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knowing that the proprietor of such design had not given his consent to such application.

A remedy is given by the 8th section of the 5 & 6 Vict. c. 100, which provides that in cases of infringement the offender shall be liable to forfeit a sum of not less than £5, nor exceeding £30, to the proprietor of the design, who may recover such penalty as follows:—

In England.

In England, either by an action of debt or on the case against the party offending, or by summary proceeding before two justices having jurisdiction where the party offending resides.

If the proprietor proceed by summary proceeding, any justice of the peace acting for the county, riding, division, city, or borough where the party offending resides, and not being concerned either in the sale or manufacture of the article of manufacture, or in the design to which such summary proceeding relates, may issue a summons requiring such party to appear on a day, and at a time and place to be named in such summons, such time not being less than eight days from the date thereof; and every such summons shall be served on the party offending, either in person or at his usual place of abode; and either upon the appearance or upon the default to appear of the party offending, any two or more of such justices may proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party offending, or upon the oath or affirmation of one or more credible witnesses, may convict the offender in a penalty of not less than £5 or more than £30 for each offence, as to such justices may seem fit; but the aggregate amount of penalties for offences in respect of any one design committed by any one person up to the time at which any of the proceedings shall be instituted, shall not exceed the sum of £100; and if the amount of such penalty or of such penalties, and the costs attending the conviction, so assessed by such justices, be not forthwith paid, the amount of the penalty or of the penalties and of the costs,

together with the costs of the distress and sale, shall be levied by distress and sale of the goods and chattels of the offender wherever the same happen to be in England; and the justices before whom the party has been convicted, or on proof of the conviction, any two justices acting for any county, riding, division, city, or borough in England, where goods and chattels of the person offending happen to be, may grant a warrant for such distress and sale; and the overplus, if any, shall be returned to the owner of the goods and chattels on demand.

Every information and conviction in any summary proceedings before two justices under the Act may be in the forms or to the effect given in the Act, *mutatis mutandis* as the case may require.

In Scotland the proprietor may proceed by action before the Court of Session in ordinary form, or by summary action before the sheriff of the county where the offence may be committed, or the offender resides, who, upon proof of the offence or offences, either by confession of the party offending, or by the oath or affirmation of one or more credible witnesses, shall convict the offender and find him liable in the penalty or penalties aforesaid, as also in expenses. And the sheriff in pronouncing judgment for the penalty or penalties and costs, may insert in the judgment a warrant in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by pounding. Scotland.

And it is provided that in the event of the sheriff dismissing the action, and assoilzieing the defender, he may find the complainer liable in expenses; and any judgment so to be pronounced by the sheriff in such summary application shall be final and conclusive, and not subject to review by advocation, suspension, reduction, or otherwise.

In Ireland, the proprietor may proceed either by action in a superior court of law at Dublin, or by civil bill in the civil bill court of the county or place where the offence was committed. Ireland.

It is provided that no action or other proceeding for

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Limitation of actions.

any offence or injury under the Act shall be brought after the expiration of twelve calendar months from the commission of the offence; and in every such action or other proceeding the party who shall prevail shall recover his full costs of suit, or of such other proceeding (*a*).

This provision seems to apply as well to summary proceedings as to actions for damages referred to in the 9th section.

Justices may order payment of costs in cases of summary proceedings.

In the case of summary proceedings before any two justices in England, they may award payment of costs to the party prevailing, and grant a warrant for enforcing payment thereof against the summonsing party, if unsuccessful, in the like manner as provided by the Act for recovering any penalty with costs against any offender (*b*).

The above provisions to apply to useful designs.

By the 6th section of the 6 & 7 Vict. c. 65, the above provisions as to the mode of recovering penalties, actions for damages, limitation of actions, and awarding of costs are made applicable to designs having reference to some purpose of utility; and by the 15th section of the 13 & 14 Vict. c. 104, they are also extended to works provisionally registered under that Act.

Proceedings may be taken in the county court.

By the 8th section of the 21 & 22 Vict. c. 70, proceedings for the recovery of damages for infringement may be brought in the county court, provided in any such proceeding the plaintiff shall deliver with his plaint a statement of particulars as to the date and title or other description of the registration whereof the copyright is alleged to be pirated, and as to the alleged piracy; and the defendant, if he intends to rely as a defence on any objection to such copyright, or to the title of the proprietor therein, shall give notice in the manner provided in the 76th section of the 9 & 10 Vict. c. 95, of his intention to rely on such special defence, and shall state in such notice the date of publication and other particulars of any designs whereof prior publication is alleged, or of any objection to such copyright, or to the title of the proprietor

(*a*) Sect. 12. (*b*) Sect. 13.

to such copyright; and it shall be lawful for the judge of the county court, at the instance of the defendant or plaintiff respectively, to require any statement or notice so delivered by the plaintiff or by the defendant respectively to be amended in such manner as the said judge may think fit.

And further, the proceedings in any plaint, and those in appeal and in writs of prohibition, provided by the 9 & 10 Vict. c. 95, and the 12 & 13 Vict. c. 100 (*a*), shall be applicable to any proceedings for piracy of copyright of designs under the Copyright of Designs Act.

Considerations as to the remedy to select.

In selecting the mode of proceeding the effect of publicity in deterring others, the moral weight of the decision of the court in which the action or suit is brought, and the probability of the judge or magistrate going more or less into the minutiæ of the case, should be thoughtfully regarded. In some cases, either from the fact of the defendant being in such a position that the moral effect of so doing would be more effectual in preventing similar thefts for the future, or from the fact that the defendant may be a man of straw, it may be advisable to place him in the police court, while in others the more costly and efficient remedy provided by the Superior Courts of Judicature may be adopted.

No provisions for delivery up of pirated designs.

There is no provision in the Designs Acts analogous to that of the 23rd section of the Literary Copyright Act, 1842, as to the delivery up of unsold copies of a pirated book to the proprietor of the copyright without his making any compensation for the cost of production and publication; but in the case of *M'Crea* v. *Holdsworth* (*b*), Lord Justice Knight Bruce made an order under the Designs Act for the delivery up to the plaintiff, "for the purpose of being destroyed, the drawing or drawings, point paper, and the several cards used in applying his design, and also of the articles manufactured by the defendants to which the plaintiff's design had been applied."

(*a*) So printed by the Queen's printers, but it is clearly a mistake. It is evidently intended for 12 & 13 Vict. c. 101, which amends the County Court Act, 9 & 10 Vict. c. 95.

(*b*) 2 De Gex & Sm. 497.

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Proceedings may also be taken in the Chancery Division of the High Court of Justice in all cases.

In a statement of claim under the Designs Act the following allegations should be inserted in their proper places; first, that previously to publication of the design the plaintiff caused a proper entry thereof to be made in the registry; and that he duly caused the letters Rd. &c., to be duly marked on each piece of the said fabrics, and duly complied in all respects with all the provisions of the statute and all the requisitions required by law in such cases; secondly, there should also be special allegations that the design is new and original, and has not been previously published in the United Kingdom or elsewhere. It should also be shewn that the infringer had notice of the piracy when he disposed of the articles complained of, as if part of the articles were sold previously to a direct notice pursuant to the 7th section of 5 & 6 Vict. c. 100, the plaintiff would not be entitled to the costs of the suit, unless the defendant then had notice of the plaintiff's copyright by other means.

The articles alleged to be piracies should be produced to the court, in order that they may be compared with the original design and the articles to which it has been applied by the proprietor (*a*). But where the alleged piracies were proved to have been stolen out of the possession of the plaintiff, the uncontradicted testimony of a witness as to their nature has been held sufficient (*b*).

The court, or a jury, will then be able to pronounce, on the comparison, whether the registered design has been applied or not. But if what is complained of is a fraudulent imitation, and not an application of the exact design, it will be convenient, if possible, to shew by direct evidence that the defendant's design has been taken from the plaintiff's (*c*).

Copyright in designs of utility.

With regard to any new or original design for any

(*a*) *Sheriff* v. *Coates*, 1 Russ. & My. 159.
(*b*) *Fradella* v. *Weller*, 2 Russ. & My. 247.
(*c*) *Lowndes* v. *Browne*, 12 Ir. L. Rep. 293; cited Norman on 'Designs,' p. 51.

article of manufacture having reference to some purpose of utility, so far as such design shall be for the shape or configuration of such article, and that, whether it be for the whole of such shape or configuration or only for a part thereof, it has been enacted by the 6 & 7 Vict. c. 65, that the proprietor of such design not previously published in the United Kingdom of Great Britain and Ireland, or elsewhere, shall have the sole right to apply such design to any article, or make or sell any article according to such design, for the term of three years, to be computed from the time of such design being registered according to the Act. But it is provided that this enactment shall not extend to such designs as are within the 5 & 6 Vict. c. 100, 38 Geo. 3, c. 71, or the 54 Geo. 3, c. 56.

What necessary in order to obtain protection.

It appears to be the received opinion that under this clause may be registered designs, the subjects of which could, in many cases, have obtained a patent (*a*).

To obtain the protection of the Act it is necessary:—

1st. That the design should not have been published, either within the United Kingdom or elsewhere, previous to registration (*b*).

2nd. That after registration every article of manufacture made according to such design, or to which such design is applied, should have upon it the word "Registered," with the date of registration.

Persons proposing to register a design for purposes of utility must furnish the registrar with two exactly similar drawings or tracings, photographs or prints of such design, made on a proper geometric scale on two separate sheets of paper or parchment not exceeding the size of twenty-four by fifteen inches, and with a blank space in front of each sheet six inches long, by four inches broad, upon which the certificate of registration

(*a*) 16 Q. B. 108; see 1 C. B. 812.
(*b*) 6 & 7 Vict. c. 65, s. 3.

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will be placed (*a*). All registered designs must have a title and be accompanied by such description in writing as may be necessary to render the same intelligible, according to the judgment of the registrar, together with the name of every person claiming to be proprietor, or of the style or title of the firm under which such proprietor may be trading, with his place of abode, or place of carrying on business, or other place of address (*b*). But by the 5th section of the Copyright of Designs Act, 1858, it is declared that the registration of any *pattern* or *portion* of an article of manufacture to which a design is applied, instead or in lieu of a copy, drawing, print, specification, or description in writing, shall be valid and effectual to all intents and purposes as if such copy, drawing, print, specification, or description in writing had been furnished to the registrar under the above Act.

Amending or cancelling registration.

The registration of any design, whether for purposes of ornament or utility, may be amended or cancelled by decree or order of a judge in equity, where it is made to appear to him that the design has been registered in the name of a wrong person.

Section 10 of the 5 & 6 Vict. c. 100, enacts, "that in any suit in equity which may be instituted by the proprietor of any design, or the person lawfully entitled thereto, relative to such design, if it shall appear to the satisfaction of the judge having cognizance of such suit, that the design has been registered in the name of a person not being the proprietor or lawfully entitled thereto, it shall be competent for such judge, in his discretion, by a decree or order in such suit, to direct either that such registration be cancelled (in which case the same shall thenceforth be wholly void), or that the name of the proprietor

(*a*) It is well when "provisional" registration is applied for, to leave an additional blank space of six inches by four for the future complete registration to be placed on, in order to save the additional expense of having new drawings prepared for that purpose.

(*b*) The drawings are of course prepared at the expense of the person registering, and vary according to their intricacy; they cost on an average two guineas per sheet.

of such design, or other person lawfully entitled thereto, be substituted in the register for the name of such wrongful proprietor or claimant, in like manner as is hereinbefore directed in case of the transfer of a design, and to make such order respecting the costs of such cancellation or substitution, and of all proceedings to procure and effect the same, as he shall think fit; and the registrar is hereby authorized and required, upon being served with an official copy of such decree or order, and upon payment of the proper fee, to comply with the tenour of such decree or order, and either cancel such registration or substitute such new name as the case may be" (*a*).

Protection afforded only to shape or configuration.

As this Act affords protection only to the shape or configuration of articles of utility, and not to any mechanical action, principle, contrivance, application, or adaptation (except in so far as these may be dependent upon and inseparable from the shape or configuration), or to the material of which the article may be composed; no design will be registered the description of or statement respecting which shall contain any expressions suggestive of the registration being for any such mechanical action, principle, contrivance, application, or adaptation, or for the material of which the article may be composed (*b*).

Discretionary power in registrar.

A discretionary power is vested in the registrar, either to register any design under the 5 & 6 Vict. c. 100, or the 6 & 7 Vict. c. 65; and a further power is given him to reject such designs as are simply labels, wrappers, or other coverings in which any article of manufacture may be exposed for sale, or such designs as may appear to him to be contrary to public morality or order. From the exercise of this latter power there is an appeal to the Privy Council.

All the clauses and provisions contained in the 5 & 6 Vict. c. 100, with reference to the transfer of designs, to their piracy, to the mode of recovering penalties, to actions for damages, to cancelling and amending registrations, to

(*a*) See also 6 & 7 Vict. c. 65, s. 6.
(*b*) See *Millingen* v. *Picken*, 1 C. B. 799; 14 L. J. (N.S.) (C.P.) 254; 9 Jur. 714.

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the limitation of actions, to the awarding of costs, to the certificate of registration, to the fixing and application of fees for registration, and to the penalty for extortion, are extended and applied to this Act (*a*).

In addition to the penalties imposed by virtue of the incorporation of the penal clauses of the 5 & 6 Vict. c. 100, is imposed a penalty of not more than £5 nor less than £1, upon all persons marking, selling, or advertising for sale any article as "registered," unless the design for such article has been registered under one of the above-mentioned Acts. This penalty may be recovered by any person proceeding for the same (*b*).

Provisional registration of designs.

Provisional registration is permitted by the 13 & 14 Vict. c. 104, the 1st section of which provides that any design registered in accordance with that Act shall be deemed "Provisionally registered," and the registration shall continue in force for the term of one year (which may be further extended for six months by the Commissioners of Patents) from the time of such registration, during which period the proprietor shall have the sole right and property in such design, and be protected in the enjoyment of this right by the penalties and provisions enumerated in the Designs Act, 1842. During the term for which protection is afforded by this provisional registration, the proprietor of any design may sell or transfer the right to apply the same to an article of manufacture, but should he sell, expose, or offer for sale, any article to which the design has been applied until after complete registration, the provisional registration shall be deemed null and void (*c*).

Exhibition of design provisionally registered not to prevent future registration.

Neither the exhibition nor the exposure of any design provisionally registered, or of any article to which such design may have been applied, in any place, whether public or private, in which articles are not sold, or exposed, or exhibited for sale, and to which the public are not admitted gratuitously, or in any place which shall have

(*a*) Sect. 6. (*b*) Sect. 4.
(*c*) 13 & 14 Vict. c. 104, s. 4.

been previously certified by the Board of Trade to be a place of public exhibition within the meaning of the 13 & 14 Vict. c. 104, shall prevent the proprietor thereof from registering such design: provided that every article to which such design shall be applied and which shall be exhibited or exposed by or with the consent of the proprietor of such design, shall have thereon or attached thereto the words "Provisionally registered," with the date of the registration (*a*).

Fees for provisional registration.

The government fee for the "provisional" registration of designs of utility, or for registering and certifying transfers, is ten shillings; and for the provisional registration of ornamental designs in all classes, one year, the sum of one shilling for each design, and for their transfer the sum of five shillings each.

By the 14 Vict. c. 8, provision was made for the protection of those exhibiting in the Exhibition of 1851, the 8th section of that Act declaring that, notwithstanding anything contained in the Designs Act, 1850, and those of 1842 and 1843, the protection intended to be by them extended to the proprietors of new and original designs should be extended to the proprietors of all new and original designs which should be provisionally registered and exhibited in such place of public exhibition as aforesaid, notwithstanding that such designs might have been previously published or applied elsewhere than in the United Kingdom of Great Britain and Ireland: provided such design or any article to which the same had been applied had not been publicly sold or exposed for sale previously to such exhibition thereof (*b*).

The 24 & 25 Vict. c. 73, declares that the various Acts on the subject of copyright of designs shall be construed as if the words "provided the same be done within the United Kingdom of Great Britain and Ireland" had not been contained in the said Acts; and that they shall apply to every design as therein referred to, whether the application thereof be within the United Kingdom or else-

(*a*) *Ibid.* s. 3.

(*b*) Since extended by 15 Vict. c. 6.

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where, and whether the inventor or proprietor be or be not a subject of Her Majesty. And that the said Acts shall not be construed to apply to the subjects of Her Majesty only (*a*).

All powers by Designs Acts given to Board of Trade now vested in Commissioners of Patents.

By the Copyright of Designs Act, 1875 (*b*), all powers, duties, and authorities vested in, or to be exercised by the Board of Trade, are transferred to, vested in, and imposed on the Commissioners of Patents for Inventions. And it is provided that the Commissioners may from time to time make, revoke, and alter general rules for regulating registrations under the Designs Acts, and any discretion or power vested in the registrar under such Acts shall be subject to the control of the Commissioners and shall be exercised by him in such manner, and with such limitations and restrictions (if any) as may be prescribed by the general rules, and any provisions contained in the said Acts as to the copies, drawings, prints, descriptions, information, matters and particulars to be furnished to the registrar, and generally as to any act or thing to be done by the registrar, may be modified by such general rules, in such manner as the Commissioners may think expedient.

General rules are to be laid before Parliament within a limited time.

By the 4th section of the Copyright of Designs Act, 1875, it is provided that the office of registrar under the previous Acts shall cease to exist as a separate paid office, and the Commissioners may from time to time make arrangement as to the mode in which, and the person or persons by whom the duties of registrar, and other duties under the said Acts are to be performed, and may from time to time delegate to any such person or persons, all or any of the duties of the registrar, and any person or persons to whom such duties may be delegated shall, in so far as delegation extends, be deemed to be the registrar within the meaning of the said Acts.

(*a*) 24 & 25 Vict. c. 73, s. 2.
(*b*) 38 & 39 Vict. c. 93.

CHAPTER XVI.

NEWSPAPERS.

Newspapers.

PAPERS for circulating news were first used in England in the reign of Queen Elizabeth (*a*). It was not until the reign of Queen Anne that any notice appears to have been taken of them by the legislature.

The Acts of Parliament on the subject of the press are 36 Geo. 3, c. 8; 39 Geo. 3, c. 79; 51 Geo. 3, c. 65; 55 Geo. 3, c. 65; 55 Geo. 3. c. 101; 60 Geo. 3 & 1 Geo. 4, c. 9; 11 Geo. 4 & 1 Wm. 4, c. 73; 6 & 7 Wm. 4, c. 76; 2 & 3 Vict. c. 12; 5 & 6 Vict. c. 82; 9 & 10 Vict. c. 33; 16 & 17 Vict. c. 59. They were, with the exceptions hereafter enumerated, repealed by "The Newspapers, Printers, and Reading Rooms Repeal Act, 1869" (the 32 & 33 Vict. c. 24).

Name and abode of printer to appear.

Every person printing any paper, except bills, bank notes, bonds, deeds, agreements, receipts, &c., or any paper printed by the authority of any public board or public office (*b*), for profit, must keep one copy at least of such paper, and write or print thereon the name (*c*) and abode of his employer, and, if required, produce and shew the same to any justice of the peace within six months next after the printing, on penalty, in case of neglect or refusal, of the sum of £20 (*d*).

(*a*) The oldest newspaper extant is dated July 23, 1588, 'The English Mercurie, published by authoritie for the prevention of false reports.' It is among the state papers in the British Museum: Godson on Patents, &c., 249.

(*b*) 51 Geo. 3, c. 65, s. 3.

(*c*) See *Bensley* v. *Bignold*, 5 B. & Ald. 335.

(*d*) 39 Geo. 3, c. 79, s. 29; 32 & 33 Vict. c. 24; 33 & 34 Vict. c. 99.

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If any person file a bill for the discovery of the name of any person concerned as printer, publisher, or proprietor of any newspaper, or of any matters relative to the printing or publishing of any newspaper, in order the more effectually to bring or carry on any suit or action for damages alleged to have been sustained by reason of any slanderous or libellous matter contained in any such newspaper respecting such person, it is provided by the 19th section of the 6 & 7 Wm. 4, c. 76, that it shall not be lawful for the defendant to plead or demur to such bill. He may be compelled to make the discovery required, which discovery, however, cannot be used in any proceeding against the defendant except in that for which the discovery is made.

In the late case of *Dixon* v. *Enoch* (*a*), a general demurrer was filed to a bill for discovery brought under the provision of this section. The bill was filed against the printer and publishers of the 'Pall Mall Gazette' and 'Pall Mall Budget' for the purpose of obtaining discovery as to the names of the proprietors of these newspapers at the time when certain articles or paragraphs were inserted which, as the plaintiff alleged, contained libellous matter with reference to himself. It appeared that these articles or paragraphs occurred in some or one of these newspapers on the 18th May, 1870, and on the 7th and 9th and 12th of August, 1871, and it was alleged that the plaintiff had sustained great loss and damage by reason of them, but the bill did not set out the alleged libels, though the pages of the publications in which they had occurred, seemed to have been pointed out to the defendant's advisers, neither was it distinctly alleged that the plaintiff intended to bring an action of libel, or that he was ignorant of the proprietors' names. The bill charged that the plaintiff was entitled, under the circumstances, to a full discovery from the defendant of the names or name of the proprietors or proprietor of the papers on the days of the above mentioned issues and publications, containing the alleged

(*a*) 20 W. R. 359.

libellous matter, in order the more effectually to enable him to bring and carry on an action for the damages sustained by him therefrom, and it then prayed relief accordingly. It was contended in support of the demurrer that by the statute the legislature only intended to give the right of filing a bill of discovery subject to the ordinary rules of the court, and that such a bill as that could therefore only be maintained against a party to the record at law; the defendant in that case at the most would be only a witness in the action. Further it was argued that if the demurrer were not allowed, it must be considered that any person complaining of libellous matter in a newspaper may file a bill against any other person in the world, for the purpose of discovering the name of the proprietor, if the plaintiff should think that it might be accidentally known to such other person. Vice-Chancellor Wickens in overruling the demurrer said: "The statements in the bill shew that the plaintiff instructed his solicitor to bring an action for the libels complained of, against the proprietors or proprietor of the newspaper; that the plaintiff's solicitor applied to a person whom he supposed to be the proprietor, and was referred to a solicitor, who declined to state, or at least did not state when asked to do so, the name of the proprietor or proprietors, but suggested, as the usual and proper course, that the action should be brought against the publisher (the present defendant) on whose behalf he was willing to meet it. The bill does not set out the alleged libels, and, in fact, contains no more distinct allegation as to their nature or character than what I have already mentioned, though it appears incidentally, from the correspondence stated in it, that the pages of the publications in which the alleged libels occur have been pointed out to the defendant's advisers. There is also no distinct statement of the plaintiff's intention to bring an action, or of his ignorance of the proprietors' names. The deficiency of allegation in those respects was, however, not strongly insisted on at the hearing; probably because it would be obviated by amendments. The

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first of them might be of some general importance, as a matter of pleading, but for the anomalous and unusual nature of the suit. If the defence were the legitimate one, that the alleged libel is not a libel, the mode of pleading here adopted might place the defendant at considerable disadvantage. It is to be gathered, however, from the correspondence, that this is not the objection intended to be insisted on in this court, and as a matter of fact it was not pressed in the argument. Under these circumstances, and not without considerable hesitation, I hold that there are in the present case just sufficient allegations in the bill to save it from a general demurrer, if in substance the plaintiff has a right to the discovery he asks. The objection to his right, as I understand it, is thus put: It is said that when the legislature gave the right of filing a bill of discovery in certain cases, it must be taken to authorize a bill which shall be subject to the ordinary rules governing such bills, in this, the natural court for filing them, one of which is, that the bill can only be maintained against a person who is, or is to be, a party to the record at law, and not against a witness whose evidence may go to charge some third person. And it is said that any other construction would enable a person complaining of a libel in a newspaper to file a bill against any human being, whether connected with the newspaper or not, for the purpose of discovering the names of the proprietors if accidentally known to him. It seems to me that those objections cannot succeed. In the first place it is to be observed that this is a bill of discovery to be filed 'in any court'; when the clause was first enacted, the Court of Exchequer in Equity (in which, it may be observed, witnesses were, for some purposes, considered proper defendants to bills of discovery) was in existence as a general court of equity. But the expression, 'in any court,' can hardly be cut down to the Court of Chancery and Exchequer, since, when the clause was re-enacted, the latter was not a general court of equity. The legislature can, perhaps, have hardly intended to give a person com-

plaining of a libel a right to file a bill of discovery for the purpose in question in courts having no practice, and no machinery appliable to such bills. Still, to read the expression, 'bill of discovery,' as importing into the clause the special rules of the Court of Chancery, would seem a little unreasonable where the bill may be filed in any court. Moreover, the Act seems to presume that the bill authorized by it would be pleadable or demurrable, if not protected by the enactment, and in any case the very object of it must have been to enable the plaintiff to extract from the defendant the name or names of some person or persons, other than himself, who might be sued at law, though, according to the defendant's contention here, not alone, or otherwise than in conjunction with the defendant in equity. The supposition that if the plaintiff knows the name of one proprietor he can make him tell the names of all the others, but that not knowing one name he cannot get the information from the printer and publisher, who is the agent of the proprietors, and is put forth to stand between them and the public, is one that does not commend itself to one's common sense, and is not to be accepted without absolute necessity. It is not necessary to consider whether the enactment would cover the case of a mere witness in the strictest sense of the word; that is, of a person accidentally knowing the names of the proprietors, but wholly unconnected with the newspaper. I merely decide that by force of this enactment a person complaining of a libel in a newspaper may file a bill against the printer and publisher to ascertain the names of the proprietors, for the purpose of bringing his action against the proprietors alone; and I do so, because any other conclusion seems to me inconsistent with the spirit and intention, as well as with the words, of the statute. I therefore overrule the demurrer."

By the 2 & 3 Vict. c. 12, s. 2, it is provided that every person who shall print any paper or book whatsoever which shall be meant to be published or dispersed, and who shall not print upon the front of every such paper, if the

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same shall be printed on one side only, or upon the first or last leaf of every paper or book consisting of more than one leaf, in legible characters, his or her name and usual place of abode or business, and every person who shall publish or disperse, or assist in publishing or dispersing any printed paper or book on which the name and place of abode of the person printing the same shall not be printed as aforesaid, shall, for every copy of such paper so printed by him or her, forfeit a sum of not more than £5 (*a*).

In the case of books or papers printed at the University Press of Oxford or the Pitt Press of Cambridge, the printer, instead of printing his name thereon, is to print the following words: "Printed at the University Press, Oxford," or, "The Pitt Press, Cambridge," as the case may be (*b*).

These enactments do not extend to impressions of engravings, or the printing of the name and address or business or profession of any person, and the articles in which he deals, or to any papers for the sale of estates or goods by auction or otherwise (*c*).

Prosecutions to be commenced within three months.

Prosecutions must be commenced within three months after the penalty is incurred; and where the penalty incurred does not exceed £20 it may be recovered before any justice of the peace for the county or place where the same may have been incurred, or where the offending party may happen to be (*d*); one moiety of such penalty to the informer and the other to Her Majesty.

All proceedings to be conducted in the name of the Attorney- or Solicitor-General.

By the 4th section of the 2 & 3 Vict. c. 12, and 9 & 10 Vict. c. 33, s. 2, no action for penalties may be commenced except in the name of the Attorney- or Solicitor-General in England, or the Queen's Advocate in Scotland; and every action, bill, plaint, or information which may

(*a*) And a printer whose name does not thus appear cannot recover in an action for work and labour for printing it: *Marchant* v. *Evans* 2 B. Moore, 14.

(*b*) 2 & 3 Vict. c. 12, s. 3.

(*c*) 39 Geo. 3, c. 79, s. 31.

(*d*) 39 Geo. 3, c. 79, ss. 35, 36.

be commenced or prosecuted in the name or names of any other person or persons, and any proceeding thereon, are thereby declared null and void to all intents and purposes (*a*).

Whether copyright exists at all in the case of newspapers has been doubted by Lord Chelmsford (*b*), who referred to the language of Knight Bruce, L.J., in *Ex parte Foss* (*c*), as seeming to imply a doubt in the mind of that learned judge also whether there was such a thing as copyright in a newspaper. There cannot, however, be much doubt as to the existence of the copyright.

Copyright in newspaper, though registration unnecessary.

In *Cox* v. *The Land and Water Company* (*d*) it was contended that newspapers being but ephemeral productions, seldom, if ever, reprinted, could not properly be the subject of copyright. But Vice-Chancellor Malins decided otherwise, remarking that the idea of there being no copyright at all in newspaper articles was repugnant to common sense and common honesty. At the same time the Vice-Chancellor decided that it was not necessary to register a newspaper under the 5 & 6 Vict. c. 45. The case is the only one on the subject, and the decision is somewhat remarkable. The learned Vice-Chancellor considered that the object of the 5 & 6 Vict. c. 45, in requiring registration was to let the public know when the copyright in a work would expire. Registration was clearly unnecessary for this purpose in the case of a newspaper, which, therefore, was not within the policy of the Act; neither was it within the words. By the 2nd section "book" was to include "every volume, part, or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published." A newspaper, he considered, was not within any one of those words; it was a well-known species of publication, and would have been inserted by name if intended to be included (*e*).

(*a*) 32 & 33 Vict. c. 24.
(*b*) *Platt* v. *Walter*, 17 L. T. (N.S.) 159.
(*c*) 2 De G. & J. 230.
(*d*) 18 W. R. 206; L. R. 9 Eq. 324; 39 L. J. (Ch.) 152; 21 L. T. (N.S.) 518; *Kelly* v. *Hutton*, L. R. 3 Ch. App. 703.
(*e*) *Ibid.*

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"For the purposes of the argument," says Malins, V.-C., "it must be assumed that the article complained of was a copy of the article of the plaintiff: and upon that ground the defendant takes the objection that there can be no copyright in any article published in this newspaper, because it is not registered under the Act 5 & 6 Vict. c. 45, commonly called the Copyright Act. Now suppose, for instance, the proprietor of a newspaper employs a correspondent abroad, and that correspondent being employed, and sent abroad at great expense, makes communications to a newspaper which are highly appreciated by the public, can it be said that another newspaper, published perhaps in the evening of the same day, may take and publish those communications *in extenso* with or without acknowledgment? If the contention of the defendants is right, the paper which copied might say: 'But they are common property. True it is, I admit, that you have paid for them. I admit you have given a great deal of money for them, and they are so very valuable that I desire to turn them to account by publishing them in my newspaper; but you have no property in them, although you pay for them; you cannot sue for your newspaper as a book, for then the copyright must be registered, and as you have not registered the book, nothing in the newspaper is protected.' If that is the law, it is a monstrous state of law, repugnant to common sense and common honesty, because that there is a property in those articles there can be no shadow of doubt. Still, however clear the right of property may be, if the case falls within the Act of Parliament, I must follow the same course which I took in the 'Brighton Directory' case (*Mathieson* v. *Harrod*) (*a*). That was clearly admitted to be a book within the Copyright Act, and it had been registered at Stationers' Hall, but instead of entering the day of publication, according to the requisition of the Act, the month only was entered; and I considered, as other judges had done before, that the object of registration was to ascertain at what time

(*a*) L. R. 7 Eq. 270.

the publication took place; in order that the public might know when the copyright expired, and when they would be at liberty to publish it in a separate form; therefore though everything else was complied with except the statement of the day of the month, I held that the omission was fatal, and the bill was dismissed with costs. So, in this case, however clearly I am of opinion that this is a property that ought to be protected, if a newspaper is a book within the 2nd section of the Copyright Act, and it being admitted that the 'Field' was not registered, that would be equally fatal to the plaintiff's suit. Now I have put the case of letters from correspondents abroad. With foreign papers we all know it is the practice to publish novels, and in some English newspapers it is also done. Supposing a newspaper proprietor were to engage the first novelist of the day to write for him a novel to be published in his newspaper, part every day, and pay him highly, is the proprietor of such a newspaper to lose all property because the paper is not registered? What information would it give, if it were registered? Would the registration of a paper called the 'Field,' registered twenty years ago, give information as to when the copyright would commence and end? Not the slightest; and therefore it is not within the policy of the Act, and I am of opinion that it is not within the words of the Act. The question depends, first, upon the 2nd section of the Act. What is a book? because every book must, by the 24th section, be registered. We find that 'book' under the 2nd section 'shall be construed to mean and include every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, or dramatic piece,' and so forth. Now certainly a newspaper does not fall within any of those descriptions, and if it was intended that this Act should be applied to newspapers, it would have been inserted, as the word 'newspaper' is well understood; and that word not being inserted, I must take it as advisedly omitted, because it was not the intention of the legislature that newspapers should be

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included within the Act. Then comes the section which prescribes what is to be done with regard to periodical publications. Section 19 provides: 'That the proprietor of the copyright in any encyclopædia, review, magazine, periodical work, or other work published in a series of books or parts, shall be entitled to all the benefits of the registration at Stationers' Hall, under this Act, of 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 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.' That, again, does not mention newspapers, and I must come to the same conclusion, that a newspaper was not mentioned because it was not intended to be included. Then can a person have any copyright or property in that which is not registered under the Act? This depends, I apprehend, upon the construction of the 18th section, which enacts that when any publisher or other person shall . . . . have projected, conducted and carried on . . . . any encyclopædia, review, magazine, periodical, work, or work published in a series of books, or parts, or any book whatsoever, and shall have employed any person to compose the same, or any volumes, parts, essays, articles, or portions thereof, for publication or as part of the same, and such work, &c., shall be composed on the terms that the copyright shall belong to such proprietor, and be paid for by him, then the proprietor of such work shall be entitled to copyright (except that after the term of twenty-eight years the copyright shall revert to the author) and shall be entitled to sue upon registering the same at Stationers' Hall. Now must every right included in this section be registered according to the Act? The present Lord Chancellor decided

that question in *Mayhew* v. *Maxwell* (*a*). Mr. Mayhew wrote a certain article or series of articles in a periodical called the 'Welcome Guest,' and the proprietor proceeded to publish them in a separate form. The plaintiff filed his bill to restrain him from publishing them in any other form than in that for which he wrote the work. The same point arose in *Strahan* v. *Graham*, where Mr. Graham had sold the right of publishing photographs of the Holy Land in a publication called 'Good Words,' in which Dr. McLeod was publishing a work with regard to the Holy Land, and the proprietors of 'Good Words' had given him permission to use the photographs, but Mr. Graham contended that Mr. Strahan had no right to give it to Dr. McLeod. I decided in that case, and my decision was confirmed by Lord Chancellor Chelmsford, that there was no right to publish in a separate form that which he had authority only to use in 'Good Words' and that Mr. Graham had a good right of action. But these cases are distinct authorities to shew that there is a property in a publication, although it is not registered. That is the ground upon which Vice-Chancellor Wood commented on the 24th section in *Mayhew* v. *Maxwell* (*b*). He says: 'The plaintiff has not registered under the 24th section, now I have been referred to the case of *Sweet* v. *Benning* (*c*), which was a case between Mr. Sweet, the proprietor of the 'Jurist,' and Mr. Benning, a bookseller. Sweet brings an action against Benning for copying the marginal notes of cases in a separate publication. This was the subject of the action. I suppose the 'Jurist' had been published before this Act of 5 & 6 Vict., and therefore it was not registered at all. If so, the question whether these reports published in the 'Jurist' were subject to the provisions of the Act did not arise. Now in deciding that case Jervis, C.J., said (*d*): 'I think that under the circumstances stated there is an implied

(*a*) 1 J. & H. 312. (*b*) *Ibid.* 312, 314. (*c*) 16 C. B. 459.
(*d*) 16 C. B. 480, 481.

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condition, understanding or arrangement between the proprietors of the 'Jurist' and the gentlemen who furnished them with reports, that the former shall acquire a copyright in the articles so written.' Now, therefore, it appears to me that a 'newspaper,' which is the best possible and only definition of such a publication as the 'Field,' not being within any of the provisions of this Act, I must infer that it was not the intention of the legislature to apply the Act to newspapers (for it was absolutely impossible that it should have missed insertion in some of the sections), and that the circumstance of non-registration throws no difficulty in the way of the plaintiff maintaining his right in law or equity; and though it is seldom worth the while of proprietors to assert the copyright in articles in a newspaper, I am of opinion that whether it be the letters of a correspondent abroad, or the publication of a tale, or a treatise, or the review of a book, or whatever else, he acquires—I will not say as copyright, but as property—such a property in every article for which he pays, under the 18th section of the Act, or by the general rules of property, as will entitle him, if he thinks it worth while, to prohibit any other person from publishing the same thing in any other newspaper, or in any other form."

Copyright in a newspaper included in the term "goods and chattels" in the Bankruptcy Act.

The copyright in a newspaper was held to be included in the words "goods and chattels," in the 125th section of the Bankruptcy Law Consolidation Act, 1849.

The registered proprietor of a newspaper mortgaged the copyright of the newspaper, and also the type and machinery used in printing it, to the petitioner. The proprietor remained in possession and no change was made in the registration. Afterwards the sheriff seized the type and machinery under a judgment obtained by a creditor. While he was in possession the proprietor filed a declaration of insolvency and was made bankrupt. It was held on a petition by the mortgagee to have the benefit of his security, that the type and machinery, having been seized by the sheriff, were not in the "order

and disposition" of the bankrupt at the time of the bankruptcy, but that the copyright of the newspaper could not be seized by the sheriff, and therefore remained in the order and disposition of the bankrupt as registered proprietor (*a*). In thus deciding Turner, L.J., said: "The case in the argument before us was very properly divided into two considerations—first, as it affects the newspapers, and, secondly, as it affects the plant. As to the newspapers, it was, in the first place, contended that they are not goods and chattels within the meaning of the 125th section of the Bankrupt Act, which provides for goods and chattels of which the bankrupt is reputed owner passing to the assignee. It was said that the right in the newspaper is a mere right to publish the paper under that name, and that such a right could not be considered as goods and chattels within the meaning of the Act. But, to say nothing of the copyright in the newspapers, which undoubtedly exists, the right to publish the newspapers is a right to which an interest is attached. It is a right protected by courts of law and by courts of equity, and therefore a proprietary right; and the statutes—the very Newspaper Acts on which the argument before us proceeds—treat the matter as a matter of property and as being a proprietary right. I feel, therefore, that the property in these newspapers must be considered as goods and chattels within the meaning of the Bankrupt Act. These words, 'goods and chattels,' are words of very extensive signification, and undoubtedly comprise both property tangible and property which is not tangible. If there had been any doubt in my mind on that point, it would have been removed by the case of *Longman* v. *Tripp* (*b*), which seems to me to be a decisive authority upon the subject, and to be well founded in point of law. The case was argued further as to the question of the copyrights on this ground—it was said that the News-

(*a*) *Ex parte Foss, Re Baldwin*; *Ex parte Baldwin, Re Baldwin*, 6 W. R. 417; *Longman* v. *Tripp*, 2 Bos. & Pul. (New R.) 67; see also *Kelly* v. *Hutton*, L. R. 3 Ch. App. 703.

(*b*) 2 Bos. & P. N. R. 67.

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paper Acts were Acts that were merely passed for fiscal purposes; that they had nothing to do with the rights of property, and therefore could not be considered as at all affecting the question whether the property was in the nature of goods and chattels within the meaning of the Bankrupt Act. But the case of *Longman* v. *Tripp* governs that point also; and independently of the case of *Longman* v. *Tripp* I think that the argument derived from the newspaper statutes is not well founded: for whether these statutes are for fiscal purposes or not, they at all events furnish the means by which the ownership of the property may be made known to the world. The declarations which are made under the Newspaper Acts are *indicia* of the property, and where such *indicia* exist I apprehend they must be attended to for the purpose of taking the property out of the disposition of the bankrupt, and removing them out of the operation of the reputed ownership clauses. The declaration is evidence of the ownership, and what may be effectual to remove that evidence must be resorted to."

Mortgage of share of newspaper not assignment of copyright requiring registration.

A mortgage of a share in a newspaper and the copyright and right of publication thereof, and all profits arising therefrom, is not an assignment of copyright which requires registration at Stationers' Hall, but merely an assignment of a chattel interest in the publishing adventure, which derives no additional efficacy from the registration (*a*).

During the progress of a suit instituted by Mr. Beeton against Mr. Hutton in reference to the proprietorship of the 'Sporting Life,' in which it was ultimately decided that the parties were entitled in equal shares, Mr. Beeton assigned by way of mortgage his share in the newspaper "and the copyright and right of publication thereof and all profits arising therefrom," to Messrs Wrigley & Son, the assignment reciting certain chancery proceedings, and containing a power of sale.

(*a*) *Kelly* v. *Hutton*, L. R. 3 Ch. App. 703; 38 L. J. (Ch.) 917; 19 L. T. (N.S.) 228.

Mr. Beeton subsequently mortgaged his same share to his partner Mr Hutton, to secure two sums of £2000 and £512, with interest at 7½ per cent.; the former sum being the amount Beeton had been overpaid in a settlement of accounts with Hutton, the latter being the balance of Beeton's purchase-money for his moiety of the newspaper. Messrs Wrigley & Son registered the assignment to them at Stationers' Hall, under the provisions of the Copyright Act, and subsequently sold the mortgaged share to the plaintiff Kelly, who filed a bill for a declaration that he was entitled to a moiety of the newspaper. Both Wrigley & Son and the plaintiff had permitted the newspaper to be carried on as formerly by Beeton and Hutton. It was held by the Lords Justices that the plaintiff could only take Beeton's share in the newspaper subject to the equities subsisting between the parties. "Many points have been raised before us," said Wood, L.J., "as regards the property which was the subject of the mortgage to Wrigley & Son. . . . . It appears to us that Beeton & Hutton were engaged in a joint adventure, namely, the publishing of the paper in question. Capital was required for the adventure, and the co-partners or co-adventurers possessed leasehold premises and type, and other chattels necessary for carrying it on. The mortgage to Wrigley & Son assigned to them Beeton's share in the newspaper, whatever it might be, and all profits belonging thereto or arising therefrom. In the habendum the deed speaks of the copyright of the newspaper, and the right of continuation and publication thereof. Now it appears to us that there is nothing analogous to copyright in the name of a newspaper, but that the proprietor has a right to prevent any other person from adopting the same name for any other similar publication; and that this right is a chattel interest capable of assignment was held in *Longman* v. *Tripp* (*a*), and *Ex parte Foss* (*b*). The mortgage, then, to Wrigley & Son was that of Beeton's share of a chattel, which formed the

(*a*) 2 Bos. & P. 67.

(*b*) 2 De G. F. & J. 230.

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principal subject of the co-adventure between Beeton and Hutton. Considerable stress has been laid in argument, on the part of the appellants, on the necessity of notice being given of such an assignment, either by direct notice to Hutton, or by an entry at the Inland Revenue Office; and much controversy has arisen in evidence as to whether Hutton had or had not in fact such notice previously to the 9th of March, 1866. The entry of their mortgage by Wrigley & Son at Stationers' Hall was clearly futile; but we do not pause to consider the question further, because it is clear on the face of their mortgage deed that Wrigley & Son were aware of the litigation between Beeton and Hutton. They allowed the joint adventure to be worked jointly, whether with or without notice, and it is impossible that they can now take to themselves the subject of that adventure and the profits arising therefrom without being subject to every equity of the co-adventurer. A judgment creditor in execution against one partner, his debtor, takes only the interest of the debtor, subject to his co-partner's equities; and Wrigley & Son could not claim the asset without satisfying in the first place the lien of £512 for the unpaid purchase-money of Beeton's moiety, nor without satisfying the balance of accounts due from Beeton to his co-adventurer Hutton. The lien of Hutton as *quasi* partner in the adventure must be satisfied before the subject-matter of the adventure can be passed over to any person claiming under an assignment from Beeton; and this lien must continue so long as Wrigley & Son, as the assigns of Beeton by way of mortgage, allow the business to be carried on in co-partnership by Beeton and Hutton. Irrespective of the doctrine of notice, they cannot take the benefit of Hutton's capital in carrying on the concern (whether they have given him notice or not) and then ask to have the share of Beeton in the chattel, and still less in the profits of the concern, handed over to them without first satisfying the lien of the co-adventurer for what may be due to him on taking the accounts of the adventure. The same

reasoning applies to the plaintiff as purchaser. His letter of the 27th of December, 1866, to Hutton the elder, set out in the amended bill, shews that he, at least up to that time, acquiesced in the arrangement under which the newspaper was to be carried on. In fact, having acquired the interest of Beeton in the newspaper, his mortgagees allow Beeton to conduct the business, and he must be taken to act as their agent and on their behalf. They do not advance any capital, and ask no question as to how it is to be provided. They must therefore take the business as they found it, at least up to the time of the actual exclusion of the plaintiff by Hutton from the concern, and even after that time profits cannot be claimed without making all just allowances in respect of such moiety. Hutton, therefore, wholly irrespective of his mortgage of the 9th of October, 1866, would be entitled to a lien on Beeton's share in the newspaper for £512, the unpaid purchase-money. He would also, we think, be entitled to the balance on the account settled on the 9th of March, 1866, with Beeton (which account came down to the 30th of September, 1865), and to the £2000 due to Hutton as the result of that account and the arrangement subsequent on it. We think, also, that interest at the rate of 7½ per cent. per annum must be allowed on those two sums: for Hutton was clearly entitled to decline carrying on the business, whether with or without the knowledge of Wrigley & Son's mortgagee, except in the terms of being allowed interest on his capital. It is in fact advanced to the plaintiff. . . . . As to the whole case, therefore, we conclude that the plaintiff has become entitled to the interest of Beeton in the newspaper. We see no reason why that interest should not be dealt with as on former occasions, by directing the defendants to concur in procuring the plaintiff's name to be registered at the office of Inland Revenue as such owner, subject to the lien before mentioned" (*a*).

(*a*) *Kelly* v. *Hutton*, L. R. 3 Ch. App. 703; 38 L. J. (Ch.) 917; 19 L. T. (N.S.) 228.

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Newspaper articles.

In a case which came before Lord Curriehill, in November, 1875, wherein Mr. Charles Reade brought an action against the 'Glasgow Herald' for damages for infringement of copyright by the publication of his sketch called 'A Hero and Martyr' which appeared originally in the 'Pall Mall Gazette,' and which the 'Herald' had transmitted daily from London by its special wire for the next day's paper; his Lordship, in giving judgment, so far as concerned the plea of irrelevancy set up by the defendants against the plaintiff's action, said: "The defenders maintain that as the London newspaper is not registered as copyright, they are entitled to copy and publish in their journal any thing which appears in it, and that even if its proprietor might have a title to sue for damages for such appropriation of matter published, the author, who has been paid by the proprietors for the right to publish such matter, has no action against the journal so appropriating. This raises a question of great importance both to authors and journalists. I am of opinion that the defence is not relevant, and that the counter-issues proposed by the defenders must be disallowed. I know of no principle or authority holding that the author loses his copyright by permitting third parties to print and publish his work. To hold such a doctrine would, I think, be analogous to holding that a patentee loses his monopoly on licensing a third party to manufacture his patented invention."

Wrongfully assuming name of newspaper.

An injunction will be granted against assuming the name of a newspaper published by the plaintiff, for the purpose of deceiving the public and supplanting the goodwill of such paper (*a*), or against publishing a magazine in the name of one who no longer authorizes it (*b*).

(*a*) *Bell* v. *Locke*, 8 Paige (Amer.) 75. See *Snowden* v. *Noah*, Hopk. (Amer.) 347.

(*b*) *Hogg* v. *Kirby*, 8 Ves. 215.

CHAPTER XVII.

INTERNATIONAL COPYRIGHT.

Non erit alia lex Romæ, alia Athenis; alia nunc alia posthac, sed et apud omnes gentes et omnia tempora una eademque lex obtinebit.—CICERO.

INTERNATIONAL law is entirely the offspring of modern civilization, and is the latest important discovery in political science.

International copyright the offspring of modern civilization.

The origin and progress of international law is itself a remarkable step in the march of civilization. Nations now begin to acknowledge their subjection to laws in conformity with natural justice and reason, as in the very origin of society individuals acknowledged themselves so bound. And the development of international law will proceed amongst the civilized nations of the earth, until citizens can enjoy in foreign countries all the rights which they enjoy in their own. Commerce, the influence of which unites the human family by one of its strongest ties, the desire of supplying mutual wants, demands an international code for the civilized nations of the earth. Art demands that the property in its inventions should be secured by an international law of patents. Literature, that the property in its works should be secured by international copyright.

"The actual law of nations," observes Mr. Curtis (*a*), "knows no exclusive right of an author to the proceeds of his work, except that which is enforced by the municipal law of his own country, which can operate nowhere but in its own jurisdiction. As soon as a copy of a book is

(*a*) 'Copyright,' p. 22.

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landed in any foreign country, all complaint of its republication is, in the absence of a treaty, fruitless, because no means of redress exist, except under the law of the author's own country. It becomes public property, not because the justice of the case is changed by the passage across the sea or a boundary, but because there are no means of enforcing the private right."

International copyright regulated by 7 Vict. c. 12, and 15 Vict. c. 12.

International copyright is regulated by the 7 Vict. c. 12, explained by the 15 Vict. c. 12.

The former repealed the 1 & 2 Vict. c. 59, which had been found "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 were conferred and provided by the said Copyright Amendment Act (5 & 6 Vict. c. 45), with respect to authors of books first published in the British dominions."

Formerly, if a book were written by a foreigner and published abroad, a person who purchased the right to publish here could not enjoy the right exclusively (*a*).

In the case of *Guichard* v. *Mori* (*b*), the defendant published a piece of music called 'The Charms of Berlin,' about a third of which consisted of a piece of music sold by the composer in 1820 to the plaintiff. The music had been published in France in 1814, six years before the sale to the plaintiff. "The policy of our law," observed Lord Lyndhurst, "recognises by statutes, express in their wording, that the importation of foreign inventions shall be encouraged in the same manner as the inventions made in this country and by natives. This is founded as well upon reason, sense, and justice, as it is upon policy. It appears that this piece of music was published in France by Kalkbrenner, or some one to whom he sold it, so long ago as 1814, six years before the sale to the plaintiff. There can be no question, then, of the right of the defendant, or any one else, to publish it in this country."

(*a*) *Guichard* v. *Mori*, 9 L. J. (Ch.) 227.
(*b*) 9 L. J. (Ch.) 237.

To remedy this, and to afford protection in this country to the authors of books first published in foreign countries, in cases where protection should be afforded in such foreign countries to the authors of books first published here, the International Copyright Act, 1837, was passed.

The Act of 1837 has reference solely to books.

This Act, however, did not empower Her Majesty to confer any exclusive right of representing or performing dramatic pieces or musical compositions first published in foreign countries upon the authors thereof, nor to extend the privilege of copyright to prints and sculpture first published abroad; it merely had reference to books.

Enlargement of the power conferred on Her Majesty of concluding international copyright conventions.

In order to confer such power an Act of Parliament was passed in 1844 to amend the law. By this Act (*a*) Her Majesty was empowered by any Order in Council to direct that as respects all or any particular class of the following works (namely) books, prints, articles of sculpture, and other works of art to be defined in such order, which should, 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, should have the privilege of copyright therein during such period as should 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 might be entitled to.

If the order applied to books, the copyright law as to books first published in this country should apply to the books to which the order related, except so far as might be excepted in any order, and except as to the delivery of copies of books at the British Museum and the other libraries.

And if the order applied to prints, articles of sculpture, or to any such other work of art as aforesaid, the copy

(*a*) 7 Vict. c. 12.

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right law as to print, sculptures, and such other works of art first published in this country should apply to the prints, sculptures, and other works of art to which such order related, except as might be provided in any order.

The 5th section of the Act enacts that it shall be lawful for Her Majesty, by Order of Her Majesty in Council, to direct that the authors of dramatic pieces and musical compositions which shall after a future time, to be specified in such order, be first publicly represented or performed in any foreign country, to be named in such order, shall have the sole liberty of representing or performing in any part of the British dominions such dramatic pieces or musical compositions during such period as shall be defined in such order, not exceeding the period during which authors of dramatic pieces and musical compositions first publicly represented or performed in the United Kingdom may for the time be entitled by law to the sole liberty of representing and performing the same: and from and after the time so specified in any such last-mentioned order the enactments of the said Dramatic Literary Property Act and of the said Copyright Amendment Act, and of any other Act for the time being in force with relation to the liberty of publicly representing and performing dramatic pieces or musical compositions, shall, subject to such limitations 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 thereinafter provided in such manner as if such dramatic pieces and musical compositions had been first publicly represented and performed in the British dominions, except such of the said enactments or such parts thereof as shall be excepted in such order.

Registration.

The provisions in regard to registration under the International Copyright Act are contained in the 6th section, which requires that every author, to entitle himself to the

protection thereby afforded, shall, within a time to be prescribed in each Order in Council made in pursuance of the Act, register the same at Stationers' Hall. It is necessary to register 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, the time and place of the first publication, representation, or performance, as the case may be, in the foreign country. One printed copy of the whole of any book, and of any dramatic piece or musical composition, in the event of the same having been printed, and of every volume, shall be delivered to the officer of the Company of Stationers.

Delivery of copies.

The copy delivered to Stationers' Hall must be on the best paper upon which the largest number or impression of the work has been printed for sale, and must contain all maps and prints.

The officer of the Stationers' Company to whom the delivery of a copy is made, is to give a receipt in writing for the same, and such delivery is to be to all intents and purposes a sufficient delivery under the provisions of the Act. As to editions, after the first, unless such subsequent editions contain additions or alterations, it is not necessary to deposit another copy.

Dramatic piece or musical composition.

If the dramatic piece or musical composition be in manuscript, all that is required is that the title, the name and place of abode of the author or composer, the name and place of abode of the proprietor of the right of performing or representing, and the time and place of the first representation or performance in the foreign country, shall be entered in the register. No copy is required to be deposited.

Engravings and prints.

As to engravings and prints, the title, the name, and place of abode of the inventor, designer, or engraver, the name of the proprietor of the copyright, and the time and place of the first publication in the foreign country, must be entered on the register, and a copy of such print upon the best paper upon which the largest number of

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impressions shall have been printed for sale, must be delivered to the officer of the Company of Stationers.

Articles of sculpture.

As to any article of sculpture or other work of art, the register must contain a descriptive title thereof, the name and place of abode of the maker of it, the name of the proprietor of the copyright, and the time and place of its first publication in the foreign country.

Mode of entry.

The task of making and also of construing the statutable entries is rendered somewhat difficult owing to the circumstances, first, that the statute does not require, or the book of registry in form provide for, any description of the thing to be registered apart from its title; and, secondly, that the register in its actual form is framed with headings applicable only to the registration of a book or other printed matter. In *Wood* v. *Boosey* (*a*), the registration of the pianoforte arrangement of an opera was held to be invalid, because the name of the composer of the opera had been entered in the registry, instead of the name of the person who had made the arrangement. In the opinion of the court, the latter, and not the former was the author of what was registered.

In *Boosey* v. *Fairlie* (*b*), the plaintiffs claimed the exclusive right of representing a comic opera known as '*Vert-vert*,' composed by Offenbach, of which a pianoforte arrangement made by Soumis, but not the orchestral parts, had been published in print. There had been entered in the registry the title of the opera, the name and place of abode of Offenbach as composer and owner, and the time and place of the first representation of the opera, and the time and place of the first publication of the pianoforte arrangement. A copy of the pianoforte arrangement, but not of the opera itself, had been delivered to the officer of the Stationers' Company. Vice-Chancellor Bacon ruled that the pianoforte arrangement, and not the opera itself, was the thing registered, and that, as the name and place of abode of Soumis, the author of the arrangement, had not

(*a*) L. R. 2 Q. B. 340; 3 Q. B. 223.
(*b*) 7 Ch. Div. 307.

been entered, the registration, according to *Wood* v. *Boosey*, was not valid. The Court of Appeal, however, held that all the facts required for the registration of the opera itself had been duly entered, and that the additional entry of the time and place of the first publication of the pianoforte arrangement, and the delivery of a copy of it, were superfluous acts, which did not affect the registration of the original opera. There was, therefore, a good registration of the unpublished opera, but not of the pianoforte arrangement.

Registration of books published anonymously.

The 7th section of the International Copyright Act provides for the registration of books published anonymously, it being sufficient in such case to insert in the entry the name and place of abode of the first publisher, instead of the name and place of abode of the author, 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.

Effect of registration.

The provisions of the Copyright Amendment Act as regards entries in the register book of the Company of Stationers, inspection, searches, false entries, expunging, and varying entries, are made to apply to entries under the International Copyright Act, except that the forms of entry may be varied to meet the circumstances of the case, and the sum to be demanded by the officer of the Stationers' Company for making any entry shall be one shilling only (*a*).

As to expunging or varying entry grounded in wrongful first publication.

And it is further provided (*b*), that every entry made in pursuance of the 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 cognisance 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

(*a*) Sect. 8. (*b*) Sect. 9.

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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; secondly, 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.

Order may specify different periods for different foreign countries and for different classes of works.

By the 13th section it is provided that the respective terms to be specified in any Order of Council 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 works: and that 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 thereinbefore mentioned, may be different for different foreign countries, and for different classes of books or other articles.

No order to be of effect unless it states reciprocal protection secured.

No Order of Council is to have any effect unless it shall be therein stated as the ground for issuing the same that due protection has been secured by the foreign power so named in such order in council for the benefit of parties interested in works first published in the dominions of Her Majesty, similar to those comprised in such order (*a*).

Orders to be published in 'Gazette.'

Provision is made that every order made under the powers conferred by the Act should be published in the 'London Gazette' as soon as may be after the making thereof, and from the time of such publication shall have the same effect as if every part thereof were included in the Act.

Proposal of Copyright

The Royal Commissioners, in their recent report on Copyright, propose that registration of foreign works in

(*a*) Sect. 14.

this country should not be required for the purpose of securing copyright here, or the right of representation or performance of musical and dramatic works, and that the production of a copy of the foreign register, attested by a British diplomatic or consular officer, should in all legal proceedings be *primâ facie* evidence of title to the copyright of the foreign work, but they suggest that this should not apply to English translations of foreign works and adaptations of foreign plays to the British stage, if published in this country. They also propose that the obligation to deposit copies of foreign books and other works for which authors may desire to obtain copyright in the British dominions should be abandoned; foreign governments being, of course, requested to give up their rights to the deposit of English books.

Commissioners as to registration.

In order to meet the difficulty of how the people of one state are to know what works of the other are protected and what not, the Commissioners recommend that a presumption should be allowed that every book has copyright and is protected in the country of production; but, in case of legal proceedings, if the copyright in the country of production is disputed, proof of copyright should be required, and, as already proposed, such proof should be supplied by the production of an attested copy of the foreign register.

The 18th section provided that nothing in the Act should be construed to prevent the printing, publication, or sale of any translation of any book the author whereof and his assigns might be entitled to the benefit of the Act.

Translations.

But this section has been repealed by the 1st section of the 15 Vict. c. 12, so far as it is inconsistent with the provisions of that Act. And the 2nd section of that Act provides that Her Majesty may by Order in Council direct that the authors of books which are, after a future time to be specified in such order, published in any foreign country to be named in such order, their executors, administrators, and assigns, shall, subject to the provisions

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thereinafter contained or referred to, be empowered to prevent the publication in the British dominions of any translations of such books not authorized by them, for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorized translations of such books thereinafter mentioned are respectively first published, and, in the case of books published in parts, not extending as to each part beyond the expiration of five years from the time at which the authorized translation of such part is first published.

The 15 Vict. c. 12, further provides that, subject to any provisions or qualifications contained in such order, and to the provisions in the Act contained or referred to, the laws and enactments for the time being in force for the purpose of preventing the infringement of copyright in books published in the British dominions shall be applied for the purpose of preventing the publication of translations of the books to which such order extends which are not sanctioned by the authors of such books, except only such parts of the said enactments as relate to the delivery of copies of books for the use of the British Museum, and for the use of the other libraries (*a*).

Articles of political discussion.

But it is provided that nothing shall prevent any article of political discussion which has been published in any newspaper or periodical in a foreign country from being republished or translated in any newspaper or periodical in this country, if the source from which it is taken be acknowledged: and that any article relating to any other subject which has been so published as aforesaid may, if the source from which the same is taken be acknowledged, be republished or translated in like manner, unless the author has signified his intention of preserving the copyright therein, and the right of translating the same, in some conspicuous part of the newspaper, or periodical in which the same was first published, in which case the same shall, without the formalities required by the 8th section,

(*a*) Sect. 3.

receive the same protection as is by virtue of the International Copyright Act or that Act extended to books (*a*).

Dramatic works.

By the 4th section of the 15 Vict. c. 12, power is given by Order in Council to grant a further right to the authors of dramatic pieces first represented in a foreign country. It is enacted that Her Majesty may by Order in Council direct that authors of dramatic pieces which are, after a future time to be specified in such order, first publicly represented in any foreign country, to be named in such order, their executors, administrators, and assigns, shall, subject to the provisions thereinafter mentioned or referred to, be empowered to prevent the representation in the British dominions of any translation of such dramatic pieces not authorized by them for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorized translations of such dramatic pieces thereinafter mentioned are first published or publicly represented. And further, that thereupon the law for protecting the representation of such pieces shall extend to prevent unauthorized translation (*b*).

Fair imitations or adaptations not prohibited.

Then follows a short, but most important provision that nothing in the Act 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 countries (*c*).

The case of *Wood* v. *Chart* (*d*) thus illustrates principles by which the court will be guided in questions respecting translations and imitations of foreign works under the above Act.

The provisions of the International Copyright Act, so far as they came in question in this case, were these: the authors of foreign plays (*i.e.*, plays first published abroad) may prevent the representation in the British dominions of any unauthorized translation, for a period not exceeding

(*a*) Sect. 7. (*b*) Sect. 5.
(*c*) Sect. 6, but see amending Act 38 & 39 Vict. c. 12, *post* p. 485.
(*d*) L. R. 10 Eq. 193; 18 W. R. 822; 22 L. T. (N.S.) 432; 39 L. J. (N.S.) Ch. 641.

four years from the first publication or representation of an authorized translation, but nothing in that Act, as we have already seen, was to prevent "fair imitations or adaptations to the English stage" of a foreign play. The facts of the case were as follows:—'*Frou-frou*,' a French comedy, was registered in England; an English version was made, published, and registered. Mr. Wood, the plaintiff, became assignee of all English rights, both of the authors and translators. An unauthorized version was made and publicly acted by the defendants. Thereupon the plaintiff filed a bill for an injunction and an account. The authorized English version of the plaintiff was entitled 'Like to Like,' the scene transferred to England, the names of the characters changed to English names, and certain alterations and omissions made in the dialogue, but the plot and the main incidents continued the same. The Vice-Chancellor dismissed the bill, holding that the requisitions to entitle the plaintiff to the benefit of the Act had not been complied with, for 'Like to Like' was not a "translation" within the meaning of the Act, but rather "an imitation or adaptation to the English stage."

"With respect to the representation of the English play," said Sir W. M. James, when Vice-Chancellor, "the plaintiff has got to make out his title, which depends upon the convention, and upon the Act. Now the Act of Parliament for some reason or other—I suppose a sufficient reason, but I do not know what it may be—has required, in order to give an author, or the assignee of that author, the particular copyright in question, that the original work shall be deposited in the United Kingdom; and then with regard to works other than dramatic works, it says, 'The translation sanctioned by the author, or part thereof, must be published in the British dominions not later than one year after the registration and deposit in the United Kingdom of the original work.' That is, the translation of part thereof; and the whole of such translation must be published within three years of such registration and deposit. It contemplates and requires

that the whole work shall be translated. But it would not be a compliance with that to translate a quarter, or half, or three-quarters of a work that is protected, and then say, 'That is all I want protected, that is my authorized translation; and I have published the whole of that part which I have thought right to have translated.' The whole work must be translated, and the translation must be published in this country. Then, for some other sufficient reason, it is provided that in the case of dramatic pieces the translation sanctioned by the author must be published within three calendar months of the registration of the original work. Now, I do not think it is possible to say that this means that anything which the author shall sanction as a translation must be published within three calendar months; but that the translation which has been authorized and sanctioned by the author must be published within that time. It appears to me that the plaintiff has gone out of his course to dig a pitfall for himself; for that which he says he has done is, the original thing being called '*Frou-frou*,' he has published in England a comedy called 'Like to Like' . . . he has introduced English characters; he has transferred the scene to England; he has made the alterations necessary for making it an English comedy and not a translation of a French comedy; and he has left out a great number of speeches and passages, especially in the first act, which would seem to imply at first he was merely making an imitation or adaptation, and afterwards was minded more completely to make a translation.

"The first two acts seem particularly to be what is referred to in the Act of Parliament itself as 'an imitation or adaptation.' Whether it be a fair adaptation is another question; but if one wanted to have an example of what is an imitation or adaptation to the English stage, I should have said that this is exactly the thing. This is an imitation and adaptation to the English stage; that is, you transfer the scene to England, you make the

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characters English, you introduce English manners, when our manners differ from French manners, and you leave out things which you say would not be suitable for representation on the English stage. But what the Act required for some sufficient reason, as I have said before, when it required that a translation should be made accessible to the English people, was that the English people should have the opportunity of knowing the French work as accurately as it was possible to know a French work by the medium of a version in English. That seems to me to be what was intended, and having come to the conclusion that this is not a translation, I am of opinion that the plaintiff has failed to comply with the condition precedent which the Act has imposed upon him to entitle him to sustain this suit. It is said that one ought to give a liberal interpretation, that one ought not to strain the meaning of the word 'translation' or any other word, for the purpose of depriving a foreign author of the benefit of the Act. Of course not. Of course, one ought to take a liberal view, and one ought not to strain any word, but one must at the same time give a real and natural meaning to those words, and, according to my view of the case, there never would have been the slightest difficulty whatever in the plaintiff's obtaining the full benefit of his assignment, and putting himself in a position to prevent any representation of the French play, or of any English translation of it, if he had simply employed Mr. Sutherland Edwards to do what he could very well have done, namely, have made a translation. If he had said to him, 'Now make a translation of this; do not be thinking of an adaptation to the English stage, but make me a translation,' he could have made a translation which could have been published in this country; and then it would have been quite open to the author, or the person claiming under the author, to have represented that, with any excision, with any alteration, with any adaptation he might have thought fit for the purpose of making it more suitable for the English stage. I have no doubt whatever

if he had published a translation, he could then have acted the thing which Mr. Sutherland Edwards has called a version, and that nobody could have acted anything like that—anything approaching to it, because (although I say this is not a translation, but an imitation and adaptation to the English stage) I have no hesitation in saying that if the authors, or any other persons claiming under them, had complied with the condition required by the Act of Parliament, I should at once have restrained the acting of this very thing as not being a fair imitation or adaptation, but as being a piratical translation of the original work. That would have been the proper thing for me to have done in that case; but the plaintiff having brought his suit, and not having a title, must fail, with the usual consequences—he must pay the costs."

The scope of the 6th section of the International Copyright Acts is to fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country has been restricted since the first edition of this work, the 38 & 39 Vict. c. 12, providing that the Queen by Order in Council may direct that the 6th section of the said Act shall not apply to 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 6th section of the said Act were thereby repealed.

What is a translation?

As to what is a translation some difficulty has arisen. Dryden reduces translations to three heads: first, that of metaphrase, or turning an author word by word, and line by line, from one language into another. Thus, or near this manner, was 'Horace, his Art of Poetry,' translated by Ben Jonson. The second way is that of paraphrase, or translation with latitude, where the author is kept in view by the translator, so as never to be lost, but his words are not so strictly followed as his sense; and that, too, is admitted to be amplified, but not altered. Such is Mr. Waller's translation of 'Virgil's fourth *Æneid*.' The

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third way is that of imitation, where the translator (if now he has not lost that name) assumes the liberty, not only to vary from the words and sense, but to forsake them both as he sees occasion; and taking only some general hints from the original, to run divisions on the groundwork, as he pleases. Such is Mr. Cowley's practice in turning two odes of Pindar, and one of Horace, into English (*a*).

It is, however, clear that the meaning of what are called in the convention "piratical translations," are all translations not authorized by the foreign author. A version must be distinguished from a translation, as will be presently seen.

Requisites in order to obtain protection.

The following are the requisites in order to entitle an author to the benefit of the Act or of any Order in Council as to any translation or dramatic piece:—

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

(*a*) Dryden's Works (Scott's Ed.) xii. 11.

4. Such translation must be registered and a copy thereof deposited in the United Kingdom within a time to be mentioned in that behalf in the order by which it is protected, and in the manner provided by the International Copyright Act for the registration and deposit of original works.
5. In the case of books published in parts, each part of the original work must be registered and deposited in this country in the manner required by the International Copyright Act within three months after the first publication thereof in the foreign country.
6. In the case of dramatic pieces the translation sanctioned by the author must be published within three calendar months of the registration of the original work.
7. The above requisitions shall apply to articles originally published in newspapers or periodicals if the same be afterwards published in a separate form, but shall not apply to such articles as originally published.

Convention between England and France.

In pursuance of the powers conferred by the 7 Vict. c. 12, a convention was signed between this country and France at Paris the 3rd of November, 1851, and subsequently ratified by Act of Parliament (*a*).

Registration.

In order to obtain protection in either country the work must be registered in the following manner:—

If the work first appear in France it must be registered at Stationers' Hall, London.

If it appear first in England, at the Bureau de la Libraire of the Ministry of the Interior at Paris, within three months after the first publication in England. As to works published in parts, they must be registered within three months after the publication of the last part; but in order to preserve the right of translation each part must be registered within three months after its publication. A copy

(*a*) 15 & 16 Vict. c. 12.

of the work must also be deposited within the same time as registration is to be made either at the British Museum in London, or in the National Library at Paris, as the case may be.

In *Cassell* v. *Stiff* (*a*), Sir W. P. Wood, V.C., held that a French newspaper published weekly, and not intended to be completed in any definite number of parts, must be registered within three months after its commencement, or if it had commenced before 1852, within three months after the date of the Order in Council (10th January, 1852); and, *semble*, the registration of a number of such a periodical, in 1855, long after its commencement, did not extend to the succeeding numbers the protection of the International Copyright Acts.

Fees for registration.

The charge for registration is in France one franc twenty-five centimes, and in England one shilling; and the further charge for a certificate of such registration must not exceed the sum of five shillings in England nor six francs twenty-five centimes in France; and the certified copy of the entry in either case is evidence of the exclusive right of publication in both countries, until the contrary is proved.

With regard to articles other than books, maps, prints, and musical compositions, in which protection may be claimed, any other mode of registration which may be applicable by law in one of the two countries to any work or article first published in such country for the purpose of affording protection to copyright in such article, is extended on equal terms to any similar article first published in the other country.

Little difference is discernible between the treaty and the Act, with the exception that the latter explains clearly one or two passages in the former that might otherwise have been disputed.

But as the convention had been concluded under the provisions of the 7 Vict. c. 12, the 15 Vict. c. 12, went on to provide that during the continuance of the convention,

(*a*) 2 K. & J. 279.

and so long as the Order in Council already made under the International Copyright Act remained in force, the provisions contained in the 15 Vict. c. 12, should apply to the said convention, and to translations of books and dramatic pieces which were after the passing of the 15 Vict. c. 12, published or represented in France, in the same manner as if Her Majesty had issued her Order in Council in pursuance of such Act for giving effect to such convention, and had therein directed that such translations should be protected as is mentioned in the 15 Vict. c. 12, for a period of five years from the date of the first publication or public representation thereof respectively, and as if a period of three months from the publication of such translation were the time mentioned in such order as the time within which the same must be registered, and a copy thereof deposited in the United Kingdom (*a*).

Authors of works in France claiming copyright in this country are not exempt from the conditions affecting authors of works in this country (*b*).

By analogy it follows that to obtain the benefit of the International Copyright Act, the proprietor of a foreign print must comply with the provisions of the Engravings Acts and the proprietor's name must be printed on it (*c*).

The 19th clause of the 7 Vict. c. 12, which enacts that no author of any book or dramatic piece, which shall be first published out of Her Majesty's dominions, shall have copyright therein, otherwise than under the provisions of that Act, applies to British subjects first publishing in a country with which no international convention exists.

It has been held that this section applies to native as well as to foreign authors, and to works first published in any foreign country, whether the provisions of the International Copyright Acts have or have not been

(*a*) 15 Vict. c. 12, s. 11.
(*b*) *Cassell* v. *Stiff*, 2 K. & J. 279.
(*c*) *Avanzo* v. *Mudie*, 10 Ex. 203.

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extended to that country; and accordingly that no author, whether a British subject or an alien, is entitled to any other protection for a work first published abroad than that which he may claim under the International Copyright Acts. Therefore where a British subject first produced for representation a dramatic piece of which he was the author, at New York, and he subsequently produced it in London, Vice-Chancellor Sir W. P. Wood held that as he had not complied with the provisions of the 7 Vict. c. 12, and there being no international treaty or arrangement (which was alluded to by the above section), he had not obtained the copyright to such piece in England (*a*), nor the exclusive right to the representation of his drama, though he could not, by any possibility, have complied with the provisions of the said Act, no regulation having been made according to the course pointed out by the Act as to International Copyright between the two countries.

It was contended by the plaintiff that this Act could not annihilate the privileges enjoyed by British subjects under the former Acts. That the word "author" must mean an author in a country affected by the Act, and that the simple performance of a piece in manuscript abroad was not contemplated by the term "publication."

However, the contention failed, the Vice-Chancellor saying:—

"The 19th clause says, in effect, that this Act having been made, if any person, whether a British subject or not, chooses to deprive this country of the advantage of the first representation of his work, then he may get the right, if he thinks fit, under the arrangements which may have been come to with that country he so favours with his representation, pursuant to the 7 & 8 Vict. c. 12. If, however, he does not get it, if he chooses to publish his performance in a country which has not entered into any treaty or made any arrangement for that purpose, he may

(*a*) *Boucicault* v. *Delafield*, 9 Jur. (N.S.) 1282; 33 L. J. (Ch.) 38; 12 W. R. 101; 1 H. & M. 597.

do so, but this country has nothing more to say to him, and he must be taken to have elected under which of the statutes, which have been made respecting similar subjects, he wishes to come, and by performing his work in one country instead of the other, he is thereby excluded from all advantage of publishing in the other. I cannot see anything to justify me in restraining the provision, or to say that it applies to foreigners, and does not apply to British subjects, because if I did so, I should be bound, by parity of reasoning, to say, that any foreigner publishing first in this country, and acquiring a right under the existing law, would have to be deprived of that right by this Act, whilst a British subject would not be deprived of the benefit. The object of the legislature seems to have been in these cases to secure, in this country, the benefit of the first publication, and to extend to any other country the same benefit, only on certain conditions, namely, that reciprocity shall be afforded, and that the representation shall take place for the first time in England, which may be published afterwards in another country."

The same plaintiff in a subsequent case again tried to restrain the performance of a play of his, which had been first introduced in New York, but failed to establish his claim (*a*).

Suggestions of Copyright Commission as to translations and adaptations of foreign plays.

The Royal Commissioners in their recent report on copyright made some important suggestions as to the right of translation, copyright in translations, and adaptation of foreign plays to the English stage. They thought that instead of simply extending the periods for partial and complete translation, as was suggested to them, the better course would be that an unconditional right of translation should be reserved to every foreign author belonging to any state with which this country had entered into a copyright convention, for three years after publication of the original work.

Under the treaty with France, the period for the right

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

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of translation is at present five years, the Commissioners considered that this period must in many instances be insufficient to secure a fair remuneration for the labour and outlay attendant upon the publication of a translation, and they therefore proposed that if an author publish an English translation of his work in this country within the three years during which they had proposed to reserve the right of translation for him, his work should be protected against unauthorized translations for a period of ten years from the date of publication of such translation (*a*).

Suggestions as to dramatic pieces and right of performance.

As to the right of translation and adaptation of dramatic pieces, and the right of performance of translations and adaptations, they recommended that there should be no obligation to publish a literal translation in order to acquire these rights, but that, in countries with which international treaties exist, a right to translate and adapt to the English stage should be reserved to the foreign dramatist, for a period of three years from publication, or first public representation of the original work. And they further recommended that if an authorized translation or adaptation were published in this country within the three years, the dramatist's work should be protected against unauthorized translations, adaptations, and imitations, for a period of ten years from publication or first public representation in this country of the translation or adaptation (*b*).

They thought that translators, whether of plays or books, and adapters of dramatic works to the English stage, should have the same rights as authors of original works; and that the right of representation on the stage of a translation or adaptation should endure for the same term as if the translation or adaptation were an original work.

Importation of copies prohibited.

Copies of books wherein copyright is subsisting printed in foreign countries, other than those wherein the book was first published, are prohibited to be imported.

(*a*) Par. 279–283. (*b*) Par. 290.

The 10th section of the 7 Vict. c. 12, provides that no copies of books wherein there shall be any subsisting copyright under or by virtue of that 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 imported into any part of the British dominions, except by or with the consent of the registered proprietor of the copyright or his agent authorized in writing, and if imported contrary to such prohibition, the same and the importers thereof are made 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 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 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.

Extended to unauthorized translations.

And by the 9th section of the 15 Vict. c. 12, these provisions are extended, that section enacting that all copies of any works of literature or art wherein there is any subsisting copyright by virtue of the International Copyright Act and the 15 Vict. c. 12, or of any Order in Council made in pursuance of such Acts or

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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 the Act 15 Vict. c. 12, mentioned, shall for the time being be prevented under any Order in Council made in pursuance of such Act, shall be 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.

Provision of the 5 & 6 Vict. c. 45, as to forfeiture, &c., to extend to works prohibited to be imported under this Act.

And it is further provided that the provision of the 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 the 15 Vict. c. 12 (*a*).

INTERNATIONAL COPYRIGHT WITH AMERICA.

An English author or publisher has no right as against an American publisher who reprints and issues his work in America. Therefore, immediately on publication of a work in this country, it may be with impunity reproduced on the other side of the Atlantic; and there is no legal obligation on the part of the American reproducer to pay a single farthing in respect of the copyright. The British author or publisher has of course power to prevent the importation of these piratical copies into this country, but

(*a*) Sect. 9.

the real hardship (if so it may be called) is that by reason of the reproduction in America, by the American publisher, he loses that profit which would otherwise accrue from the sale of copies in which he had an interest to the American public. The American readers are infinitely more numerous than the English, and the English author frequently finds that, whereas in this country he has realised perhaps next to nothing, the American publisher, who has merely reproduced his work abroad, has made large profits thereby.

There appears to be a growing feeling, both in America and in this country, that something should be done for the protection of authors and publishers, and the eyes of the public are opening to the justice and policy of effecting a settlement of this question, which has recently been, and still is, so much discussed. However, there is no disguising the fact that there is a strong disinclination to an arrangement for international copyright on the part of certain publishing houses in the United States. Nor is this repugnance on their part unnatural. The United States have many advantages over this country from the absence of an international law of copyright, and the great disparity of interest which the two countries would respectively reap from such an arrangement is one of the greatest difficulties in the way of any arrangement and settlement of the question being come to. The works of American authors are, generally speaking, far less in demand in England than those of British writers in the United States; and in addition to this, the reproducer in America has a wider public to provide for than his rival in this country. The American publishers are themselves sufficiently protected by their custom in the publishing trade that the man who first re-issues any work of an English author retains a monopoly of future productions from the same pen. No other publisher will interfere with him, and the amount he pays as acknowledgment depends wholly upon his sense of honour. In the case of publishers of reputation perhaps no great evil results from this arrangement, yet the

CAP. XVII. English author is left completely at the mercy of the American publisher.

A bill was introduced in Congress by Mr. Cox, dated December 6, 1871, which would have required reciprocal action on the part of our Government; and another in the publishers' interest by Mr. Appleton, and a third was presented by the executive committee of the International Copyright Association of the United States, in the interest of the copyright owners (*a*). As a compromise between these interests of authors and publishers a fourth bill was presented on the 20th February, 1872, which was as follows:—

An Act to secure a Copyright to Foreign Authors and Artists.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled:

Sect. 1. That any author and artist who is not a citizen of the United States may secure a copyright for his or her work, in accordance with the regulations of the United States Copyright Act, provided such author and artist shall manufacture and publish said works in the United States.

This seems only a fair protection to the American people generally, for otherwise they would be seriously affected. In the bills presented to Congress in the interest of the authors this provision was omitted, and

(*a*) The brevity of the bill admits of its introduction here:—

An Act to secure Authors the Right of Property in their Works.

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled:

1. All rights of property secured to citizens of the United States of America by existing copyright laws of the United States are hereby secured to the citizens and subjects of every country the Government of which secures reciprocal rights to citizens of the United States.

2. This Act shall take effect two years from the date of its passage.

This bill was forwarded to Washington with the sanction of William Cullen Bryant, Henry W. Longfellow, Richard Grant White, Francis Lieber, Professor Barnard of Columbia College, and other literary men of distinction; and of George P. Putman, and Henry Holt, publishers of high respectability.

it was always alleged by the American publishers that the treaty was sought primarily in the interests of the English publisher, and yet when the bill introduced by Mr. Appleton contained a similar provision, it was urged that if it were conceded that English publishers could in any way, direct or indirect, extend their copyrights to that country, it would be a matter of comparatively small importance to American publishers, who were not themselves manufacturers, whether the books were made there or in England, since in that case the protection of the English publisher, which would be in the copyright, would be absolute, and shield him from all competition.

Sect. 2.—That any author who is not a citizen of the United States may secure the right of translation of his or her work, whether the original work be published in a foreign country or in the United States, provided that upon the first publication of such original work, the author shall have announced on its title-page his intention of translating it, and the original work shall have been registered in the office of the librarian of the Congress of the United States, and a copy of it shall have been deposited in the library of Congress within one month after its first publication in a foreign country, for copyright in accordance with the regulations of the United States Copyright Act, and provided also that the author shall manufacture and publish the translation of his or her work in the United States.

Sect. 3.—This Act shall take effect from the date of its passage.

A report adverse to the bill was made to the Senate in February, 1873, by Mr. Morrill from the joint committee on the library, to whom the subject had been referred, and thus the question has been shelved for the time. The report closed as follows:—"Your committee are satisfied that no form of international copyright can fairly be urged upon Congress, upon reasons of general equity or of constitutional law. That the adoption of any plan for the purpose which has been laid before us would be of very

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doubtful advantage to American authors as a class, and would be, not only an unquestionable and permanent injury to the manufacturing interests concerned in producing books, but a hindrance to the diffusion of knowledge among the people and to the cause of universal education; that no plan for the protection of foreign authors has yet been devised which can unite the support of all, or nearly all, who profess to be favourable to the general object in view, and that, in the opinion of your committee, any project for an international copyright will be found upon mature deliberation to be inexpedient."

Colonial copyright.

By the 5 & 6 Vict. c. 45, the copyright of books, &c., printed in the United Kingdom is extended to all the British dominions; the words "British dominions," meaning "all parts of the United Kingdom of Great Britain and Ireland, the islands of Jersey and Guernsey, all parts of the East and West Indies, and all the colonies, settlements, and possessions of the Crown which now are or hereafter may be acquired;" and the 8 & 9 Vict. c. 93, concerning the trade of the colonies, absolutely prohibited these dependencies from importing pirated editions of copyright works. Practically, this last enactment was unavailing. Large quantities of cheap reprints of British copyright books continued to be imported from the United States into the British American possessions. Remonstrances against these irregularities at length led to some special legislation.

In 1847 the 10 & 11 Vict. c. 95, was passed for enabling Her Majesty by Order in Council to suspend the enactment contained in the Copyright Act, 1842, against the importation into any part of Her Majesty's colonies, &c., of "foreign reprints" of English copyright works.

The Act provides that in case the 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 to make an Ordinance for that purpose, and shall transmit the same in the proper manner to the Secretary of State, in

order that it may be submitted to Her Majesty, and in case Her Majesty should be of opinion that such Act or Ordinance is sufficient for the purpose of securing to British authors reasonable protection within such possession, it shall be lawful for Her Majesty, if she think fit so to do, to express her royal approval of such Act or Ordinance, and thereupon to issue an Order in Council declaring that so long as the provisions of such Act or Ordinance continue in force within such colony, the prohibitions contained in the aforesaid Acts (*i.e.* the Copyright Act, 1842, and a certain Customs Act) and therein before recited, and any prohibitions contained in the said Act, 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 directed by such Order in Council. Every such Order in Council to be published in the *London Gazette*, and Orders in Council and the colonial Acts or Ordinances to be laid before Parliament within a certain specified time. Accordingly, the following colonies have placed themselves within its provisions, viz.: Canada, December 12, 1850; St. Vincent, August 18, 1852; Jamaica, December 29 and June 25, 1857; Mauritius, April 1, 1853; Nevis, Grenada, Newfoundland, July 30, 1849; St. Christopher, November 6, 1849; St. Lucia, November 13, 1850; New Brunswick, August 11, 1848; St. Kitts, British Guiana, October 23, 1851; Prince Edward's Island, October 31, 1848; Barbadoes, December 16, 1848; Bermuda, February 13, 1849; the Bahamas, May 21, 1849; Cape of Good Hope, March 10, 1851; Nova Scotia, August 11, 1848; Antigua, June 19, 1850; and Natal, May 16, 1857. In fact, all the important colonies with the exception of Australia. The understood arrangement is, that English publishers shall

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furnish catalogues of their copyrights to the custom-house authorities in the different colonies, as a guide for exacting what is termed the protective duties (amounting in Canada to 12½ per cent. *ad valorem*). These measures are next to inoperative, and the whole thing is little better than a delusion; so little is collected, that British authors and publishers reap either nothing or some paltry and insignificant amount, and they have now (*a*) generally ceased to give themselves any concern in the matter. In Canada the evil is experienced to a greater extent than in other colonies. Its proximity to the United States need only be recalled to mind to suggest the quarter from which the unauthorized reproductions of British works chiefly proceed. In short, unauthorized cheap reprints of British copyright works may be said to be freely imported into and sold in Canada and the adjacent provinces, this kind of trade in itself tending to indispose the United States to enter into an international treaty with the United Kingdom.

These statements are confirmed by a letter dated the 11th of June, 1868, from Mr. John Lovell (a Montreal publisher) to Mr. Rose, which appears in the correspondence carried on between the Canadian Government and the Imperial authorities upon the subject of "Copyright Law in Canada," and lately published. Mr. Lovell says: "At present only a few hundred copies pay duty, but many thousands pass into the country without registration, and pay nothing at all; thus having the effect of seriously injuring the publishers of Great Britain, to the consequent advantage of the United States. I may add that, on looking over the custom-house entries to-day, I have found that not a single entry of an American reprint of

(*a*) A ludicrous but significant illustration of the value of colonial copyright to English authors is furnished in a document sent in 1875 to Archbishop Trench from Her Majesty's Treasury. It announced that the sum of elevenpence was in the hands of the Paymaster-General, and would be paid to Dr. Trench on presentation of a signed receipt. It appears that the elevenpence represented the whole amount the colonial authorities in Canada had levied on the Archbishop's behalf during nearly as many years, that is, at the rate of a penny a year. Yet it is well known that Dr. Trench's books had there a large and constant sale.

an English copyright (except the reviews and one or two magazines) has been made since the 3rd day of April last, though it is notorious that an edition of 1000 of a popular work coming under this description has been received and sold within the last few days by one bookseller in this city."

The Copyright Commissioners on the "Foreign Reprints Act."

The Royal Copyright Commissioners in their report in June, 1878, referring to the operation of the Foreign Reprints Act, say, "So far as British authors and owners of copyright are concerned, the Act has proved a complete failure. Foreign reprints of copyright works have been largely introduced into the colonies, and notably American reprints into the Dominion of Canada; but no returns, or returns of an absurdly small amount, have been made to the authors and owners. It appears from official reports that during the ten years ending in 1876, the amount received from the whole of the nineteen colonies which have taken advantage of the Act, was only £1155 13*s.* 2½*d.*, of which £1084 13*s.* 3½*d.* was received from Canada; and that, of these colonies, seven paid nothing whatever to the authors, while six now and then paid small sums amounting to a few shillings."

The Canadian Act of 1875.

In 1875, the Dominion Parliament passed an Act giving copyright for twenty-eight years to any person domiciled in Canada, or in any part of the British dominions, or being the citizen of any country having an international copyright treaty with Great Britain. To secure copyright, the book must be published or republished in Canada. Section 15 of the Act provides that "works of which the copyright has been granted and is subsisting in the United Kingdom, and copyright of which is not secured or subsisting in Canada under any Canadian or Provincial Act, shall upon being printed and published, or reprinted and republished in Canada, be entitled to copyright under this Act; but nothing in this Act shall be held to prohibit the importation from the United Kingdom of copies of such works legally printed there."

By the 38 & 39 Vict. c. 53, the Queen was authorized

to assent to the Canada bill, and by the 4th section of this Act it was further provided that "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." By section 5, the Order in Council of 1868 is continued 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."

Under this law it appears the Canadian publishers considered themselves free to republish English copyright books in Canada without any consideration whatever. Accordingly, on the appearance of Mr. Samuel Smiles's 'Thrift' in England at the end of 1875, Messrs. Belford of Montreal at once proceeded to reprint and republish the book without any communication with Mr. Smiles, the author, or Mr. Murray, the publisher of the book. The Copyright Association, assuming this to be a test case, then proceeded to dispute the right of the Canadian publishers to print and publish English copyright books without permission. The case of *Smiles* v. *Belford* was accordingly argued before Vice-Chancellor Proudfoot, upon which he gave his judgment, which was in favour of the plaintiff on all points. Messrs. Belford then appealed to the Canadian publishers, and they raised among them a considerable subscription to enable the case to be tried before the highest Canadian Court. The appeal was argued before the Chancellor, Mr. Justice Burton, Mr. Justice Paterson, and Mr. Justice Moys, and their decision was again in favour of the plaintiff, Messrs. Belford's appeal being unanimously dismissed with costs.

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Suggestions of Copyright Commissioners as to colonial copyright.

The suggestions of the Royal Copyright Commissioners on the subject of colonial copyright are numerous. They recommended that the difficulty of securing a supply of English literature at cheap prices for colonial readers should be met in two ways: first, by the introduction of a licensing system in the colonies; and, secondly, by continuing, though with alterations, the provisions of the Foreign Reprints Act.

In proposing the introduction of a licensing system, they did not intend to interfere with the power now possessed by the colonial legislatures of dealing with the subject of copyright, so far as their own colonies are concerned. They recommended that in case the owner of a copyright work should not avail himself of the provisions of the copyright law (if any) in a colony, and in case no adequate provision be made by republication in the colony or otherwise, within a reasonable time after publication elsewhere, for a supply of the work sufficient for general sale and circulation in the colony, a licence might, upon an application, be granted to republish the work in the colony, subject to a royalty in favour of the copyright owner, of not less than a specified sum per cent. on the retail price, as might be settled by any local law. Effective provision for the due collection and transmission to the copyright owner of such royalty should be made by such law (*a*).

Not recommend repeal of Foreign Reprints Act.

The Commissioners could not recommend the simple repeal of the Foreign Reprints Act. They believed that although the system of republication under a licence, might be well adapted to some of the larger colonies which have printing and publishing firms of their own, and which could reprint and republish for themselves with every prospect of fair remuneration, it would be practically inapplicable in the case of many of the smaller colonies. These latter at present depend almost wholly on foreign reprints for a supply of literature; and to sweep away the Foreign Reprints Act without establishing some other system of supply would be to

(*a*) Par. 207.

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deprive them in a great measure of English books (*a*). The Commissioners considered that it had been proved that the existing law in the different colonies had failed to secure remuneration to proprietors of copyright, and therefore they suggested that power should be given to Her Majesty to repeal the existing Orders in Council, and that no future Order in Council should be made under the Foreign Reprints Act until sufficient provision had been made by local law for better securing the payment of the duty upon foreign reprints to the owners of copyright works (*b*).

It appeared to the Commissioners that possibly some arrangement might be effected by which all foreign reprints should be sent to certain specified places in the colony, and should be there stamped with date of admission upon payment of the duty, which could then be transmitted here to the Treasury or Board of Trade for the author. All copies of foreign reprints not so stamped, they thought should be liable to seizure, and possibly some penalty might be also affixed to the dealing with unstamped copies.

And having regard to the power which they had contemplated, for authors to obtain colonial copyright by republication in the colonies, and to the licensing system which they had suggested, they recommended that when an Order in Council for the admission of foreign reprints has been made, such reprints should not, unless with the consent of the owner of the copyright, be imported into a colony—

1. Where the owner has availed himself of the local copyright law, if any.
2. Where an adequate provision, as pointed out above, has been made; or,
3. After there has been a republication under the licensing system (*c*).

And, lastly, the Commissioners were of opinion that colonial reprints of copyright works first published in the United Kingdom should not be admitted into the United Kingdom without the consent of the copyright owner;

(*a*) Par. 211. (*b*) Par. 213 (*c*) Par. 215, 216.

and conversely, that reprints in the United Kingdom of copyright works first published in any colony, should not be admitted into such colony without the consent of the copyright owners (*a*).

In the late case of *Routledge* v. *Low*, Lords Cairns, Cranworth, Chelmsford, Westbury, and Colonsay, unanimously held that to acquire a copyright under 5 & 6 Vict. c. 45, the work must be first published in the *United Kingdom*. The law now, therefore, is, that if a literary or musical work be first published in the *United Kingdom*, it may be protected from infringement in any part of the *British dominions*; but if, on the other hand, any such work be first published in India, Canada, Jamaica, or any other British possession not included in the *United Kingdom*, no copyright can be acquired in that work, excepting only such (if any) as the local laws of the colony, &c., where it is first published may afford.

This opinion has caused great and general dissatisfaction in the colonies and India; it has either destroyed all copyright property in the numerous works since 1842, which have been first published there, or rendered such property comparatively worthless; and this hardship is increased by the fact that, since 1842, it has been, and still is, compulsory upon all publishers in the British dominions, gratuitously to send one copy of every book published by them to the British Museum, and on application four to the libraries of Oxford, Cambridge, &c. (*b*).

International copyright conventions.

The German Diet introduced a convention on the subject of international copyright between the different members of the Confederation in 1837. Austria and Prussia gave in their adherence on behalf of those portions of their territories which did not belong to the Confederation. Austria and Sardinia had a convention in 1840, to which the other states of Italy, and one of the cantons, adhered. In 1837, Prussia passed a law of reciprocity in this matter with all foreign states.

(*a*) Par. 225, 226.
(*b*) See an able article in the *Athenæum*, Nov. 1820, 69.

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Prussia	May 13, 1846.	Anhalt	Feb. 8, 1853.
Saxony	Aug. 24, 1846.	Hamburg	Aug. 16, 1853.
Brunswick	March 30, 1847.	Belgium	Aug. 13, 1854.
Thuringian Union	July 1, 1847.	Prussia (additional)	June 14, 1855.
Hanover	Aug. 4, 1847.	Spain (*a*)	July 7, 1857.
Oldenburg	Dec. 28, 1847.	Sardinia	Nov. 30, 1860.
French Republic	Nov. 3, 1851.		

Copyright in India.

An Act of the Legislative Council of India was passed on the subject of Copyright in the year 1847. After reciting that doubts might exist whether copyright could be enforced by the common law, or by virtue of the principles of equity, in the territories subject to the government of the East India Company, and whether the Act of 5 & 6 Vict. c. 45, had made provision for the enforcement of the right against persons not being British subjects, it enacts that copyright in every book published in India in the author's lifetime, after the 28th of August, 1833, shall endure for the natural life of the author, and seven years after, or for forty years if the seven years sooner expire: and copyright in any book published after the death of the author shall endure for forty-two years, and shall be the property of the proprietor of the author's manuscript.

The enactments are almost in every respect similar to those contained in the 5 & 6 Vict. c. 45. The book of registry is to be kept in the office of the Secretary to the Government of India for the Home Department, and may be inspected at any time on payment of eight annas for every entry searched for or inspected; and certified copies of entries may be obtained on payment of two rupees. A like sum must be paid on registering any work.

A like power to that vested in the Judicial Committee of the Privy Council by the 5th sect. of the 5 & 6 Vict. c. 45, is as to books in India vested in the Governor-General in Council.

(*a*) Notice has been given by the Spanish Government for the termination of the International Copyright Treaty, and it expired therefore on March 17, 1880.

CHAPTER XVIII.

COPYRIGHT IN FOREIGN COUNTRIES.

France.

Copyright in France.

THE infringement of copyright was formerly visited with far heavier penalties in France than in this country. The printing a work, the sole right to which belonged to another, was regarded as little better than theft; indeed, it was said that such conduct was worse than to enter a neighbour's house and steal his goods; for, in the latter case, negligence might be imputed to him for permitting the thief to enter, whereas in the former, it was stealing a thing confided to the public honour (*a*).

The protection afforded by the various edicts of the French kings to the authors of literary works was, however, taken away by the famous decree of the National Assembly, by which all privileges of whatever kind were abolished (*b*).

Before entering into any details of the law of copyright under the different heads of literature, the drama, music and art, it will tend to make the subject clearer, and will be more useful for reference, first, to give an account of the principal laws on the subject in their order of date, and then touch upon the application of these laws.

Decree of 13 Jan., 1791. The drama.

The first decree on copyright is that of 13th to 19th January, 1791, concerning public performances (*spectacles*).

Art. 1. Gives a right to all citizens to open a theatre.

(*a*) Lowndes on Copy.
(*b*) 4th of August, 1789; Lowndes on Copy., App. 116.

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Art. 2. The works of authors dead five years or more before the date of this decree are public property, and may, notwithstanding all ancient privileges which are abolished, be represented in any theatre.

Art. 3. The works of living authors cannot be represented in any public theatre throughout France without the formal consent in writing of such author under penalty of confiscation of the gross receipts (*du produit total*) from such representations for the benefit of the authors.

Art. 4. The provision of article 3 applies to works already represented, whatever the former rule may have been; nevertheless agreements which may have been made (*les actes qui auraient été passés*) between comedians and living authors or authors dead within five years before the date of this decree, shall be performed.

Art. 5. The heirs or assigns of authors shall be the proprietors of their works for the period of five years after the death of the author.

The drama. Decree, 19 July, 1791.

Then follows a further decree on the same subject dated 19th July to 6th August, 1791.

Art. 1. Conformably to the provisions of articles 3 and 4 of the decree of 13th January last, concerning public performances (*spectacles*), the works of living authors, although represented before that date, whether engraved or printed or neither, cannot be represented in any public theatre throughout the kingdom without the formal written consent of the authors, or in the case of authors dead within five years before the 13th day of January, that of their heirs or assigns, under penalty of confiscation of the gross receipts from such representations for the benefit of the author, his heirs or assigns.

Art. 2. Agreements between authors and managers (*entrepreneurs de spectacles*) shall be perfectly free, and no municipal or other public functionaries may tax any play, nor diminish nor increase the price agreed upon; the remuneration of authors, agreed upon between them or their representatives and such managers, can neither

be seised nor held back (*arrêtée*) by the creditors of such manager.

Literary copyright. Decree, 19 July, 1793.

Then follows the decree of the National Convention of 19th to 24th July, 1793, relating to the right of property of authors in works of literature (*écrits*) of all kinds, of composers of music, of painters and designers (*dessinateurs*). This may be looked upon as the fundamental law on copyright although the majority of its provisions have been modified by subsequent legislation. They are as follows:

Art. 1. The authors of writings (*écrits*) of all kinds, composers of music, painters and designers, who engrave pictures or drawings, shall enjoy during their whole life the exclusive right to sell, cause to be sold, and distribute their works within the territory of the Republic, and to assign their property in such right in whole or in part.

Art. 2. Their heirs or assigns shall enjoy the same right for the space of ten years after the death of the author.

Art. 3. The magistrates (*officiers de paix*) shall be bound to confiscate for the benefit of the authors, composers, painters or designers and others, their heirs or assigns, all copies of editions printed or engraved without the formal permission in writing of the authors.

Art. 4. Every infringer (*contrefacteur*) shall be bound to pay to the true proprietor a sum equivalent to the price of 3000 copies of the original edition.

Art. 5. Every seller of a pirated edition, if not convicted of being the infringer, shall be bound to pay to the true proprietor a sum equivalent to the price of 500 copies of the original edition.

Art. 6. Every citizen who produces a work whether of literature or engraving (*gravure*) of whatever kind, must deposit two copies, for which he will get a receipt duly signed, failing which he can have no right of action against an infringer.

Art. 7. The heirs of an author of a work of literature or engraving, or of every other production of the in-

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tellect or genius which can be classed as a work of art, shall have the exclusive property of such work during ten years (*a*).

Posthumous works.

Proprietors by descent, or any other title, of posthumous, literary and dramatic works have the same rights as the author; and the provisions of the law concerning the exclusive property of authors and its duration are applicable to such proprietors (*b*).

Procedure and remedies.

The "Code Civil," articles 544, 1382, the *Code de Procédure Civile*, articles 59 and 1036, and the *Code d'instruction criminelle*, articles 637 and 638, define property in general, indicate the remedies and procedure of injured parties, and limit the time during which actions may be

(*a*) These provisions embrace "les auteurs d'écrits en tout genre," and upon this expression M Merlin has made the following commentary: "Mais il ne faut pas séparer, dans cet article, les mots *écrits en tout genre* de l'expression *auteurs*; et la propriété, dont cet article déclare que les *écrits en tout genre* sont susceptibles, ne peut évidemment être réclamée que par ceux qui en sont *auteurs*, dans la véritable acception de ce terme.

"Or, le mot *auteurs*, quel sens a-t-il en général? Quel sens a-t-il relativement aux écrits? Quel sens a-t-il dans la loi du 19 juillet 1793?

"En général, le mot *auteurs* désigne, suivant la définition qu'en donne le Dictionnaire de l'Académie française, celui qui est la première cause de quelque chose; et il est aussi, suivant la même définition, synonyme d'inventeur.

"Appliqué aux écrits, le mot *auteur* se dit (toujours suivant le même Dictionnaire) *de celui qui a composé un livre, qui a fait quelques ouvrages d'esprit en vers ou en prose*; et il est bien clair qu'en ce sens, le mot *auteur* est opposé à *copiste*.

"Enfin, la loi du 19 juillet 1793 ne permit pas de douter qu'elle n'exclue également les copistes de la dénomination d'auteurs. *Les héritiers de l'auteur d'un ouvrage de littérature ou de gravure*, dit-elle, art. 7, *ou de toute autre production de l'esprit ou du génie, qui appartient aux beaux-arts, en auront la propriété exclusive pendant dix années.* Ces termes, *ou de toute autre production de l'esprit ou du génie, qui appartient aux beaux-arts*, ne sont ni obscurs ni équivoques. Ils signifient clairement que les productions de l'esprit ou du génie sont de deux sortes; que les unes consistent en ouvrages de littérature; que les autres appartiennent aux beaux-arts; mais que nul ne peut être réputé auteur soit d'un ouvrage de littérature, soit d'un ouvrage d'arts, si ce n'est pas à son esprit ou à son génie qu'en est due la production.

"Donc, les expressions d'*écrits* en tout genre ne sont employées, dans l'art. 1er de la même loi, que pour désigner tous les genres de compositions littéraires.

"Donc, elles n'y désignent pas les écrits qui ne seraient pas de compositions, mais de simples copies.

"Donc, celui qui ne fait que copier une composition littéraire ne peut jamais être réputé auteur de la copie de cette composition, ni par conséquent en avoir la *propriété*, dans le sens attaché à ce mot par la loi du 19 juillet 1793, et par le code pénal 1810." Merlin, Répertoire de Jurisprudence, titre 'Contrefaçon,' § xi.

(*b*) Decrees, 8 Dec., 1805, 8 June, 1806; see also decree of 15 Oct. 1812.

brought. These general provisions are also applicable to copyright.

The *Code Pénal* of March 1810, articles 425 to 429, makes piracy a misdemeanor (*délit*). These articles are as follows: Penal Code on piracy.

"*Toute édition d'écrits, de composition musicale, de dessin, de peinture, ou de toute autre production, imprimée ou gravée en entier ou en partie, au mépris des lois et réglemens relatifs à la propriété des auteurs, est une contrefaçon; et toute contrefaçon est un délit.*

"*Le débit d'ouvrages contrefaits, l'introduction sur le territoire français d'ouvrages qui, après avoir été imprimés en France, ont été contrefaits chez l'étranger, sont un délit de la même espèce.*

"*La peine contre le contrefacteur, ou contre l'introducteur, sera une amende de cent francs au moins et de deux mille francs au plus; et contre le débitant, une amende de vingt-cinq francs au moins et de cinq cents francs au plus. La confiscation de l'édition contrefaite sera prononcée tant contre le contrefacteur que contre l'introducteur et le débitant. Les planches, moules, ou matrices des objets contrefaits, seront aussi confisqués.*

"*Tout directeur, tout entrepreneur de spectacle, tout association d'artistes, qui aura fait représenter sur son théâtre des ouvrages dramatiques au mépris des lois et réglemens relatifs à la propriété des auteurs, sera puni d'une amende de cinquante francs au moins, de cinq cents francs au plus, et de la confiscation des recettes.*

"*Dans les cas prévus par les quatre articles précédens le produit des confiscations, ou les recettes confisquées, seront remis au propriétaire, pour l'indemniser d'autant du préjudice qu'il aura souffert; le surplus de son indemnité, ou l'entière indemnité, s'il n'y a eu ni vente d'objets confisqués ni saisie de recettes, sera réglé par les voies ordinaires*" (*a*).

The law of 3rd August, 1844, provides that the widows and children of the authors of dramatic works shall have The Drama. Law of 3 Aug., 1844.

(*a*) *Code Pénal*, lib. iii. tit. ii. art. 425–429.

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from that date the right during twenty years to authorize the representation and to confer the advantages arising from such works (*d'en conférer la jouissance*) in conformity with the provisions of articles 39 and 40 of the imperial decree of the 5th February, 1810.

Reciprocity. Decree, 28 March, 1852.

By the decree of 28th March, 1852, it is made unlawful without the permission of the author to publish a work already published in a foreign country with which no copyright convention exists. The provisions of this decree are as follows:—

Art. 1. Piracy on French territory of works published abroad and comprised in article 425 of the Penal Code constitutes a misdemeanor (*délit*).

Art. 2. The same holds good with regard to the sale, export, and consignment of pirated works. The export and consignment of such works are offences of the same kind as the introduction into French territory of works, which after having been printed in France have been pirated abroad.

Art. 3. The offences defined by the preceding articles are punished in accordance with articles 427 and 429 of the Penal Code, and article 463 is also applicable.

Art. 4. Nevertheless a prosecution can only take place under the conditions imposed with respect to works published in France by article 6 of the law of 19th July, 1793, which relates to the formalities of deposit.

Copyright. Law, 8 April, 1854.

By the law of 8th April, 1854, the twenty years term of copyright vested in the children of the author was extended to thirty years. This law contains only one article, which is to the following effect: "The widows of authors, composers, and artists shall enjoy during life, the rights guaranteed by the laws of 13th January, 1791, and 19th July, 1793, the decree of 5th February, 1810, the law of 3rd August, 1844, and all other laws and decrees relating to this subject. The duration of the benefit given to children by the same laws and decrees, is increased to thirty years, dating either from the death of such author, composer, or artist, or from the cessation of the rights of his widow.

Copyright. Law, 14 July, 1866.

Lastly, we have the law of the 14th July, 1866, by which protection of copyright is given to all heirs of an author for fifty years after his death. The provisions of this law are as follows: "The duration of the rights given by former laws to the heirs, irregular successors (*successeurs irréguliers*), donees, and legatees of authors, composers, or artists, is extended to fifty years from the death of the author.

"During this term of fifty years the widow of such author, whatever may be the provisions of the marriage contract (*le régime matrimonial*), and independently of her rights under the *régime de la communauté*, has a life interest in the rights which her deceased husband has not alienated by assignment during life, or by will.

"Nevertheless if the author leave *héritiers à réserve* such life interest is reduced in favour of such heirs in accordance with the provisions of articles 913 and 915 of the Civil Code (*a*).

"This interest is not given if at the time of the author's death there be a decree of separation (*séparation de corps*) in force against his widow: it ceases as soon as the widow remarries.

"The rights of *héritiers à réserve* and of other heirs or successors during this period of fifty years are in other respects regulated by the provisions of the Civil Code.

"When the succession falls to the state, the exclusive right is extinguished, without prejudice to the rights of creditors, and contracts for assignment which may have been entered into by the author or his representative."

The above laws for the most part deal with the duration of copyright and its mode of descent. In other respects the provisions are general and somewhat difficult

(*a*) "*Héritiers à réserve*" are those heirs of a man who, by articles 913–915 of the Civil Code, are entitled to a certain share of his property, and whom he cannot disinherit either by act *inter vivos* or by will. M. Fliniaux remarks on this article: "C'est par une erreur de droit qu'il a été déclaré réductible conformément aux articles 913 et 915 du Code Civil; c'est l'article 1094 du même code, relatif au droit du conjoint, qu'il aurait fallu viser. (Fliniaux, Prop. industrielle et prop. litt. et art. en France et à l'étranger: Paris, 1879. An excellent work, of which free use has been made in this chapter.)

CAP. XVIII. to apply in particular cases. Hence it will be advisable to refer to the cases which have been decided in the French Courts of Law for information on many points.

Literary Copyright.

Literary copyright.

The works of literature protected by the copyright laws are comprised in the terms "*écrits en tout genre*" which occur in the law of 19th July, 1793. The following are a few of the principal decisions on the meaning of this expression.

What protected.

A compilation effected by an author by means of analysis and classification, such as a descriptive catalogue, a nautical almanac, or a dictionary, and having a scientific or literary character, is entitled to protection.

A newspaper may reproduce news, whether telegraphic or not, received and published by another newspaper (*a*). But literary articles and romances in a newspaper remain the property of the author, provided it be duly registered (*b*). Public dissertations and lectures of professors cannot be published without the consent of the authors (*c*). The publication of private correspondence is not allowed without the consent of the writer or his heirs (*d*).

Manuscripts form a distinct category, and can only be published by the heirs or assigns, and not by the creditors of the author (*e*). A translation is the property of the translator and cannot be copied (*f*), but it cannot be made without the consent of the author of the original or his legal representatives (*g*).

Duration.

The duration of literary copyright is regulated by the law cited above of the 14th July, 1866. By this law the

Rights of author's widow.

surviving widow has a right of survivorship over the works left by her husband, even when by the marriage settlement and the law of succession she has no such right in respect of other property of her husband: if the

(*a*) Cass. 8 Aug., 1861, Havas.
(*b*) Cass. 29 Oct. 1830, Le Pirate.
(*c*) Paris, 18 June, 1840, Hérit. Cuvier; Lyon, 17 July, 1845, Marie.
(*d*) Paris, 11 June, 1875, Gentil.
(*e*) Dijon, 18 Feb. 1870, de Chapuys.
(*f*) Cass. 25 July, 1824, Ladvocat.
(*g*) Paris, 17 July, 1847, Leclerc.

author have assigned his rights the widow has no right of survivorship over the purchase-money (*a*).

Rights of widower of an authoress.

The widower of an authoress has the same rights in respect of her literary works as the widow of an author.

Posthumous works.

The proprietors of posthumous works who publish them have the same rights as authors, on condition that they do not publish such works in a collection with the other works of the author (*b*).

The state.

The state enjoys copyright in perpetuity over works published by its order or by its agents (*c*).

Registration and deposit.

In order that an author may be fully protected, and have a right of action in cases of piracy, he must deposit two copies of his work at the Ministry of the Interior at Paris, and at the Prefecture in the departments, in conformity with the law of 19th July, 1793 (art. 6), the decree of 3rd Feb. 1810 (art. 48), and the orders of 24th Oct. 1814 (arts. 4, 8), and of 9th Jan. 1828 (art. 1). A receipt is given as evidence.

The copyright of a MS., even of a play already performed, is protected without the deposit of copies, so long as it has not been made public by printing. But once printed, the author or publisher who neglects the formality of deposit in accordance with the provisions of the law, cannot prosecute infringers of his rights (*d*).

Assignment.

Assignment of literary copyright is regulated by the general law of assignment of property. Heirs can assign their rights like an author, either in whole, or in part, for a consideration or not. An author who has assigned the right to publish an edition of one of his works, is bound not to publish a fresh edition before the former one is exhausted (*e*). The assignment without any reserve of a work to which an author has put his name, does not give the person to whom it is assigned the absolute disposal of it to such an extent that he can alter it by changes or additions (*f*).

(*a*) Fliniaux, l. c. p. 98. (*b*) Fliniaux, l. c. p. 98.
(*c*) Cass. 27 May, 1842, Gros; Paris, 5 May, 1877, Peigné.
(*d*) Prop. litt. et art.: Pouillet, Paris, 1879.
(*e*) Cass. 22 Feb. 1847, Laurent.
(*f*) Paris, 14 Aug. 1860. Peigné. Seine, Tr. Civ. 12 Jan. 1875, Vve. Michelet.

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In those cases where an alteration in the law extends the term of copyright granted to the heirs of an author, the extended term is considered to belong to the family of the author in preference to his assigns, and the term vested in the persons to whom it has been assigned, is that existing at the date of the assignment in conformity with the Civil Code, art. 1153. Hence the extension of the term of copyright granted by the laws of 8th April, 1854, and the 14th July, 1866, is for the benefit of the author's heirs, and not of the publishers to whom he may have assigned his works (*a*).

Piracy.

Piracy under the French law is the illegal reproduction of the works of another, literary or musical, not yet public property, and which reproduction is made publicly with the intention to injure, whether by printing or public representation. Piracy gives rise, as a misdemeanor, to an "*action correctionnelle*"; if the intention to injure be not proved, the author of the work reproduced may bring a civil or commercial action for compensation in respect of the damage done to him. Piracy is committed although the offender may not have completed the printing of the work.

A literal copy (*la copie servile*) of about one-fourth of a work constitutes the offence of partial piracy. *Il y a également contrefaçon, quelle que soit la matière de la reproduction ou la qualité de l'auteur ou du propriétaire de l'ouvrage contrefait. Elle est indépendante des moyens à l'aide desquels elle est produite* (*b*).

The following are a few decisions on cases of piracy. 1. Piracy is committed from the moment there is a violation of the absolute right of property given by law, no matter what be the merit or importance of the work pirated (*c*). 2. It is piracy to copy without authorization a work even of small extent and to annex it to another work

(*a*) Paris, 12 July, 1852; Cass. Ch. Crim. 29 April, 1876, Pradier; Cass. Ch. req. 20 Nov. 1877, Degorce—Cadot.
(*b*) Code du Théâtre, &c. C. Le Senne, Paris, 1878.
(*c*) Paris, 11 March, 1869, aff. Godchau.

of a different author (*a*). 3. The composers of airs or of musical works can prevent such airs from being inserted without their consent in other works, even though they may have tolerated such insertion for a longer or shorter period.

Piracy, whether whole or partial, forbidden.

The law prohibits piracy whether total or partial. There is no doubt that the protection of the law is extended to every work in its entirety, and to all its parts. It therefore follows that partial piracy is an offence of the same order as total piracy. The law has taken care expressly to provide for this, as may be seen from the words, "*en entier ou en partie*," in art. 425 of the Code Pénal (*b*).

Unauthorized translation.

M. Renouard is of opinion that unauthorized translation is not piracy, because, first, the law is silent on this point, and, secondly, "*La différence de forme extérieure du langage*," says the learned author, "*empêche qu'il ne s'établisse ni confusion, ni rivalité. Les lecteurs ne seront probablement pas les mêmes. Quiconque sera capable de comprendre l'original ne manquera pas de le préférer à une traduction plus ou moins imparfaite. La gloire de l'auteur et la propagation de ses idées, la popularité de ses productions et leurs chances de débit, ont tout à gagner par l'existence des traductions et n'ont rien à y perdre.*" But at the same time he thinks that the question is not without difficulty.

M. Renouard's views are strongly opposed by M. Pouillet (*c*), who says, "*La contrefaçon, en effet, est pour nous l'atteinte portée au droit privatif, l'usurpation de la propriété ; c'est le fait de s'emparer, de profiter du travail d'autrui, sans son autorisation. Il y a contrefaçon, toutes les fois qu'on prend une œuvre qu'on n'a point faite soi-même, et que, sans permission de l'auteur, on la fait tourner à son propre profit. Si cela est, n'est-il pas certain que la traduction est une contrefaçon ?*"

Owing to their generality the provisions of the law of

(*a*) Paris, 27 June, 1812, aff. St. Georges.
(*b*) Traité, Prop. litt. et art.: Pouillet, Paris, 1879.
(*c*) Prop. litt. et art.: Pouillet, Paris, 1879.

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1793, apply to every sort of reproduction which infringes the right of property of another. The translation of a French book into a foreign tongue is such a reproduction (*a*).

The following points have also been decided:

Points of note which have been decided.

1. That it is piracy to borrow from a published work, its subject, general plan, and the development of its episodes (*b*); 2. That it is piracy to publish in the form of a pamphlet the analysis of a play, even when accompanied with critical remarks, if such publication would clearly interfere with the sale of the original work (*c*); 3. That it is piracy for a newspaper to give literally an analysis of all the chapters of a romance, even when accompanied by critical remarks, if it is clear that such reproduction will interfere with the sale of the original, by revealing the plan and most important details of the work (*d*); 4. That it is a piratical reproduction to publish and sell a faithful *résumé* of a play so as to injure its sale (*e*); 5. That it is piracy on the part of an author to give his work a title analogous to that of another work already published, when he follows the plan and borrows passages from it (*f*).

Dramatic and Musical Works.

Dramatic and musical copyright.

The publication of dramatic and musical works is regulated by the same laws as those relating to literary works.

Operas, &c.

A work which consists of words and music by different authors is the joint property of the two, and cannot become public property until the rights of the heirs of each have expired: the unexpired rights of the heirs of one of the authors prolongs the existence of the rights of the heirs of the other author (*g*).

(*a*) Paris, 17 July, 1847, aff. Lecointe.
(*b*) Paris, 20 Feb. 1872, aff. Sarlit.
(*c*) Nîmes, 25 Feb. 1864, aff. Offray.
(*d*) Paris, 13 July, 1830, aff. Dartheuay, Dall. 30, 2, 235.
(*e*) Paris, 12 March, 1845, aff. Durand.
(*f*) Cass. 26 Nov. 1853, Laurent de Villedenil, Roland de Villargues, art. 425, Code Pénal.
(*g*) Paris, 27 June, 1866, Gérard.

It is lawful to appropriate the plot of a novel for the purposes of a drama, but the characters, situations and episodes, must be changed (*a*).

Registration and deposit.

Published dramatic works must be deposited like other literary works—and the same with regard to music with a text. In the case of music without words there is no law compelling deposit, but in practice it is generally made.

Representation.

The exclusive right of representation of dramatic and musical works is by the law of 14th July, 1866, secured to the author for life, and to his heirs for fifty years after his death, exactly as in the publication of works of literature.

The right of representation is distinct from the right of publication, each being guaranteed by different enactments, the former by the law of 1791 and art. 428 of the Penal Code, the latter by the law of 1793 and art. 425 of the Penal Code.

Before being represented every dramatic work must be submitted to authorities for approval (*censure*).

Every work intended for public performance is protected, as plays, operas, and musical compositions, whether vocal or instrumental.

The right of representation comprises as regards the author merely the right to authorize the representation of his work: the right of publication comprises the right of reproduction (*le droit de copie*) properly so called, the right to reproduce the work by copies (*exemplaires*) printed, engraved, or written by hand for circulation from one person to another. Hence it follows that the granting of one of these rights does not include the granting of the other. Therefore the director of a theatre authorized to *represent* a dramatic work cannot contend that he is invested with the *right of publication*, and, consequently, with the right of copying it for the purpose of representing it (*et par conséquent du droit de la copier pour l'exécuter*) (*b*).

Right of representation not lost

An author who publishes his dramatic work does not lose thereby the exclusive right of representation, as the

(*a*) Paris, 20 Feb. 1872, Delagrave.
(*b*) Traité, Prop. litt. et art.: Pouillet, Paris, 1879.

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by publication.

law of July–August, 1791, provides that the works of living authors, whether engraved or printed or not, cannot be represented without their consent (*a*).

Musical works.

The publisher of the music of an opera is not implicitly authorized by his contract with the composer alone, to print the words with the music (*b*).

The grant of the right to publish a work does not give the grantee the right to represent or execute it. This question was raised in regard to barrel organs. A law has authorized the reproduction on these instruments of pieces of music which are still private property (*c*).

Piracy.

As regards French plays not yet public property, their plan, subject, characters, arrangement of scenes and action, are of capital importance, independently of style, language, and composition. It is therefore piracy to write a similar work, even in a foreign language, without the sanction of the author of the original, and any such imitation may be confiscated and the performance stopped.

The right which belongs to the author of a dramatic work of preventing the representation of an imitation of his work in a foreign language, is distinct from and independent of the right to prosecute for piracy committed by printing. Consequently, loss by prescription of the right of action against the person committing piracy, does not involve loss of the right to forbid the representation of such work (*d*).

Adaptations.

The following cases have been decided as to adaptations: 1. That it is piracy to adapt a romance for the theatre without the consent of the author (*e*); 2. That the transformation of a dramatic work in prose into an opera is also an act of piracy (*f*); 3. That it is piracy to modify a theatrical piece, so as to adapt it for use as an opera libretto, if the plot and arrangement of the scenes (*la disposition des scènes et la marche générale de l'ouvrage*) have not been altered (*g*).

(*a*) Prop. litt. V. Cappellemans: Bruxelles et Paris, 1854.
(*b*) Trib. Corr. de la Seine, 2 August, 1826.
(*c*) Traité Prop. litt. et. art.: Pouillet, Paris, 1879.
(*d*) Code du Théâtre: C. Le Seune, Paris, 1878.
(*e*) Paris, 27 Jan. 1840, aff. de Musset; Dall. V. Prop. litt. No. 187.
(*f*) Paris, 6 Nov. 1841, aff. Victor Hugo.
(*g*) Paris, 30 Jan. 1865, aff. Scribe.

This principle applies also to unpublished works, and it has been decided that it is piracy to take down by short-hand during representation an unpublished play, for the purpose of having it printed (*a*). Piracy of an unpublished play.

When a piece has been printed or engraved without the formality of deposit, it does not follow that the author loses his right to control the representation. He can always prosecute those who in contravention of his rights represent his works, whether printed or engraved, although no deposit has taken place (*b*). Right of representation independent of deposit.

The combined effect of the laws of 13th of January and 6th August, 1791—19th July and 1st September, 1793, is to guarantee to the authors of dramatic works the right of property in such works, and the right to dispose of them during their lives, either for the double purpose of publication by printing and representation, or separately for either of these purposes (*c*). Combined effects of laws of 1791 and 1793.

Every infringement of the right of public representation is punishable by confiscation of the gross receipts for the benefit of the author. This principle is established by the law of July-August, 1791, and art. 428 of the Code Pénal (*d*). Penalties.

Artistic Copyright.

The law of 19th July, 1793, puts "*les peintres et dessinateurs qui font graver des tableaux ou dessins*" on the same footing with "*les auteurs d'écrits en tous genres.*" In subsequent laws this equality has only been maintained in the case of engravers, no mention being made of sculptors or other descriptions of artists; but the law courts have decided that the law is by analogy equally applicable in all cases (*e*). Artistic copyright.

The duration of copyright in works of art is for the life Duration.

(*a*) Paris, 18 Feb. 1836, aff. Fréd. Lemaître, Dall. V. Prop. litt., No. 345.
(*b*) Code du Théâtre, &c: C. Le Seune, Paris, 1878.
(*c*) Etude sur la Prop. des Œuvres posthumes: E. Collett & C. Le Seune, Paris, 1879.
(*d*) Code du Théâtre, Lois, Règlements, Usages, Jurisprudence, par C. Le Seune, Paris, 1878.
(*e*) Fliniaux, l.c. p. 111.

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of the artist and fifty years after his death, exactly as in works of literature.

What protected.

Artists have a latitude which is not allowed to others. They may utilise the ideas and works of other people on condition that their work is not a servile reproduction, and that it possesses a certain amount of originality.

It is not lawful to reproduce for sale an engraving or picture which belongs to another, by sculpture, drawing, painting on porcelain, or by needlework, even though in the case of a picture the colours be omitted (*a*).

Photographs.

A photograph is not necessarily a work of art, nevertheless it may have the character of such a work, and then is protected against piracy like any other work of art (*b*).

Works of art which have become public property may be photographed; but to photograph for sale any work of art in which copyright exists without the consent of the owner thereof is an act of piracy (*c*).

Right of engraving.

The proprietor of a work of art has the sole right of engraving it.

Registration and deposit.

By the laws of the 19th July, 1793, and 9th January, 1828, engravings, lithographs, and other printed works of art must be deposited at the national library; and those artists who omit this formality cannot prosecute any one for piracy (*d*). On the other hand, no such formality is required in the case of works of art executed on wood, marble, metal, and ivory (*e*).

Penalties for piracy.

Piracy of works of art is punishable in the same manner as literary piracy, and the pirated work is liable to seizure and confiscation.

Reciprocity in literary, dramatic, and artistic copyright.

The decree of 28th March, 1852, protects the works of all foreigners published out of France on the sole condition that the formality of deposit in France be duly complied with. It is not necessary that any reciprocity

(*a*) Fliniaux, l.c. p. 111.
(*b*) Fliniaux, l.c. p. 112.
(*c*) *Ibid.*
(*d*) Paris, 6 June, 1861, Gilles.
(*e*) Paris, 26 Feb., 1868, and Cass. 12 June, 1868, Mathias.

should exist between France and the country in which the foreign work is published. And any foreigner who publishes a work in France, or causes a dramatic work to be represented in France, is by the French law put entirely on the same footing as a French author with respect to copyright (*a*).

The French law of domicile confers on an author very

(*a*) A peculiarity of the combined operation of the French law and the Convention of 1852 already referred to (p. 487), has been pointed out by a writer in the 'Athenæum,' whose letter will be found reprinted, 1 Jur. (N.S.) pt. ii. 523, 5th Jan. 1856:—"Another flaw, it is believed, has been found in the Copyright Act. If our courts of law shall rule according to the letter of the International Convention—and we do not see how they can avoid such ruling—a mode of evasion has been discovered which will enable Americans, as well as all other aliens, to secure a copyright for works in this country. An experiment, having for its object to unsettle the law once more, is being made in the case of an Italian, Signor Ruffini, author of 'Lorenzo Benoni' and 'Doctor Antonio,' two tales written in English and intended chiefly for circulation in England. Anticipating for 'Doctor Antonio,' which has just appeared, a popularity similar to that which attended 'Lorenzo Benoni,' Signor Ruffini's publishers, Messrs. Constable & Co. of Edinburgh, were led to look into the state of the law. They found, that though the English law alone offered no security, the French law of copyright, taken in connection with the international copyright convention between England and France, seemed to furnish it. Mr. Burke in his 'Analysis of the Copyright Laws,' says "According to the law of France, a French subject does not injure his copyright by publishing his work first in a foreign country. It matters not where that publication has taken place, the copyright forthwith accrues in France, and on the necessary deposit being effected, its infringement may be proceeded against in the French courts. Moreover, a foreigner publishing in France will enjoy the same copyright as a native, and this whether he has previously published in his own or any other country or not.' Then comes the pleasantry. By the first article of the International Convention of 1852, it is provided that 'the authors of works of literature and art, to whom the laws of either of the two countries do now, or may hereafter, give the right of property or copyright, shall be entitled to exercise that right in the territories of the other such countries for the same term and to the same extent as the authors of works of the same nature, if published in such other country, would therein be entitled to exercise such right; so that the republication or piracy in either country, of any work of literature or art published in the other, shall be dealt with in the same manner as the republication or piracy of a work of the same nature, first published in the other country.' Here the text is clear. Publication in France confers copyright in that country, and the holder of such copyright in France becomes, in virtue of the convention of 1852, entitled to copyright in England! Let Signor Ruffini or Mr. Prescott first publish in Paris. He may then come to London and offer Mr. Murray or Mr. Bentley a monopoly of his works. Such at least is now the reading of the law which has been acted on in Signor Ruffini's case. His 'Doctor Antonio' was published first in Paris, in English, by Galignani, all the formalities required by the French law being complied with, and thus it is supposed no copies of the work will be published in Great Britain, except those issued by the Edinburgh publishers. Of course the convention with France never contemplated the admission of Americans to its benefits, still an American holding a French copyright, which he can easily hold, becomes *quoad*

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peculiar rights. Thus, a Frenchman may publish a work in England, and yet, some years afterwards, he, or his children, or their assigns, may have the copyright of that work in France. The case of 'Clery's Journal' is an instance in point (*a*). Clery had published in London a work entitled 'Journal of what happened in the Tower of the Temple during the Captivity of Louis XVI. King of France.' In July, 1814, the two daughters-in-law and heirs of Clery assigned to Chaumerot, a bookseller in Paris, the property in the 'Journal' of their father-in-law. In September he reprinted it, and made the ordinary declaration then required by the law of France. In June, 1817, Michaud, another bookseller, published a work entitled, 'History of the Captivity of Louis XVI., and of the Royal Family, as well at the Tower of the Temple, as at the Conciergerie,' in which work was inserted, entire, the 'Journal,' which was the property of Chaumerot. A proceeding as for piracy was commenced by Chaumerot, and by the judgment of the Court of Cassation he succeeded in his suit (*b*).

Rights of foreign dramatic authors.

It is the opinion of MM. Paulmier and Lacan (tom. ii No. 677, pp. 234–236) that a play by a foreign author represented with his consent out of France, can only be represented in France with his formal written consent. They consider that the decree of 22nd March, 1852, has placed this beyond a doubt, and that this is the case notwithstanding that no express mention is made in such decree of the right of representation (*c*).

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copyright a Frenchman, and is entitled on the above interpretation to the protection of the Convention. Here is another and most powerful argument in favour of a revision of the law of copyright, as well as of the convention to which it has given rise."

(*a*) Rénouard, Traité des Droits d'Auteurs (1839), Part 4, c. 3, s. 89, vol. ii. p. 205. "Does any privilege belong in France to a foreigner who there first publishes his work?" Under the law of 1793, which preserved silence on this matter, this question was discussed. It has been formally solved by art. 4 of the decree of the 5 Feb. 1810, which assimilates foreign to national authors.

(*b*) Merlin, Questions de Droit, Contrefaçon, s. vii.

(*c*) Prop. litt. V. Cappellemas, Bruxelles et Paris, 1854.

Belgium.

Literary copyright in Belgium.

From 1791 to 1814 copyright in Belgium was the same as in France, the two countries being united during that time, and the French laws of that period are still in force. Then, until 1830, Belgium was united with Holland, but the only laws passed during this latter interval affecting copyright, appear to be those of the 23rd September, 1814, and the 25th January, 1817. The first Belgian law on the subject was the decree of 21st October, 1830.

Duration.

At present the law as to copyright is shortly as follows: Literary works are protected for the life of the author and twenty years after his death (Decree of 5th February, 1810).

Piracy and penalties.

Piracy is defined and punished by articles 425–429 of the French Penal Code of 1810: we have already given these articles in the section on French copyright (*a*). There seems to be no doubt that these articles, which were not repealed by the Belgian Penal Code of 1867, are still in force, and such is also the opinion of M. Nypels in his 'Commentaire du Code Pénal.'

Registration.

Three copies of every edition must be deposited with the communal authorities at the locality where the author resides, signed by the printer and the publisher, in order to secure protection.

What protected.

Only those works are entitled to protection which are printed and published in Belgium.

The heirs of an author have the copyright of his posthumous works on condition of not joining them to other works which have already become public property.

Assignment.

Copyright can be alienated in whole or in part by the author or his legal representatives.

Dramatic and musical works.

With regard to publication of dramatic and musical works the rules are the same as for other literary works.

Representation.

With regard to their representation the exclusive right belongs to the author during his life, but it does not

(*a*) Page 511.

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descend to any one except his issue, or failing them his widow; to these the right of representation is given for ten years.

Artistic copyright.

The French law of 19th July, 1793, and the Dutch-Belgian law of 25th June, 1817, regulate artistic copyright.

The heirs and assigns of an artist enjoy protection for twenty years against reproduction of his work by any process except sculpture. In the case of sculpture this protection only lasts for ten years.

Rights of foreigners.

As regards the rights of foreigners in Belgium they are regulated by international treaties with the following countries: France, England, Holland, Spain, Italy, Russia, Germany, Portugal, and Switzerland (*e*). The 1st article of all these treaties (except that of France) is, "The authors of works of literature or art, over which the laws of one of the two countries give either now or at any future time the right of property or copyright, will be permitted to exercise such right in the territory of the other state, in the same manner and subject to the same limitations as the rights given to authors of works of the same nature published in such other country, are exercised."

By this article in each treaty it is evident that the inhabitants of all these countries enjoy the same author's rights in Belgium as the Belgians themselves.

The effect of the treaty with France is the same, although with regard to dramatic representation, the Belgian courts for a long time gave to French dramatic authors more limited rights than the Belgians themselves possessed. But by a recent decision at Brussels, in the case of *Verdi* v. *The Directors of Le Théâtre de la Monnaie*, the Belgian law has now put France on the same footing as all other countries (*a*).

Proposed law on copyright in literature and art in Belgium.

(*a*) Such is the law at present. But on 9 February, 1878, a draft law on literary and artistic copyright was laid before the Belgian Chambers by the Minister of the Interior, which we had hopes would have been passed by this time. It has, however, been referred to M. Demeur, deputy of the Belgian Parliament, to be reported upon, and it is expected

Holland.

Previously to the French Revolution, Holland acknowledged the author's right as a perpetual one, capable of

Copyright in Holland.

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that his report will very shortly be ready. It is not probable that it will undergo many alterations, and it may possibly become law before the end of the present year. It repeals all former laws, and consolidates them into a systematic whole. We have therefore no hesitation in giving a summary of its chief provisions; apart from the probability of its shortly being promulgated, it is interesting as shewing the tendency of continental legislation on the subject.

What protected.

Protection is afforded for copyright in works of literature and art, including lectures, sermons, and public addresses, pleadings, and speeches in court, or in political and administrative assemblies, dramatic and musical works, drawings, pictures, works of sculpture, architecture, and other works of art, except such as are applied to industrial purposes; the latter shall for such application, be bound by the laws which govern industrial models and designs.

Persons protected, and duration.

The author of every work of literature or art, enjoys during his lifetime the exclusive right of publication and reproduction. His heirs enjoy the same for fifty years after his death. In the case of posthumous works, the heirs of the author enjoy from the date of publication the same rights, and the same rights belong to the publisher of an anonymous work. If a proprietor of a work brought out by joint authorship, die without heirs, his rights accrue to the surviving joint author. The publisher of dictionaries, and of works compiled by several authors, enjoys the same rights, with the exception of the right which the joint authors may reserve to themselves, of reprinting those portions of the book which are their own work. An artist who sells a work of art produced by himself retains the exclusive right of reproducing such work, either by the same or a different process, saving always a stipulation to the contrary. If a work of art be acquired by the State or a public administrative body, they can authorize its reproduction, save in the case of contrary stipulations, or where the right of reproduction does not belong to the seller. On the

Registration and deposit.

issue of each edition of a work of literature or art, published in Belgium by printing or any other analogous process, the author or publisher shall in order to secure himself the copyright, deposit at the latest within the year of publication at the Ministry of the Interior a copy bearing on the title, first page, or in some other conspicuous position, declarations in conformity with the model forms appended to this law, one signed by the author or publisher, and the other by the printer. A receipt shall be given for this deposit. In case of works in several volumes, or brought out in numbers, each volume, or number, shall be deposited within the period fixed above.

Alienation of copyright.

An author may cede his rights for the whole or a part of the term of copyright. In the latter case his legal representatives only enjoy the right during the portion of the period not comprised in the cession.

Piracy and infringement.

Whoever shall in violation of the rights guaranteed by this law, publish, print, engrave, or reproduce, in whole, or in part, writings or works of any kind, drawings, pictures, sculptures, engravings, musical compositions, or other literary or artistic productions, shall be guilty of piracy, and any one who shall knowingly announce, sell, expose for sale, or introduce upon Belgian soil, pirated works, shall be guilty of the same crime (*délit*). Newspapers and periodicals are allowed to reproduce articles and extracts published in another newspaper or periodical, provided the source from which they are obtained be indicated; this provision does not apply to

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transmission to heirs or assigns for ever. By the law of the 25th of January, 1817, literary copyright was limited to the author for his life, and to his heirs or representatives for twenty years after his death. The penalty inflicted for infringement of copyright was confiscation of all the unsold pirated copies in the kingdom; also a fine, equivalent in value to 2000 copies of the original edition, to the use of the proprietor; besides a fine of not more than 1000, nor less than 100 florins, to be given to the poor of the district where the offender resided; and in case of a second offence, the offender was to be disabled from the exercise of his trade of printer or bookseller, the whole without prejudice to the provisions and penalties imposed, or to be imposed, by the general laws respecting piratical printing (*a*). Both

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articles or extracts, the reproduction of which is expressly reserved. Infringers of this law will be prosecuted by the public prosecutor, but in addition to this the author or party injured has a right to sue for damages in a civil action.

Penalties.

The author or introducer of a pirated work is punished with a fine, varying from 50 to 2000 francs, and the edition or article will be confiscated. The usurpation of the name of an artist for a work of art, or the fraudulent imitation of his signature, shall be punished with imprisonment for a period varying from three months to two years, a fine ranging from 100 to 2000 francs, and the confiscation of the works forming the subject of the fraud, and the introduction of any such works shall receive the same punishment.

Nationality and reciprocity.

The rights guaranteed by this law are assured alike to native and foreign authors, and to each only for the period of the duration of their rights in the country of the original publication of their works, and in no case can duration of protection exceed the period fixed by the present law.

REPRESENTATION OF DRAMATIC AND MUSICAL WORKS.

Representation of dramatic and musical works.

The author of a dramatic or musical work shall enjoy during his life the right of causing it to be publicly represented or rendered. His heirs enjoy the same right for ten years from the death of the author; where the work is the joint production of several authors the consent of all is required to the representation, and the proprietors of posthumous or pseudonymous dramatic or musical works, have the exclusive right to cause them to be represented for ten years from the first representation.

Infringement.

Any representation or rendering of a musical or dramatic work, whether partial or entire, without the author's consent, is an infringement of his rights. Nevertheless after the author's death, any person may, on paying an indemnity, publicly represent or render a dramatic or musical work already published, represented, or rendered. In case of disagreement as to the indemnity the person interested shall appeal to the president of the court of first instance. The above provisions also apply to translation of dramatic works.

(*a*) Lowndes on Copyright, App. 121.

works of literature and art (except sculptures) are now protected for the term mentioned in the above law. CAP. XVIII.

Only such works are protected as are printed in the country, and the publisher must also reside there, but the name of a foreign publisher may be coupled with that of the native one.

The deposit of three copies with the communal authorities, and a declaration by a Dutch printer that the work has been printed by him, is necessary to secure protection. Dutch authors are protected against pirated works being imported from abroad.

In 1877 a new draft law on copyright was laid before the Dutch parliament, but it does not appear to have yet become law. By this law it was proposed to confer the right of protection upon the author for the period of fifty years from the first publication, and in the event of his surviving this period, then during the remainder of his life.

The German Empire.

Literary copyright with German Empire.

Copyright in works of literature and art, in all the states of the German Empire, is now regulated by the three laws of the 11th June, 1870, the 9th January, 1876, and the 10th January, 1876. There is also a law protecting industrial designs and models dated the 11th January, 1876. The first of these laws was enacted by the Federal Council and Parliament of the North German Confederation, before the establishment of the German Empire, and came into operation on the 1st January, 1871. It did not, therefore, originally apply to Bavaria, Baden, Hesse, and Würtemberg. But by the constitution of the empire, on 16th April, 1871, this law was adopted by these four states also, and is now in force in the whole of the German Empire. In Alsace-Lorraine, it took effect from 23rd January, 1873. This law relates to copyright in works of literature, technical drawings

What works protected.

CAP. XVIII. and designs which are not mere works of art, musical compositions and dramatic works (*a*).

Under "works of literature" are comprised not only printed books but manuscripts. Under technical drawings and designs are comprised maps, plans, charts, geographical, topographical, also scientific, architectural, mechanical, and technical drawings, which are not merely works of art: works of art as such being protected by the law of 10th January 1876.

Duration. Copyright lasts for the life of the author and thirty years after his death, provided the real name of the author appear on the title page or at the end of the dedication or preface. The right passes to his heirs, but does not fall to the treasury or other authorities empowered to administer estates to which there are no heirs.

Translations without the consent of the author are forbidden (if he has reserved the right) for a period of five years from the publication of the original works, and an authorized translator enjoys copyright for a period of five years from the first appearance of his translation. The copyright of a joint work lasts thirty years from the death of the survivor. Articles in periodicals are protected against separate publication by their authors for two years, after which period the author is at liberty to reprint them without the consent of the publisher of the periodical.

Anonymous and pseudonymous works are protected for thirty years from date of publication; but if within thirty years from that date the author or his legal representatives disclose their names and have them duly registered, the work is protected for the full term of life and thirty years. Posthumous works are protected for thirty years from the death of the author. Academies, universities,

(*a*) Gesetz, betreffend das Urheberrecht an Schriftwerken, Abbildungen, musikalischen Compositionen und dramatischen Werken. Bundes Gesetz Blatt von 1870, No. 19, p. 339. In making the résumé of this and the following German laws, reference has been made to Volkmann's Deutsche Gesetze und Verträge zum Schutze des Urheberrechts, Leipzig, 1877, the Annuaire de Législation étrangère, Paris, 1877, and the Law Mag. and Rev. 4th Series, May, 1878.

&c., have their publications protected for thirty years from first appearance. The remainder of the year of the death of the author, or of the publication of a work, or its translation, is not to be taken account of in computing the duration of copyright.

Registration.

A register is kept by the Stadtrath of Leipzig, in which entries of the dates of commencing and terminating translations of works, and of the names of authors are to be entered. The entries are to be made without any proof being demanded of the correctness of the author's claim. All persons are allowed to inspect the register, and take extracts. The entries are also to be published in an official journal.

Assignment.

An author's copyright may be assigned *inter vivos*, or bequeathed by will. Failing these, it passes to his heirs.

Infringement and piracy.

The right of reproducing a work belongs exclusively to the author of the same.

Every mechanical multiplication of all, or part, of a work without the consent of the author is piracy (*Nachdruck*) and is forbidden.

Piracy by copies made by hand.

Copies made by hand, if intended to take the place of printed copies, are also piracy. The following are also considered as piracy:

(*a.*) Printing a MS. without the consent of the author; even the legal owner of a MS. may not have it printed without the author's consent.

(*b.*) The like printing of lectures.

(*c.*) A new impression of a work by an author or publisher, in violation of any agreement between them.

(*d.*) The preparation of a greater number of copies by a publisher than is allowed by his agreement with the author.

Piratical translations.

Translations made without the consent of an author are piracy in the following cases:

(*a.*) When the original is in a dead language.

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(*b.*) When the original appears simultaneously in several languages and an unauthorized translation is made into one of these languages.

(*c*). When the author reserves to himself the right of translation on the title page, and such translation is commenced within one year, and ended within three years. The year in which the original appears is not counted. But in the case of dramatic works such reserved translation must be fully completed within six months from the day of the appearance of the original. The date of the beginning and ending of such reserved translations must be registered.

The translation without consent of an unprinted MS. or lecture is piracy.

Translations enjoy protection against piracy like original works.

Exceptions.

The following are not regarded as piracy:

(*a.*) Citation of passages, or portions of works, or even incorporation of the whole of a small work in a large one of different scope, provided the source be duly acknowledged.

(*b.*) The printing of isolated articles from periodicals and newspapers, but novels and scientific articles are excepted, and some others where reproduction is expressly forbidden at the head.

(*c.*) The printing of laws, decrees, &c.

(*d.*) Of speeches in court, in political and similar assemblies.

Piracy of music.

It is piracy without the consent of the composer thereof to elaborate and publish any musical composition, unless an independent composition is thereby produced, and in particular, it is forbidden to publish extracts or arrangements for one or more voices or instruments. But it is not piracy to make use of an isolated passage from an already published work on the art of music, or to embody a small published composition in a scientific work, or in a

collection of the works of different composers for the use of schools, provided the sources be duly acknowledged. It is not piracy to make use of a published work of literature as the text to a musical composition provided the text and music are not separate. The texts of oratorios and operas are excepted.

Remedy of authors.

The right to bring an action for piracy belongs to any one whose copyright has been infringed or endangered. The ordinary courts are competent to decide upon all claims for damages, the amount of penalties, and confiscation of pirated copies. Criminal proceedings are not commenced officially, but on the initiative of the injured person.

Prescription.

The right to prosecute for piracy, or to bring an action for damages, is lost after a period of three years, beginning with the day on which the pirated work was first put into circulation. And so with the right to prosecute and bring an action for circulating pirated copies, but the period in this case begins with the day on which the pirated work was *last* put in circulation.

Piracy and circulation of pirated copies shall go unpunished if the person entitled to prosecute neglect to take action within three months after the knowledge of such piracy, and of the person committing it, has been acquired by the injured party.

Confiscation of pirated works.

Confiscation of pirated copies and plant for preparing the same may be applied for to the court as long as any such copies or plant exist.

Penalties.

Whoever designedly or negligently pirates a work with a view to circulate it either in or out of the German Empire, or induces any one so to pirate a work, is bound to compensate the author or his legal representatives, and is besides liable to be fined up to 3000 marks; if the fine cannot be obtained, imprisonment up to six months is the alternative. Instead of the compensation above mentioned, the injured party may demand the imposition of a fine, to be paid to him, up to the amount of 6000 marks. In this case no further compensation can be claimed. If the accused has acted in good faith the fine

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is not imposed and he is only liable in damages for the amount of his profits.

In all cases the Court decides whether damage has been done, its amount, and the amount of the profits last received.

All stocks of pirated copies and the plant expressly intended for producing the same are subject to confiscation. After the order for confiscation, such copies will either be destroyed or returned to their owner after being altered so as to be no longer injurious to the rights of the author. Confiscation may take place whether the pirated copies have been produced *bonâ fide* or not, and the heirs of the offender are liable. The injured party is at liberty to take over the whole or part of the pirated copies towards payment of costs, so long as the rights of others are not affected.

The offence of piracy is committed so soon as a copy in violation of the provisions of this law has been produced, either in or out of Germany.

Sale of pirated works.

Whoever sells, or otherwise circulates, pirated copies, is bound to compensate the author, and is liable to be fined just as a person who commits an act of piracy.

Nationality and reciprocity.

This law is applicable to all works of native authors, whether the same have appeared in the country or abroad, or have even never been published; and also to the works of foreign authors which are issued by publishers whose place of business is in Germany. Works of foreign authors published within the limits of the former Germanic Confederation, but not included in the German Empire, are protected by this law, on condition that reciprocity exists between the state where such works appear and the German Empire; but such protection only endures as long as the law in such state affords it. The same applies to unpublished works of authors belonging to such states.

Dramatic and musical representations.

The right to represent in public a dramatic, musical, or dramatic-musical work belongs exclusively to the author and his legal representatives. In the case of dramatic

and dramatic-musical works the fact of their having been published or not makes no difference. But musical works which have been published can be performed in public without the consent of the author, unless he has reserved this right on the title-page or head of the work. An authorized translator of a dramatic work has the same right in this respect as an author.

The public representation of an illegal translation or, with reference to music, of an arrangement (*Bearbeitung*) is forbidden. Where there are joint authors, the consent of each is necessary. But in a musical work with which a text is incorporated, the consent of the composer alone is necessary.

Duration

The duration of the exclusive right to public representation is the same as for copyright, viz. the life of the author and thirty years.

Whoever gives an illegal representation of the above mentioned works is bound to compensate the author, and is also liable to the same fines as in the case of piracy mentioned above of works of literature.

Whoever induces another to give an illegal representation, is punishable in the same way as one who induces another to commit an act of piracy.

The compensation payable to the author in all these cases consists of the entire gross receipts of each performance. If the work which has been illegally represented, has been performed along with others, a proportionate part of the receipts must be paid to the author as such compensation.

If the receipts cannot be ascertained, the amount of compensation may be fixed by the judge.

If the person who gave the illegal representation acted *bonâ fide*, he is liable for the amount of his profits only.

The remedies of the author, procedure, and registration, are the same as in ordinary works of literature.

Artistic copyright.

The law of 9th January, 1876, concerns copyright in works of art. It is retrospective in its effect, and repeals all previous legislation on the subject. It took effect

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from 1st July, 1876, and its chief provisions are as follows:

What is protected.

It is not applicable to architecture, nor does it protect an artist who permits his works to be imitated in the productions of manufacturing and similar industries. His copyright in such manufactured articles is protected by the law of 11th January, 1876, given below.

Persons protected.

The right to reproduce a work of art in whole or in part belongs exclusively to the artist, and passes to his heirs, unless alienated previously; but does not pass to the Treasury or other authorities empowered to administer estates to which there are no heirs.

Any one imitating a work of art with due authorization, but by a different art process, enjoys the same protection for his imitation as an original artist, even though the original be already public property (*b*).

Duration.

Copyright given by this law lasts for the life of the author and thirty years after his death. This protection is subject to the condition that the author's true name appears in full or by some unmistakable sign on the work.

Anonymous and pseudonymous works are protected for thirty years from publication. If within this period the author's real name shall have been registered by the author or his authorized representatives, in accordance with art. 39 of the law of 11th June, 1870, the work is protected for the full period of life and thirty years after.

When artistic works are published in volumes or parts, at intervals, the commencement of the period of protection of each part is the same as in the case of works of literature.

Posthumous works are protected for thirty years from the death of the author.

Works of art appearing in periodicals, can after the lapse of two years from publication, unless stipulated to the contrary, be reproduced elsewhere without the consent of the editor or publisher of such periodical.

(*a*) Gesetz betreffend das Urheberrecht an Werken der bildenden Künste, vom 9. Januar 1876. (Reichs Gesetz Blatt,' No. 2).

(*b*) Is said to be specially intended to apply to engravings.

The rules with regard to registration and the keeping of registers are the same as in literary copyright. Registration.

An artist may alienate his copyright by contract or by will. Alienation.

If an artist alienate his work, the alienation of his copyright is not necessarily included; but in the case of portraits and busts, the copyright belongs to those who order them.

The owner of a work of art is not bound to place it at the disposal of the artist for reproduction.

Every reproduction for purposes of public circulation of a work of art without the consent of the person entitled to the copyright is forbidden. Piracy.

The following acts are considered piratical: What acts piratical.

(*a*). Obtaining the reproduction by a different process from that by which the original was produced.

(*b*). Indirect reproduction not from the original work but from a copy of it.

(*c*). The reproduction of a work of art in a work of architecture, industry, or manufacture.

(*d*). Reproduction by either author or publisher contrary to the contract binding them.

(*e*). Production by the publisher of a greater number of copies than he has a right to publish either by law or by contract.

It is not considered piracy: Exceptions.

(*a.*) Freely to make use of a work of art to produce a new one.

(*b.*) To copy by hand a work of art if the copy is not intended for sale, but it is forbidden to introduce in any way on the copy the name or monogram of the artist of the work under penalty of a maximum fine of 500 marks.

(*c.*) To reproduce by the plastic art a painting or a drawing and *vice versâ*.

(*d*) To reproduce works of art which are permanently exposed to view in the streets and public places. But such reproduction must not be in the same form (*in derselben Kunstform*).

(*e.*) The reproduction of a work of art in a work of

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literature, provided such reproduction be subsidiary to and serves only to illustrate the text. But the source must be acknowledged under penalty of a maximum fine of sixty marks.

Remedies and penalties.

The remedies of the artist and penalties for infringement are in corresponding cases the same as those in literary copyright, as given in the law of 11th June, 1870.

Nationality and reciprocity.

The provisions as to nationality and reciprocity are also the same as in the law of 11th June, 1870.

Copyright in photographs.

The law of 10th January, 1876 (*a*), relates to the protection of photographs against unauthorized reproduction; it came into force on 1st July, 1876. It is not retrospective, but existing photographs, which up to this date were locally protected by law, continue to enjoy such protection.

What protected.

The provisions of this law apply to works produced by any process analogous to photography (*durch ein der Photographie ähnliches Verfahren*) but do not apply to photographs of works protected by law against unauthorized reproduction.

Any copy of a photograph produced by drawing, painting, or sculpture, is protected by the law on art copyright (art. 7) of 9th January, 1876.

Who protected.

The right to reproduce a photograph in whole or in part by mechanical means belongs exclusively to the photographer, and passes to his heirs.

Duration.

By this law photographs are protected against reproduction for five years. This period commences to run from the end of the year in which the first impressions from the original photograph appeared, and if no impressions are taken, then from the date of making such original photograph. In the case of photographs published in volumes, the beginning of the period of protection is determined in the same manner as in works of literature and art.

Every lawful photographic or other mechanical reproduction of an original photograph must bear, either on

(*a*) Gesetz betreffend den Schutz der Photographien gegen unbefugte Nachbildung, vom 10. Januar 1876. (Reichs Gesetz Blatt, No. 2.)

the picture itself or the mounting, (1), the name or firm of the photographer or publisher; (2) his address; and (3), the year in which such reproduction first appeared.

Unless these conditions are complied with, no protection is afforded.

Alienation of copyright.

The producer of a photograph or his heirs can alienate his copyright, either by contract or by will, in whole or in part. But in the case of portraits the copyright vests in the person ordering them.

Piracy.

It is not piracy to make free use of a photograph to originate a new work.

The mechanical reproduction of a photograph without consent of the owner of the copyright, with a view to its public circulation (*in der Absicht dieselbe zu verbreiten*) is forbidden.

It is not piracy to copy a photograph for use in a work of industry, handicraft, or manufacture.

Remedies, penalties.

The provisions of the law of the 11th June, 1870, as to author's remedies, procedure, and penalties, apply in the corresponding cases to photographic copyright.

Nationality.

The present law is applicable to all works of native photographers, whether such works have been published, in or out of Germany, or not at all.

No provisions as to reciprocity are inserted in this law.

Copyright in industrial designs and models.

The law of 11th January, 1876 (*a*), relates to copyright in industrial designs and models. It came into force on 1st April, 1876, and is not retrospective.

What protected.

Designs and models within the meaning of this law are only such as are of a new and original character.

Who protected.

The right to reproduce an industrial design or model belongs exclusively to the author of the same.

The proprietor of any industrial establishment in which designs and models are produced by persons in his employ is to be regarded as the author of such designs and models.

The right of the author passes to his heirs. It can be

(*a*) Gesetz betreffend das Urheberrecht an Mustern und Modellen.

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alienated either in whole or in part, and either by act *inter vivos* or by will.

Duration.

The protection of this law against reproduction of industrial designs and models is given to the author for a period which lasts from one to three years, according to his wish, from the date of registration. On payment of a fixed sum this period may be extended to fifteen years as a maximum, and such extension must be registered.

Registration.

All designs and models in order to obtain protection must be registered, and a duplicate or copy deposited with the registrar, and such registration and deposit must take place before any goods manufactured from such designs or models have been circulated. The person registering a design is not obliged to prove beforehand his claim to be considered the author. The register is open to public inspection, and certified extracts can be obtained. A person who has registered a design or model is considered the author until the contrary is proved.

Piracy.

It is not piracy (*Nachbildung*) to make free use of different parts of a design or model for the production of a new design or model.

Every reproduction without the consent of the author of a design or model made with a view to its circulation is forbidden; as also (*a*) when such reproduction takes place by a different process from that by which the original was produced, or when it is intended to be used in a different branch of industry; (*b*) when it differs from the original in size and colour only, or can only be distinguished from the original by close observation; and (*c*) when it has been reproduced indirectly from a copy of the original instead of from the original itself.

What is not piracy.

It is not piracy (*verbotene Nachbildung*) (*a*) to make single copies of designs or models without the intention to use them for industrial purposes, or to derive profit from them; (*b*) to reproduce a surface design in the form of a plastic one, and *vice versâ*; (*c*) to incorporate reproductions of designs and models in a work of literature.

Nationality and

The provisions as to the remedies of the author,

procedure, and nationality, correspond to those in the three previous laws. The rights of foreign authors are regulated in accordance with existing treaties.

reciprocity.

Austria and Hungary.

Literary copyright lasts for the life of the author and for thirty years after his death. In the case of posthumous, anonymous, or pseudonymous works the right lasts for thirty years from the year of their first publication. Academies, universities, and other scientific or artistic societies under state control, enjoy copyright in their publications for fifty years; all other companies or societies are only protected for thirty years. If a work be published in several volumes, and not more than three years elapse between the appearance of each volume, the term of copyright begins to run from the date of publication of the last volume.

Duration of copyright.

Unpublished manuscripts cannot be copied without the permission of the author. Lectures and speeches whose aim is merely instruction or amusement are protected against reproduction. Translations are protected against reproduction in the same way as an original work, but any one can make a fresh translation for himself of the original work.

What works protected.

If the author of an original work duly reserve the right of translation on the title page no one can translate such work without his sanction, but the author's translation must appear before the expiration of a year.

Periodicals and similar works which are the joint product of several authors, belong to the publisher; but it is lawful to make extracts from such works to the extent of one page on condition that the source be acknowledged.

There are no regulations regarding registration or deposit of copies.

Registration.

An author who has granted the right to publish an edition of his work must wait until such edition is exhausted before he can publish a further edition.

Assignment.

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Piracy.

Every illegal reproduction of a work is prohibited as piracy.

The sale of pirated copies in the country or abroad is prohibited as piracy.

Remedy of the author and penalties.

An action for piracy can only be brought by the party injured, and the offender is liable to a fine varying from 25 to 1000 florins, or in case of non-payment, to a term of imprisonment varying from eight days to three months. Damages may also be given to the plaintiff, in which case he is at liberty to take the pirated copies in part payment. If he should not so take them they must be destroyed, together with all implements used in producing the pirated copies. If the offender be unable to pay the damages he is liable to further imprisonment.

The same protection is afforded to the authors and publishers of musical works as in the case of literary works.

Dramatic and musical representations.

The right to authorize the representation or execution in public of a dramatic or musical work belongs exclusively to the author for his life: and after his death this right passes to his heirs or legal representatives for a term of ten years. In the case of an anonymous or posthumous work, such term begins from the date of the first publication.

The unauthorized representation of a dramatic or musical work is punishable by fines varying from 10 to 200 florins, or by imprisonment in case of non-payment; the author is also entitled to damages amounting at least to the gross receipts arising from the illegal representations, and all copies and parts are to be confiscated.

Artistic copyright.

The legislation on artistic copyright is the same as for literary, and the duration of the term is the same. But there are two conditions attached to the artist's exclusive right of reproduction: (1) he must expressly reserve this right at the time of publication of the work; and (2), he must exercise this right within two years after.

It is not illegal to make use of a work of art as a

model for an article of manufacture or handicraft, nor to reproduce a picture by sculpture, or a sculpture by a picture.

Norway.

The law of copyright in this country was for a long time very incomplete, the enactments on the subject being numerous, fragmentary, and passed at various dates between the years 1839 and 1875. The law of 8th June, 1876 (*a*) and the two laws of the 12th May, 1877 (*b*), consolidate the whole. The principal provisions of the law of 8th June 1876, are as follows, taking force from the 1st January, 1877.

It is retrospective, subject to existing rights, and repeals all those provisions of previous laws which are at variance with it.

Works of literature, what protected.

This law relates to copyright in works of literature, the drama and musical compositions: geographical, topographical, technical and scientific maps, drawings, and figures which have not the character of mere works of art.

Persons protected.

The exclusive right of reproducing a work protected by this law belongs to the author. The publisher of a periodical, or other work, to which several authors contribute, has the right of an author, but the author of each article, unless prevented by express stipulation, may publish such article elsewhere, at any time after the lapse of one year from the date of its first publication in such periodical. Scientific institutes and societies also enjoy author's rights in respect of their publications subject to the same conditions.

Translators.

The translator of a work written in a foreign language, enjoys the rights of an author in his translation, provided such translation do not infringe any provision of the law.

Duration.

The exclusive right of publication lasts for the life of the author and fifty years after his death.

(*a*) Lov om Beskyttelse af den saakaldse Skrifteiendomsret, as given in the Annuaire de Législation étrangère, 6me année, Paris 1877.

(*b*) Lov om Beskyttelse af kunstnerisk Eiendomsret, Ann. de Législation étrangère, 7me ann. Paris 1878, and Lov om Beskyttelse af fotografiske Billeder, l. c.

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Public bodies enjoy protection for fifty years from first publication, and the same with regard to anonymous and pseudonymous works, but the author on making himself known by announcement in the journal appointed for that purpose acquires protection for the full term of life and fifty years. Posthumous works are protected for fifty years from date of first publication.

Registration.

There are no provisions in this law as to registration.

Alienation.

Copyright can be alienated in whole or in part by deed or will, and in default of alienation after the author's death it descends first to his widow and then according to the law of succession in Norway.

Piracy and infringement.

Every infringement of the rights established by this law is punishable as piracy. The reproduction of a work with omissions, additions, and other alterations, which are not sufficiently extensive to change the character of the work, is also an act of piracy; and in musical compositions, unauthorized arrangements for other instruments or voices, and analogous alterations, are piratical; but not variations, studies, fantasies, &c., which can be considered as original productions.

The following are also piracy: (*a.*) The publication in the press or reproduction in any other way by mechanical means, without the consent of the author or his representatives, of MSS. sermons, speeches, lectures, and other oral communications of the same nature. (*b.*) The publication by author or publisher of a new edition in contravention of agreement. (*c*). The printing by the publisher of a greater number of copies of an edition than the agreement allows to him.

Piratical translations.

Translation without the consent of the author (*a*) of any work into a dialect of the language in which it is written (and for this purpose Norwegian, Swedish and Danish are all dialects of one language); or (*b*), of an unpublished work; or (*c*) of one that is written in a dead language into a living one or (*d*), of a work published simultaneously in several languages into one of such languages, is treated as piracy.

What is not piracy.

But it is no piracy (*a*) to quote passages from any work if the source be acknowledged, or (*b*) to incorporate extracts from the same or entire works in others of a different kind which are original, or (*c*) to employ poetry for the text of a musical composition, or (*d*) to make use of drawings (*dessins*) for purposes of illustration, or (*e*) to insert musical pieces in an original scientific work.

It is also no piracy for one newspaper or periodical to publish articles, &c., from another, unless the copyright be specially reserved. In any case the source must be acknowledged.

This law does not apply to publication in the press of debates in parliament or municipal assemblies, nor of proceedings in courts of law, public and political meetings, nor of laws, judgments, and public documents of all kinds.

Works long out of print.

When it has become impossible to obtain a copy of any work for five years, it is no piracy to print it: but the author or his legal representative in this case recovers his right if he bring out a new edition before any other person has done so, or has in the journal appointed for that purpose announced his intention so to do.

Penalties.

The offence of piracy is completed as soon as a copy is wholly printed: it is punishable by fine, varying from 10 to 1000 crowns, and the offender must also indemnify the injured party. The same applies to the person who knowingly sells or puts into circulation pirated copies.

Such illegal copies are also liable to confiscation for the benefit of the author, and all tools and plant will be destroyed, or otherwise rendered harmless.

The right to prosecute belongs to the party injured, and not to the government.

Right to prosecute lost by delay.

If two years be allowed to pass without prosecuting for an act of piracy, the right of action is lost; and if the injured party be aware of the offence, he must bring his action within twelve months from the date of his so becoming aware of it; but an action to compel confisca-

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tion, &c., of pirated copies can be brought so long as such copies exist.

Nationality and reciprocity.

The present law applies to the works of Norwegian authors and composers, and to works published by Norwegians, and on condition of reciprocity its provisions can be extended, in whole or in part, to works belonging to other countries protected by the laws of such other countries.

Representation of dramatic and musical works.

The exclusive right to represent dramatic and musical works belongs to the author and his legal representatives; and this right extends not only to the original piece, but to those translations of it which the author alone has the privilege of making. Again any person who, in accordance with this law, translates a play into Norwegian from another language, has the rights of an author in his translation. Composers of musical dramatic works have similar protection.

Representation within the meaning of this law.

Mere recitations without scenery are not representations within the meaning of this law.

Consent of joint authors.

If a work be the joint production of several authors or composers, the consent of each is necessary for its representation; but in the case of musical dramatic works the consent of the composer alone is sufficient, and in the case of dramatic works, in which detached pieces of music are incorporated, the consent of the author alone suffices.

Right of representation not assignable without author's consent.

Any one authorized by the author or composer may give as many representations of a piece as he likes, but may not transfer his right to another.

The author or composer may grant the right of representing a piece to as many persons as he likes, provided there be no agreement to the contrary, and even in the case of an exclusive grant he may grant the right to others if the person exclusively authorized have not given a representation for five years.

Duration of right of representation.

The author's exclusive right to represent such works lasts for his life and fifty years after—the remainder of

the year in which he dies not being reckoned in the fifty years.

Artistic copyright.

The first law of the 12th May, 1877, relates to artistic copyright: it is retrospective (subject to existing rights), and repeals the law of 29th April, 1871, and other older Acts. It came into force 1st January, 1878, and its principal provisions are as follows:

What protected.

This law does not apply to buildings, nor to utensils of artistic design or decoration, but solely to works of art as such, whether sculptures or pictures and similar works.

Who is protected and duration.

The exclusive right to reproduce isolated copies by hand for sale of an original work of art belongs to the artist who has executed it for his life.

The artist has also the exclusive right to multiply his work by engraving and other mechanical means, or by photography and other analogous means which do not require artistic labour. This exclusive right lasts for the life of the artist and fifty years after his death.

Persons who reproduce in a lawful way and by an artistic process, such as engraving, an original work of art, enjoy the same rights over such reproductions as the artists over the original works.

Registration.

There are no provisions as to registration in this law.

Alienation.

An artist can alienate his rights by assignment, either with or without restrictions.

If he alienate the work itself, the right of reproduction is not comprised in such alienation, except in the case of busts and portraits made to order.

The alienation of the right to reproduce isolated copies of a work by hand does not, unless agreed to the contrary, exclude the artist himself from making such copies, and from granting the same right to others.

If the artist have not alienated his right of reproduction during his life, it passes on his death first to the person to whom he bequeaths it by will, and then to his widow, and then according to the law of succession to his heirs.

The testamentary, as well as every other heir, can

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dispose of this right *inter vivos*, and if there be no other heirs of the artist surviving, or the will authorize it, such heir can also dispose of the same right by his will.

Piracy.

All reproduction by hand, or multiplication by a mechanical process, in contravention of the provisions of this law, is forbidden as piracy.

And for the purposes of this provision it is not necessary to inquire whether the work has been reproduced in whole or in part, with additions, suppressions, or changes, so long as such reproduction is essentially a copy. Nor is it necessary to inquire (*a*) whether such reproduction is on another scale or of different materials; or (*b*) whether another technical process has been employed; or (*c*) whether the reproduction has been made directly or indirectly; or (*d*) whether it has been made for an insignificant purpose.

What is not piracy.

But, on the other hand, it is no piracy (*a*) if a painting, drawing, or engraving has been reproduced in the plastic form, or *vice versâ*, provided such reproduction has not been obtained by purely mechanical means, such as photography; or (*b*) if the original serve as a model for the fabrication or decoration of utensils; or (*c*) if a copy of a work of art be inserted in a work of literature for purposes of illustration.

Works of art in public places.

The above prohibitive provisions do not apply to works of art exposed in the streets or public places, or used for decorating the interior of public buildings. It is also lawful to take copies of works of art acquired for the public galleries.

Penalties, procedure, remedies.

The provisions as to penalties, compensation, destruction, and confiscation of unauthorized copies, procedure, and prescription, are the same as in the law of literary copyright of the 8th June, 1876, given above.

Nationality and reciprocity.

And the same with regard to nationality and reciprocity.

Photographic copyright.

The other law of 12th May, 1877, relates to photographs; it is very short, and may be given in an abridged form as follows:

Art. 1. The person who produces an original photograph from nature, or of a work of art which may lawfully be reproduced in such manner, has the exclusive right to copy it by photography. Who and what protected.

Art. 2. The word "*emberettiget*" (protected) must be inscribed on each copy, also the date when such copy was first made, the name of the photographer, and, if it be a reproduction of a work of art, the name of the artist. Regulations.

Art. 3. This right subsists for five years from the expiration of the year in which the first copy was made, but in all cases terminating with the life of the photographer. Duration.

A photographer is forbidden to make copies of photographs executed to order, without the consent of the person ordering them. Commissioned photographs.

Art. 4. Penalties for infringement. Penalties.

Art. 5. Destruction of illegal copies and negatives.

Art. 6. Prosecution for infringement is not undertaken by government. Procedure.

Art. 7. Right of action is lost after a lapse of two years in any case, or after a year from infringement becoming known to prosecutor. But the provisions of art. 5 apply so long as the illegal photographs exist. Prescription.

Art. 8. On condition of reciprocity the protection given by this law may be extended by royal decree to photographs of foreign origin. The king will determine whether and what provisions of art. 2 shall apply to such photographs. Reciprocity.

Art. 9. This law will come into force on 1st January, 1878.

Sweden.

Copyright in this country was formerly perpetual (*a*). Literary copyright is now protected by the law of 10th August, 1877, which resembles in many points those of Literary copyright in Sweden.

(*a*) Amer. Juris. vol. x. 69, until 11 July, 1837.

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Norway and Denmark (*a*). This law applies to works already published before the date of its coming into force on 1st January, 1878, and repeals previous laws. Its principal provisions are as follows:

What protected.

For the purposes of this law the following are assimilated to works of literature, viz., musical compositions, drawings of natural history, marine charts, maps, architectural drawings, and all works of an analogous character which cannot be classed as mere works of art.

Persons protected.

The author has the exclusive right to reproduce his works by printing, whether already published or in manuscript.

Translators.

The translator of a work from a foreign language enjoys in his translation the same rights as the author of an original work, provided such translation do not infringe any provisions of the law, and subject to the right of any other person to translate the same original work.

Publishers of periodicals.

The publisher of a periodical or other work composed of distinct articles by different authors, is considered as an author, but has no right to reproduce such articles separately. One year after the publication of each article the author can reproduce the same (*b*).

Duration.

Copyright lasts for the life of the author and fifty years after his death. In a joint work, not consisting of several distinct articles, the fifty years begin to run from the death of the last surviving author.

The remainder of the year in which the author dies is not reckoned in the above fifty years.

Works published by learned societies or other associations, also works first published after the death of their author, are protected for fifty years from date of first publication; and the same with regard to anonymous and pseudonymous works, the authors of which, however, on making themselves known before the expira-

(*a*) Ann. de lég. étrang. vii. p. 658: Paris, 1878. Lag angående egenderätt till skrift.

(*b*) This is different from the corresponding provision in the Norwegian law of 8 June, 1876.

tion of the fifty years, in the manner provided by the law, acquire the full author's term of protection. The period of fifty years in all the above cases dates from the 1st January following the first publication.

There are no provisions as to registration in this law. Registration.

An author can transfer to others the rights given him by this law with or without conditions or restrictions. Failing such transfer, the right passes to his heirs at his death. Alienation of copyright.

The person to whom an author grants the right to publish a work may not publish more than one edition of it, nor more than 1000 copies in that edition.

It is forbidden as piracy, but subject to any provisions to the contrary in this and in the law on liberty of the press, to print any work, in whole or in part, before the expiration of the term of copyright, without the consent of the owner of such copyright. Changes, abbreviations, or additions of no importance to a work, do not legalize such piracy. Piracy and infringement.

The publication of a translation of an unprinted work, without the consent of the author, or of a translation of his work from one dialect into another of the same language (and for the purposes of this provision, Swedish, Norwegian, and Danish, are all considered as different dialects of one language) is an act of piracy. Piratical translations.

It is no piracy to reproduce passages from another work in a new and original work, whether in full or abridged, for purposes of proof or illustration, provided the source be acknowledged. Neither is it piracy to reproduce in a periodical publication extracts from another periodical, provided the source be acknowledged. But scientific articles and *ouvrages d'esprit* of considerable extent are excepted, if the reservation of copyright be expressed at the head. What is not piracy.

Whoever is guilty of the offence of piracy, is punishable by a fine of from 20 to 1000 crowns. Moreover, the Penalties.

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pirated edition is confiscated for the benefit of the plaintiff, and the value of the copies parted with (if any) are to be paid for by the offender.

All objects exclusively destined for the illicit printing of a work may be seized, and, subject to any agreement between the parties to the contrary, may be made so that they cannot be used again. The penal provisions of this law, are equally applicable to persons who expose for sale or import into Sweden for purposes of sale a work which they know to be pirated.

Actions for infringement of the provisions of this law can only be brought by the party injured.

Nationality and reciprocity.

The present law applies to the works of Swedish citizens. Every anonymous or pseudonymous work is considered as emanating from a Swedish author until proof to the contrary.

The provisions of this law can be extended, in whole or in part, and on condition of reciprocity, to the works of foreign authors.

Representation of dramatic and musical works.

No dramatic or musical dramatic work can be represented without the consent of the author or his representative. But the reading or public performance of a work is permitted if there be no scenic accompaniments.

The person authorized may give as many representations as he likes, but may not transfer his privilege to another.

The proprietor of such work may grant the same authorization to others if there be no agreement to the contrary. When a proprietor has granted the exclusive right of representation to another, and such grantee has failed to make use of his privilege for five consecutive years, the proprietor is again at liberty to grant the right of representation to others.

Duration.

The above rights of the author or translator over representation last for his life and five years after his death, the remainder of the year in which he dies not being reckoned in the five years. If the author or translator

has not made himself known the representation becomes free to every one at the end of five years from the first representation or the first publication.

Penalties.

Whoever represents a work in violation of this law is liable to a fine of from 20 to 1000 crowns; moreover, he will be compelled to hand over by way of compensation to the injured party the whole of his receipts, without deducting anything for costs, or for that part of such receipts which might be considered as arising from any piece represented at the same time.

All copies of a work destined to be illegally performed may be seized.

General provisions.

When there are several proprietors of a work the consent of each is necessary for publication or representation. Moreover, in the case of a musical dramatic work the consent of the author suffices if the text forms the principal part, and of the composer if the music forms the principal part.

In the session of the Swedish parliament, 1876, two changes were made in the constitutional laws. One, which does not concern the subject of copyright. The other a modification in form, as follows: all provisions relative to literary property were expunged from these constitutional laws and remodelled into an ordinary law, so as to make it possible to amend or alter it, without the necessity of recurring to the procedure necessary to alter the constitution (*Annuaire de législation étrangère*, vi. p. 619, Paris, 1877). This remodelled law was replaced in the following year by the more complete one on literary copyright given above.

Additional law.

An additional law on literary property of 10th August is as follows:

Artistic copyright.

The provisions relating to literary copyright having been expunged from the constitutional law on liberty of the press, piracy of works of art by means of printing will in future be subject to the general rules of the law of 3rd May, 1867, on artistic works and the rights thereto belonging.

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Denmark.

Literary copyright.

The laws regulating literary copyright in Denmark are those of 29th December, 1857, 23rd February, 1865, and 21st February, 1868.

What protected.

Besides ordinary works of literature, protection is afforded to speeches, lectures, and sermons: but speeches at public political meetings are excepted.

An author's manuscripts are protected for thirty years after his death.

On condition of giving the author's name, it is lawful to make quotations and extract detached passages from any work for insertion in other works, but it is forbidden to reproduce a work by the free use of extracts.

Duration.

Copyright lasts for the life of the author and fifty years after his death.

In case of intestacy the copyright passes to the widow first, and then to the children and other heirs according to the Danish law of succession. If the author has bequeathed the copyright and the legatee die before the expiration of thirty years from the death of the author, such copyright passes to the widow of the author or other legatees, unless the author have made provision to the contrary: the widow or such legatees are not allowed to alienate the copyright if there be any heirs of the author to whom it can descend.

Works out of print.

If it has not been possible to procure a copy of the last edition of any work during five successive years, the author loses his rights, but they may be recovered so long as a third person has not published or announced a new edition.

For anonymous and pseudonymous works copyright lasts for thirty years from the date of the last edition published within thirty years after the first edition, but the whole term from the date of the first edition cannot exceed fifty years.

The copyright of a work which consists of articles by different authors, belongs to the publishers, but any author,

unless agreed to the contrary, may publish separately his article after the lapse of one year.

Registration.

No registration or deposit of copies is required.

Remedies.

All actions for piracy or infringement must be brought by the party injured within a year and a day from the commission of the offence.

Penalties.

Pirated copies may be confiscated, and if the injured party do not wish to have them, they are to be destroyed.

Dramatic and musical works.

With regard to the publication of musical and dramatic works the rules are the same as for other works of literature.

Representation.

With regard to representation, the exclusive right to authorize it belongs to the author and his representatives for thirty years. But it is no infringement of an author's rights to represent a play without scenery, or to perform at a concert overtures or extracts from musical works.

When an author gives permission for the representation of his work, it does not confer the exclusive right of representation, and he may therefore authorize a third person to give representations. Where he has granted the exclusive right the contract becomes void if no representation has been given for five years.

Artistic copyright.

Artistic copyright is regulated by the law of 31st March, 1864.

What protected.

The reproduction of a work of art by any process is forbidden, unless sanctioned by the artist. Architectural designs are the property of the architect, unless he publish them.

Works of art in public galleries and places are considered public property: any one who reproduces such works enjoys the copyright of his work, but any other person is at liberty to make a copy of the original by the same process.

Duration.

The exclusive right of reproduction belongs to the artist for his life, and to his heirs or assigns for thirty years after his death, on the same conditions as the copyright of works of literature.

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Spain.

Literary copyright.

Copyright in Spain has lately occupied the attention of the legislature, and is now regulated by the new law on intellectual property, the draft of which was reported on to the Cortes on 4th January, 1877, and by previous laws of 1834 and 10th June, 1847. The term of copyright before the passing of the new law was for life of the author and fifty years after his death.

What protected.

The new law protects all scientific, literary, and artistic works which are capable of being published by printing or any similar process.

Persons protected.

The persons protected are authors, translators, authorized publishers, musical composers, painters and sculptors, and the legal representatives of all these people.

The publishers of anonymous and pseudonymous works have the rights of authors. But on proof of the identity of the real author, such author shall regain his rights of ownership.

Proprietors of newspapers may assimilate their publications to literary works, by annually presenting two complete files to the Registry of Intellectual Property.

The authors of works published in periodicals have the right to publish such writings in a collected shape, unless there be an agreement to the contrary. And the author of various literary works may publish them in a collected shape, even after he has sold one of them to a third party, unless a stipulation to the contrary shall exist.

Duration.

Intellectual property lasts for life both in the case of authors and translators, and of other persons to whom it may pass by donation *inter vivos*. It then passes to their heirs-at-law, or testamentary heirs, for a period of eighty years from the death of the owner.

Registration.

A general registry of intellectual property is provided, and a book is kept in every prefecture in which the works protected by the present law are to be inscribed in order of date. Copies of these entries are to be sent periodically

to the office of the Minister of Public Instruction, and two copies of each work must be deposited.

Works must be registered within one year from their publication.

Every work published without indication of place, date, and selling firm, will be considered fraudulent, and cannot be inscribed on the register.

Every work not duly registered becomes public property.

Reciprocity.

The subjects of a foreign state, whose law recognises the right of intellectual property, enjoy in Spain the rights recognised by the present law, on condition of observing its provisions.

Spain has treaties on copyright with England, France, Belgium, Italy, Portugal, and Holland.

The proprietor of a foreign work can exercise his right of property over it in accordance with the laws of his own country. He has the right of property in translations of such work, as long as he possesses the original work in the country where it was published, and for the time during which it is protected by the laws of such country.

A translation authorzied by the owner of a work, and printed abroad, is subject to the law of that country; if printed in Spain, it is governed by Spanish law.

Dramatic and musical works.

No dramatic or musical work can be represented in whole or in part in any public place whatsoever, without previous consent of the author or his legal representative. The rate of remuneration must be fixed by the author at the time of giving such consent, otherwise he must accept the scale fixed by government.

No one may, without the author's permission, make a copy of an unprinted dramatic or musical work after representation in public, nor sell or hire out such copy. Joint authors of musical or dramatic works have equal shares, unless otherwise stipulated. In a musical dramatic work half the profits belong to the author of the libretto, and the other half to the author of the music. The consent of one of the authors shall suffice to authorize the representation. The author of the libretto and the

composer of the music, have each the right of publishing separately their part of the work. The persons who give representations of such works may not change its title in announcing it, or make changes or additions without consent of the author. The fraudulent representation of a dramatic or musical work in any public place, is, independently of the penalties prescribed by the code, punished by the loss of the entire receipts, which must be handed over to the author of the work.

Duration. The duration of the right of representation is the same as that of copyright in works of literature.

Registration. When a work is represented before publication, registration and deposit of a manuscript copy are necessary.

Works of art. The law of copyright in works of art is the same as for literary property, but no deposit need accompany the registration.

Portugal.

Literary copyright. Literary copyright in Portugal is regulated by the law of the 8th July, 1851, and the penal code.

What protected. Under literary works are included public speeches, lectures, sermons, and translations; but speeches in parliament, courts of justice, and academies may be published in the reports of proceedings.

Quotations from a book or a newspaper are permitted, provided the source be acknowledged.

The publication of a work in a newspaper does not deprive the author of the right of separate publication.

Duration. Copyright lasts for the life of the author, and thirty years after his death.

Registration. Six copies of every book must be deposited at the Lisbon Library. Certificates are given on payment of a small fee.

Assignment. An author may alienate his rights during his lifetime or by testament.

Piracy. An author may obtain an injunction stopping the publication of a pirated work until the courts have decided the case.

The penalty of piracy is confiscation of the pirated work, fine, and compensation to the injured party. Penalties.

The same rules apply to the publication of dramatic and musical works as to other works of literature, except that the six copies must be deposited at the "Conservatoire Royal." Dramatic and musical works.

The author's exclusive right of representation lasts for life, and for thirty years after his death. In the case of works published but not represented in the lifetime of the author, the term of thirty years commences with the first representation. Representation.

Any person representing a piece without the sanction of the author is liable to the same penalties as a person who pirates a work of literature, and must pay, by way of compensation, the gross receipts resulting from such representation, and in addition the nett profits of one representation. Penalties.

Artistic copyright is protected by the law of 1851 and the code of procedure of 3rd November, 1876. Artistic copyright.

The works protected are paintings, drawings, engravings, lithographs, and sculptures. What protected.

Six copies must be deposited at the Academy of Arts in Lisbon of every kind of drawing, but of works of sculpture, and others of a similar character, only two copies need be deposited. Registration.

An artist may alienate his right of reproduction without parting with the work itself, but if he alienate the work, the copyright passes also, unless specially reserved. Assignment.

All pirated works of art are liable to seizure and confiscation. Piracy.

Article 32 of the law of 1851 gives protection to foreigners on condition of reciprocity. Reciprocity.

Italy.

By the law of 25th June, 1865, article 8, copyright lasts for the life of the author and forty years after his death. If the author die before the lapse of forty years from the first Copyright in Italy. Duration.

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appearance of the work, his heirs or representatives enjoy the copyright for the remainder of that period: then begins a second period of forty years, during which the same work may, subject to certain regulations, be reproduced without the consent of the proprietors, but on condition of paying to them 5 per cent. on the published price of each copy, which price must be plainly printed on each.

Translations

By article 11 of the same law the author has the exclusive right of authorizing translations of his works for ten years from the date of their first publication. A translator has the same rights as an author.

Works of academics and public bodies.

By article 10 copyright in works published by academies, universities, scientific and other societies, and government and public functionaries, is protected for twenty years from date of first appearance, and the author of any separate articles published in such works, can make free use of his contributions for publication, &c., provided he state the name of the collective work in which such contribution first appeared.

Registration.

The author of every work must deposit three copies at the prefecture of his province, and make a declaration that he intends to reserve his rights.

Assignment.

An author may alienate his rights, but a mere authorization to publish a work does not transfer the copyright.

After the death of an author, the state may on public grounds, and on payment of compensation to the parties entitled, declare any work to be the property of the state, or of any particular province or commune.

Piracy.

Any person who publishes a work without the consent of the author, is guilty of illegal publication.

It is accounted piracy (1) to reproduce any work over which the author's rights shall still extend, or to sell such reproduction without his consent; (2), when a publisher produces and sells a greater number of copies than his agreement with the author allows; (3), to translate without consent any work during the ten years reserved to the author; (4), to publish a work during the second period of

forty years after the death of the author, without complying with the regulations laid down by the law.

Penalties.

Illegal publication and piracy are punishable by fine up to 5000 francs; confiscation of the illegal copies, and implements for producing the same, follows in most cases, and damages may be awarded to the author in addition.

Dramatic and musical works.

A special law relating to dramatic and musical works, and modifying the law of 25th June, 1865, was passed on 10th August, 1875. With regard to publication the term of copyright is limited in the same manner as in the case of ordinary works of literature, but if no deposit of the work has been duly made within three months, either from date of publication or first representation, the author has no remedy against those who during such three months, or before he has deposited the work, may have reproduced his work or imported copies from abroad. Copies of musical works must also be deposited, and in all cases it is necessary to state whether the work has been publicly represented before publication, and to give the date of such representation.

Representation.

By the law of 10th August, 1875, the duration of the right of representation, is not as in the case of publication, divided into two periods of forty years after the death of the author, but is simply limited to eighty years from the date of the first publication, and is enjoyed by the author and his heirs or legal representatives.

The composer of a musical work can prohibit any extracts from or arrangements or variations of his work.

Artistic copyright.

In works of art the duration of the artist's rights, is the same as in works of literature, *i.e.* for the life of the author and eighty years. Three copies of every work must be deposited to secure copyright, and such copies may be made by photography or any other method. so long as the identity of the work be made certain. The work of an artist cannot be copied or reproduced by any process without his consent, during the ten years immediately following the publication. After this period a picture may be engraved or a statue drawn, these cases being put on

CAP. XVIII. the same footing as the translation of a work of literature.

Switzerland.

Copyright in Switzerland.

The law of copyright in Switzerland is laid down by a concordat entered into by fourteen separate cantons and approved 3rd December, 1856, by the Federal Council. Its provisions are as follows: authors and artists have the

Works protected.

exclusive right of publishing or authorizing publication of their works. This right extends to all works of literature or art printed or published in any canton. Swiss citizens who publish works abroad may acquire the rights of an author in Switzerland, by sending a copy of the work to their government, and by declaring themselves as the authors (art. 1).

Duration.

Copyright lasts for the life of the author, and if he die before the end of thirty years from the date of publication, then for the remainder of this period the copyright vests in his heirs or assigns. If no publication of the work took place during the life of the author, his heirs or legal representatives have the exclusive right of publishing the work during the ten years immediately following his death: if they avail themselves of this right the work is protected for thirty years dating from the death of the author (art. 2).

Piracy and infringement.

Reproductions which require intellectual work are not considered infringements of an author's rights: they are, on the contrary, equally protected with the original (art. 3).

It is not an infringement of copyright

(1.) To print the transactions and Acts of government and public authorities, unless they have previously been entrusted for publication to some person.

(2.) To print speeches made in public.

(3.) To reproduce newspaper articles.

(4.) To insert extracts from a work in a collection of passages from different authors (art. 4).

Penalties.

The penalty for illegal publication of a work of litera-

ture or art, or for knowingly selling a pirated work is, by fine up to 1000 francs, and the confiscation of the unsold copies for the benefit of the author (art. 5). The author is also entitled to damages (art. 6). Cases of piracy are tried in the courts of the canton in which such piracy takes place (art. 7).

Reciprocity.

The protection afforded to literary and artistic property may be extended by treaty to the productions of foreign states who exercise reciprocity, and who by moderate duties on the productions of Swiss literature and art facilitate their sale; but such treaties will only bind the separate cantons in so far as they agree to them (art. 8).

Turkey.

Former and present law.

Before the year 1872 the copyright of authors was protected by two decrees of January, 1850, and 19th April, 1857. The first applied only to authors paid by government, the second was general. These measures were very imperfect, and merely made a publisher liable to damages for issuing more copies of a work than had been agreed upon between himself and the author. The right was also reserved to the state of publishing any work which it should think proper on payment of an indemnity, the amount to be fixed by the state itself, to the author. In the year 1872, however, a copyright law was sanctioned by the Sultan. The provisions of the new law are simple but comprehensive.

Duration.

The exclusive property in an original work, with the right of translation, is conferred on the author, his heirs or assigns, for forty years; for translations the privilege is to be for only half that period. All rights can be sold for the whole, or any part of the term. For publishing a translation of any work belonging to the government, permission must be obtained from the Ministry of Public Instruction.

Piracy.

Piracy of copyright will be punished under article 141 of the penal code, and every author or translator must conform to the press regulations.

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Russia.

Literary copyright.

In Russia literary copyright is regulated by the pena code of 1832, and the ukases of 26th January, 1846, and of 7th May, 1857.

What protected.

Speeches and lectures are comprised in works of literature. Translations are protected like original works, and an author cannot prevent another person from publishing a translation of his work, but an exception is made in favour of authors of scientific works involving research. They may reserve the right of translation but must make use of it within two years.

Private letters cannot be published without the mutual consent of the writer and receiver.

The copyright of musical compositions is the same as for literary works, and no musical composition can be arranged for or adapted to another instrument without the consent of the composer.

Duration.

Copyright lasts for the life of the author, and after his death is enjoyed by his heirs or assigns for fifty years. In the case of posthumous works this term only commences to run from the date of publication. Learned societies have the exclusive right of reproduction for fifty years from date of publication.

Registration.

Authors must register their works in order to secure the copyright, but no deposit of a copy is required. Every assignment of copyright must be in writing.

Assignment.

The assignment of a work to a publisher gives him the right to publish only one edition, unless a stipulation to the contrary be expressly made. Five years after the Censure Office has authorized the sale of this edition, the author or his heirs can publish a new one. The author can also publish a new edition before the expiration of these five years if he has made changes in or additions to his work equivalent to two-thirds of the whole. The author of articles in reviews and periodicals retains the right to publish them in a separate form

unless there be an agreement to the contrary. Manuscripts cannot be seized by creditors.

Remedies of the author against piracy.

No prosecution for piracy can take place except on the complaint of the injured party, and this complaint must be formulated within two years from the commission of the offence, or within four years if the plaintiff reside abroad. The trial is held in the courts of the province in which the defendant is domiciled.

Penalties.

Besides confiscation of pirated copies, damages may be awarded to the plaintiff in cases of piracy.

Any person guilty of the fraudulent publication in his own name of the work of another, or of selling a manuscript, or the right of publishing it, to several persons, was, by article 742 of the penal code of 1832, liable to deprivation of his civil rights, to corporal punishment, and to transportation into Siberia in addition to the pecuniary penalties. But the penal code of 1857 does not contain this provision.

Dramatic and musical works.

There are no provisions regulating the right of representation of dramatic and musical works.

Artistic copyright. What protected.

The same laws which regulate literary copyright apply also to artistic copyright. Pictures, drawings, engravings, maps, statues and other works of art enjoy the same protection as works of literature. An architect's plans are also his property, and it is not lawful to construct a building on the lines of another designed by some one else.

Piracy.

It is unlawful to reproduce a picture or any part of it by the same process without the artist's consent, or to copy it by engraving or drawing.

A sculptor's work may not be reproduced by a cast, nor in marble, nor in the form of a medallion, nor by an engraving, so long as the reproduction is on the same scale as the original. A sculptor is not allowed to copy portions of the work of another sculptor in order to introduce them in his own work.

In any case a piece of sculpture may be reproduced by a painting, and *vice versâ*.

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Works of art belonging to the government may be reproduced without consent of the artist.

The free use of works of art for application to industrial purposes is allowed by the law of 11th July, 1864.

Portraits and family pictures cannot be reproduced, even by the artist without the consent of the owners.

Assignment.

All assignments of right of reproduction must be in writing; on the death of an artist the assignee or legatee of the right of reproduction must give notice to the heirs within a year, or, if he reside abroad, within two years.

When an artist assigns or bequeaths his artistic copyright in a work, or the work itself, the copyright passes completely to such assignee and his heirs: but if the work be of such a nature that it can be reproduced in a complete collection of the artist's works, the law reserves to him the right to insert it in such collection. Works of art may be sold to pay the artist's creditors, but in such case the copyright does not pass.

Registration.

An artist in order to secure his copyright must, before publication, duly register it in his district with a detailed description. The fact of registration is then gazetted by the Academy of Arts.

Greece.

Copyright in Greece.

Copyright of all kinds in Greece is regulated by the Penal Code of 1833. Its provisions are general, and make no distinction between literary, artistic, or industrial copyright.

Duration.

The term of copyright in this country lasts only for fifteen years from the date of first publication. But the king can grant an extension in particular cases. Inventions are also protected under this law.

Reciprocity.

Any foreigner is protected for fifteen years, provided the Greeks enjoy protection in the country of which he is a native.

Brazil.

Brazil. There is copyright in works of literature for the life of the author and for ten years after his death. Foreign works have no protection whatever (*a*).

Republic of Chili.

Chili. Literary and artistic copyright lasts for the life of the author and for five years after his death—and the right of representation of dramatic and musical works is protected for the same period—foreign works published out of Chili have no protection whatever (*b*).

Japan.

Japan. Literary copyright is secured to the author and his heirs for thirty years, which period may be extended to forty-five years in the case of works of great utility. Translators are put on the same footing as authors (*c*).

Mexico.

Mexico. Literary copyright is perpetual, registration and deposit of copies is obligatory. The right of representation of dramatic and musical works lasts for the life of the author, and for thirty years after his death. Artists are also protected against piratical reproductions of their works (*d*).

The United States of Venezuela.

Venezuela. Literary and artistic copyright lasts for the life of the author, and for fourteen years after his death. Deposit and registration are necessary (*e*).

(*a*) Fliniaux, l. c. p. 402.
(*b*) l. c. p. 405.
(*c*) l. c. p. 424.
(*d*) l. c. p. 385.
(*e*) l. c. p. 421.

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Countries with no copyright laws.

In the following countries there is no law on copyright:

1. The Argentine Republic.
2. Egypt.
3. The Republic of Paraguay.
4. The Republic of Peru.
5. The Republic of Uruguay.

United States.

Copyright and its extent in the United States.

All statutes relating to copyright were repealed in 1870, and the entire law on the subject embodied in one Act. No change was made in the duration of copyright. To the subjects protected by previous statutes were added paintings, drawings, chromos, statues, statuary, and models or designs intended to be perfected as works of the fine arts.

In 1873–4 the copyright, with all other statutes of the United States, was revised.

Authors, inventors, designers, or proprietors of books, maps, charts, dramatic or musical compositions, engravings, cuts, prints, or photographs, or negatives thereof, or of any paintings, drawings, chromos, statues, statuaries, and of models or designs intended to be perfected as works of the fine arts, being citizens of the United States, or resident therein (*a*), and their executors, administrators, or assigns, are entitled to the exclusive right of printing, reprinting, publishing, completing, copying, finishing, and vending them, for the term of twenty-eight years from the time of recording the title thereof (*b*), and if the author, inventor, or designer, or any of them, where the work was originally composed and made by more than one person, be living, and a citizen of the United States, or resident therein, at the end of the term, or being dead

(*a*) *Keane* v. *Wheatley*, 9 Amer. Law Reg. 33, 45; *Boucicault* v. *Wood*, 16 Amer. Law Rep. 539.

(*b*) It seems that in the United States a title will not be protected under the copyright laws independent of the contents of the book. This was the decision of the United States Circuit Court in the recent Benn-Leclercq case.

shall have left a widow, or child, or children, either or all of them living, she or they are entitled to the same exclusive right for the further term of fourteen years, on complying with the terms prescribed by the Act of Congress within six months after the expiration of the first term. In order to acquire a copyright a person must be a resident in the country. A temporary residence there, even though with a declared intention of becoming a citizen, is not sufficient. Captain Marryat, the well-known novelist, a subject of Great Britain, and an officer under our Government, being temporarily in the United States, took the required oath of his intention to become a citizen, and then took out a copyright for one of his books and assigned the same to the plaintiff; but it was nevertheless held, that the author was not a "resident" within the meaning of the Act of 1831, so as to be entitled to a copyright in his book (*a*).

To acquire a copyright in the States a person must be a citizen.

But where the intention of continuing in the United States existed at the time of publication, the courts have held the author to be a resident within the meaning of the Acts. Thus in *Boucicault* v. *Wood* (*b*); it appeared that the plaintiff, who was a native of Great Britain, had been in the United States from 1853 to 1861, when he returned to the former country. During this period he had registered certain plays which he had written and taken the usual steps to secure the copyright. The defence was, that the plaintiff, being a foreigner, was not entitled to copyright in this country. The jury was directed to find whether Boucicault, when he entered his copyright, intended to make the United States his home. It was found that such intention then existed in his mind, and accordingly the copyright was held to be valid. The law on this point was expounded by Mr. Justice Drummond as follows: "No person is entitled to the benefit of these Acts unless he be at the time publishing the title a

(*a*) *Cory* v. *Collier*, 56 Niles Reg. 262; Betts, J. The assignee of the work composed by a non-resident alien cannot obtain a copyright in respect thereof.

(*b*) 2 Bliss. 38; 7 Am. Law Reg. N.S. 539, 545.

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citizen of the United States, or a resident therein. Residence ordinarily means domicile, or the continuance of a man in a place, having his home there. It is not necessary that he should be the occupant of his own house, he may be a boarder or a lodger in the house of another. The main question is the intention with which he is staying in a particular place. In order to constitute residence it is necessary that a man should go to a place, and take up his abode there with the intention of remaining, making it his home. If he does that, then he is a resident of that place. This question of residence is not to be determined by the length of time that the person may remain in a particular place. For example, a man goes into a place, and takes up his abode there with the intention of remaining, and if so, he becomes a resident there, although he may afterwards change his mind and within a short time remove. So if a person goes to a place with the intention of remaining for a limited time, although in point of fact he may remain for a year or more, still this does not constitute him a resident. So it is his intention accompanied with his acts, and not the lapse of time, which determines the question of residence. The plaintiff came to this country in 1853, and remained pursuing his profession as an actor and author till 1861; and if at the time of filing the title he had his abode in this country with the intention of remaining permanently he was a resident within the meaning of the law, even though he afterwards changed his mind and returned to England. If, however, he was a sojourner, or transient person, or at the time of the filing had the intention to return to England, he is not entitled to the protection of these laws."

Deposit of title and published copies.

No person is entitled to a copyright unless he has before publication delivered at the office of the Librarian of Congress, or deposited in the mail addressed to the Librarian of Congress at Washington, District of Columbia, a printed copy of the title of the book or other article, or a description of the painting, drawing, chromo,

statue, statuary, or a model or design for a work of fine art, for which he desires a copyright, nor unless he also, within ten days from the publication, delivers at the office above, or deposits in the mail addressed as aforesaid, two copies of such copyright book or other article, or in case of a painting, drawing, statue, statuary, model or design for a work of the fine arts, a photograph of the same (*a*).

Book of entry and attested copy.

The Librarian of Congress is to record the name of every copyright book or other article in a book to be kept for that purpose. And he is to give a copy of the title or description, under the seal of the Librarian of Congress, to the proprietor whenever he may require it (*b*).

Copies of copyright works to be furnished to the Librarian of Congress.

The proprietor of every copyright book or other article is to deliver at the office of the Librarian of Congress, or send to him by post within ten days after its publication, two complete printed copies thereof, of the best edition issued, or descriptions, or photographs of such article as above required, and a copy of every subsequent edition wherein any substantial changes may be made (*c*).

Penalty for omission.

For every failure to deliver or send as above either the published copies, or description, or photograph, the proprietor of the copyright is liable to a penalty of twenty-five dollars (*d*).

Assignment of copyright.

The resulting or contingent term secured to the author in case he shall be living at the time of the expiration of the first term, or if he be then dead to his widow, child or children if living, has been held not to pass under an assignment of "the copyright of the book," and that the word "copyright" embraces only the term then capable of being secured, which at the time of the contract constituted the copyright of the book (*e*), and it is doubtful whether a general assignment by the author of all his

(*a*) Sect. 4956, Revised Statutes of the United States, being the Act of July 8, 1870.
(*b*) Sect. 4957.
(*c*) Sect. 4959.
(*d*) Sect. 4960.
(*e*) *Pierpoint* v. *Fowle*, 2 Wood & Min. 23.

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interest in the copyright would deprive his widow and child or children living at that time in the event of the author's death (*a*).

It is not necessary that the assignee of an American copyright should be a citizen or a resident.

Publication of notice of entry for copyright prescribed.

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

Penalty for false publication of notice of entry.

A penalty of 100 dollars is imposed upon any person inserting or impressing such notice or words of the same purport in or upon any book, map, chart, musical composition, print, cut, engraving or photograph, or other article for which he has not obtained a copyright, half of such penalty to belong to the person suing for such penalty, and the other half to the use of the United States (*c*).

Damages and forfeiture for infringement.

The penalty for infringement of the copyright in a book is the forfeiture of every copy thereof to the proprietor, and the payment of such damages as he may recover in a civil action. The penalty for infringing

(*a*) See cases decided under a similar provision contained in the 8 Anne, c. 19; *Carnan* v. *Bowles*, 2 B. C. C. 80, and *Kennet* v. *Thompson*, there cited; and *Rundell* v. *Murray*, Jacob, 315.

(*b*) Sect. 4962 and Act of 1874, s. 1.

(*c*) Sect. 4963.

the copyright in any map, chart, musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts, is the forfeiture to the proprietor of the copyright of all plates on which the same shall be copied, and every sheet thereof either copied or printed, and of 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 the forfeiture of ten dollars for every copy of the same in his possession or by him sold or exposed for sale (*a*).

Dramatic compositions.

By the Act of Congress of the 18th of August, 1856, s. 1, it was declared that any copyright thereafter granted, under the laws of the United States, to the author or proprietor of any dramatic composition, designed or suited for public representation, should be deemed to confer upon the author or proprietor, his heirs or assigns, along with the sole right to print and publish the said composition, the sole right also to act, perform, or represent the same, or cause it to be acted, performed, or represented, on any stage or public place, during the whole period for which the copyright was obtained. The above provisions are re-enacted in the Act of 1870.

How to secure exclusive right of performance.

The exclusive right to perform a drama can only be secured by first publication and registration as a literary composition. Copyright in a dramatic composition carries with it the right of representation, which cannot be secured in respect of any play in manuscript only (*b*). No special conditions or requirements are prescribed for securing the right of representation. If the production be a "dramatic composition," it attaches simultaneously with the copyright in the same manner and on the same conditions.

(*a*) Sect. 4964–5.

(*b*) *Boucicault* v. *Hart*, 13 Blatchf. (Amer.) 47, practically overruling *Boucicault* v. *Wood*, 2 Biss. 34; *Roberts* v. *Myers*, 13 Monthly L. R. 396; *Boucicault* v. *Fox*, 5 Blatchf. 87; *Shook* v. *Rawkin*, 3 Cent. Law Jour. 210, 6 Biss. 477.

CAP. XVIII. Both rights begin with publication in print and continue for the same term. Neither is affected by public performance of the play before its publication in print.

The Act of Congress of the 8th July, 1870, is declared not to extend to prohibit the printing, publishing, importation, or sale of any book, map, chart, dramatic or musical composition, print, cut, engraving, or photograph, written, composed, or made by any person not a citizen of the United States, nor resident therein. Authors may reserve the right to dramatize or to translate their own works.

Damages for printing or publishing manuscripts.

A remedy is by the existing law (sect. 4967) provided for the unauthorized publication of a manuscript. It is declared that "every person who shall print or publish any manuscript whatever, without the consent of the author or proprietor first obtained, if such author or proprietor is a citizen of the United States or resident therein, shall be liable to the author or proprietor for all damages occasioned by such injury." This section is said to operate in favour of a resident assignee of a foreign author (*a*); but as copyright will not vest in a work written by a foreign author, and if section 4967, as is usually supposed, applies only to productions for which copyright may be obtained, it would appear that such section could give no redress for the unauthorized publication of a manuscript which a citizen or resident might have bought from a foreigner. The construction of the section is yet open for judicial determination.

(*a*) *Keene* v. *Wheatley*, 9 Amer. Law Rep. 45.

CHAPTER XIX.

ARRANGEMENTS BETWEEN AUTHORS AND PUBLISHERS.

Arrangements between authors and publishers.

A FEW remarks may, perhaps, be here advantageously offered on compacts, arrangements, and stipulations between authors and publishers, and we trust they may prove profitable both to the former and the latter.

In these days, when literature and commerce march in open array, and their pace is so rapid and great; when on the one hand a few authors write for fame, some for gain, and many for both; and on the other hand publishers regard their writings purely in a commercial point of view, estimating their worth (at least to them) by the amount of profit likely to accrue from the publication, two antagonistic parties frequently come in contact.

Authors who compose exclusively for fame are, on the assumption that they ever existed, rapidly becoming extinct, while those who write for gain are much on the increase. The spirit of the age is commerce, and almost every transaction of the present day is regarded in a commercial light (*a*).

Thus we have two parties in opposition: the one estimating the value of his work in proportion to his toil and labour in its composition, the other computing it in proportion as he conceives the public may become purchasers. The publisher could not undertake to requite or recompense the author according to the degree of exertion

(*a*) "Avarice," said Goldsmith, "is the passion of inferior natures; money, the pay of the common herd. The author who draws his quill merely to take a purse, no more deserves success than he who presents a pistol."—'An Inquiry into the Present State of Polite Learning,' chap. x.

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employed by him; for what amount of drudgery and toil may not be expended upon a work which would not even cover the expenses of printing and publication? Publishers invariably act like merchants, whose principle is to risk as little capital as possible, and to replace *that* with profit as early as feasible.

The reward due to the author.

The reward due to an author is thus justly referred to by Mr. Serjeant Talfourd: "We cannot decide the abstract question between genius and money, because there exists no common properties by which they can be tested, if we were dispensing an arbitrary reward; but the question how much the author ought to receive is easily answered: so much as his readers are delighted to pay him. When we say that he has obtained immense wealth by his writing, what do we assert, but that he has multiplied the sources of enjoyment to countless readers, and lightened thousands of else sad, or weary, or dissolute hours? The two propositions are identical, the proof of the one at once establishing the other. Why, then, should we grudge it any more than we would reckon against the soldier, not the pension or the grant, but the very prize-money which attests the splendour of his victories, and in the amount of his gains proves the extent of ours? Complaints have been made by one in the foremost rank in the opposition to this bill [a bill for the extension of copyright], the pioneer of the noble army of publishers, booksellers, printers, and bookbinders, who are arrayed against it, that in selecting the case of Sir Walter Scott as an instance in which the extension of copyright would be just, I had been singularly unfortunate, because that great writer received during the period of subsisting copyright an unprecedented revenue from the immediate sale of his works. But, sir, the question is not one of reward—it is one of justice. How would this gentleman approve of the application of a similar rule to his own honest gains? From small beginnings, this very publisher has, in the fair and honourable course of trade, I doubt not, acquired a splendid fortune, amassed by the sale of works, the property of the public—of works, whose

authors have gone to their repose, from the fevers, the disappointments, and the jealousies which await a life of literary toil. Who grudges it to him? Who doubts his title to retain it? And yet this gentleman's fortune is all, every farthing of it, so much taken from the public, in the sense of the publishers' argument; it is all profits on books bought by that public, the accumulation of pence, which, if he had sold his books without profit, would have remained in the pockets of the buyers. On what principle is Mr. Tegg to retain what is denied to Sir Walter? Is it the claim of superior merit? Is it greater toil? Is it larger public service? His course, I doubt not, has been that of an honest, laborious tradesman; but what has been its anxieties compared to the stupendous labour, the sharp agonies, of him whose deadly alliance with those very trades whose members oppose me now, and whose noble resolution to combine the severest integrity with the loftiest genius, brought him to a premature grave,—a grave which, by the operation of the law, extends its chillness even to the results of those labours, and despoils them of the living efficacy to assist those whom he has left to mourn him? Let any man contemplate that heroic struggle, of which the affecting record has just been completed, and turn from the sad spectacle of one who had once rejoiced in the rapid creation of a thousand characters flowing from his brain and stamped with individuality, for ever straining the fibres of the mind till the exercise which was delight became torture, girding himself to the mighty task of achieving his deliverance from the load which pressed upon him, and with brave endeavour, but relaxing strength, returning to the toil, till his faculties give way, the pen falls from his hand on the unmarked paper, and the silent tears of half-conscious imbecility fall upon it—and to some prosperous bookseller in his counting-house, calculating the approach of the time (too swiftly accelerated) when he should be able to publish for his own gain, those works fatal to life; and then tell me, if we are to apportion the reward

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of the effort, where is the justice of the bookseller's claim? Had Sir Walter Scott been able to see, in the distance, an extension of his own right in his own productions, his estate and his heart had been set free; and the publishers and printers, who are our opponents now, would have been grateful to him for a continuation of labour and rewards which would have impelled and augmented their own" (*a*).

Contracts between authors and publishers should be in writing.

Contracts between authors and publishers should be in writing—the Statute of Frauds applies to literary as well as other contracts (*b*). In *Sweet* v. *Lee* (*c*), it appeared that the agreement for the publication of a dictionary of legal practice was contained in a memorandum, which was signed with the initials of the publisher and of the author, and was to the effect that the latter should receive £80 a year for five years, and £60 a year for the rest of his life if he should live longer than five years. This was held to be void under the Statute of Frauds; because, being a memorandum of an agreement not to be performed within a year, no consideration was expressed on the face of it, and it was without any signature other than the initials of the parties. The plaintiff, therefore, was not entitled to damages claimed to have been sustained by the failure of the defendant to perform his agreement to prepare a new edition. Nor, although the contract was void, could the plaintiff, having paid for several years the sums mentioned in the memorandum, recover the money so paid on the ground of failure of consideration.

What necessary to satisfy the Statute of Frauds.

But the contract required to be in writing by the Statute of Frauds need not appear from one document,

(*a*) Speech in the Commons, April 25, 1838, 42 Parl. Deb. 560.

(*b*) But a contract by a printer to print, and find the paper for printing a number of copies of a work is not a contract for the sale of goods within the 17th section of the Statute of Frauds as extended by the 9 Geo. 4, c. 14, s. 7; and the printer consequently may recover the price in an action for work, labour, and materials, where the contract is a verbal one: *Clay* v. *Yates*, 1 H. & N. 73. And a printer who is employed to print certain numbers, but not all consecutive numbers, of an entire work has a lien upon the copies not delivered for his general balance due for printing the whole of those numbers: *Blake* v. *Nicholson*, 3 M. & S. 167. But it seems that by the custom of trade a printer cannot recover for the printing of a work before the whole is completed and delivered: *Gillett* v. *Mawman*, 1 Taunt. 137; see also *Adlard* v. *Booth*, 7 C. & P. 108.

(*c*) 3 Man. & Gr. 452.

it may be collected from any number of documents. Thus, where a publisher proposed to publish by subscription an illustrated edition of Shakespeare, to appear in numbers at the price of three guineas a number, two guineas to be paid at the time of subscribing, and the remaining guinea on the delivery of each successive number; the prospectus stating "that one number at least should be published annually," and that the proprietors were confident that they should be able to "produce two numbers within the course of every year;" and the defendant, wishing to become a subscriber, wrote his name in a book kept for the purpose in the plaintiff's shop, entitled 'Shakespearian subscribers, their signatures;' printed copies of the prospectus lying at the same time in the plaintiff's shop, but neither prospectus nor book of subscribers containing any reference the one to the other, it was held that the contract of the defendant was not one to be performed within the space of a year from the making thereof, and therefore that, in order to be enforceable by action, it must be writing. The defendant having refused to continue to take in the numbers of the book, an action was brought against him by the publisher; but it was held that the action could not be maintained for want of a written agreement or memorandum signed by the party to be charged therewith, as required by the 4th section of the Statute of Frauds. The prospectus contained the terms of the agreement, and if it could be coupled with the book of subscribers in which the defendant had signed his name, it would be a sufficient memorandum of the agreement to satisfy the statute, but as it contained no reference to the book, nor the book to it, there was no connection in sense between them which would enable the court to couple them together, and treat them as one document; and parol evidence to establish such a connection was inadmissible (*a*). "If," said Le Blanc, J. "there had been anything in the book which had referred to the particular prospectus, that

(*a*) *Boydell* v. *Drummond*, 11 East, 142.

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would have been sufficient; if the title to the book had been the same with that of the prospectus, it might, perhaps, have done; but as the signature now stands, without reference of any sort to the prospectus, there was nothing to prevent the plaintiff from substituting any prospectus, and saying that it was the prospectus exhibited in his shop at the time, to which the signature related; the case, therefore, falls directly within this branch of the Statute of Frauds."

An action maintainable for not supplying a work agreed to be furnished.

If an author agree in writing to supply a bookseller or publisher with a manuscript of a work to be printed by the latter, an action for damages can be maintained for refusing to furnish the same (*a*), provided the work be one which, if published, would not be libellous (*b*), or would not subject the author to punishment (*c*).

Should the work be stopped the author must be paid for work already done.

Where, however, the author was engaged for a certain sum to write an article to appear, among others, in a work called the 'The Juvenile Library,' and before he had completed his article, and before any portion of it had been published, the work in which it was to have appeared was discontinued, Lord Chief Justice Tindal held that the publishers were not entitled to claim the completion of the article in order that it might be published in a separate form for general readers, but were bound to pay the author a reasonable sum for the part which he had prepared (*d*).

Payment to author's representative for part of work finished.

Where a work called the 'Elements of Mechanical

(*a*) *Gale* v. *Leckie*, 2 Stark, N. P. C. 107; the Court of Chancery, however, could not compel him: *Clarke* v. *Price*, 2 Wills. C. C. 157.

(*b*) *Lyne* v. *Sampson Low & Marston*, 'Times,' 17th Feb., 1873.

(*c*) *Gale* v. *Leckie*, *supra*, and see *Brook* v. *Wentworth*, 3 Anstr. 881; *Cowan* v. *Milburn*, L. R. 2 Ex. 230; 36 L. J. (Ex.) 124; 16 L. T. (N.S) 290. A contract for the publication of a book which it is unlawful to publish is not valid. But where this defence is set up, and the work is not produced, and no evidence of its character is offered, the jury are not to pronounce that the book is obnoxious: *Gale* v. *Leckie*, *supra*. A printer cannot maintain an action against a publisher for money due for printing an obscene book: *Poplett* v. *Stockdale*, 1 Ryan & M. 337. But where a printer, after printing part of a book, received the manuscript of the other part and found it to be libellous, it was held that he was not bound to print the libellous part, and was entitled to recover for what he had printed: *Clay* v. *Yates*, 1 Hurl. & N. 73; *Lyne* v. *Sampson Low & Marston*, *supra*.

(*d*) *Planché* v. *Colburn*, 5 Car. & Pay. 58; on ap. 8 Bing. 14.

Philosophy' was published in parts, the agreement between the author and publisher being that each part should be paid for when issued, and after the publication of a complete part the progress of the work was interrupted by the death of the author, it was held that repre-sentatives of the deceased author were entitled to payment of the stipulated price of the published part (*a*).

No specific performer of agreement to write book.

A Court of Equity will not, however, decree specific performance of an agreement to write a book (*b*). It has no power to go so far, and were it capable of such an order, there would be no means of enforcing it.

In the case of *Clarke* v. *Price* (*c*), the defendant, Mr. Price, entered into an agreement with the plaintiffs, dated the 27th of April, 1814, "to compose and write the cases in the Court of Exchequer, commencing with Easter Term, 1814, and to be published periodically," on the terms of sharing the profits; and it was agreed that the plaintiffs should be at liberty to relinquish the under-taking if they should think it advisable. As the first and second volumes were published, the defendant, for certain considerations, assigned the copyright in them to the plaintiffs. Afterwards, in 1817, the terms of the arrange-ment were altered, and the following agreement was executed:—"Memorandum, Mr. Price agrees with Messrs. Clarke to receive for his interest in the agreement for the Exchequer Reports, dated the 27th of April, 1814, com-mencing at the third volume, the sum of, &c. Mr. Price agrees to give any further assignment of the copyright and future interest to Messrs. Clarke at their expense." The defendant having subsequently entered into an agree-ment with other publishers, who were made defendants, to report the cases in the Exchequer; the bill was filed,

(*a*) *Constable* v. *Robinson's Trustees*, 14 Fac. Dec. 166, 1 June, 1868. One judge, however, dissented, thinking the contract was one for the entire work, and that the object of partial payment was the accommodation of the author, and not any qualification of the original obligation.

(*b*) Specific performance of an agreement for the sale of copyright (even though personal chattels, such as stereotype plates, printed sheets, &c., are included in the contract) will be decreed: *Thombleson* v. *Black*, 1 Jur. 198.

(*c*) 2 Wills. C. C. 157.

CAP. XIX. praying to have a specific performance of the agreements of 1814 and 1817, by permitting the plaintiffs to print and publish the reports of cases in the Exchequer so long as he should continue to compose and write them, upon the terms of those agreements, and by executing an assignment of the copyright; and also praying an injunction. *Morris* v. *Colman* (*a*), was relied upon. Lord Eldon, C., dissolved an injunction which had been obtained *ex parte*, apparently assuming that the agreement bore the construction contended for by the plaintiffs. His lordship said: "The case of *Morris* v. *Colman* is essentially different from the present. In that case Morris, Colman, and other persons were engaged in a partnership in the Haymarket Theatre, which was to have continued for a very long period, as long, indeed, as the theatre should exist. Colman had entered into an agreement which I was very unwilling to enforce—not that he would write for the Haymarket Theatre, but that he would not write for any other theatre. The court could not compel him to write for the Haymarket Theatre, but it did the only thing in its power—it induced him indirectly to do one thing by prohibiting him from doing another. There was an express covenant on his part contained in the articles of partnership. But the terms of the prayer of this bill do not solve the difficulty, for if this contract is one which the court will not carry into execution, the court cannot indirectly enforce it by restraining Mr. Price from doing some other act. This is an agreement which expressly provides that Mr. Price shall write and compose reports of cases to be published by the plaintiffs. In *Morris* v. *Colman* there was a decree directing the partnership to be carried on, it could not be put an end to, and it was the duty of the parties to interfere. But I have no jurisdiction to compel Mr. Price to write reports for the plaintiffs; I cannot, as in the other case, say that I will induce him to write for the plaintiffs by preventing him from writing for any other person, for that is not the nature of the agreement. The only means

(*a*) 18 Ves. 437.

of enforcing the execution of this agreement would be to make an order compelling Mr. Price to write reports for the plaintiffs, which I have not the means of doing. If there be any remedy in this case, it is at law. If I cannot compel Mr. Price to remain in the Court of Exchequer for the purpose of taking notes, I can do nothing. I cannot indirectly, and for the purpose of compelling him to perform the agreement, compel him to do something which is merely incidental to the agreement. It is also quite clear that there is no mutuality in this agreement."

An author may bind himself not to write upon a particular subject.

But an author may bind himself not to write upon a particular subject, or only for a particular person; for a bond or covenant to that effect would not resemble one in restraint of trade.

Thus, in the case quoted in *Clarke* v. *Price*, where Colman had contracted with the proprietors of the Haymarket Theatre not to write dramatic pieces for any other theatre, the Lord Chancellor maintained that such a contract was not unreasonable upon either construction, whether it was that Mr. Colman should not write for any other theatre without the licence of the proprietors of the Haymarket Theatre, or whether it gave to those proprietors merely a right of pre-emption. If, said he, Mr. Garrick were now living, would it be unreasonable that he should contract with Mr. Colman to perform only at the Haymarket Theatre, and Mr. Colman with him to write for that theatre alone? Why should they not thus engage for the talents of each other? I cannot see anything unreasonable in this; on the contrary, it is a contract which all parties may consider as affording the most eligible, if not the only, means of making this theatre profitable to them at all as proprietors, authors, or in any other character which they are by the contract to hold (*a*).

(*a*) *Morris* v. *Colman*, 18 Ves. 437. In *Montague* v. *Flockton*, L. R. 16 Eq. 189, it was held that a contract between a manager of a theatre and an actor must be understood to be for the exclusive services of the latter during the period for which he had been engaged, though there was no express agreement that he should not act elsewhere.

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But court will not interfere until there be an actual publication.

But in *Brooke* v. *Chitty* (*a*), where the defendant had undertaken not to write or edit any work upon the criminal law, except a work of which the plaintiff had purchased the copyright, and an advertisement of an edition of Burn's 'Justice of the Peace,' by the defendant, had appeared, Lord Brougham refused to grant an injunction, observing that the defendant was at liberty to write in his closet what he pleased, and that the court would not interfere until there was a violation of the alleged undertaking by actual printing and publication.

So, where an author sells the copyright of a work (*b*) published under his own name, and covenants with the purchaser not to publish any other work to prejudice the sale of it, it seems that another publisher, who has no notice of this covenant, may be restrained from publishing a work subsequently purchased by him from the same author, and published under his name, on the same subject, but under a different title, and though there be no piracy of the first book (*c*).

Independent of agreement to the contrary, author at liberty to publish a continuation of his work.

But where no such covenant had been entered into and the publisher had agreed with an author for an edition of a history to be written by the latter, in four volumes, and had obtained subscriptions for all that could fall within his edition, the court held that the author was at liberty to publish a continuation of the history which embraced part of the period and also much of the matter contained in the last of the four volumes (*d*).

'The Edinburgh Philosophical Journal.'

An arrangement was entered into between Dr. Brewster and Professor Jameson, on the one part, and an Edinburgh publishing firm on the other part, for the publication of a

(*a*) 2 Cooper's Cases, 216; see *Brook* v. *Wentworth*, 3 Anstr. 881.

(*b*) A contract for sale of a copyright is enforceable in equity: *Thombleson* v. *Black*, 1 Jur. 198.

(*c*) *Barfield* v. *Nicholson*, 2 Sim & Stu. 1; 2 L. J. (Ch.) 90. But where, in an action by several plaintiffs for piracy of copyright, it appeared that the defendant, the author, had published the work in question pursuant to the conditions of a *cognovit* given by him to one of the plaintiffs and another person, in an action for not performing an agreement to write the work in question, it was held that this was a sufficient defence: *Sweet et al.* v. *Archbold*, 10 Bing. R. 133; cited Curtis on Copy. 231.

(*d*) *Blackie & Co.* v. *Aikman*, May 26, 1827; 5 Scs. Cass. 719 (N.E.) 671.

work to be edited by the former, called 'The Edinburgh Philosophical Journal,' the agreement to be binding for five years, or till the termination of the twentieth number of the journal. On the title-page the journal was stated to be "conducted by Dr. Brewster and Professor Jameson." After the twentieth number had appeared, Dr. Brewster, having differed with the firm, published a prospectus of "No. 1 of the 'New Series of the Edinburgh Journal,' conducted by Dr. Brewster," whereupon the firm presented a bill of suspension and interdict of a work under this title, on the ground that they were the proprietors of the original journal, the publication of which they intended to continue, and that the proposed work was an invasion of their property. The Lord Ordinary, on the ground that the copyright of the publication in question was the property of the complainers, passed the bill, and granted the interdict. The Court of Session recalled the interlocutor as deciding the question to be discussed on the passed bill; but at the same time remitted to pass the bill and continue the interdict (*a*).

'The London Journal.'

Where, in 1857, the defendant, being the proprietor of a weekly publication, 'The London Journal,' the price of which was 1*d.*, assigned his copyright and interest therein to the plaintiff for £24,000, and entered into a covenant with the plaintiff that he would not directly or indirectly, alone or in partnership with any other person or persons, engage himself or be concerned in bringing out or publishing any weekly periodical of a nature similar to 'The London Journal,' selling at 1*d.* per copy, or commit any act or default which might tend to lessen or diminish the sale or circulation of the said periodical, or the profit to be derived by the plaintiff from the future printing or publishing thereof, and in May, 1859, the defendant issued an advertisement announcing the publication by him, on the 1st of June following, of a daily newspaper, to be called the 'The Daily London Journal,' and to be sold at 1*d.*, the plaintiff obtained an

(*a*) *Constable* v. *Brewster*, 3 Scotch Scs. Cass. 215.

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injunction. The injunction was appealed against, but without effect. Sir J. L. Knight Bruce, L.J. (*dissentiente* Sir G. J. Turner, L.J.), confirming the order, upon the plaintiff undertaking to abide by any order the court might make as to damages, and to bring an action against the defendant within one week (*a*).

'London Society.'

So also in the case of *Clowes* v. *Hogg* (*b*), an injunction was applied for on behalf of Messrs. Clowes and Messrs. Wrigley, the proprietors of a magazine called 'London Society,' to restrain the defendant, Mr. James Hogg the younger, from publishing a magazine under the name of 'English Society,' or with a cover only colourably differing from that used for the plaintiffs' magazine. It was only sought to restrain the defendant from selling the Christmas number of his intended magazine with a cover similar to that used by the plaintiffs. 'London Society' was brought out by the defendant in its present form in 1863, but some time afterwards Messrs. Hogg, of whose firm the defendant was a member, became indebted to Messrs. Wrigley, paper makers, and a mortgage of the magazine was executed as part of an arrangement to pay the debt, the defendant at the same time entered into a covenant not at any time to do, or cause to be done, anything which might injure the said publication or decrease its value. The copyright in the magazine was subsequently assigned to the plaintiffs absolutely, subject to the before-mentioned mortgage. The magazine continued to be edited by the defendant, and was published at 217 Piccadilly. In May, 1870, the plaintiffs, under the terms of their agreement with the defendant, gave him three months' notice of dismissal, and informed him that the magazine, 'London Society,' would in future be published by Messrs. Bentley, and would be edited by Mr. Blackburn. Upon this intimation the defendant proceeded to make arrangements for bringing out another magazine,

(*a*) *Ingram* v. *Stiff*, 5 Jur. (N.S.) 947; 33 L. T. (N.S.) 195.
(*b*) W. N. (1870) V.-C. M. 268; see *Hogg* v. *Kirby*, 8 Ves. 115. And see *Sedon* v. *Serrate*, cited 2 V. & B. 220.

entitled 'English Society,' and upon the termination of his notice of dismissal, he issued a circular in terms almost identical with the circular issued when the plaintiffs' magazine was first published, and which, it was alleged, contained expressions indicating that the defendant's magazine was a substitute for, or a continuation of, the plaintiffs' magazine; and the defendant further threatened that he should endeavour to drive the rival publication out of the field. The defendant stated in his circular that he had ceased to be connected with 'London Society,' but proposed to carry into the new magazine whatever knowledge and spirit he had been able to impart into the old work, and announced that, with the aid of the well-known masters of the pen and pencil with whom he had so long been associated, he proposed "to continue all those sketches of London society and those studies of English life for which we have won some reputation." The covers of the two magazines had a general resemblance in colour, but the defendant's cover exhibited the picture of a lady in the place where a coat of arms appeared upon the plaintiffs' magazine. Vice-Chancellor Malins said, if the question had arisen between two independent publishers, he should have had some difficulty in deciding that the cover of the defendant's magazine was so close an imitation of that of the plaintiffs' as to entitle him to an injunction; but as the defendant had entered into a covenant not to do anything to injure the magazine entitled 'London Society,' which covenant he thought was still in force so long as there was any money due upon the mortgage, and as the whole course of conduct pursued by the defendant evinced, in his opinion, an evident intention on the part of the defendant to injure the sale of the plaintiffs' magazine, and to lead the public to believe that his magazine was a continuation of, or a substitute for, the magazine of the plaintiffs', he had no hesitation in granting the injunction. But since there had been some amount of delay by the plaintiffs, in consequence of which the defendant had been induced, as

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he alleged, to expend a large sum of money in preparing the January number for publication, he thought it would be right to allow that number to appear in its intended form.

As to the alteration of an author's work by another.

When a publisher is the absolute owner of the copyright, he is entitled, without the consent of the author, to publish successive editions of the work with additions and corrections; and, in bringing out new editions, may make such omissions and other changes in the original as will not injure the reputation of the author. But such revision when done by another, cannot lawfully be represented as having been made by the author of the original: and if the publisher issues a new edition under the author's name so incorrect as to be injurious to the author's reputation, he renders himself liable to an action for damages (*a*).

When, however, a portion of the work is written to be published under the name of another, the author would have no remedy in case of its alteration or variation (*b*). This was decided in *Cox* v. *Cox* (*c*). The defendant, a house agent, having prepared a book on the sale of estates, applied to the plaintiff, a barrister, to correct the work, and to supply the legal matter necessary to complete it, for which the plaintiff was to be paid a certain remuneration, according to the number of pages the work might contain. "No agreement," said the Vice-Chancellor in passing judgment, "was come to as to the name under which the work was to appear. The case, therefore, stood thus: The defendant said, 'I am going to write a work, which you shall correct and put into shape, and a part of which you shall supply for a certain remuneration.' If that be so, the plaintiff was evidently in the subordinate position of assisting in the production of a work which was to come

(*a*) See *Archbold* v. *Sweet*, 1 Moo. & Rob. 162; 5 Car. & Pay. 219.

(*b*) The name of the editor appearing upon the title-page forms no part of the title; and the Master of the Rolls refused to restrain by injunction the proprietors of a journal from omitting the publication of the editor's name on the title-page, although the agreement between the proprietors and editor provided that the title of the journal should not be altered without mutual consent: *Crookes* v. *Petter*, 6 Jur. (N.S.) 1131.

(*c*) 11 Hare, 118.

out in the name and as the work of the defendant. The work would be partly the defendant's own composition, and it would be partly the work of the plaintiff; but it was to come out as one entire publication, and to be paid for at one uniform rate. The bulk of the matter was apparently to be supplied by the defendant. The plaintiff employed himself in the preparation of a treatise on the law of vendor and purchaser and landlord and tenant, the whole of which the defendant desired to have compressed into one printed sheet. The plaintiff, on the other hand, thought that no information of value on the legal incidents of the property treated of could be condensed within that compass, and he extended this portion of the work to three sheets and a half. The defendant then said: 'If you will reduce this matter to one-half of its present magnitude, I am willing to print it; if not, I decline to print it at all.' This was an absolute rejection of the plaintiff's contribution, except upon the terms of reducing it in quantity to the extent which the defendant required. The plaintiff, on the other hand, was resolved that the whole should be printed or none. There was at this point of the transaction great difficulty in the way of any arrangement. The defendant said, 'I will have only one sheet and three-quarters of legal matter.' The plaintiff insisted that he should have three sheets and a half, or none. Then what followed? The plaintiff looked over the manuscript again, but did not reduce it to the required dimensions; and the defendant, although it had not been so reduced, took the manuscript in the state in which it had been left (which he could only have been entitled to do under the contract), and he began to print the work. The plaintiff proceeded to correct the proof sheets; but (as he states), when he began to find that the legal portion of the work was introduced in a mutilated form, he intimated his refusal to consent to any alteration; and in this state of things the application is made for the injunction. I have stated what appears to me to be the substance of the contract between the parties, up to the time of the discussion as to the space which the

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legal matter should occupy; and that contract the plaintiff has, by the fourteenth paragraph of the bill, treated as subsisting, for he thereby claims £60 as the unpaid part of the remuneration on the whole contract. On the other hand, the defendant, having taken the manuscript and used it, cannot, I think, dispute his liability to pay for it, according to the terms of the contract. But that would be a question for a court of law. Something was said with regard to the possible effect of the alteration of the plaintiff's portion of his work, as affecting his reputation; but, as it was held in Sir James Clarke's case (*a*), the possible effect on reputation, unless connected with property, is not a ground for coming to this court, though it may be an ingredient for the court to consider when the question of a right of property also arises. . . . . A serious question was then adverted to—but it is one which does not arise in this case—how far a party who had purchased a manuscript has a right to alter it, and produce it in a mutilated form?—how far, in a case in which the property has completely passed, it is to be assimilated to a case of goods sold and delivered, and thenceforward in the complete dominion of the purchaser? A qualified contract may be made; an essay may be supplied to a magazine or an encyclopædia, on the understanding that it is to be published entire; and it may be accepted by the editor, and paid for as what it purports to be. In the instance of an essay which had been accepted in that shape, the question might arise whether any curtailment could be allowed under that special contract. But here there is no such special contract. The contract is, that the plaintiff shall supply the defendant with the matter which is required, in such a form as to enable the defendant to publish it as his own. I can find no circumstances from which any such special contract as I have mentioned can be inferred. The plaintiff has, indeed, sought to make it a stipulation that his contribution of the legal materials shall not be published otherwise than entire; but this stipulation has no founda-

(*a*) *Clarke* v. *Freeman*, 11 Beav. 112.

tion in the original contract, upon which his case rests. It may well be that this part of the work may suffer in value from the alterations made by the defendant, but no one will probably expect to find the law set forth with any great amount of precision in a work issued by a house agent for the guidance of his customers in dealings of a simple character. If any such mistakes should occur in the legal portion of the work, as the plaintiff apprehends, he will have the remedy in his own hands, by correcting the errors in a subsequent work, in which he may publish his treatise in a distinct form."

The plaintiff would have had this right by analogy to the principle that a publisher acquiring from an author a right to publish a treatise in a particular work, such as in the 'Encyclopædia Britannica,' would not be entitled to make the publication in another work not embraced in the contract, nor to publish generally beyond his licence (*a*). But it must be borne in mind that the opportunity of correcting the errors by separate publication could not have arrived until the expiration of twenty-eight years from the first publication.

Where agreement is for a specified number of copies.

Where the agreement is for the exclusive publication of a specified number of copies, that number only can be printed and sold, and until their sale the author cannot revoke the authority given to the publishers, or himself publish the work.

An agreement that the publisher shall publish a second edition, if demanded by the public, and print as many copies as they can sell, gives them the right, when such demand arises, to publish and sell as many copies as can properly be considered to belong to that edition, and to prevent the author or any other person from publishing until such copies shall be sold (*b*).

Agreements as to style of publication.

The publisher is bound to observe the terms of the contract between himself and the author as to the manner

(*a*) *Stewart* v. *Black*, 9 Sess. Cas. 2nd Series, 1026; cited Phillips on Copy. 178. As to bookseller's lien on the copyright for his disbursements, see *Brook* v. *Wentworth*, 3 Anstr. 881.

(*b*) *Pulte* v. *Derby*, 5 McLean (Amer.) 328.

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and style of the publication, and the price at which it shall be issued to the public, but if the price at which the work is to be sold is not fixed by the agreement or otherwise arranged by the author and publisher, the latter is the proper person to determine the same. At the same time he would not be permitted to fix upon a style, or sell at a price, which would be clearly injurious either to the literary reputation or the pecuniary interests of the author without his consent.

When neither the time during which the publication is to last, nor the number of editions or copies to be published, is specified, the publisher is not bound to publish more than the first edition; and the author, by giving proper notice, may end the contract and prevent the publication of any further editions (*a*). But the publisher is at liberty to continue publishing successive editions on the terms of the contract until the receipt of such notice: and the author is not entitled to restrain the publication or sale of any edition on which the publisher has incurred expense before receiving notice to end the agreement (*b*).

After parting with copyright, author cannot reproduce matter in any other book.

After an author has parted with the copyright in a book, he is not at liberty to reproduce substantially the same matter in another work. Even in the absence of any special agreement, the second publication would be an infringement of the copyright in the first (*c*).

A writer agreed with a publisher to edit a translation of Montaigne, adding notes and a biographical sketch of the author, for a particular sum, which was to be increased by other sums as further editions should be published. It was intended that the publisher should have the sole right of multiplying copies of the work, but there was no assignment to him of the copyright. After the publisher's death, his widow and executrix, with the author's

(*a*) *Reade* v. *Bentley*, 3 K. & J. 271; 4 Id. 656; *Warne* v. *Routledge*, L. R. 18 Eq. 497.
(*b*) *Reade* v. *Bentley*, *supra*.
(*c*) *Rooney* v. *Kelly*, 14 Ir. Law Rep. (N.S.) 158; *Colburn* v. *Simms*, 2 Hare, 543.

knowledge and assent, registered the copyright in her own name. On the publication of a fresh edition, the widow paid the author money, and gave him copies of the work on the same terms as were contained in the agreement made with her husband in his lifetime, and on three occasions, when the author claimed remuneration on those terms, she did not repudiate all liability, but disputed merely the amount. This was held to be evidence from which a jury might infer an agreement on the part of the widow to remunerate the author on the same scale as in the agreement with her husband, in consideration of the author assenting to her registering the copyright in her own name (*a*).

Warranty on sale of copyright.

Where the executor and son of a deceased author, in reply to an offer from a publishing house relating to one of his father's works, replied that he would be happy to treat with them "respecting the copyright" in it; and, in another letter, said he had accepted their offer "for the exclusive right of publishing it," and gave a receipt for the money paid "for permission to publish the work so long as the copyright may endure; that right to be exclusively their own for ten years from this date," it was held that this amounted to an express warranty of title, and an equitable assignment of the copyright having, unknown to the executor, been previously made to another publisher, the executor was held liable to an action for breach of the warranty (*b*).

Copyright of articles in the proprietor of periodicals.

A person may be the proprietor of a copyright in the separate parts of a periodical simply by reason of his employment of the writers (*c*). It appears but reasonable, that where the proprietors of a periodical employ a gentleman to write a given article, or a series of articles or reports, expressly for the purpose of publication therein, to imply that the copyright of the articles so expressly written for such periodical, and paid for by the proprie-

(*a*) *Hazlett* v. *Templemore*, 13 L. T. (N.S.) 593.
(*b*) *Sims* v. *Marryatt*, 17 Q. B. 281.
(*c*) But see Jervis, C.J., in *Shepherd* v. *Conquest*, 25 L. J. (C.P.) 127 17 C. B. 427.

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tors and publishers, shall be the property of such proprietors and publishers; otherwise the author the day after his article had been published by the persons for whom he contracted to write it, might republish it in a separate form, or in another serial, and there would be no correspondent benefit to the original publishers for the payment they had made (*a*).

How far proprietor of periodical can interfere with editor.

Without determining the extent to which the owners of the copyright in a journal are justified in interfering with the editor in his editorial capacity, where the remuneration of the editor depends upon the success of the journal, the court refused to restrain the proprietors from altering articles proposed to be inserted by the editor, or inserting others contrary to his wish, it being the province of a jury to determine the amount of damage, if any, which the editor sustained by reason of the conduct of the proprietors (*b*).

Where an editor and publishers have formed a partnership for the publication of a magazine of which they are joint owners, the editor, having taken steps to dissolve the partnership with the view of establishing another periodical, is not at liberty to advertise the discontinuance of the first magazine. The title of the latter and the right to publish it are partnership property, and may be sold for the benefit of the partners. But the editor may advertise its discontinuance by himself, or as far as he is concerned (*c*).

Construction of agreements between authors and publishers.

Should an author, in consideration of a sum of money paid to him, agree that certain persons shall have the sole power of printing, reprinting, and publishing a particular work for all time, that would be parting with the copyright; but if the agreement be that the publishers,

(*a*) Where publishers of a magazine employ and pay an editor, and the editor employs and pays persons for writing articles in the magazine,—*Semble*, the copyright in such articles is not vested in the publishers under 5 & 6 Vict. c. 45, s. 18; *Brown* v. *Cooke*, 11 Jur. 77; 16 L. J. (N.S) Ch. 140. Printers have a lien on undelivered copies of a work printed by them, for the balance due in respect of the whole work: *Blake* v. *Nicholson*, 3 M. & S. 167.

(*b*) *Crookes* v. *Petter*, 6 Jur. (N.S.) 1131; 3 L. T. (N.S.) 225.

(*c*) *Bradbury* v. *Dickens*, 27 Beav. 53; *Hogg* v. *Kirby*, 8 Ves. 215.

performing certain conditions on their part, should, so long as they perform such conditions, have the right of printing and publishing the book, that is a very different agreement.

In the case of *Sweet* v. *Cater* (*a*) the agreement, after reciting that the author had prepared a tenth edition of his work, which the publisher was desirous of *purchasing*, and that it had been agreed that a certain printer should print a given number of copies, and the publisher should pay to the author *for the said tenth edition* a certain sum, went on to direct that the work should be in a given number of volumes, and should *be sold* to the public for a given price. It was objected that the plaintiff, the publisher, was not under this agreement the *proprietor of the copyright* within the meaning of the statute (54 Geo. 3, c. 156, s. 4), but a mere licensee to sell a given number of copies. The court overruled the objection, holding that the copyright was equitably vested in the publisher, on the ground that the contract was obligatory on both parties, that the plaintiff was bound to sell, and therefore the author was bound to abstain from doing anything which would interfere with the sale. The court, moreover, were of opinion that the equitable right to the copyright endured until the number of copies fixed by the terms of the agreement had been exhausted. It is to be regretted that the court did not advert to the question whether the words of purchase of the agreement—viz., that the publisher was to pay for *the edition*—gave him, independently of the implied contract on the part of the author not to do any act which might interfere with the sale, an equitable copyright in the work.

Agreements for division of profits, personal.

Where there was an agreement in writing between an author and certain publishers, that they should print, reprint, and publish his book, upon condition that the author should prepare it all before a certain day, and should correct the press, and that the publishers should direct the mode of printing, and pay all the expenses and

(*a*) 5 Jur. 68; 11 Sim. 572.

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take all risk of publishing, and out of the produce should first repay such expenses, and then divide the profits between themselves and the author equally; and that if all copies should be sold and a new edition should be required, the author should prepare the same, and the publishers should print and publish it on the same conditions: and that, if all the copies of any edition should not be sold in five years from the time of publication, the publishers might sell the remaining copies by auction or otherwise, in order to close the account; it was held to be a personal contract by the author, and not a contract for an assignment of the copyright; and, consequently, the benefit thereof could not be assigned by the publishers (*a*).

The benefit of right to publish not transferable by publisher.

The case referred to is the leading case of *Stevens* v. *Benning*, in which the original contract was between Mr. William Forsyth and Messrs Saunders & Benning, for the publication of a treatise on the 'Law relating to Composition with Creditors.' After the issue of the second edition one of the parties became bankrupt, and there was an assignment by his assignees and a partner of the bankrupt to Messrs Stevens & Norton, who then endeavoured to restrain the issue of a third edition by William Granger Benning for the author.

"The principal question then is," said Vice-Chancellor Wood, "whether this agreement is a personal engagement or not. It would be difficult for me to say, that in a contract of this kind, the author is utterly indifferent into whose hands his interests under such an engagement are to be intrusted.

"It is not merely a question of his literary interests, but certain publishers undertaking to incur the expenses of bringing out the work, and fixing the price, the author is to have a share of the profits; and they are to decide in what shape the book is to come out, and at what price it is to be sold, and are to account with him. I must say,

(*a*) *Stevens* v. *Benning*, 1 K. & J. 168, affirmed, 6 D. M. & G. 223; 1 Jur. (N.S.) 74. See *Pulte* v. *Derby*, 5 McLean (Amer.) 332.

that, in my opinion, these are peculiarly personal considerations; and that this contract bears the impress of being a personal contract in all these respects. It could not be a matter of indifference to Mr. Forsyth that the assignees in bankruptcy of Mr. Benning should be at liberty to transfer the future right of fixing the price of this and subsequent editions, and the right to call upon him to fulfil his duty of preparing a new edition, and the risk which might be incurred in conducting it, and the other benefits and obligations of the agreement, to any one they might think proper; possibly to some one not even carrying on the trade of a bookseller, as might happen in case of an absolute sale to the best bidder. Regarding the agreement as a contract for the purchase of a limited right, according to the view of the Vice-Chancellor of England in *Sweet* v. *Cater* (*a*), it is still impossible that it should be indifferent to Mr. Forsyth that it should pass from a respectable firm in London to booksellers residing in a remote part of the country, or to other persons unable to fulfil the engagements entered into with him. The contract, therefore, is one which involves personal considerations; and framed as it is, I must regard it as a special kind of agency, under which the agents were bound to sell, and to take the risk of there being no profits upon themselves" (*b*).

Nor whether author receives a royalty.

For similar reasons to those assigned above, a contract whereby the author is to receive a royalty on the copies sold is not transferable by the publishers, but it seems doubtful whether, where a definite sum has been agreed upon for the privilege of publication, the benefit of the contract could not be assigned by the publisher, for though the literary interests of the author might possibly be affected to some extent, yet the change of publishers could not, at least directly, cause him any pecuniary injury.

Otherwise where he receives a sum down.

This case of *Stevens* v. *Benning* was followed by Mr.

(*a*) 11 Sim. 579.
(*b*) 1 Kay & J. 174; on appeal, 6 De G. M. & G. 223.

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Justice Fry in the recent case of *Hole* v. *Bradbury* (*a*). The plaintiffs alleged themselves to be the owners of the copyright of a book called 'A Little Tour in Ireland,' and they brought the action to restrain the defendants, who were publishers, from publishing the book. The copyright had not been assigned to the defendants by writing or by entry at Stationers' Hall. The book was composed by two joint authors, one of whom was a plaintiff, the other was dead. The personal representative of the deceased joint author was the other plaintiff. The defendants alleged that before the first publication of the book, which was first published by a firm to whose business the defendants had succeeded, an arrangement had been made between that firm and the deceased joint author, acting on behalf of himself and his co-author, that the firm should engrave the illustrations and print and publish the book. If there were a loss from the publication, the firm were to bear the whole of it. If there were a profit they were to pay half of it to the plaintiff and the deceased joint author. The profits were to be ascertained after debiting the costs of the engraving, printing, and publication. The defendants alleged that this was an agreement for the sale of the copyright, and that they, as successors of the original firm, were entitled by assignment from them to the benefit of the agreement. No member of the original firm was a partner in the defendants' firm. The defendants had in their possession the blocks from which the illustrations to the first edition of the book had been printed, the drawings on the block having been made by the deceased joint author himself. It was held that the alleged agreement was a mere publishing agreement, and did not amount to a sale of the copyright, and that the benefit of the agreement was not assignable without the consent of the authors. Consequently, the defendants could derive no benefit from the agreement, and the injunction must be granted. And,

(*a*) 12 Ch. Div. 886.

as by the terms of the agreement, the cost of engraving was to be paid out of the gross profits, the blocks were not the property of the defendants, and must be delivered up to the plaintiffs.

Agreement for division of profits a joint adventure terminable by notice.

An agreement similar to that in *Stevens* v. *Benning*, and without specifying a particular edition, constitutes a joint adventure between the parties (*a*), which either party is at liberty to terminate upon notice after the publication of a given edition, if at the date of such notice no fresh expense has been incurred by the party to whom such notice be given.

By a memorandum of agreement made in November, 1852, between the plaintiff and the defendant, it was agreed that the latter should publish, at his own expense and risk, a work entitled 'Peg Woffington,' of which the former was the author; and, after deducting from the produce of the sale thereof the charges for printing, paper, advertisements, embellishments (if any), and other incidental expenses, including the allowance of 10 per cent. on the gross amount of the sale for commission and risk of bad debts, the profits remaining of every edition that should be printed of the work were to be divided into two equal parts, one moiety to be paid to the plaintiff, and the other to the defendant.

Subsequently the same parties entered into a similar agreement relative to the publication of another work entitled 'Christie Johnstone,' of which the plaintiff was also the author; and they signed for that purpose a memorandum of agreement, which, except as to the date and the title of the work, was in the same words as the former. Two editions of the former work and four of the latter having been published by the defendant, and no fresh expenditure having been incurred by him since the publication of those editions, the plaintiff claimed a right to terminate the joint adventure between them, and to pre-

(*a*) Joint owners of a copyright may make a contract between themselves as to the printing and publishing of the work, and neither will be permitted to set up against the other his original rights as a joint owner in violation of such contract: *Gould* v. *Banks*, 8 Wend. (Amer.) 568.

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vent the defendant from publishing any further edition of either work.

The main question to determine was, what was the effect of the agreement which had been entered into between the plaintiff and the defendant?

It was contended by the plaintiff that the case was one of simple agency; that by the effect of the agreement the defendant became a mere agent of the plaintiff. "But," observed the Vice-Chancellor, "it is clear that he became more than that. A mere agent may be paid, as the defendant was to be paid, by a share of the profits; but a mere agent never embarks in the risk of the undertaking; and here the defendant took upon himself the whole expense and risk of bringing out the work. Clearly, therefore, the case is something more than one of simple agency."

Sir W. Page Wood, in passing judgment, made the following observations: "Agreements between authors and publishers assume a variety of forms. Some are so clear and explicit that no doubt can arise upon them. Thus, where an author assigns his copyright, the transaction is one which every person understands, and which leaves no room for uncertainty as to the rights of the parties. Again, where, as in *Sweet* v. *Cater* (*a*), the author assigns a particular edition, the rights of himself and the publisher are equally clear; and although in that case the point did not require determination, the court observed, and justly observed, that, where an author has sold an edition of a given number of copies to one publisher, he is not at liberty, before they are sold, to publish the same work himself or through another publisher, in such a manner as to compete with the edition he has sold, but is bound to afford to the purchaser a full opportunity of realizing the benefit of his contract. The case before me, like that of *Stevens* v. *Benning* (*b*), is of an intermediate description. Here, as there, the author does not sell, or purport to sell, any

(*a*) 5 Jur. 68; 11 Sim. 572.
(*b*) 1 K. & J. 168; 6 D. M. & G. 223.