for Sale, Hire, Exhibition, or Distribution, any Repetition, Copy, or Imitation of the said Work, or of the Design thereof, made without such Consent as aforesaid, such Person for every such Offence (*u*) shall forfeit to the Proprietor of the Copyright for the Time being a sum not exceeding Ten Pounds; and all such Repetitions, Copies, and Imitations made without such Consent as aforesaid, and all Negatives of Photographs made for the Purpose of obtaining such Copies, shall be forfeited to the Proprietor of the Copyright.

(*s*) *Tuck* v. *Priester* (1887), 19 Q. B. D. 629, at p. 643.
(*t*) See *Tuck* v. *Priester* (1887), 19 Q. B. D. at pp. 638, 644.
(*u*) *Ex p. Beal* (1868), L. R. 3 Q. B. 387.

Penalties on fraudulent Productions and Sales.

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

First, no Person shall fraudulently sign or otherwise affix, or fraudulently cause to be signed or otherwise affixed, to or upon any Painting, Drawing, or Photograph, or the Negative thereof, any Name, Initials, or Monogram:

Secondly, no Person shall fraudulently sell, publish, exhibit, or dispose of, or offer for Sale, Exhibition, or Distribution, any Painting, Drawing, or Photograph, or Negative of a Photograph, having thereon the Name, Initials, or Monogram of a Person who did not execute or make such Work:

Thirdly, no Person shall fraudulently utter, dispose of, or put off, or cause to be uttered or disposed of, any Copy or colourable Imitation of any Painting, Drawing, or Photograph, or Negative of a Photograph, whether there shall be subsisting Copyright therein or not, as having been made or executed by the Author or Maker of the original Work from which such Copy or Imitation shall have been taken:

Fourthly, where the Author or Maker of any Painting, Drawing, or Photograph, or Negative of a Photograph, made either before or after the passing of this Act, shall have sold or otherwise parted with the Possession of such Work, if any Alteration shall afterwards be made therein by any other Person, by Addition or otherwise, no Person shall be at liberty, during the Life of the Author or Maker of such Work, without his consent, to make or knowingly to sell or publish, or offer for Sale, such Work or any Copies of such Work so altered as aforesaid, or of any Part thereof, as or for the unaltered Work of such Author or Maker:

Penalties. Every Offender under this Section shall, upon Conviction, forfeit to the Person aggrieved a Sum not exceeding Ten Pounds, or not exceeding double the full Price, if any, at which all such Copies, Engravings, Imitations, or altered Works shall have been sold or offered for Sale; and all such Copies, Engravings, Imitations, or altered Works shall be forfeited to the Person, or the Assigns or legal Representatives of the Person, whose Name, Initials, or Monogram shall be so fraudulently signed or affixed thereto, or to whom such spurious or altered Work shall be so fraudulently or falsely ascribed as aforesaid: Provided always, that the Penalties imposed by this Section shall not be incurred unless the Person whose Name, Initials, or Monogram shall be so fraudulently signed or affixed, or to whom such spurious or altered Work shall be so fraudulently or falsely ascribed as aforesaid, shall have been living at or within Twenty Years next before the Time when the Offence may have been committed.

Recovery of pecuniary Penalties.

8. All pecuniary Penalties which shall be incurred, and all such unlawful Copies, Imitations, and all other Effects and Things as shall have been forfeited by Offenders, pursuant to this Act, and pursuant to

any Act for the Protection of Copyright Engravings, may be recovered by the Person hereinbefore and in any such Act as aforesaid empowered to recover the same respectively, and hereinafter called the Complainant or the Complainer, as follows:

In *England* and *Ireland*, either by Action against the Party offending, or by summary Proceeding before any Two Justices having Jurisdiction where the Party offending resides: In England and Ireland.

In *Scotland* by Action before the Court of Session in ordinary Form, or by summary Action before the Sheriff of the County where the Offence may be committed or the Offender resides (*v*), . . . and any Judgment so to be pronounced by the Sheriff in such summary Application shall be final and conclusive, and not subject to Review by Suspension, Reduction, or otherwise. In Scotland.

Superior Courts of Record in which any Action is pending may make an Order for an Injunction, Inspection, or Account.

9. In any Action in any of Her Majesty's Superior Courts of Record at *Westminster* and in *Dublin*, for the Infringement of any such Copyright as aforesaid, it shall be lawful for the Court in which such Action is pending, if the Court be then sitting, or if the Court be not sitting then for a Judge of such Court, on the Application of the Plaintiff or Defendant respectively, to make such Order for an Injunction, Inspection, or Account, and to give such Direction respecting such Action, Injunction, Inspection, and Account, and the Proceedings therein respectively, as to such Court or Judge may seem fit.

Importation of pirated Works prohibited.

10. All Repetitions, Copies, or Imitations of Paintings, Drawings, or Photographs, wherein or in the Design whereof there shall be subsisting Copyright under this Act, and all Repetitions, Copies, and Imitations of the Design of any such Painting or Drawing, or of the Negative of any such Photograph, which, contrary to the Provisions of this Act, shall have been made in any Foreign State, or in any Part of the *British* Dominions, are hereby absolutely prohibited to be imported into any Part of the United Kingdom, except by or with the Consent of the Proprietor of the Copyright thereof, or his Agent authorized in Writing; and if the Proprietor of any such Copyright, or his Agent, shall declare that any Goods imported are Repetitions, Copies, or Imitations of any such Painting, Drawing, or Photograph, or of the Negative of any such Photograph, and so prohibited as aforesaid, then such Goods may be detained by the Officers of Her Majesty's Customs (*w*).

Application in such Cases of Customs Acts.

Saving of Right to bring Action for Damages.

11. If the Author of any Painting, Drawing, or Photograph, in which there shall be subsisting Copyright, after having sold or otherwise disposed of such Copyright, or if any other Person, not being the Proprietor for the Time being of such Copyright, shall, without the Consent of such Proprietor, repeat, copy, colourably imitate, or otherwise multiply, or cause or procure to be repeated, copied, colourably

(*v*) Words omitted repealed by S. L. R. Act, 1893 (1).
(*w*) See Customs Act, 1876, s. 42; Revenue Act, 1889, s. 1.

imitated, or otherwise multiplied, for Sale, Hire, Exhibition, or Distribution, any such Work or the Design thereof, or the Negative of any such Photograph, or shall import or cause to be imported into any Part of the United Kingdom, or sell, publish, let to Hire, exhibit, or distribute, or offer for Sale, Hire, Exhibition, or Distribution, or cause or procure to be sold, published, let to Hire, exhibited, or distributed, or offered for Sale, Hire, Exhibition, or Distribution, any Repetition, Copy, or Imitation, of such Work, or the Design thereof, or the Negative of any such Photograph, made without such Consent as aforesaid, then every such Proprietor, in addition to the Remedies hereby given for the Recovery of any such Penalties, and Forfeiture of any such Things as aforesaid, may recover Damages by and in a Special Action on the Case, to be brought against the Person so offending, and may in such Action recover and enforce the Delivery to him of all unlawful Repetitions, Copies, and Imitations, and Negatives of Photographs, or may recover Damages for the Retention or Conversion thereof: Provided that nothing herein contained, nor any Proceeding, Conviction, or Judgment, for any Act hereby forbidden, shall affect any Remedy which any Person aggrieved by such Act may be entitled to either at Law or in Equity.

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

12. This Act shall be considered as including the Provisions of the Act passed in the Session of Parliament held in the Seventh and Eighth Years of Her present Majesty, intituled *An Act to amend the Law relating to International Copyright*, in the same Manner as if such Provisions were Part of this Act (*x*).

38 VICT. C. 12.

An Act to amend the Law relating to International Copyright (*y*).

[13th May, 1875.]

WHEREAS by an Act (15 Vict. c. 12) it is enacted (*z*).

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

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

Sect. 6 of recited Act not to

1. (*a*) In any case in which, by virtue of the enactments hereinbefore recited, any Order in Council has been or may hereafter be made for

(*x*) See 49 & 50 Vict. c. 33, s. 12, and Chap. IX., *ante*.

(*y*) Chap. IX., *ante*. "The International Copyright Act, 1875" (see Short Titles Act, 1896).

(*z*) Recital in preamble repealed by S. L. R. Act, 1893 (2).

(*a*) See Order in Council, November 28th, 1887, s. 6, *post*, p. 295.

the purpose of extending protection to the translations of dramatic pieces first publicly represented in any foreign country, it shall be lawful for Her Majesty by Order in Council to direct that the sixth section of the said Act shall not apply to the dramatic pieces to which protection is so extended; and thereupon the said recited Act shall take effect with respect to such dramatic pieces and to the translations thereof as if the said sixth section of the said Act were hereby repealed. apply to dramatic pieces in certain cases.

38 & 39 VICT. c. 53.

An Act to give effect to an Act of Parliament of the Dominion of Canada respecting Copyright (*b*). [2nd August, 1875.]

WHEREAS by an Order of Her Majesty in Council, dated the 7th day of July, 1868, it was ordered that all probibitions contained in Acts of the Imperial Parliament against the importing into the Province of Canada, or against the selling, letting out to hire, exposing for sale or hire, or possessing therein foreign reprints of books first composed, written, printed, or published in the United Kingdom, and entitled to copyright therein, should be suspended so far as regarded Canada:

And whereas the Senate and House of Commons of Canada did (38 Vict.) pass a Bill intituled "An Act respecting Copyrights," which Bill has been reserved by the Governor-General for the signification of Her Majesty's pleasnre thereon:

And whereas by the said reserved Bill provision is made, subject to such conditions as in the said Bill are mentioned, for securing in Canada the rights of authors in respect of matters of copyright, and for prohibiting the importation into Canada of any work for which copyright under the said reserved Bill has been secured; and whereas doubts have arisen whether the said reserved Bill may not be repugnant to the said Order in Council, and it is expedient to remove such doubts and to confirm the said Bill:

1. This Act may be cited for all purposes as The Canada Copyright Act, 1875. Short title of Act

2. In the construction of this Act the words "book" and "copyright" shall have respectively the same meaning as in the Act (5 & 6 Vict. c. 45). Definition of terms.

3. It shall be lawful for Her Majesty in Council to assent to the said reserved Bill, as contained in the schedule to this Act annexed, and if Her Majesty shall be pleased to signify Her assent thereto, the said Bill shall come into operation at such time and in such manner as Her Majesty may by Order in Council direct; anything . . . in any other Act to the contrary notwithstanding. Her Majesty may assent to the Bill in schedule.

(*b*) Chap. VIII., *ante*, p. 208.

Colonial reprints not to be imported into United Kingdom.

4. Where any book in which, at the time when the said reserved Bill comes into operation, there is copyright in the United Kingdom, or any book in which thereafter there shall be such copyright, becomes entitled to copyright in Canada in pursuance of the provisions of the said reserved Bill, it shall be unlawful for any person, not being the owner, in the United Kingdom, of the copyright in such book or some person authorized by him, to import into the United Kingdom any copies of such book reprinted or republished in Canada; and for the purposes of such importation (5 & 6 Vict. c. 45, s. 17), shall apply to all such books in the same manner as if they had been reprinted out of the British dominions.

Order in Council of 7th July, 1868, to continue in force subject to this Act.

5. The said Order in Council, dated July 7, 1868, shall continue in force so far as relates to books which are not entitled to copyright for the time being, in pursuance of the said reserved Bill.

(The schedule sets out the Canadian Act in full.)

Customs Laws Consolidation Act.

39 & 40 VICT. c. 36 (*c*).

* * * * *

42. The goods enumerated and described in the following table of prohibitions and restrictions inwards are hereby prohibited to be imported or brought into the United Kingdom, save as thereby excepted, and if any goods so enumerated and described shall be imported or brought into the United Kingdom contrary to the prohibitions or restrictions contained therein, such goods shall be forfeited, and may be destroyed or otherwise disposed of as the Commissioners of Customs may direct.

A TABLE OF PROHIBITIONS AND RESTRICTIONS INWARDS.

Goods prohibited to be imported.

Table of prohibitions and restrictions.

Books wherein the copyright shall be first subsisting, first composed, or written or printed, in the United Kingdom, and printed or reprinted in any other country, as to which the proprietor of such copyright or his agent shall have given to the Commissioners of Customs a notice in writing, duly declared, that such copyright subsists, such notice also stating when such copyright will expire.

* * * * *

Lists of prohibited books to be

44. The Commissioners of Customs shall cause to be made, and to be publicly exposed at the Custom Houses in the several ports in the United Kingdom, lists of all books wherein the copyright shall be

(*c*) See p. 213, *ante*. See Revenue Act, 1889, *post*, p. 293.

subsisting, and as to which the proprietor of such copyright, or his agent, shall have given notice in writing to the said Commissioners that such copyright exists, stating in such notice when such copyright expires, accompanied by a declaration made and subscribed before a collector of customs or a justice of the peace, that the contents of such notice are true. exposed at Custom Houses.

45. If any person shall have cause to complain of the insertion of any book in such lists, it shall be lawful for any judge at chambers, on the application of the person so complaining, to issue a summons, calling upon the person upon whose notice such book shall have been so inserted to appear before any such judge, at a time to be appointed in such summons, to show cause why such book shall not be expunged from such lists, and any such judge shall at the time so appointed proceed to hear and determine upon the matter of such summons, and make his order thereon in writing; and upon service of such order, or a certified copy thereof, upon the Commissioners of Customs or their secretary for the time being, the said Commissioners shall expunge such book from the list, or retain the same therein, according to the tenor of such order; and in case such book shall be expunged from such lists, the importation thereof shall not be deemed to be prohibited. If at the time appointed in any such summons, the person so summoned shall not appear before such judge, then upon proof by affidavit that such summons, or a true copy thereof, has been personally served upon the person so summoned, or sent to him by post to, or left at his last known place of abode or business, any such judge may proceed *ex parte* to hear and determine the matter; but if either party be dissatisfied with such order, he may apply to a superior court to review such decision, and to make such further order thereon as the court may see fit: Provided always, that nothing herein contained shall affect any proceeding at law or in equity which any party aggrieved by reason of the insertion of any book pursuant to any such notice, or the removal of any book from such list pursuant to any such order, or by reason of any false declaration under this Act, might or would otherwise have against any party giving such notice, or obtaining such order, or making such false declaration.

* * * * *

152. Any books wherein the copyright shall be subsisting, first composed or written or printed in the United Kingdom, and printed or reprinted in any other country, shall be and are hereby absolutely prohibited to be imported into the British possessions abroad: Provided always, that no such books shall be prohibited to be imported as aforesaid unless the proprietor of such copyright, or his agent, shall have given notice in writing to the Commissioners of Customs that such copyright subsists, and in such notice shall have stated when the copyright will expire; and the said Commissioners shall cause to be made and transmitted to the several ports in the British possessions Foreign reprints of books under copyright prohibited.

abroad, from time to time to be publicly exposed there, lists of books respecting which such notice shall have been duly given, and all books imported contrary thereto shall be forfeited: but nothing herein contained shall be taken to prevent Her Majesty from exercising the powers vested in her by the tenth and eleventh Victoria, chapter ninety-five, intituled "An Act to amend the law relating to the protection in the colonies of works entitled to copyright in the United Kingdom," to suspend in certain cases such prohibition.

* * * * *

45 & 46 VICT. c. 40.

An Act to amend the law of Copyright relating to Musical Compositions (d). [10th August, 1882.]

WHEREAS it is expedient to amend the law relating to copyright in musical compositions, and to protect the public from vexatious proceedings for the recovery of penalties for the unauthorized performance of the same:

Be it enacted,

Printed notice restraining public performance.

1. On and after the passing of this Act the proprietor of the copyright in any musical composition first published after the passing of this Act, or his assignee, who shall be entitled to and be desirous of retaining in his own hands exclusively the right of public representation or performance of the same, shall print or cause to be printed upon the title-page of every published copy of such musical composition a notice to the effect that the right of public representation or performance is reserved.

Provision when right of performance and copyright are vested in different owners.

2. In case, after the passing of this Act, the right of public representation or performance of, and the copyright in, any musical composition shall be or become vested before publication of any copy thereof in different owners, then, if the owner of the right of public representation or performance shall desire to retain the same, he shall, before any such publication of any copy of such musical composition, give to the owner of the copyright therein notice in writing requiring him to print upon every copy of such musical composition a notice to the effect that the right of public representation or performance is reserved; but in case the right of public representation or performance of, and the copyright in any musical composition shall, after publication of any copy thereof subsequently to the passing of this Act, first become vested in different owners, and such notice as aforesaid shall have been duly printed on all copies published after the passing of this Act previously to such vesting, then, if the owner of the right of performance and

(d) Chap. V., pp. 96–108, *ante*, see especially p. 100, and *Fuller* v. *Blackpool Co.* (1895), 2 Q. B. 429.

representation shall desire to retain the same, he shall, before the publication of any further copies of such musical composition, give notice in writing to the person in whom the copyright shall be then vested, requiring him to print such notice as aforesaid on every copy of such musical composition to be thereafter published.

Penalty on owner of copyright for non-compliance with notice from owner of right of performance.

3. If the owner for the time being of the copyright in any musical composition shall, after due notice being given to him or his predecessor in title at the time, and generally in accordance with the last preceding section, neglect or fail to print legibly and conspicuously upon every copy of such composition published by him or by his authority, or by any person lawfully entitled to publish the same, and claiming through or under him, a note or memorandum stating that the right of public representation or performance is reserved, then and in such case the owner of the copyright at the time of the happening of such neglect or default, shall forfeit and pay to the owner of the right of public representation or performance of such composition the sum of twenty pounds to be recovered in any court of competent jurisdiction.

Costs 2 & 4 Will. 4, c. 15.

4. *Notwithstanding the provisions of the Act* 3 & 4 *Will.* 4, c. 15, *to amend the laws relating to dramatic literary property, or any other Act in which those provisions are incorporated, the costs of any action or proceedings for penalties or damages in respect of the unauthorized representation or performance of any musical composition published before the passing of this Act shall, in cases in which the plaintiff shall not recover more than forty shillings as penalty or damages, be in the discretion of the court or judge before whom such action or proceedings shall be tried* (e).

Short title.

5. This Act may be cited as the Copyright (Musical Compositions) Act, 1882.

49 & 50 VICT. c. 33.

An Act to amend the Law respecting International and Colonial Copyright (f). [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 September, 1885, a draft of a convention was agreed to for giving to authors of literary and artistic works first published in one of the

(e) Repealed 51 & 52 Vict. c. 17, s. 2, *post*, p. 292.
(f) Chap. IX., *ante*, p. 214.

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 (*g*):

Short titles and construction.

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.

Amendment as to extent and effect of order under International Copyright Acts.

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 (*h*).

(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 (*i*).

(*g*) See *Hanfstaengl* v. *American Tobacco Co.* (1895), 1 Q. B. 347.
(*h*) See Order in Council, November 28th, 1887, s. 4, *post*, p. 295.
(*i*) *Ibid.* s. 3, *post*, p. 294, and *ante*, p. 217. As to meaning of "produced," see *Hanfstaengl* v. *American Tobacco Co.* (1895), 1 Q. B. 347.

Simultaneous publication.

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 Act applies (*j*).

(2.) Where a work produced simultaneously in the United Kingdom, and in some foreign country or countries is by virtue of an Order in Council under the International Copyright Acts deemed for the purpose of copyright to be first produced in one of the said foreign countries, and not in the United Kingdom, the copyright in the United Kingdom shall be such only as exists by virtue of production in the said foreign country, and shall not be such as would have been acquired if the work had been first produced in the United Kingdom.

Modification of certain provisions of International Copyright Acts.

4.—(1.) Where an order respecting any foreign country is made under the International Copyright Acts (*k*), 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 (*l*).

(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 (*m*).

Restriction on translation.

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 (*n*), 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 (*o*), was first produced, an authorized translation in the English language of such work or number has not been produced, the

(*j*) *Ibid.* s. 5, *post*, p. 295. (*k*) See s. 1 (2), above.

(*l*) The Order of November 28th, 1887, contains no such provisions. See p. 224, *ante*.

(*m*) See Order in Council, November 28th, 1887, preamble.

(*n*) The Order does not direct otherwise: see Berne Convention, Arts. 5 and 6, *post*, pp. 297, 298.

(*o*) The last number, according to the Convention, s. 5.

said right to prevent the production in and importation into the United Kingdom of an unauthorized translation of such work shall cease (*p*).

(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 (*q*).

(4.) Such of the provisions of the International Copyright Act, 1852, relating to translations as are unrepealed by this Act (*r*) shall apply in like manner as if they were re-enacted in this section.

Application of Act to existing works.

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 (*s*): 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 (*t*).

Evidence of foreign copyright.

7. Where it is necessary (*u*) 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 (*v*) 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 in this section mentioned, and shall admit in evidence, without proof, the documents authenticated by it.

Application of Copyright Acts to colonies.

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 (*w*):

Provided that—

(*a*) the enactments respecting the registry of the copyright in such

(*p*) Convention, Art. 5. Cf. *Lauri* v. *Renad* (1892), 3 Ch. 402, and *ante*, pp. 220, 221.

(*q*) This confirms the existing law: see p. 123, *ante*.

(*r*) *I.e.* ss. 6 and 7 of 15 Vict. c. 12, *ante*, p. 271; but as to s. 6, see Order in Council, s. 6, *post*, p. 295.

(*s*) Convention, Art. 14, *post*, p. 300.

(*t*) See p. 221, *ante*.

(*u*) See Art. 11 of Convention.

(*v*) See 8 & 9 Vict. c. 113, s. 1.

(*w*) See Chap. VIII., pp. 208–212, *ante*.

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 (*x*) as a true copy by the officer keeping it, and authenticated by the public seal (*x*) of the British possession, or by the official seal (*x*) 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 Art or ordinance respecting the copyright within the limits of such possession of works first produced in that possession.

Application of International Copyright Acts to colonies.

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 (*y*).

Making of Orders in Council.

10.—(1.) It shall be lawful for Her Majesty from time to time to make Orders in Council for the purposes of the International Copyright Acts and this Act, for revoking or altering any Order in Council previously made in pursuance of the said Acts, or any of them.

(2.) Any such Order in Council shall not affect prejudicially any rights acquired or accrued at the date of such Order coming into operation, and shall provide for the protection of such rights.

(*x*) See 8 & 9 Vict. c. 113, s. 1.

(*y*) Berne Convention, Art. 19.

Definitions.

11. In this Act, unless the context otherwise requires—

The expression "literary and artistic work" (*x*) 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 (*y*).

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.

Repeal of Acts.

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 (*z*).

(*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 (*a*).

(*x*) See Berne Convention, Art. 4.

(*y*) See *Hanfstaengl* v. *American Tobacco Co.* (1895), 1 Q. B. 347.

(*z*) For Orders in Council revoked, see Second Schedule to Order in Council of November 28th, 1887, *post*, p. 304.

(*a*) The first part of this section, and subsection (*b*), have been repealed by the Statute Law Revision Act, 1898, because the Interpretation Act, 1889, 52 & 53 Vict. c. 63, s. 9 (1), contains a general enactment to the same effect.

FIRST SCHEDULE.

INTERNATIONAL COPYRIGHT ACTS.

PART I.

Session and Chapter.	Short Title.
7 & 8 Vict. c. 12 . .	The International Copyright Act, 1844.
15 & 16 Vict. c. 12 .	The International Copyright Act, 1852.
38 & 39 Vict. c. 12 .	The International Copyright Act, 1875.

PART II.

Session and Chapter.	Title.	Enactment referred to.
25 & 26 Vict. c. 68 .	Copyright (Works of Art).	Section twelve.

SECOND SCHEDULE

Copyright Acts.

Session and Chapter.	Short Title.
8 Geo. 2, c. 13 . .	The Engraving Copyright Act, 1734.
7 Geo. 3, c. 38 . .	The Engraving Copyright Act, 1766.
15 Geo. 3, c. 53 . .	The Copyright Act, 1775.
17 Geo. 3, c. 57 . .	The Prints Copyright Act, 1777.
54 Geo. 3, c. 56 . .	The Sculpture Copyright Act, 1814.
3 Will. 4, c. 15 . .	The Dramatic Copyright Act, 1833.
5 & 6 Will. 4, c. 65 .	The Lectures Copyright Act, 1835.
6 & 7 Will. 4, c. 59 .	The Prints and Engravings Copyright Act, 1836.
6 & 7 Will. 4, c. 110.	The Copyright Act, 1836.
5 & 6 Vict. c. 45 . .	The Copyright Act, 1842.
10 & 11 Vict. c. 95 .	The Colonial Copyright Act, 1847.
25 & 26 Vict. c. 68 .	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.

51 & 52 VICT. c. 17.

An Act to amend the Law relating to the Recovery of Penalties for the unauthorized Performance of Copyright Musical Compositions.

[5th July, 1888.]

WHEREAS it is expedient to further amend the law relating to copyright in musical compositions, and to further protect the public from vexatious proceedings for the recovery of penalties for the unauthorized performance of the same:

Be it enacted as follows:

Provision as to damages.

1. Notwithstanding the provisions of the Act to amend the laws relating to dramatic literary property (3 & 4 Will. 4, c. 15, s. 2), or any other Act in which those provisions are incorporated, the penalty or damages to be awarded upon any action or proceedings in respect of each and every unauthorized representation or performance of any musical composition, whether published before or after the passing of this Act, shall be such a sum or sums as shall, in the discretion of the Court or judge before whom such action or proceedings shall be tried, be reasonable, and the Court or judge before whom such action or proceedings shall bo tried may award a less sum than forty shillings in respect of each and every such unauthorized representation or performance as aforesaid, or a nominal penalty or nominal damages as the justice of the case may require (*a*).

Costs to be in discretion of judge. 45 & 46 Vict. c. 40.

2. The costs of all such actions or proceedings as aforesaid shall be in the absolute discretion of the judge before whom such actions and proceedings shall be tried, and section four of the Copyright (Musical Compositions) Act, 1882 (*b*), is hereby repealed (*c*).

Proprietor not wilfully permitting such performance to be exempt.

3. The proprietor, tenant, or occupier of any place of dramatic entertainment, or other place at which any unauthorized representation or performance of any musical composition, whether published before or after the passing of this Act, shall take place, shall not by reason of such representation or performance be liable to any penalty or damages in respect thereof, unless he shall wilfully cause or permit such unauthorized representation or performance, knowing it to be unauthorized (*d*).

Saving for operas and plays.

4. The provisions of this Act shall not apply to any action or proceedings in respect of a representation or performance of any opera or stage play in any theatre or other place of public entertainment duly licensed in that respect (*d*).

(*a*) See p. 101, and *Fuller* v. *Blackpool Co.* (1895), 2 Q. B. 429.
(*b*) See p. 283.
(*c*) See p. 101.
(*d*) See p. 94; and see *Monaghan* v. *Taylor*, 2 Times L. R. 685; *Roberts* v. *Bignell*, 3 Times L. R. 552.

5. This Act may be cited as the Copyright (Musical Compositions) Act, 1888. Short title.

52 & 53 VICT. c. 42, s. 1.

The Revenue Act, 1889.

1. THE following goods shall from and after the passing of this Act be included amongst the goods enumerated and described on the table of prohibitions and restrictions contained in section 42 of the Customs Consolidation Act, 1876; namely,

Books, first published in any country or State other than the United Kingdom, wherein under the International Copyright Act, 1886, or any other Act, or any Order in Council made under the authority of any Act, there is a subsisting copyright in the United Kingdom, printed or reprinted in any country or State other than the country or State in which they were first published, and as to which the owner of the copyright, or his agent in the United Kingdom, has given to the Commissioners of Customs in the manner prescribed by section 44 of the Customs Consolidation Act, 1876, a notice in such form and giving such particulars as those Commissioners require, and accompanied by a declaration as provided in that section:

ORDER IN COUNCIL (ADOPTING BERNE CONVENTION) (*f*).

London Gazette, Friday, December 2, 1887.

At the Court at Windsor, the 28th day of November, 1887.

WHEREAS a Convention, of which an English translation is set out in the First Schedule to this Order (*g*), 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 copyright to the authors of literary and artistic works:

And WHEREAS the ratifications of the said Convention were exchanged on the 5th day of September, 1887, between Her Majesty the Queen and the Governments of the foreign countries following, that is to say:

(*f*) Chap. IX., p. 214, *ante*.
(*g*) *Post*, pp. 296-304.

Belgium, France, Germany, Hayti, Italy, Spain, Switzerland, Tunis (*h*):

And WHEREAS Her Majesty in Council is satisfied (*i*) 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.) (*ii*) The Convention as set out 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 (*j*).

(2.) This Order shall extend to the foreign countries following, that is to say:

Belgium, France, Germany, Hayti, Italy, Spain, Switzerland, Tunis (*k*).

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 (*l*), 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, 1845 to 1886, mentioned, have as respects that work throughout Her Majesty's dominions the same right of copyright, including any right capable of being conferred by an Order in Council under section 2 or section 5 of the International Copyright Act, 1844, or under any other enactment, as if the work had been first produced in the United Kingdom, and shall have such right during the same period:

Provided that the author of a literary or artistic work shall not have

(*h*) Luxembourg has adhered to the Convention under Art. 18 thereof: see Order in Council, August 14th, 1888; Monaco: see Order, October 15th, 1889; Norway (Order in Council, August 1st, 1896); and Japan (Order in Council, August 8th, 1899). Denmark is about to join.

(*i*) *Cf.* 49 & 50 Vict. c. 33, s. 4, sub-s. 2.

(*ii*) The Berne Convention has been modified by the Additional Act signed at Paris on May 4th, 1896, and declared binding by Order in Council of March 8th, 1898.

(*j*) The International Copyright Act, 1886, and the two Orders in Council of 1887 and 1898, were applied to the Channel Islands by Order in Council of July 14th, 1899.

(*k*) By Order, August 14th, 1888, Luxembourg is added; and by Order, October 15th, 1889, Monaco; Norway, August 1st, 1896; Hayti, May 19th, 1898; Japan, August 8th, 1899.

(*l*) By s. 9, *post*, December 6th, 1887.

any greater right or longer term of copyright therein, than that which he enjoys in the country in which the work is first produced (*m*).

The author of any literary or artistic work first produced before the commencement of this Order shall have the rights and remedies to which he is entitled under section 6 of the International Copyright Act, 1886 (*n*).

(4.) (*o*) *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 such work is shortest.

(6.) Section 6 of the International Copyright Act, 1852, shall not apply to any dramatic piece to which protection is extended by virtue of this Order (*p*).

(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 6th day of December, 1887, which day is in this Order referred to as the commencement of this Order.

And the Lords Commissioners of Her Majesty's Treasury are to give the necessary orders accordingly.

C. L. PEEL.

(*m*) See p. 217, *ante*.
(*n*) See p. 219, *ante*.
(*o*) Repealed by Order in Council, *London Gazette*, March 8th, 1898. See *post*, p. 305.
(*p*) See Convention, Art. 10.

BERNE CONVENTION (q).

FIRST SCHEDULE.

Copyright Convention.

CONVENTION for protecting effectually and in as uniform a manner as possible the rights of authors over their literary and artistic works, made on the 5th of September, 1887, between 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 Haiti: His Majesty the King of Italy; the Federal Council of the Swiss Federation; His Highness the Bey of Tunis.

(The following is an English Translation of the Convention, with the omission of the formal beginning and end.)

ARTICLE 1.

The contracting States are constituted into a Union for the protection of the rights of authors over their literary and artistic works.

ARTICLE 2.

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 (r).

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 accorded 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

(q) Modified in some respects by Additional Act of Paris, *vide post*, p. 306.

(r) See Additional Act of Paris, Art. I., *post*, p. 306.

countries of the Union, that one of them in which the shortest term of protection is recorded by law (*s*).

For unpublished works the country to which the author belongs is considered the country of origin of the work (*t*).

Article 3.

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 (*u*).

Article 4.

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 5.

Authors of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries exclusive rights 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 (*v*).

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, 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.

(*s*) Modified by Additional Act of Paris, Art. I., *post*, p. 306. *Cf.* 49 & 50 Vict. c. 33, s. 3, sub-s. 2.

(*t*) Addition made by Act of Paris, *post*, p. 307.

(*u*) Modified by Additional Act of Paris, Art. I., *post*, p. 307.

(*v*) See Additional Act of Paris, Art. I., *post*, p. 307; *cf.* 49 & 50 Vict. c. 33, s. 5.

ARTICLE 6.

Authorized translations are protected as original works. They consequently enjoy the protection stipulated in Articles 2 and 3 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 7 (*w*).

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 8.

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 (*x*), 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 9.

The stipulations of Article 2 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 their works.

The stipulations of Article 2 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 10.

Unauthorized indirect appropriations of a literary or artistic work, of various kinds, such as *adaptations, arrangements of music*, &c., are

(*w*) Modified by Additional Act of Paris, Art. I., *post*, p. 307.

(*x*) "A collection of choice passages from an author or authors": see Murray's Dictionary, *sub voc.*

specially included among the illicit reproductions to which the present Convention applies, when they are only a 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 (*y*).

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 11.

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 2 (*z*).

Article 12 (*a*).

Pirated works may be seized on importation into those countries of the Union where the original work enjoys protection.

The seizure shall take place conformably to the domestic law of each state (*b*).

Article 13.

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 (*c*).

(*y*) See Order in Council, s. 6, and 15 Vict. c. 12, s. 6.

(*z*) See 49 & 50 Vict. c. 33, s. 7, *et ante*, pp. 224–226.

(*a*) Modified by Additional Act of Paris, Art. I., *post*, p. 307.

(*b*) See 5 & 6 Vict. c. 45, s. 17; 7 Vict. c. 12, s. 10; 15 Vict. c. 12, s. 9; 25 & 26 Vict. c. 68, ss. 6, 10, 11; and the Customs Act, 1876, ss. 42, 44; notice thereunder, *London Gazette*, May 1st, 1888; Revenue Act, 1889, s. 1.

(*c*) In *Baschet* v. *Illustrated Standard Co.* (1900), 1 Ch. 73, a French copyright work was refused protection in England for immorality, though the English piratical work was the coarser of the two.

ARTICLE 14.

Under the reserves and conditions to be determined by common agreement, 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 15.

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 16.

An International Office is established under the name of the "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 Confederation, and works under its direction. The functions of this office are determined by common accord between the countries of the Union.

ARTICLE 17.

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 18.

Countries which have not become parties to the present Convention, and which grant by their domestic law protection of rights secured by this Convention, shall be admitted to accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, who will communicate it to all the other countries of the Union.

Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention (*d*).

ARTICLE 19.

Countries acceding to the present Convention shall also have the right of acceding 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 (*e*).

ARTICLE 20.

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 date on which it may have been denounced.

Such denunciations 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 (*f*).

ARTICLE 21.

The present Convention shall be ratified, and the ratifications exchanged at Berne, within the space of one year at the latest.

ADDITIONAL ARTICLE.

The Convention concluded this day in no wise 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.

FINAL PROTOCOL.

(1.) (*g*) *As regards Article* 4, *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*

(*d*) Luxembourg has adhered to the Convention under this Article: see Order in Council, August 14th, 1888; Monaco, see Order in Council October 15th, 1889; Norway, August 1st, 1896; Japan, August 8th, 1899. Denmark is about to join. See also Additional Act of Paris, Art. III., *post*, p. 309.

(*e*) 49 & 50 Vict. c. 33, s. 9.

(*f*) Modified by Additional Act of Paris, Art. I., *post*, p. 308.

(*g*) Modified by Additional Act of Paris, Art. II., *post*, p. 308.

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 9 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 (*h*), shall not be considered as constituting an infringement of musical copyright.

(4.) (*i*) *The common agreement alluded to in Article* 14 *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 14 *is to be applied* (*k*).

(5.) The organization of the international office established in virtue of Article 16 of the Convention, shall be fixed by a regulation which shall be drawn up by the Government of the Swiss Confederation.

The official language of the international office shall 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

(*h*) *e.g.* Barrel organs.
(*i*) Modified by Additional Act of Paris, Art. II., *post*, p. 308.
(*k*) 49 & 50 Vict. c. 33, s. 6.

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 a 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 International Union shall be shared by the contracting States. Unless a fresh arrangement be made, they cannot exceed a sum of 60,000 francs a year. This sum may be increased by the decision of one of the Conferences provided for in Article 17.

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 :—

1st	Class	25	Units
2nd	„	20	„
3rd	„	15	„
4th	„	10	„
5th	„	5	„
6th	„	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 expenses. 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 (*l*).

(*l*) The Convention was held in Paris, in April, 1896, and on May 4th, 1896, the Additional Act of Paris was provisionally agreed to: *vid. post*, p. 306.

The French Government will fix the date within these limits after having consulted the International Office.

(7.) It is agreed that as regards the exchange of ratifications contemplated in Article 21, 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.

SECOND SCHEDULE.

Orders in Council revoked.

Orders in Council of the dates named below for securing the privileges of copyright in Her Majesty's Dominions to authors of works of literature and the fine arts and dramatic pieces, and musical compositions first produced in the following countries, namely:—

Foreign Countries.	Date of Order.
Prussia	27 Aug. 1846.
Saxony	26 Sept. 1846.
Brunswick	24 April, 1847.
The States of the Thuringian Union	10 Aug. 1847.
Hanover	30 Oct. 1847.
Oldenburg	11 Feb. 1848.
France	10 Jan. 1852.
Anhalt-Dessau and Anhalt-Bernbourg	11 Mar. 1853.
Hamburg	25 Nov. 1853. 8 July, 1855.
Belgium	8 Feb. 1855.
Prussia, Saxony, Saxe-Weimar	19 Oct. 1855.
Spain	24 Sept. 1857 and 20 Nov. 1880.
The States of Sardinia	4 Feb. 1861.
Hesse Darmstadt	5 Feb. 1862.
Italy	9 Sept. 1885.
German Empire	24 Sept. 1886.

The Order in Council of 5th August, 1875, revoked the application of s. 6 of 15 & 16 Vict. c. 12, to dramatic pieces referred to in the

Order in Council of 10th January, 1852, with reference to works first published in France.

ORDER IN COUNCIL (ADOPTING ADDITIONAL ACT OF PARIS).

London Gazette, March 8, 1898.

Preamble reciting the previous legislative Orders in Councils and Convention.

AND whereas her Majesty in Council is satisfied that the foreign countries named in the body of this Order, and parties to the said Additional Act, have made such provisions as it appears to Her Majesty expedient to require for the protection of authors of works first produced in Her Majesty's dominions:—

Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and by virtue of the authority committed to Her by the International Copyright Acts, 1844 to 1886, doth order, and it is hereby ordered, as follows:—

1. The Additional Act of the Berne Convention, set forth in the Schedule to this Order, shall, as from the commencement of this Order, have full effect throughout Her Majesty's dominions, and all persons are enjoined to observe the same.

2. This Order shall extend to the foreign countries following, that is to say:—

Germany, Belgium, Spain, France, Italy, Luxemburg, Monaco, Montenegro, Switzerland, and Tunis (*m*).

3. Article 4 of the Order in Council of November 28th, 1887 (*n*), shall, as from the commencement of this Order, cease to apply to the foreign countries to which this Order extends.

4. The Order in Council of November 28th, 1887 (*n*), shall continue to be of full force and effect, save in so far as the same is varied by this Order.

5. Nothing contained in this Order shall prejudicially affect any right acquired or accrued before the commencement of this Order, by virtue of the said Order in Council of November 28th, 1887, or otherwise, and any person entitled to such right shall continue entitled thereto and to the remedies for the same in like manner as if this Order had not been made.

6. The author of any literary or artistic work first produced before the commencement of this Order shall have the rights and remedies to

(*m*) Japan has since joined, Order in Council, August 8th, 1899. Norway, which acceded to the Convention, has not acceded to the Act.
(*n*) *Ante*, pp. 293–295.

which he is entitled under section 6 of the International Copyright Act, 1886.

7. This Order shall be construed as if it formed part of the International Copyright Act, 1886.

8. This Order shall come into operation on the date hereof (March 7th, 1898), which day is in this Order referred to as the commencement of this Order.

ADDITIONAL ACT (MODIFYING THE INTERNATIONAL COPYRIGHT CONVENTION OF SEPTEMBER 9, 1886).

Signed at Paris, May 4, 1896 (*o*).

Ratifications deposited at Paris, September 9, 1897.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the German Emperor, King of Prussia, in the name of the German Empire; His Majesty the King of the Belgians; Her Majesty the Queen-Regent of Spain, in the name of His Majesty the King of Spain; the President of the French Republic; His Majesty the King of Italy; His Royal Highness the Grand Duke of Luxemburg; His Most Serene Highness the Prince of Monaco; His Highness the Prince of Montenegro; the Federal Council of the Swiss Confederation; His Highness the Bey of Tunis; being equally animated by the desire to protect in a more effective and more uniform manner the rights of the authors over their literary and artistic works, have resolved to conclude an Additional Act to the Convention, signed at Berne on the 9th September, 1886, respecting the establishment of an International Union for the protection of such works, and have named as their Plenipotentiaries, that is to say: (here follow names).

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

The International Convention of the 9th September, 1886, is modified as follows:—

1. Article II.—The first paragraph of Article II. shall run as follows:—

> "Authors belonging to any one of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether unpublished, or published for the first

(*o*) There was also a declaration, to which Great Britain did not accede. See reference in Ratifications, p. 309.

time in one of those countries, the rights which the respective laws do now or shall hereafter grant to nationals."

A fifth paragraph is added in these terms:—

"Posthumous works are included among those to be protected."

2. Article III.—Article III. shall run as follows:—

"Authors not belonging to one of the countries of the Union, who shall have published or caused to be published for the first time their literary or artistic works in a country which is a party to the Union, shall enjoy, in respect of such works, the protection accorded by the Berne Convention, and by the present Additional Act."

3. Article V.—The first paragraph of Article V. shall run as follows:—

"Authors belonging to any one of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of making or authorizing the translation of their works during the entire period of their right over the original work. Nevertheless, the exclusive right of translation shall cease to exist if the author shall not have availed himself of it, during a period of ten years from the date of the first publication of the original work, by publishing or causing to be published in one of the countries of the Union, a translation in the language for which protection is to be claimed."

4. Article VII.—Article VII. shall run as follows:—

"Serial stories, including tales, published in the newspapers or periodicals of one of the countries of the Union, may not be reproduced, in original or translation, in the other countries, without the sanction of the authors or of their lawful representatives.

"This stipulation shall apply equally to other articles in newspapers or periodicals, when the authors or editors shall have expressly declared in the newspaper or periodical itself in which they shall have been published that the right of reproduction is prohibited. In the case of periodicals it shall suffice if such prohibition be indicated in general terms at the beginning of each number.

"In the absence of prohibition, such articles may be reproduced on condition that the source is acknowledged.

"In any case, the prohibition shall not apply to articles on political questions, to the news of the day, or to miscellaneous information."

5. Article XII.—Article XII. shall run as follows:—

"Pirated works may be seized by the competent authorities of the countries of the Union where the original work is entitled to legal protection.

"The seizure shall take place conformably to the domestic law of each State."

6. Article XX.—The second paragraph of Article XX. shall run as follows:—

"Such denunciation shall be made to the Government of the Swiss Confederation. It shall only be effective as regards the country making it, the Convention remaining in full force and effect for the other countries of the Union."

Article II.

The Final Protocol annexed to the Convention of the 9th September, 1896, is modified as follows:—

1. No. 1.—This clause shall run as follows:—

"As regards Article IV., it is agreed as follows:

"(A.) In countries of the Union where protection is accorded not only to architectural plans, but also to the architectural works themselves, these works shall be admitted to the benefits of the Berne Convention and of the present Additional Act.

"(B.) Photographic works and works produced by an analogous process shall be admitted to the benefits of these engagements in so far as the laws of each State may permit, and to the extent of the protection accorded by such laws to similar national works.

"It is understood that an authorized photograph of a work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the Berne Convention and by the present Additional Act, for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private arrangements between those who have legal rights."

2. No. 4.—This clause shall run as follows:—

"The common agreement contemplated in Article XIV. of the Convention is established as follows:—

"The application of the Berne Convention and of the present Additional Act to works which have not fallen into the public domain within the country of origin at the time when these engagements come into force, shall operate according to such stipulations on this head as may be contained in special Conventions either actually existing or to be concluded hereafter.

"In the absence of such stipulations between any of the countries of the Union, the respective countries shall regulate, each for itself, by its domestic legislation, the manner in which the principle contained in Article XIV. is to be applied.

"The stipulations of Article XIV. of the Berne Convention and of the present clause of the Final Protocol shall apply equally to the exclusive right of translation, in so far as such right is established by the present Additional Act.

"The temporary stipulations noted above shall be applicable to countries which may hereafter accede to the Union."

ARTICLE III.

The countries of the Union which are not parties to the present Additional Act, shall at any time be allowed to accede thereto on their request to that effect. This stipulation shall apply equally to countries which may hereafter accede to the Convention of the 9th September, 1886. It will suffice for this purpose that such accession should be notified in writing to the Swiss Federal Council, who shall in turn communicate it to the other Governments.

ARTICLE IV.

The present Additional Act shall have the same force and duration as the Convention of the 9th September, 1886.

It shall be ratified, and the ratifications shall be exchanged at Paris, in the manner adopted in the case of that Convention, as soon as possible, and within the space of one year at the latest.

It shall come into force as regards those countries which shall have ratified it three months after such exchange of ratifications.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Paris in a single transcript, the 4th May, 1896. (Here follow signatures.)

Procès Verbal recording Deposit of Ratifications.

Circumstances having prevented action being taken within the period of delay originally fixed for the exchange of the ratifications of the Additional Act of the 4th May, 1896, modifying Articles II., III., V., VII., XII., and XX. of the Convention of the 9th September, 1886, and clauses 1 and 4 of the Final Protocol annexed thereto, as well as of the Declaration interpreting certain stipulations of the Convention of Berne of the 9th September, 1886, and of the Additional Act signed at Paris on the 4th May, 1896, it has been unanimously agreed that that period should be prolonged until this day.

In consequence whereof, the Undersigned have met together in order to deposit the instruments in question.

Germany, Belgium, Spain, France, Italy, Luxemburg, Monaco, Montenegro, Switzerland, and Tunis have ratified both engagements.

Great Britain has ratified the Additional Act alone, on behalf of the United Kingdom, as well as of all the British Colonies and Possessions.

Norway has only ratified the interpretative Declaration.

The respective ratifications having been produced and found to be in good and due form, have been handed to the French Minister for Foreign Affairs, in order that they may be deposited in the archives of the Ministry, such deposit to be held equivalent to an exchange of ratifications.

In faith of which the Undersigned have prepared the present Record of deposit, to which they have affixed their seals.

Done at Paris, the 9th September, 1897. (Here follow signatures.)

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2 Edw. VII. c. 15.

An Act to amend the Law relating to Musical Copyright (*p*).

[22nd July, 1902.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Seizure, &c., of pirated copies.

1. A court of summary jurisdiction, upon the application of the owner of the copyright in any musical work, may act as follows: If satisfied by evidence that there is reasonable ground for believing that pirated copies of such musical work are being hawked, carried about, sold, or offered for sale, may, by order, authorize a constable to seize such copies without warrant and to bring them before the court, and the court, on proof that the copies are pirated, may order them to be destroyed or to be delivered up to the owner of the copyright if he makes application for that delivery.

Power to seize copies on hawkers.

2. If any person shall hawk, carry about, sell, or offer for sale any pirated copy of any musical work, every such pirated copy may be seized by any constable without warrant, on the request in writing of the apparent owner of the copyright in such work, or of his agent thereto authorized in writing, and at the risk of such owner.

On seizure of any such copies, they shall be conveyed by such constable before a court of summary jurisdiction, and, on proof that they are infringements of copyright, shall be forfeited or destroyed, or otherwise dealt with as the court may think fit (*q*).

Definitions.

3. "Musical copyright" means the exclusive right of the owner of such copyright under the Copyright Acts in force for the time being to do or to authorize another person to do all or any of the following things in respect of a musical work:—

(*p*) See p. 107, *ante*.

(*q*) *Ex parte Francis*, *The Times*, Jan. 13, 1903.

(1.) To make copies by writing or otherwise of such musical work. Definitions.

(2.) To abridge such musical work.

(3.) To make any new adaptation, arrangement, or setting of such musical work, or of the melody thereof, in any notation or system.

"Musical work" means any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced.

"Pirated musical work" means any musical work written, printed, or otherwise reproduced, without the consent lawfully given by the owner of the copyright in such musical work.

4. This Act may be cited as the Musical (Summary Proceedings) Copyright Act, 1902, and shall come into operation on the first day of October one thousand nine hundred and two, and shall apply only to the United Kingdom. Short title and commencement.

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