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, was to prevent the proprietor thereof from registering such design: provided that every article to which such design should be applied and which should be exhibited or exposed by or with the consent of the proprietor of such design, had thereon or attached thereto the words "Provisionally registered," with the date of the registration (*a*).

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*).

Provisional protection at an end.

Provisional protection, which was allowed by the 13 & 14 Vict. c. 104, is now at an end, there being no provision made in the recent Acts for such, but the protection afforded to those exhibiting in industrial or international exhibitions made permanent by the 28 & 29 Vict. c. 3 and 33 & 34 Vict. c. 27, is continued by the 57th section of the Act of 1883, which is as follows:—

Exceptions.

The exhibition at an industrial or international exhibition (*c*), certified as such by the Board of Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the pro-

(*a*) 13 & 14 Vict. c. 104, s. 3.
(*b*) Since extended by 15 Vict. c. 6; see 28 & 29 Vict. c. 3, and 33 & 34 Vict. c. 27.
(*c*) By order in Council dated 24th Nov., 1891, these provisions were applied to the Chicago Exhibition of 1893.

prietor of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered or invalidate the registration thereof, provided that both the following conditions are complied with, namely :—

(a) The exhibitor must, before exhibiting the design or article, or publishing a description of the design, give the comptroller the prescribed notice of his intention to do so ; and

(b) The application for registration must be made before or within six months from the date of the opening of the exhibition.

By the rules of 1883, the notice to be given to the comptroller of the intention to exhibit or to publish a description of the design is to be a seven days' notice in writing (*a*). And, for the purpose of identifying the design in the event of an application to register the same being subsequently made, the applicant is to furnish to the comptroller a brief description of the nature of the design, accompanied by a sketch or drawing thereof, and such other information as he may in each case require.

Rights of Proprietors of Foreign or Colonial Designs.

Foreign Designs.

Section 103 of the Act of 1883 enables Orders in Council to be issued declaring the provisions of that section applicable to foreign states specified in such order.

Any person who has applied for protection for any design in any such state is entitled to registration of his design, under the Act, in priority to other applicants, and such registration is to have the same date as the date of the application in such foreign state (*b*). The application in this country, however, must be made within four months from the application for protection in the foreign state (*c*).

(*a*) Rule 36.
(*b*) S. 103, Act 1883, as amended by 48 & 49 Vict. c. 63.
(*c*) See *Re Application by Californian Fig Syrup Co.*, W. N. (1888), p. 248 ; 6 Rep. Pat. Cas. 126.

If the application be not made in time (even though no order was in force within the time limited), and the design has been published in the United Kingdom, the right of registration will be gone. The proprietor of the design is precluded from recovering damages for infringements happening prior to the date of the *actual registration* of his design in this country.

The exhibition or use of the design in the United Kingdom or Isle of Man during the four months, or the publication therein during this period, of a description or representation of the design, will not invalidate the registration.

All applications for registration pursuant to the section under consideration, must be made in the same manner as an ordinary application under the Act.

The provisions of the section only apply to those foreign states with respect to which Her Majesty by Order in Council declares them to be applicable, and so long only, in the case of each state, as the Order in Council continues in force with respect to that state. Orders are now in force as to the following states:—

Date of Order.	Nature of Order.	To whom Appliable.	Remarks.
26 June, 1884	Applying provisions of sect. 103.	Belgium, Brazil, France, Guatemala, Italy, Netherlands, Portugal, Servia, Spain, Switzerland, Tunis.	In view of adhesion to Industrial Property Convention, 1883.
9 July, 1885	,, ,,	Sweden and Norway	,, ,,
12 July, 1887	,, ,,	United States.	,, ,,
17 Nov. 1888	,, ,,	East Indian Colonies of the Netherlands.	,, ,,
24 Sept. 1886	,, ,,	Paraguay and Uruguay.	In view of provisions of commercial treaties (most favoured nation clause).
28 May, 1889	,, ,,	Mexico.	,, ,,
17 May, 1890	,, ,,	Curaçoa and Surinam, colonies of the Netherlands.	,, ,,
21 Oct. 1890	,, ,,	Santo Domingo.	,, ,,

Under section 104, Orders in Council may be issued applying the provisions of the Act of 1883, with such variations or additions, if any, as may be thought proper to British Possessions.

It must be first shewn to Her Majesty that the legislature of the British Possession in whose favour the Act is to have application, has made satisfactory provision for the protection of designs registered in this country; and any Order in Council will take effect from the date mentioned in it as if its provisions had been contained in the Act (*a*).

The only orders at present in force under this section are in favour of Queensland, which was made the 17 Sept., 1885, and in favour of New Zealand made the 8 Feb., 1890.

(*a*) Sect. 104.

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. 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 officer (*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 authoritief or 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.

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 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-

(*a*) L. R. 13 Eq. 394 ; 20 W. R. 359.

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mentioned issues and publications, containing the alleged 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; pro-

bably because it would be obviated by amendments. The 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

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can, perhaps, have hardly intended to give a person complaining 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 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 papers printed by the authority and for the use of Parliament nor 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 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 is to go to the informer and the other to Her Majesty.

Prosecutions to be commenced within three months.

By the 4th section of the 2 & 3 Vict. c. 12, and 9 & 10 Vict. c. 33, s. 1, no action for penalties may be commenced except in the name of the Attorney- or Solicitor-

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

(*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, ss. 28 & 31.

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

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General in England, or the Queen's Advocate in Scotland; and every action, bill, plaint, or information which may 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*).

Definition of newspaper.

By the Newspaper Libel and Registration Act, 1881 (*b*), a register of newspaper proprietors as defined by the Act is established under the superintendence of a registrar. Section 1 of the Act defines the word "newspaper" to mean any paper containing public news, intelligence or occurrences, or any remarks or observations thereon printed for sale and published in England or Ireland periodically or in parts or numbers at intervals not exceeding 26 days between the publication of any two such papers, parts or numbers. Also any paper printed in order to be dispersed and made public weekly or oftener, or at intervals not exceeding 26 days, containing only or principally advertisements.

Definition of proprietor.

The word "proprietor" is defined to mean and include as well the sole proprietor of any newspaper as also, in the case of a divided proprietorship, the persons who as partners or otherwise represent and are responsible for any share or interest in the newspaper as between themselves and the persons in like manner representing or responsible for the other shares or interests therein.

Where in the opinion of the Board of Trade inconvenience would arise or be caused in any case from the registering of the names of all the proprietors of the newspaper (either owing to minority, coverture, absence from the United Kingdom, minute sub-division of shares or other special circumstances), the Board may authorize the registration of such newspaper in the name or names of some one or more responsible "representative proprietors" (*c*).

(*a*) 32 & 33 Vict. c. 24.
(*b*) 44 & 45 Vict. c. 60, s. 8.
(*c*) Sect. 7.

Annual returns to be made by printers and publishers.

Printers and publishers are to make annual returns in the month of July (*a*) according to scheduled form of—

(*a.*) The title of a newspaper;

(*b.*) The names of all the proprietors of such newspaper together with their respective occupations, places of business (if any), and places of residence;

and a penalty is imposed in case of omission to make the return (*b*).

Transfer of shares in newspapers.

Power is given to any party to a transfer or transmission of or dealing with any share of or interest in any newspaper whereby any person ceases to be a proprietor, or any new proprietor is introduced at any time, to make a return according to a prescribed form (*c*).

Register open to inspection.

The register to be kept by the registrar is to be open to public inspection during business hours (*d*) on payment of a certain fee (*e*). The provisions of the Act as to registration of proprietors are not to apply to any newspaper which belongs to a joint-stock company incorporated under the Companies Act, 1862 (*f*).

Copyright in newspapers.

Whether copyright exists at all in the case of newspapers has been doubted by Lord Chelmsford (*g*), who referred to the language of Knight Bruce, L.J., in *Ex parte Foss* (*h*), 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.

But there cannot be prospective copyright in a newspaper, which was the extent to which *Platt* v. *Walter*

(*a*) It will be seen that no provision is made for the immediate registration of a newspaper whose first number appears in any other month than July, and consequently a newspaper started in August may be regularly published for nearly a year before any necessity for registration arises under the Act. See, too, the 11th section as to transfer.

(*b*) Sects. 9 and 10.

(*c*) Sect. 11.

(*d*) Sect. 13.

(*e*) Sect. 14.

(*f*) Sect. 18.

(*g*) *Platt* v. *Walter*, 17 L. T. (N.S.) 159.

(*h*) 2 De G. & J. 230.

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went. It is a common practice for the same proprietor to own two newspapers, one issued in the morning under one name and another in the evening under a different name, the latter consisting, in a large proportion, of news and other matter taken from the former. This is a convenient arrangement, and no difficulty is likely to arise so long as the proprietorship of both papers is in the same individual; but where the practice has been carried on for a considerable time and the proprietorship in the papers passes into different hands, difficulties are sure to arise. Thus we find in the case above referred to, where the plaintiffs were part owners of the 'Evening Mail' and the defendants part owners of the 'Evening Mail' and owners of the 'Times.' Both the 'Times' and 'Evening Mail' had originally belonged to a Mr. Walter, from whose son the plaintiffs had bought their share of the 'Evening Mail.' Ever since the papers were first published the 'Evening Mail' had been printed with the type of the 'Times' and published on its premises, but there was no express agreement that this should continue. Disagreements having arisen the owners of the 'Times' refused to allow the 'Evening Mail' to be printed with the 'Times'' type. The plaintiffs thereupon applied for an injunction to restrain them from preventing this. The claim was based on long user, and the plaintiffs claimed also a "share in the copyright," as they called it, of the 'Times.' By this they meant that they had the right to abstract whatever matter they chose from the 'Times' and print it in their paper. Vice-Chancellor Stuart refused the injunction, and on appeal Lord Chelmsford affirmed the decision. The court was of opinion on the one point, that the plaintiffs had no legal property in the type of the 'Times,' that user, however long continued, could not establish such a servitude over personal property, nor could even an express agreement, which would only bind those who were parties to it and would lapse on their death (*a*); and

(*a*) See *Glassington* v. *Thwaites*, 1 Sim. & Stu. 124.

on the other point, that there could be no copyright in a non-existent thing. Copyright only accrued when the matter was actually produced. Accordingly the plaintiffs could not be entitled to a share in, nor could prescription act upon, a right which was not yet in existence.

Cox v. *Land & Water Co.*

In *Cox* v. *The Land and Water Company* (*a*) 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. In the last edition of this work we styled the decision a somewhat remarkable one. 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 (*b*).

The decision has not been followed, and in *Walter* v. *Howe* (*c*), Sir George Jessel, M. R., held that a newspaper was within the Act and required registration.

A newspaper is clearly "a book" within the Copyright

(*a*) 18 W. R. 206; L. R. 9 Eq. 324; 39 L. J. (Ch.) 152; 21 L. T. (N.S.) 548; *Kelly* v. *Hutton*, L. R. 3 Ch. App. 703.

(*b*) *Ibid.*

(*c*) 17 Ch. Div. 708; *Cate and others* v. *The Devon and Exeter Constitutional Newspaper Co.* (*Limited*), 40 Ch. D. 500; 5 T. L. R. 229; *The Trade Auxiliary Co.* v. *Middlesbrough and District Tradesmen's Protection Association*, 40 Ch. D. 425; 5 T. L. R. 168, 254.

Act, 1842, and all the provisions of that statute concerning books apply also to newspapers so far as the circumstances allow. They must therefore be registered at Stationers' Hall. And as each single number of a newspaper is a book within the Act, a separate registration of a single number *may* be made (*a*). But the 19th section applies more particularly to the registration of periodical publications. As we have seen in the case of books, non-registration does not affect the copyright, but is a condition precedent only to suing. Consequently it is not necessary to register before infringement of copyright has taken place. It is sufficient if the registration is made at any time after publication and before the action for infringement of copyright is brought. An action then lies for infringement occurring both before and after registration.

Points as to registration.

The main points as to registration have been already dealt with under the head Registration, and these points we may briefly summarize here thus :—

1. Registration of a newspaper or other periodical must be made *after* publication, registration before publication is invalid.
2. Registration in order to apply to the whole series must be of the first number, or of the first number published after the passing of the Copyright Act, 1st July, 1842.
3. Registration of any single number will be effectual to protect the contents of that number.
4. Registration to be effectual must be of the exact title of the newspaper or other periodical, the exact date of its first publication—that is of the day of the month as well as month and year.
5. Where the proprietor of the newspaper and the publisher are different persons, the names of both must be registered.
6. Where the proprietors or publishers are a firm, either

(*a*) *Dicks* v. *Yates*, 18 Ch. D. 76.

the names of all the partners or the partnership name may be registered.

Dicks v. *Yates*.

A case which may be regarded as a leading case on registration is that of *Dicks* v. *Yates* (*a*). In this case the action was brought by the proprietor of a journal called 'Every Week' against the proprietor of the 'World' for infringement of copyright. The infringement complained of was in respect to a novel, "Splendid Misery," which was being published in the plaintiff's journal in weekly instalments, and one of the objections taken by the defendant was that there was no proper registration. On the part of the plaintiff it was proved that there had been two registrations. The first registration was of the journal itself, 'Every Week,' and this had been made before the first number of that publication had appeared. The second was of the proprietorship of the novel. In it the date given as the day of first publication was the date of the issue of the journal which contained the first instalment of the novel. This registration was made after all the work had been published. It was held by the Court of Appeal that the registration of the journal having taken place previous to publication was bad, but that the registration of the novel, though it took place after the whole story had appeared was good. Jessel, M.R., in delivering judgment, said: "The first registration is a registration of 'Every Week.' That appears to be a bad registration, because it was made before that periodical was published at all. But there is a second registration, and the second registration is of the first part of 'Splendid Misery,' and is in every respect correct, unless we accede to the argument that the registration is invalid because at the time the first part was registered the second and subsequent parts had been published. I am quite unable to follow that argument. The registration informs the public of everything that the public could have any possible desire or right to know. It cannot be less a registration of the

(*a*) 18 Ch. D. 76.

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first part because the other parts had been published. Each part may be registered separately, each part is, according to the definition in the Act of Parliament, a book. It appears to me there is no tenable objection to the second registration."

Copies of newspapers for public libraries.

It follows from a newspaper being a "book" within the meaning of the Copyright Act, 1842, that the publisher is bound to deliver a copy of every issue at the British Museum, and if demanded copies must be delivered at Stationers' Hall for the Bodleian, the University Library, Cambridge, the Advocates' Library, Edinburgh, and the Library of Trinity College, Dublin. The penalty for non-compliance with the Act in this respect is £5, and the value of the copy not delivered.

Difference between registration under copyright and newspaper acts.

Registration under the Copyright Acts for the purpose of suing for infringement of copyright must not be confounded with the registration of the newspaper under the Newspaper Libel and Registration Act of 1881, which has nothing whatever to do with the copyright (*a*).

Consequently the proprietor of a newspaper registered as a serial publication under the Copyright Act, 1842, can sue in respect of his copyright in matters published in his paper, though neither the name of the proprietor nor the title of the paper is registered under the Newspaper Libel and Registration Act, 1881. And an injunction was granted to three plaintiffs, the proprietors of three several serial publications registered under the Copyright Act, to restrain the infringement of their joint copyright in matter printed in all three publications, though the printed matter was copied not from either of the three publications, but from a reproduction of the same matter issued in another form by the authority of one of the plaintiffs without further registration under the Copyright Act (*b*).

(*a*) A large number of magazines, story papers, papers composed of scraps of miscellaneous reading, and the like, though issued periodically, are not "newspapers" under this Act, and the authors or proprietors are therefore under no obligation to register, nor can they claim the protection afforded by the Act.

(*b*) *Cate* v. *Devon and Exeter Constitutional Newspaper Co.*, 40 Ch. D. 500.

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" (*a*).

Copyright in news.

There can be little doubt but that there is copyright in the literary form given to news—not in the substance of the news itself, but in the form in which it is conveyed, and this even where it consists of a mere statement or summary. As to what is known as a "descriptive report," whether of the proceedings in a law court or Parliament, or at any public meeting, there can be no doubt that copyright attaches. One newspaper cannot legally use the

500; 58 L. J. Ch. 288; 60 L. T. 672; 37 W. R. 487; 5 T. L. R. 229; *The Trade Auxiliary Co. (Limited)* v. *Jackson*, 4 T. L. R. 130.

(*a*) See *The Trade Auxiliary Co. (Limited)* v. *Jackson*, 4 T. L. R. 130.

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telegrams sent to another, but we are not able to go so far as to admit copyright in the substance of the news as distinguished from the form of language by which that substance is conveyed.

Speeches.

As regards reports of speeches, it has been thought that the labour and skill of the reporter reduces the spoken words, which are common to all, to a form in which copyright comes into operation, and the argument has been used that the reasoning applied to the case of directories, guide books, or translations applies equally well to reports of speeches and lectures (*a*). With this view we are strongly inclined to agree.

Articles.

The proprietor of a newspaper who has employed and paid a writer of articles appearing in it can, upon registration, restrain any other person from publishing such articles for 28 years, but he is not entitled to publish the articles separately without the consent of the writer. A reprint of the original issue will not be regarded as a separate publication, but republishing an article in any other form would amount to such. The question came before the court in a case (*b*) where the plaintiff was the writer of a novel which had appeared in the defendant's paper, the 'London Journal.' The defendant began the issue of what was called "supplementary numbers," which could be bought along with or separate from the current numbers. They were composed of stories and other matter which had previously appeared in the 'London Journal.' The plaintiff's story appearing in these supplementary numbers, he applied for an injunction on the ground that this was a separate publication of it. Stuart, V.-C., held that he was entitled to the relief sought. The Vice-Chancellor considered that publishing separately must mean separately from something. "What," said he, "is that publishing which the Act of Parliament says shall not be separately made? It must be the publishing

(*a*) Fisher & Strahan, Law of the Press, 33.
(*b*) *Smith* v. *Johnson*, 33 L. J. Ch. 137.

of the part or portion separately from that which has been before published" (*a*).

During the twenty-eight years after publication of an article in a newspaper, the right of the author is simply to prevent a publication of the matter separately, and this right he has independent of any registration. Upon the expiration of the twenty-eight years the copyright reverts to the author for the remainder of the full term of copyright.

This is the result of the absence of any agreement between the parties, and it must be remembered that under the 18th section of the Act of 1842, the author may reserve to himself the separate right of publication even during the period of twenty-eight years, or he may agree to the vesting of the whole of the copyright in the proprietor of the newspaper absolutely.

Property in letters, &c., sent to newspapers.

It may be mentioned here that letters and other manuscripts sent to the editor of a newspaper, as agent for the proprietor are the property of the latter, and if the editor after ceasing to be editor attempts to use them for his own purposes he will be restrained on the application of the proprietor, and be compelled to hand over such letters or other manuscripts (*b*).

There is no obligation on the part of the proprietor of a newspaper to insert or to preserve any manuscript sent to him uninvited, and if the manuscript be lost or destroyed, the author cannot recover for its value. Of course, if an editor or proprietor undertook to return unaccepted communications the case would be different.

Alterations in communications made to newspapers.

Difficulties sometimes arise by reason of alterations made in the matter communicated by correspondents and others to newspapers. The rule may be taken to be as follows: Where the author's name appears, any alterations of a nature which may affect the credit or the literary reputation of the author would be illegal, and an injunction might be obtained to restrain the publication (*c*). Of course, if the communication, though signed, contained

(*a*) See, too, *Mayhew* v. *Maxwell*, 1 John. & Hem. 312.
(*b*) *Hogg* v. *Kirby*, 8 Ves. 215.
(*c*) But see *Lee* v. *Gibbings*, 9 T. L. R. 773; Athenæum. 13th August, 1892.

any matter of an objectionable or offensive description this might be omitted, but the insertion of new matter which would have the effect of distorting the writer's meaning would not be permissible. In *Archbold* v. *Sweet* (*a*), where the plaintiff had written a law book on the Law of Pleading and Evidence in Criminal Cases, and the defendant, who had acquired the copyright, brought out a new edition by another person without a statement appearing that it was so edited, and in this edition were several serious errors which were likely to prove prejudicial to the author's reputation as a legal writer, the court considered the publication a libel on the author. So where an application was made for an injunction to restrain the defendants from advertising the plaintiff's name in connection with the representation of an opera called 'Les Brigands,' and it appeared that the defendants had inserted into Mr. Gilbert's version of the libretto two songs which were not written by him and had omitted a solo by him, Mr. Justice Denman, in delivering judgment, said: "He considered what had been done did not justify the granting of an interlocutory injunction unless it had been done in bad faith, or the acts had been of such a kind as to injure the reputation of the plaintiff. If the songs had been scandalous or indecent, there would have been a strong ground for the court interfering. There was nothing of the kind here, only advertisements attributing to Mr. Gilbert what was not his work, but only to a very small extent. . . . . He considered it too strong a measure to hamper this performance by an interlocutory injunction where no substantial injury had been done, and no substantial injury was likely to be done to Mr. Gilbert." On appeal this decision was substantially affirmed (*b*).

As to unsigned communications, the right of the editor

(*a*) 5 C. & P. 219.

(*b*) *Gilbert* v. *Boosey & Co.*, Times, 21 Sept. 1889; L. T. 28 Sept. 1889. *Lee* v. *Gibbings*, 8 T. L. R. 773, where the defendant published an imperfect edition of a work of the plaintiff of which the assignor of the copies to the defendant owned the copyright and on the plaintiff applying to restrain him, it was held that the plaintiff's remedy (if any) was an action for libel.

to alter seems to be unlimited. The author here can suffer no injury in reputation, the "custom of the trade" in this respect is well-known and must be deemed to be known to the author.

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,

(*a*) *Ex parte Foss, Re Baldwin; Ex parte Baldwin, Re Baldwin*, 6 W. R. 417; 2 De G. & J. 230; *Longman* v. *Tripp*, 2 Bos. & Pul. (New R.) 67; see also *Kelly* v. *Hutton*, L. R. 3 Ch. App. 703.

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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* (*a*), 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 Newspaper 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

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

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.

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

(*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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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* (*a*). The mortgage, then, to Wrigley & Son was that of Beeton's share of a chattel, which formed the 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-

(*a*) 2 Bos. & P. 67.
(*b*) 2 De G. & J. 230.

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

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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 mortgage, except on 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*).

No copyright in title of newspaper.

There is no copyright, strictly speaking, in the title of a newspaper, and the registration of a name at Stationers' Hall does not confer any exclusive right to the user. The right to the exclusive use of any title may, however, be acquired by "user and reputation." It then becomes a property which the Courts will protect. The use confers the right, not registration. This is well illustrated by the case of *The Licensed Victuallers' Newspaper Co.* v. *Bingham* (*b*). The plaintiffs had, on the 3rd February, published the first number of a newspaper called the 'Licensed Victuallers' Mirror.' On the next day they registered as proprietors at Stationers' Hall, and duly deposited copies at the British Museum. They had previously to publication advertised their intention of starting a newspaper, but had not mentioned its name. Three days later, on the 6th of February, the defendant published the first

(*a*) *Kelly* v. *Hutton*, L. R. 3 Ch. App. 703, 38 L. J. (Ch.) 917, 19 L. T. (N.S.) 228.
(*b*) 38 C. D. 139.

number of another paper under the same title, which he registered at Somerset House and Stationers' Hall. Thereupon the plaintiffs applied for an injunction to restrain the defendant from publishing a newspaper under that name or any other name so closely resembling it as to mislead the public. The sales of the plaintiffs' paper before the issue of the defendant's were very small. It was proved also that the defendant had previously to the issue of the plaintiffs' paper registered at Stationers' Hall some twenty-eight newspaper titles, all beginning 'The Licensed Victuallers',' but 'The Licensed Victuallers' Mirror' was not among them. It was held that the plaintiffs were not entitled to an injunction on the ground that the plaintiffs' paper was not an article known in the market, or having any reputation which could induce the public to buy the defendant's paper as being that of the plaintiffs', the mere registration in itself giving no exclusive right to the names, which right could only be acquired by user and reputation. And on appeal this decision was affirmed (*a*).

Wrongfully assuming the name of newspaper.

Where the name of a newspaper is taken for the purpose of deceiving the public and supplanting the goodwill of the original newspaper, an injunction will be granted (*b*); and the publication of a magazine in the name of one who no longer authorizes it will likewise be restrained (*c*).

Where part only of title taken.

Where the property in the first title has been duly acquired and a part only of that title is taken, that part must be so like the title of the first as to be calculated to deceive the public, and there must be reason to suppose that the first newspaper will suffer damages before the court can be successfully required to move.

The law on this point is perhaps best illustrated by the case of *Borthwick* v. *The Evening Post* (*d*). The plaintiff

(*a*) See further *Dicks* v. *Yates*, 18 Ch. D. 76.
(*b*) *Bell* v. *Locke*, 8 Paige (Amer.) 75; see *Snowden* v. *Noah*, Hopk. (Amer.) 347.
(*c*) *Hogg* v. *Kirby*, 8 Ves. 215.
(*d*) 37 Ch. D. 449.

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was the owner of the 'Morning Post.' The defendants were a joint-stock company which owned an old-established paper called 'Daily Recorder of Commerce.' In December, 1887, they announced their intention of starting a new evening paper, to be called the 'Evening Post,' with which the 'Daily Recorder' would be incorporated. Thereupon the plaintiff applied for an injunction to restrain the defendants from publishing a newspaper under that name or under any other name of which the word "Post" formed part. The first number of the 'Evening Post' was published on the 21st December, 1887. The words "The Evening Post" were printed at the head of the paper in old English type, and underneath in smaller type were printed the words "With which is incorporated the 'Daily Recorder.'" It appeared that the new paper consisted of four pages, the 'Morning Post' of eight. The 'Evening Post' had no advertisements on the front page; the front page of the 'Morning Post' consisted entirely of advertisements. The price of both papers was the same. The placards issued by the two papers were printed in different colours. It was given in evidence by the plaintiff that twelve persons had called at the office of the 'Morning Post' to ask for copies of the 'Evening Post.' The defendants put in evidence to show that many London and provincial papers had had and some still had the word "Post" as part of their title. Mr. Justice Kay held that the defendants' paper and the circumstances connected with its issue were such as to deceive the public and damage the plaintiff, and he therefore granted an injunction. The Court of Appeal, however, reversed the decision, holding that though the defendants' conduct was calculated to deceive and had deceived the public, still there was no evidence that the plaintiff had suffered any damage hitherto, and no likelihood that he would suffer any in the future through the deception. They based this conclusion chiefly on the ground that as the one was a morning and the other an evening paper, there could be no real competition between them.

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 copyright the offspring of modern civilization

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

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 landed in any foreign country, all complaint of its republication is, in the absence of a treaty, fruitless, because

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

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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 first regulated by 7 & 8 Vict. c. 12, and 15 & 16 Vict. c 12.

Until the passing of the International Copyright Act, 1886 (*a*), in the year 1886, International Copyright in England, that is copyright in works first published out of the British dominions was regulated by the 7 & 8 Vict. c. 12. explained by the 15 & 16 Vict. c. 12, the 25 & 26 Vict. c. 68, and 38 & 39 Vict. c. 12.

The first 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 (*b*).

In the case of *Guichard* v. *Mori* (*c*), 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

(*a*) The Acts 7 & 8 Vict. c. 12, 15 & 16 Vict. c. 12, 25 & 26 Vict. c. 68; 38 & 39 Vict. c. 12, and 49 & 50 Vict. c. 33, may under the Short Titles Act, 1892, be cited collectively as the International Copyright Acts. The Acts may also be separated, cited as the International Copyright Act, 1844, the International Copyright Act, 1852, the Fine Arts Copyright Act, 1862, the International Copyright Act, 1875, and the International Copyright Act, 1886.

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

(*c*) 9 L. J. (Ch.) 237.

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 as in 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."

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 had 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, or 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

(*a*) 7 & 8 Vict. c. 12.

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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 copyright law as to prints, 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 enacted that it should be lawful for Her Majesty, by order of Her Majesty in council, to direct that the authors of dramatic pieces and musical compositions, which should 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, should 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 should 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 might 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, should, subject to such limitations as to the duration of the right conferred by any such order as should be therein contained, apply to and be in force in respect of the dramatic pieces and musical compositions to which such order should extend and which should 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 should be excepted in such order.

Registration.

The provisions in regard to registration under the Inter-

national Copyright Act, 1844, were contained in the 6th section, which requires that every author, to entitle himself to the protection thereby afforded, should, within a time to be prescribed in each order in council made in pursuance of the Act, register the same at Stationers' Hall. It was 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 might 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, had to be delivered to the officer of the Company of Stationers (*a*).

Dramatic piece or musical composition.

If the dramatic piece or musical composition were in manuscript, all that was required was 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, should be entered in the register. No copy was 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, had to be entered on the register, and a copy of such print upon the best paper upon which the largest number of impressions had been printed for sale, had to 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 had to 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 statu-

(*a*) As to the registration necessary in case of a foreign painting, see *Fishburn* v. *Hollingshead* [1891], 2 Ch. 371.

table entries was rendered somewhat difficult owing to the circumstances, first, that the statute did 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 was 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 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 regis-

(*a*) L. R. 2 Q. B. 340 : 3 Q. B. 223.
(*b*) 7 Ch. Div. 307 ; 1 App. C. 714.

tration of the unpublished opera, but not of the pianoforte arrangement.

Registration of books published anonymously.

The 7th section of the International Copyright Act, 1844, 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 Act, 1842, 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, 1844, 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 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 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

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

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.

Orders to be published in Gazette.

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

The 10th section of the 7 & 8 Vict. c. 12, provided that no copies of books wherein there should 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, should 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 were made subject to the enactments in force relating to goods prohibited to be imported by any Act relating to the customs (*a*); 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 should be any subsisting copyright as aforesaid, any person who should in any part of the British dominions

(*a*) See 39 & 40 Vict. c. 36, s. 42, The Customs Consolidation Act, 1876.

import such prohibited or unlawfully printed copies, or, who knowing such copies to be so unlawfully imported or unlawfully printed, should sell, publish, or expose to sale or hire, or should 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 should 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 were respectively prescribed in the Copyright Act, 1842, 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 & 16 Vict. c. 12, these provisions were extended, that section enacting that all copies of any works of literature or art wherein there was any subsisting copyright by virtue of the International Copyright Act, 1844, and the 15 & 16 Vict. c. 12, or of any Order in Council made in pursuance of such Acts or either of them, and which were printed, reprinted, or made in any foreign country except that in which such work should 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 & 16 Vict. c. 12, mentioned, should for the time being be prevented under any Order in Council made in pursuance of such Act, should 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

And it was 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 should be copyright, and reprinted in any country out of the British dominions, and im-

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works prohibited to be imported under this Act.

ported into any part of the British dominions by any person not being the proprietor of the copyright, or a person authorized by such proprietor, should 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 was prohibited under the 15 & 16 Vict. c. 12 (*a*).

Translations under Act of 1844.

The 18th section of the Act of 1844, provided that nothing in that 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.

But this section was repealed by the 1st section of the 15 Vict. c. 12, so far as it was inconsistent with the provisions of that Act. And the 2nd section of that Act provided that Her Majesty might by Order in Council direct that the authors of books which were, 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, should, subject to the provisions 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 might 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 were 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 was first published.

The 15 & 16 Vict. c. 12, further provided in section 3 now repealed by the International Copyright Act, 1886, 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

(*a*) Sect. 9.

copyright in books published in the British dominions should be applied for the purpose of preventing the publication of translations of the books to which such order extended which were not sanctioned by the authors of such books, except only such parts of the said enactments as related 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.

It is, however, by the 7th section of the 15 & 16 Vict. c. 12, provided that nothing should prevent any article of political discussion which had 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 was taken were acknowledged: and that any article relating to any other subject which had been so published as aforesaid might, if the source from which the same was taken were acknowledged, be republished or translated in like manner, unless the author had 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 should, without the formalities required by the 8th section, receive the same protection as was by virtue of the International Copyright Act or that Act extended to books (*b*).

The 19th clause of the 7 & 8 Vict. c. 12, which enacted that no author of any book or dramatic piece, which should be first published out of Her Majesty's dominions, should have copyright therein, otherwise than under the provisions of that Act, applied to British subjects first publishing in a country with which no international convention was subsisting.

And it was held that this section applied to works first published in any foreign country, whether the provisions of the International Copyright Acts had or had not been extended to that country; and accordingly that no author

(*a*) Sect. 3.
(*b*) Sect. 7.

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whether a British subject or an alien, was entitled to any other protection for a work first published abroad than that which he might 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 & 8 Vict. c. 12, (there being no such international treaty or arrangement as 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; and that this was the case 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 do so, but this country has nothing more to say to him, and he must be taken to have elected under which of the

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

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 (*a*) tried to restrain the representation of a play of his called 'The Shaughraun,' which had been first performed in New York. The defendants relied on *Boucicault* v. *Delafield*: for the plaintiff it was argued that the Court in that case went upon the fact that one copy of the drama was printed, but there was no decision that the first representation was a publication. *Malins*, V.-C. considered that *Boucicault* v. *Delafield* did so decide, and that he was bound by it, and his decision was affirmed.

Dramatic works.

By the 4th section of the 15 & 16 Vict. c. 12, power was given by Order in Council to grant a further right to the authors of dramatic pieces first represented in a foreign country. It was enacted that Her Majesty might by Order in Council direct that authors of dramatic pieces which were after a future time to be specified in such

(*a*) *Boucicault* v. *Chatterton*, 5 Ch. Div. 267, stated more fully *ante*, p. 374.

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order, first publicly represented in any foreign country, to be named in such order, their executors, administrators and assigns, should, subject to the provisions thereinafter mentioned, 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 might 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 were first published or publicly represented. And further, that thereupon the law for protecting the representation of such pieces should extend to prevent unauthorized translation (*a*).

Fair imitations or adaptations.

Then followed a short but most important provision that nothing in the Act should be so construed as to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country (*b*).

Orders in Council and Conventions.

Pursuant to the Act of 1844 a large number of Orders in Council were promulgated, and the various European countries had also numerous copyright treaties *inter se*.

The following conventions were entered into by Great Britain:

Prussia . .	May 13, 1846.	Belgium . .	Aug. 12, 1854.
Saxony . .	Aug. 24, 1846.	Prussia, Saxony, &c. (additional) .	June 14, 1855.
Brunswick .	March 30, 1847.	Spain (*c*) . .	July 7, 1857.
Thuringian Union	July 1, 1847.	Sardinia . .	Nov. 30, 1860.
Hanover . .	Aug. 4, 1847.	Hesse Darmstadt .	Nov. 19, 1861.
Oldenburg . .	Dec. 28, 1847.	Italy . . .	Sept. 12, 1865.
French Republic (*c*)	Nov. 3, 1851.	Germany (*f*) .	June 2, 1886.
Anhalt . .	Feb. 8, 1853.		
Hamburg (*d*) .	Aug. 16, 1853.		

(*a*) Sect. 5.

(*b*) Sect. 6. But see 38 & 39 Vict. c. 12, *post*, p. 587. The Order in Council was made under the last Act on the 5th August, 1875, revoking the application of 15 & 16 Vict. c. 12, as to dramatic pieces first published in France. This Order was revoked by the Order of the 28th November, 1887.

(*c*) Amended by Order in Council, 5th Aug. 1875.

(*d*) Amended by Order in Council, 8th Feb. 1855.

(*e*) The treaty with Spain expired and was renewed 11th Aug. 1880.

(*f*) The Orders in Council under the Copyright Conventions have now all been revoked by the Order in Council of 28th Nov. 1887.

A complicated state of circumstances arose, for the rights of an author in foreign countries varied according to the particular treaty or Order in Council, and in 1885 an attempt was made by several of the great powers to secure uniformity throughout their dominions, and in anticipation of a favourable understanding the International Copyright Act of 1886 was passed, which enabled the Queen to issue Orders in Council embodying the chief features of the new convention. By the International Copyright Act, which recites that at an International Conference held at Berne a draft of a convention was agreed to for giving authors of literary and artistic works first published in one of the countries parties to the convention copyright in such works throughout such other countries parties to the convention, it is provided (*a*) that it shall be lawful for Her Majesty from time to time to make Orders in Council for the purpose of the International Copyright Acts, and the Act of 1886, which Acts are by the 1st sect., sub-sect. 2, collectively referred to as "The International Copyright Acts," for revoking or altering any Order in Council previously made in pursuance of the said Acts, or any of them, provided that (*b*) any such Order in Council shall not affect prejudicially any right acquired or accrued at the date of such Order coming into operation, and shall provide for the protection of such rights. By an Order in Council dated the 28th Nov., 1887, the Berne Convention set forth in the first schedule to the order was declared to have full effect throughout Her Majesty's dominions. The order is to be construed as if it formed part of the International Copyright Act, 1886, and the previous orders on which the treaties above referred to were founded, are revoked with a saving of previously acquired rights.

The International Copyright Act, 1886.

Order in Council of 28th Nov., 1887.

The Berne Convention was a step in the right direction,

The Berne Convention.

(*a*) Sect. 10, sub-sect. 1.
(*b*) Sub-sect. 2.

and the result is that in the countries whose governments are parties to it a comparatively uniform system of international copyright now prevails.

The countries bound by the Berne Convention, and forming what is known as the "Copyright Union," are—The British Empire, Belgium, France, Germany, Italy, Spain, Switzerland, Luxembourg, Tunis, Hayti, Monaco and Montenegro.

The International Copyright Act, 1886, the Berne Convention of 5th September, 1887, and the Order in Council of 28th November, 1887, differ in their terms upon matters as to which there should have been absolute identity—all are framed in a loose and irregular style, particularly the two last. Why there should have been a repetition of some provisions and not of others in the Order in Council one is at a loss to imagine, and further, if repetition were necessary, why not in identical words.

Rights of authors may be thus divided :—

1. The rights of English authors in foreign countries of the Copyright Union.
2. The rights of foreign authors in the British dominions.

Rights of English authors in foreign countries.

1. The rights of English authors in the foreign countries of the Copyright Union rest upon the Berne Convention, together with any legislation which may be in operation in any particular country answering to the English Act of 1886 (*a*).

English authors or their lawful representatives are to enjoy in the other countries for their works, whether published in one of the countries, or unpublished, the rights which the respective laws grant to natives, but the enjoyment is to be subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work, and cannot exceed in the other countries

(*a*) Scrutton on Copyright, 2nd ed., p. 190.

the term of protection accorded in the country of origin. The country of origin is that where the work is first published, and in case of simultaneous publication in two countries of the Union the one of them in which the shortest term of protection is accorded. For unpublished works, the country to which the author belongs is considered the country of origin of the work. The provisions of the above articles are by Article 9 extended to public representation of dramatic or dramatic-musical works whether such works have or have not been published, and they apply equally to the public performance of unpublished musical works as of published works where the author has expressly declared on the title page or commencement of the work that he forbids the public performance.

An Englishman first publishing in this country obtains in each of the countries of the Union protection such as is granted by each country to its natives and for the same term; but the period of protection for an Englishman in any country cannot exceed the author's life and 7 years, or 42 years from the first publication, whichever is the longest.

An Englishman first publishing in France obtains in each of the countries of the Union protection such as is granted by each country to its natives and for the same term, but the period of protection in any country cannot exceed the term during which protection is given by the French laws to natives.

Definition of "literary and artistic works."

The expression "literary and artistic works" is by the Berne Convention to comprehend books, pamphlets, and all other writings; dramatic, or dramatic-musical works, musical compositions with or without words; works of design, painting, sculpture, and engraving; lithographs, illustrations, geographical charts, plans, sketches, and plastic works relative to geography, topography, architecture, or science in general: in fact every production whatsoever in the literary, scientific, or artistic domain which can be published by any mode of impression or reproduction (*a*).

(*a*) Art. 4.

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The definition in the 11th section of the International Copyright Act, 1886, of "literary and artistic work," is "every book, print, lithograph, article of sculpture, dramatic piece, musical composition, painting, drawing, photograph, and other work of literature and art to which the Copyright Acts or the International Copyright Acts, as the case requires, extend."

Definition of author.

And by the same Act the expression "author" is to mean the author, inventor, designer, engraver or maker of any literary or artistic work, and to include any person claiming through the author, and in the case of a posthumous work to mean the proprietor of the manuscript of such work and any person claiming through him; and in the case of an encyclopædia, review, magazine, periodical work or work published in a series of books or parts, to include the proprietor, projector, publisher or conductor (*a*).

Translations.

Authors or their lawful representatives are to enjoy in the other countries exclusive rights of making or authorizing the translation of their works until the expiration of 10 years from the publication of the original work in one of the countries of the Union; and for works published in parts the period is to commence from the date of publication of the last part of the original work (*b*).

Authorized translations protected as original works.

Authorized translations are protected as original works, but in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers (*c*).

Unauthorized indirect appropriations of various kinds, such as adaptations, arrangements of music, &c., are specially included amongst the reproductions to which the

(*a*) Sect. 11.

(*b*) Art. 5. For works composed of several volumes at intervals as well as for bulletins or collections published by literary or scientific societies, or by private persons, each volume, bulletin, or collection, is with regard to the period of 10 years considered as a separate work.

(*c*) Art. 6.

Convention applies when they are only a reproduction of a particular work, in the same form or in another form, with non essential alterations, additions, or abridgements so made as not to confer the character of a new original work (*a*).

Restriction on translations.

The 5th section of the International Copyright Act, 1886, provides that where a work being a book or dramatic piece is first produced in a foreign country to which an Order in Council applies, the author or publisher, as the case may be, shall, unless otherwise directed by the Order (and the Order does not direct otherwise, see, too, Berne Convention, Arts. 5 and 6), have the same right of preventing the production in and importation into the United Kingdom of any translation not authorized by him of the said work as he has of preventing the production and importation of the original work. But it is provided that if after the expiration of 10 years or any other term prescribed by the Order next after the end of the year in which the work, or in the case of a book published in numbers, each number of the book (the last number, according to the Convention, sect. 5), was first produced (*b*), an authorized translation in the English language of such work or number has not been produced, the said right to prevent the production in and importation into the United Kingdom of an unauthorized translation of such work shall cease. And it is also provided that the law relating to copyright, including the Act of 1886, shall apply to a lawfully produced translation of a work in like manner as if it were an original work, and that such of the provisions of the International Copyright Act, 1852, relating to translations as are unrepealed by the Act of 1886 (*i.e.*, ss. 6 and 7 of 15 Vict. c. 12, but as to s. 6, see Order in Council, s. 6), shall apply in like manner as if they were re-enacted in the Act of 1886.

Wood v. *Chart*.

The case of *Wood* v. *Chart* (*c*) illustrates the principles

(*a*) Art. 10.

(*b*) By the Act 15 & 16 Vict. c. 12, s. 8, the period was one year. See, too, *Osborne* v. *Vizetelly*, 1 T. L. R. 17.

(*c*) L. R. 10 Eq. 193; 18 W R. 822: 22 L. T. (N.S.) 432; 39 L. J. (N. S.) Ch. 641

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by which the Court were guided in questions respecting translations and imitations of foreign works under the earlier Acts.

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

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"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 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."

Adaptations restricted.

The scope of the 6th section of the International Copyright Act as to fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country was restricted by the 38 & 39 Vict. c. 12, by which Her Majesty was empowered by Order in Council to direct that the 6th section of the Act of 1852 as to fair adaptations should not apply to dramatic pieces first represented in any foreign country.

By the Order in Council of the 28th November, 1887, section 6, the last-mentioned section was acted upon, and the Berne Convention declares (*a*), as we have seen, that indirect appropriations such as adaptations, arrangements, of music, &c., are especially included among the unlawful reproductions to which the treaty is to apply where they are only the reproduction of a work in the same form or in

(*a*) Art. 10.

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another form with some non-essential alterations, additions, or abridgments so made as not to confer the character of a new original work.

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 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*).

Effect of statutory and conventional clauses as to translations.

The effect of the Act of 1886 (*b*) and the Berne Convention (*c*) is that authorized translations are protected as original works and enjoy the same protection as regards their unauthorized reproduction in the countries of the Union. Of course where the translating right has fallen into the public domain, the translator cannot oppose the translations of the same work by other writers (*c*).

The exclusive right of making or authorizing the translation of a work is given to an author for a period of 10 years from the publication of the original work in one of the countries of the Union (*d*). Where the work is published in incomplete parts, the 10 years run from the publication of the last part, but in the case of bulletins or collections published by literary or scientific societies, or by private persons, or works composed of volumes pub-

(*a*) Dryden's Works (Scott's Ed.), xii. 11. (*b*) Sect. 5.
(*c*) Art. 6. (*d*) Art. 5.

lished at intervals, each bulletin, collection, or volume is regarded as a separate work. Any translation made or authorized by an author during this period of 10 years will be entitled to protection as an original work during the whole period of copyright. Where a book or dramatic poem is first produced in one of the foreign countries of the Union, if after the expiration of 10 years an authorized translation in the English language has not been produced, the author ceases to have any right to prevent the production or the importation of an unauthorized translation (*a*).

Newspaper articles.

Articles from newspapers or periodicals may be reproduced in original or in translation, unless the authors or publishers have expressly forbidden it, but the prohibition cannot be made to apply to articles of political discussion, or to the reproduction of news of the day or current topics(*b*).

Extracts from literary or artistic works.

Power is left to the legislation of the different countries of the Union to decide as to the liberty to be allowed in regard to extracts from literary or artistic works for use in publications destined for educational or scientific purposes or for chrestomathies (*c*).

Name of authors to appear.

For the purpose of proceedings against infringers, it is sufficient that the names of the authors be indicated on the work in the usual manner; and for anonymous or pseudonymous works, the publisher whose name is indicated on the work is entitled to protect the rights belonging to the author. He is, without other proof, reputed the lawful representative of the anonymous or pseudonymous author (*d*).

Seizure of pirated copies on importation.

Pirated works may be seized on importation into those countries of the Union where the original work enjoys protection (*e*).

2. The rights of foreign authors in the British dominions rest upon the Order in Council of Nov. 28, 1887, made under the Act of 1886, and incorporating the Berne Convention.

(*a*) Sect. 5. (*b*) Art. 7.
(*c*) Art. 8. A chrestomathy is a collection of choice morceaux from certain Greek authors.
(*d*) Art. 11.
(*e*) Art. 12. See 5 & 6 Vict. c. 45, s. 17; 7 & 8 Vict. c. 12, s. 10; 15 & 16 Vict. c. 12, s. 9; 25 & 26 Vict. c. 68, ss. 6, 10, 11; and the Customs Act, 1876, ss. 42, 44; and notice thereunder 'London Gazette,' May 1st, 1888.

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An Order in Council under the Acts may extend to all the several foreign countries named or described therein, and the order may exclude or limit the rights conferred by the International Copyright Acts in the case of authors who are not subjects or citizens of the foreign countries named or described in that or any other order, and if the order contains such limitation, and the author of a literary or artistic work first produced in one of those foreign countries is not a British subject, nor a subject or citizen of any of the foreign countries so named or described, the publisher of such work, unless the order otherwise provides, shall, for the purpose of any legal proceedings in the United Kingdom for protecting any copyright in such work, be deemed to be entitled to such copyright as if he were the author, but the enactment is not to prejudice the rights of such author and publisher as between themselves.

Term of International Copyright.

Further, the International Copyright Acts, and an order made thereunder, shall not confer on any person any greater right or longer term of copyright in any work than that enjoyed in the foreign country in which such work was first produced (*a*).

"The author of any literary or artistic work first produced *after* December 6th, 1887, in one of the countries of the Copyright Union has, subject to the provisions of the International Copyright Acts, the Order in Council, and the convention, the same copyright in the British dominions as if the work had been first produced in the United Kingdom" (*b*). But the author is not to have any greater right or longer term of copyright than that which he enjoys in the country in which the work is first produced (*c*).

"In the case of literary or artistic works first produced *before* December 6th, 1887, in one of these foreign countries, such works are the subject of copyright, as if the International Copyright Acts and Order in Council had been in force at the date of their production, without prejudice to the rights of any person who has before December 6th,

(*a*) 49 & 50 Vict. c. 33, s. 2. (*b*) Scrutton on Copyright, 2nd Ed. 190.
(*c*) Ord. of Nov. 28th, 1887, s. 3.

1887, lawfully produced any such work in the United Kingdom" (*a*). This is expressed in the Articles of the Convention, thus: "Under the reserves and conditions to be determined by common agreement, the present Convention applies to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin."

The meaning of this reservation may be better understood by the following example. Suppose A., a French author, to have published a book in France in 1875, it is clear that if before 1886 this work had not "fallen into the public domain in the country of origin," then, as the author under the Order in Council will have English copyright as if the order had applied to France in 1875, he will have all the protection afforded by the Order of 1887.

But if A. took no steps to protect his copyright in England, and an English publisher had published the work before December 6th, 1887, it would seem that such publisher would be allowed to continue selling his edition after that date, and probably might continue to issue other editions. It is clear, however, that the English publisher would not have been allowed to publish the book for the first time after December 6th, 1887 (*b*).

The Final Protocol explains that the common agreement as to works not yet fallen into the public domain in the country of origin is, that the Convention shall operate according to the special conventions either existing or to be concluded, and in default the respective countries shall regulate each for itself by domestic legislation, the manner in which the principle is to be applied (Art. 4).

Construction of the 6th section of the International Copyright Act, 1886.

The 6th section of the International Copyright Act, 1886, seems wider than the 14th Article of the Convention, the latter being vague and limited by the words "in the country of origin."

So, too, as has been pointed out by Messrs. Cutler, Eustace Smith & Weatherly (*c*), the former section would seem to

(*a*) Scrutton on Copyright, 2nd Ed. p. 190, see sect. 6, Act of 1886. 14 Art. Convention. (*b*) As to these examples, see Scrutton, p. 191.
(*c*) Musical and Dramatic Copyright, p. 82.

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have "no operation with reference to a dramatic or lyric piece in manuscript which has not been publicly performed, but which might call for protection under some circumstances; as for instance, if the manuscript were surreptitiously obtained out of the author's desk."

It has been decided in the *Haufstaengl Art Publishing Co.* v. *Holloway* (*a*), that section 6 applies to all foreign works produced before the date of the Order in Council of the 28th November, 1887, whether produced before or after the passing of the Act.

The proviso in the Act of 1886, s. 6, protecting the rights and interests (*b*) arising from or in connection with works which have previous to an Order in Council been lawfully produced in the United Kingdom, is of importance, and a recent case upon the section was taken to the Court of Appeal (*c*). The plaintiff, a French subject, had composed and first produced in France a musical composition called the 'Caprice Polka' before the Order of the 28th November, 1887, had come in operation, but had not acquired the copyright or sole right of performance in England, pursuant to 7 & 8 Vict. c. 12, and the Order in Council made under that Act, January 16th, 1852. Before the date of the publication of the Order of 1887 an English publisher had printed and published the plaintiff's work in England, and the defendant, a bandmaster, had purchased a copy for 5*s.* for the use of his band, and had played it by his band both before and after such date. In an action for damages for the infringement of copyright and for an injunction, it was held by the Court of Appeal, affirming the judgments of A. L. Smith and Grantham, JJ., that there was evidence to warrant the finding that the defendant had an interest arising from or in connection with the lawful production of the work in the United Kingdom which was subsisting and valuable

(*a*) [1893] 2 Q. B. 1.

(*b*) See as to the fact that the word 'interests' has a more extended meaning than rights the case of *Schauer* v. *Field*, [1893] 1 Ch. 41. The interest however must be a direct subsisting pecuniary interest in the continuation of the production: *Haufstaengl Art Publishing Co.* v. *Holloway*, [1893] 2 Q. B. 1.

(*c*) *Moul* v. *Groenings*, [1891] 2 Q. B. 443; 7 T. L. R. 623.

when the Order in Council was published, and that he was, therefore, protected by the proviso to s. 6.

In his judgment in the Divisional Court below, Mr. Justice Smith says:—"It appears to me that the Legislature contemplates a distinction between the word 'rights' and the word 'interests' used in the disjunctive as they are, and to understand what is meant thereby, it becomes important to remember the positions of many authors and publishers in this country when the International Copyright Act was passed in 1886. By the International Copyright Act, 1844 (*a*), to entitle a foreign author to the copyright of a foreign work in this country, it must have been registered within a time to be prescribed by each Order in Council. In 1886, there existed many foreign works copyright in their own country, which had no protection here, and in connection with such works, English authors and publishers were in the habit of bringing out reproductions with such additions and alterations as to give them a protection under the English Copyright Acts. In these cases the English translator or adapter beside his right (in the popular sense) to produce in common with all mankind, a work not copyright in England, had a right in the strict legal sense of the term under the English Copyright Acts, having obtained for his translation or adaptation protection thereunder. It is true he could not prevent other persons going to the foreign original for a similar purpose, but he could prevent them from saving themselves the trouble of translating or adapting by copying his work without going to the original. It is to this class of case, in my judgment, that the term 'rights arising from or in connection with publication' applies, but it is not suggested that Lafleur (the publisher of the English version) had any such rights.

"There also existed another class of case in which English publishers had bestowed no original labour on the foreign works they produced here, but had simply reproduced them as Lafleur had produced the polka in the

(*a*) 7 & 8 Vict. c. 12, s. 6.

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present instance. In this class of case, in my judgment, the English publishers would not have acquired rights within the meaning of the proviso. It is true that they would have, popularly speaking, a right to reproduce the works as had everyone also, for no one could stop them; but though they had this right to produce, they could not in my judgment in the terms of the proviso, have any 'rights arising from or in connection with their production.' They had no further right on the day after they had produced the works than they had the day before, and I arrive at the conclusion that in this case neither Lafleur nor the defendant had any rights arising from or in connection with their publication, or performance of the polka within the true reading of the proviso.

"But had not Lafleur *an interest* arising from or in connection therewith? If the publisher of a work had invested capital in its production, and depended for the return of that capital upon the sale of copies in stock, or it may be upon the proceeds of a second edition, and was in such a position upon December 2nd, 1887, why, I ask, has he not an 'interest arising from or in connection with the production of the work subsisting and valuable' upon December 2nd, 1887? In my judgment he has, and that it was to meet cases such as these, that the word 'interests' was inserted in the proviso in contradistinction to the word 'rights.' He has a direct subsisting pecuniary interest in the continuation of the production or, in other words, in connection with the production; and s. 6 enacts that this interest is not to be diminished or prejudiced, which a foreigner could distinctly do if he could in such a case, by means of the Act of 1886, stop the further production of the work. This instance of a publisher by no means exhausts the examples which might be given as to whom the proviso would apply, but it suffices to accentuate the points now in hand. I hold, therefore, that Lafleur would have an interest within the true reading of the proviso, assuming that he was in the position suggested on December 2nd, 1887. Now comes the question as to the defendant. Why had

not he, on December 2nd, 1887, an 'interest arising from or in connection with the performance' of the polka then subsisting and of value? For the reasons above given he had no 'rights' within the proviso; but why not an '*interest*'? The learned county court judge held that there was evidence that he had an interest subsisting and of value. In my judgment there was evidence that he had an interest then subsisting, viz., an interest to recoup and to obtain a return for the outlay he had been put to in purchasing the piece, in training his band in its performance, and possibly in adapting it to different parts for his men, and that this interest was of value. Whether there be such an interest of value must in each case depend upon the facts of each case.

"There is also another point which is this: if all the bandsmen in the kingdom and all others are to be prevented from playing this polka, it might well be that Lafleur's interest in his unsold copies, if such there be, would be seriously affected, and it seems to me that this would also prevent this action from succeeding, if it were proved that Lafleur was in such a position on December 2nd, 1887." In the same case Mr. Justice Grantham gave some apt illustrations which clearly shew the view the courts are likely to take on the subject. He says:—"Just let us assume that it is a book which is the subject of dispute; an English printer has published a French book here, and has a number of copies still unsold. Are those copies to be wasted or not? In my judgment, not, and he would have the right of selling, and others would have the right of buying them certainly until that edition was sold out. As far as his position is concerned, he occupies very much the same position *pro tanto* at least that he would occupy if he had printed and published a book written by an English author, before that author had taken steps to secure his copyright. His interests, to say nothing of his rights in connection with or arising from the publication, would be subsisting and valuable. Next let us take the case of a manager of a theatre. He translates and produces on the stage a French comedy before the passing

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of the Act. Can it be said that he ought or was likely to be prejudiced by *ex post facto* legislation, and that, though perhaps only one or two performances had been given and none of the initial expenses of reproduction recouped to him, yet he had no interests arising out of that production which were subsisting and valuable at the date of the coming into operation of the Order in Council giving the foreigner this new right? Next take the case of a composer or publisher of music who incurs considerable expense in printing some musical compositions for a band, and has only sold a few copies, and is dependent on the performance of the music by those who have already bought it to popularize the music, and so sell the remainder of his edition. He was completely within his legal rights in the publication here of the music. Has he no interests in that publication which would be legal as against an English composer who had delayed the claim of and thus lost his copyright? And if he has as against him this right, he should have the same right as against the foreigner who for the first time was being treated in the same position as the home producer. If the publisher has this right, why then has not the performer of the music the same right apparently reserved to him in the same spirit by this proviso? He might have spent days in teaching his band this music. He might have spent pounds where in this case shillings were spent in the purchase of the music, and he intended probably, as in this case, to continue the performance to recoup himself for his outlay, and to enjoy the valuable interests he had in this music from its great popularity. Would it not be right to preserve his vested interests as well as those of the publisher of the book first mentioned, or the theatrical manager who prepared a French play for the English stage? For these reasons my judgment must be for the defendant, the respondent" (*a*).

(*a*) *Moul* v. *Grocnings*, [1891] 2 Q. B. 443; 64 L. T. N. S. 329; 65 L. T. N. S. 327. This case has been explained and applied in *Schauer* v. *Field*, [1893] 1 Ch. 35. The plaintiff there owned in Germany the photographic copyright in an oil painting called "Lisette," and also the copyright in a photograph of "Lisette" as a distinct work of art. In January, 1887, the defendant registered as a trade mark a photograph of "Lisette," with their name and the words "trade mark" over the picture. The defendant reproduced this trade mark on show-cards for purposes of advertisement. After the date of an order extending the benefit of the Act of

In a recent case (*a*) the plaintiff claimed to have acquired, by assignment and registration, the right of representation both of the French and English versions of a play or pantomime known as 'The Voyage in Switzerland' or 'The Swiss Express,' which was originally written in French in 1879 by two French authors and called 'Le Voyage en Suisse.' The action was for an injunction to restrain the defendants, a Parisian troupe of pantomimists, from performing this play at a theatre in Nottingham. The main defence was that all copyright in this play had expired before the passing of the International Copyright Act, 1886, and that no new right had been created by that Act. Mr. Justice Kekewich refused to grant the interlocutory injunction sought by the plaintiff and he appealed. The Court of Appeal said that, assuming everything in the appellant's favour, the copyright acquired in 1879 expired in November, 1884, and under sect. 4 of the International Copyright Act, 1852, his right to prevent representations of the play came to an end in the same year. The only enactment, therefore, which could avail the plaintiff was sect. 6 of the International Copyright Act of 1886; but there were rules of law that no statute shall be given a retrospective operation unless its language plainly requires it, and that no statute shall have a greater retrospective operation than its language renders necessary; and it would be a violation of these rules if that section were to be construed so as to revive or recreate a right which had expired before the Act was passed, or to confer a new right on the owners of an expired right without any fresh act done by him. Their Lordships had only to deal with a translation, the copyright in which had expired before the Act came into force, and on the broad ground taken by the court below, that the Act did not revive expired copyrights, they held that the plaintiff had not the right he asserted.

Evidence of foreign copyright.

The 7th section of the Act of 1886 provides that where

1886 to Germany, the plaintiff sought to restrain the defendant from continuing the use of his show-cards, admittedly produced after the date of the order, but it was held the defendant had acquired an interest in advertising his trade mark by the show-cards, and was protected by sect. 6.

(*a*) *Lauri* v. *Renad*, [1892] 3 Ch. 402; 8 T. L. R. 536, 637.

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it is necessary to prove the existence or proprietorship of the copyright in any work first produced in a foreign country to which an Order in Council applies, an extract from a register or a certificate or other document stating the existence of the copyright, or the person who is the proprietor or is for the purpose of any legal proceedings in the United Kingdom deemed to be entitled to such copyright, if authenticated by the official seal or the signature of a Minister of State of the said foreign country, or by the official seal or the signature of a British diplomatic or consular officer acting in such country, shall be admissible as evidence of the facts named therein, and all courts shall take judicial notice of every such official seal and signature, and shall admit in evidence without proof the documents authenticated by it.

The 11th Article of the Berne Convention is as follows: In order that the authors of works protected by the present Convention shall in the absence of proof to the contrary be considered as such, and be consequently admitted to institute proceedings against pirates before the courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner. For anonymous or pseudonymous works the publisher whose name is indicated on the work is entitled to protect the rights belonging to the author. He is, without other proof, reputed the lawful representative of the anonymous or pseudonymous author. It is, nevertheless, agreed that the tribunals may, if necessary, require the production of a certificate from the competent authority to the effect that the formalities prescribed by law in the country of origin have been accomplished, as contemplated in Article 2.

International Union for the Protection of Literary and Artistic Works.

Article 16 of the Convention provides for the establishment of an international office under the name of "Office of the International Union for the Protection of Literary and Artistic Works."

How expenses to be borne.

The expenses of the office are to be borne by the several countries of the Union in the proportions agreed upon,

and the office is placed under the authority of the superior administration of the Swiss Confederation, and works under its direction. The functions of this office are determined by common accord between the countries of the Union.

Official language of office.

The official language of the office is to be French; and it will be the duty of the office to collect all kinds of information relative to the protection of the rights of authors over their literary and artistic works; to arrange and publish such information; to study questions of general utility likely to be of interest to the Union; and by the aid of documents placed at its disposal by the different administrations to edit a periodical publication in the French language treating questions which concern the Union. The office is to hold itself at the disposal of members of the Union, with the view to furnish them with any special information they may require relative to the protection of literary and artistic works.

Adhesion to Berne Convention of other countries.

By Article 18 countries which have not become parties to the Convention and which grant by their domestic law the protection of rights secured by the Convention, may be admitted to accede thereto on request to that effect; such accession to be notified in writing to the government of the Swiss Confederation, who will communicate it to all other countries of the Union. Such accession is to imply full adhesion to all the clauses and admission to all the advantages provided by the Convention.

By Article 19, countries acceding to the Convention have also the right to accede thereto at any time for their colonies or foreign possessions, and they may do this either by a general declaration comprehending all their colonies or possessions within the accession, or by specially naming those comprised therein, or by simply indicating those which are excluded.

Photographs.

By the final protocol it is provided that as regards Article 4 it is agreed that those countries of the Union where the character of artistic works is not refused to photographs, engage to admit them to the benefits of the Convention. They are, however, not bound to protect the

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authors of such works further than is permitted by their own legislature, except in the case of international engagements already existing or which may thereafter be entered into by them.

Also that an authorized photograph of a protected work shall have protection for the same period as the principal right of reproduction of the work itself subsists.

As regards Article 9 it is agreed that those countries whose legislature implicitly includes choregraphic works amongst dramatico-musical works, expressly admit the former works to the benefit of the Convention; and that the manufacture and sale of instruments for the mechanical reproduction of musical airs which are copyright, shall not be considered as constituting an infringement of musical copyright.

Registration.

Registration.

We have seen that the 7 & 8 Vict. c. 12, deals not merely with the copyright in books and musical and dramatic compositions, but also with the copyright in prints, engravings, sculptures, and other works of art. And in 1844 when that Act was passed it must be remembered that there was no existing provision as to registration of copyright in engravings or in sculpture. The provisions for the protection of engravings were of a different character not affected by registration, but by means of the name and date of publication being put upon the plate. The 3rd section of the 7 & 8 Vict. c. 12, provides that in case any Order in Council "shall apply to books, all and singular the enactments of the said Copyright Amendment Act (*a*), and of any other Act for the time being in force with relation to the copyright in books first published in this country, shall, from and after the time so to be specified in that behalf in such order, and subject to such limitation as to the duration of the copyright as shall be therein contained, apply to and be in force in respect of the books to which such order shall extend, and which shall have been registered as hereinafter is pro-

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

vided, in such and the same manner as if such books were first published in the United Kingdom, save and except such of the said enactments, or such parts thereof, as shall be excepted in such order, and save and except such of the said enactments as relate to the delivery of copies of books at the British Museum, and to and for the use of the other libraries mentioned in the said Copyright Amendment Act." Sect. 4 is a similar enactment with respect to prints or articles of sculpture, or any other works of art, and it provides that "All and singular the enactments of the said Engraving Copyright Acts (*a*) and the said Sculpture Copyright Acts (*b*), or of any other Act for the time being in force with relation to the copyright in prints or articles of sculpture first published in this country, and of any Act for the time being in force with relation to the copyright in any similar work of art first published in this country"—so that it points there to future Acts of Parliament—"shall, from and after the time so to be specified in that behalf in such order, and subject to such limitation as to the duration of the copyright as shall be therein contained respectively, apply to and be in force in respect of the prints, articles of sculpture, and other works of art to which such order shall extend, and which shall have been registered as hereinafter is provided, in such and the same manner as if such articles and other works of art were first published in the United Kingdom, save and except such of the said enactments or such parts thereof as shall be excepted in such order." Sect. 5 is a similar enactment as to dramatic and musical pieces; and then sect. 6 provides for the registration which is pointed to by the three sections above. "No author of any book, dramatic piece, or musical composition, or his executors, administrators, or assigns, and no inventor, designer, or engraver of any print or maker of any article of sculpture or other work of art, his executors, administrators, or assigns, shall be entitled to the benefit of this Act, or of

(*a*) 8 Geo. 2, c. 13; 7 Geo. 3, c. 38; 17 Geo. 3, c. 57; and 6 & 7 Will. 4, c. 59.

(*b*) 38 Geo. 3, c. 71 (since repealed), and 54 Geo. 3, c. 56.

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any Order in Council to be issued in pursuance thereof, unless, within a time or times to be in that behalf prescribed in each such Order in Council, such book, &c. . . . . shall have been so registered, and such copy thereof shall have been so delivered as hereinafter is mentioned (that is to say), as regards such book, and also such dramatic piece or musical composition (in the event of the same having been printed), the title to the copy thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the copyright thereof." This differs from the requirements of sect. 13 of the Copyright Act of 1842, inasmuch as it prescribes the registration of the name and place of abode of the "author or composer" instead of the "name and place of abode of the publisher thereof." The Act of 1844 also requires to be entered the time and place of the first publication, representation, or performance, as the case may be, in the foreign country named in the Order in Council under which the benefits of the Act shall be claimed, in the register book of the Company of Stationers in London, that is the register book which is prescribed to be kept by the Copyright Act of 1842. Then there is a similar provision as regards dramatic pieces and musical compositions in manuscript, and also a provision as regards prints and other things; "And as regards any such article of sculpture, or any such other works of art as aforesaid, a descriptive title thereof, the name and place of abode of the maker thereof, the name of the proprietor of the copyright therein, and the time and place of its first publication in the foreign country named in the Order in Council under which the benefit of the Act shall be claimed, shall be entered in the said register book of the said Company of Stationers in London." That, again, points to the same book, viz., the register to be kept under the provisions of the Copyright Act, 1842.

One feature in the Act to which attention may be called is that it imposed an obligation to register which did not exist as regards prints or works of art composed

or made or published by British subjects, and consequently when it provided that the enactments of the Copyright Act of 1842 and of the other Acts with relation to copyright in this country were to be applied in such and the same manner as if publication had first taken place in the United Kingdom, save and except such of the enactments or such parts thereof as should be excepted in the Order; in other words, that unless express provisions were made by the Order in Council for excepting from its operation some of its enactments, foreigners who claimed copyright under the Act were to be subject to the same obligations as were imposed by the statutes on British subjects. Thus authors of works in France claiming copyright in this country were held not exempt from conditions affecting authors of works in this country (*a*).

Proprietor of foreign print to comply with Engravings Acts.

So, too, in order to obtain the benefit of the International Copyright Act the proprietor of a foreign print had to comply with the provisions of the Engravings Acts, and the proprietor's name had to be printed thereon (*b*). This clearly was the view taken by Lord Hatherley in *Cassell* v. *Stiff*, which he thus expressed:—"He," that is the author, "is to have the same protection which the author of any other book would obtain under an Order in Council. He would obtain in that manner protection subject to all the other provisions of the statute, otherwise authors of foreign works would be placed in a better position than those in this country, which certainly was not intended. There is a careful and jealous provision that no author of a foreign work shall be in a better position in this country than authors of works here are. It was not intended to give them anything more. The 3rd section of the statute provides that under an Order in Council the foreign author is to be subject to the provisions of the general Copyright Acts, unless it should be otherwise specified in the order." As to paintings, drawings and photographs, it must be remembered that at the

(*a*) *Cassell* v. *Stiff*, 2 K. & J. 279.
(*b*) *Avanzo* v. *Mudie*, 10 Ex. 203.

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passing of the Act of 1844 there was no provision for registration, but the Fine Arts Copyright Act, 1862 (*a*), provided that there should be kept at the Hall of the Stationers' Company by the officer appointed by the said company for the purpose of the Act (*b*), a book or books, entitled the Register of Proprietors of Copyright in Paintings, Drawings and Photographs, wherein should be entered a memorandum of every copyright to which any person should be entitled under that Act, and also of every subsequent assignment of any such copyright, and such memorandum should contain a statement of the date of such agreement or assignment, and of the name or names of the parties thereto, of the name and place of abode of the person in whom such copyright should be vested by virtue thereof, and of the name and place of abode of the author of the work in which there should be such copyright, together with a short description of the nature and subject of such work, and in addition thereto, if the person registering should so desire, a sketch, outline, or photograph, of the said work, and no proprietor of such copyright should be entitled to the benefit of this Act until such registration, and no action should be sustainable nor any penalty be recoverable in respect of anything done before registration. Section 5 of the Fine Arts Copyright Act, 1862, provided that the several enactments in the Copyright Act, 1842 (*b*), with relation to keeping the register book thereby required, and the inspection thereof, the searches therein, and the delivery of certified and stamped copies thereof, the reception of such copies in evidence, the making of false entries in the said book, and the production in evidence of papers falsely purporting to be copies of entries in the said book, the application to the courts and judges by persons aggrieved by entries in the said book, and the expunging and varying such entries, should apply to the book or books kept by virtue of the Fine Arts Copyright Act, 1862, recognising the distinction between the register created by that Act, and that which

(*a*) 25 & 26 Vict. c. 68.
(*b*) 5 & 6 Vict. c. 45.

was created by the 5 & 6 Vict. c. 45. And the 12th section of the Act of 1862 (*a*), provided that such act should be considered as including the provisions of the International Copyright Act, 1844 (*b*), in the same manner as if such provisions were part of the Act of 1862. Consequently section 4 of the Act of 1844, and also section 6 which provides for registration not in the register directed to be kept by the Act of 1862, but in the book kept by the Stationers' Company under the authority of the Copyright Act, 1842, are introduced into the Act of 1862 in the same manner as if they had been there repeated.

It is clear, therefore, that a foreigner claiming copyright in this country under the Act of 1844 had to register under that Act, the provisions of the Act of 1844 as to registration superseding the provision of the Act of 1842.

The section which refers to registration in the International Copyright Act, 1886, is section 4, which provides that "where an Order respecting any foreign country is made under the International Copyright Acts, the provisions of those Acts with respect to the registry and delivery of copies of works shall not apply to copies of works produced in such country, except so far as provided by the Order." The term "The International Copyright Acts" by section 1 means the Acts specified in the second part of the first schedule to the Act, together with the enactment specified in the second part of the schedule, and these consist of the Acts of 1844, 1852, 1875, and section 12 of the Act of 1862 (*c*). Consequently section 4 is open to the construction that any provisions with respect to the registry and delivery of copies which are introduced by the International Copyright Acts are not to apply to works produced in a foreign country, except so far as provided by the Order, that is to say, unless there is found in

(*a*) Partly repealed by the International Copyright Act, 1886.
(*b*) 7 & 8 Vict. c. 12.
(*c*) See the Short Titles Act, 1892, which includes under the term International Copyright Acts, the Acts of 1844, 1852, 1862, 1875, and 1886.

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the Order in Council something intimating that these provisions as to registration are to apply, but that the provisions of the Copyright Acts, as distinct from the International Copyright Acts, apply unless there is something in the Order excepting from the obligation imposed by the first-mentioned Acts. In other words, it is open to the construction that the 4th section of the Act of 1886 does not deal with registration under the general Copyright Acts, but under the International Copyright Acts only, and that though there is nothing in the Order in Council of the 28th Nov., 1887, requiring registration under the International Copyright Acts, yet as there is nothing in that Order which excepts the enactments with respect to registration contained in the general Copyright Acts, these latter apply. The points above mentioned were fully dealt with in the case of *Fishburn* v. *Hollingshead* (*a*), where it was held that in order to entitle the owner of an English copyright in a foreign painting to sue in this country in respect of an infringement of such copyright, it was not necessary for him to have registered his ownership under the International Copyright Acts, but he must have previously registered himself as proprietor under section 4 of the Fine Arts Copyright Act, 1862 (*b*). As, however, in the case in question Mr. Justice Stirling came to the conclusion that the plaintiff had registered in accordance with the Act of 1882, the question as to the necessity for the registration was not necessary for the purpose of the decision. The view taken by the learned judge as to the necessity for registration caused widespread alarm, and was considered to impose upon the proprietor of copyright an obligation certainly never contemplated by the Berne Convention.

Fishburn v. *Hollingshead.*

It is not the Act of 1886 which should have been considered mainly in the case of a foreign author claiming

(*a*) [1891] 2 Ch. 371; 7 T. L. R. 263.
(*b*) 25 & 26 Vict. c. 68.

copyright in this country, but the Berne Convention and the Order in Council of 28 Nov., 1887, made under the Act and incorporating the Berne Convention of 5 Sept., 1887, which in Articles 2 and 11 clearly show an intention that the accomplishment of the conditions and formalities prescribed by law in the *country of origin* of the work, shall give to the author copyright throughout the countries of the Convention, and if the suggestion as to registration and deposit in this country by a foreign author, as well as in the country of origin, were correct, the position of foreign authors would be worse under the new Order than under the old system.

It is submitted therefore that the provisions of the International Copyright Acts as to registration and delivery of copies do not apply to foreign works by reason of the 4th section of the Act of 1886, and that the foreign author is left to register in his own country, obtaining thereby copyright under the Convention throughout the countries admitted to the Union.

Fishburn v. *Hollingshead* doubted.

The view taken in *Fishburn* v. *Hollingshead* was doubted by Smith and Grantham, JJ., in the argument in *Moul* v. *Groenings* (*a*) (though the doubt is not reported); and Judge Martineau has felt himself justified by that doubt in declining to follow it in the case of *Moul* v. *Devonshire Park Co.* (*b*).

It seems quite clear that, if the opinion of Mr. Justice Stirling be correct, this country has failed to carry out the intention of the Berne Convention, which obviously was that an author who complies with the formalities requisite in the country wherein he first published his work thereby obtains copyright in the other countries parties to the Convention without also having to comply with the formalities necessary for the obtaining of copyright in each of such countries.

(*a*) [1891] 2 Q. B. 443.
(*b*) Law Times, Sept. 19, 1891.

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The point has lately come before Mr. Justice Charles in the *Haufstaengl Art Publishing Co.* v. *Holloway*, [1893] 2 Q. B. 1, where he held that registration in accordance with the Fine Arts Copyright Act, 1862, is not necessary to entitle the owner of British copyright in a foreign painting to sue for infringement, and expressly dissented from *Fishburn* v. *Hollingshead*. "The object of the legislation," said the learned judge (p. 10), "seems clear. It was not designed to impose disabilities, but rather if they existed to remove them and to leave the foreign and native author as near as might be on an equality. The foreigner who complies with the requirements of the law of his own country is to be protected in England; the Englishman who complies with the requirements of English law is to be protected in the foreign countries of the Copyright Union." In the last-mentioned case it was further held that section 6 of the International Copyright Act, 1886, applies to any literary or artistic work produced before the 6th Dec., 1887, the date at which the Order in Council of the 28th Nov., 1887, came into operation, whether produced before or after the 25th June, 1886, the date of the passing of the Act, and that the interest contemplated by the proviso is a direct pecuniary interest in the continuation of the production.

Colonial Copyright.

Colonial copyright.

The rights enjoyed in the United Kingdom by authors of works first published in the colonies and those enjoyed in the colonies by authors of works first published in the United Kingdom differ materially, the former being governed by Imperial Legislation, the latter by colonial.

As to Literary Copyright the Act of 5 & 6 Vict. c. 45, expressly extends copyright to every part of the British

dominions (*a*), but none of the Acts relating to artistic copyright contain any similar provision. The 25 & 26 Vict. c. 68, does refer to the British dominions, giving copyright in all works made in the British dominions or elsewhere (*b*), but it has been pointed out by a writer on the subject (Mr. Winslow) that there is nothing to suggest that the copyright is to extend throughout the British dominions, and the provisions of sections 8 and 10, providing for the recovery of the penalties in England, Scotland and Ireland, and forbidding the importation into the United Kingdom of copies made in any part of the British dominions point to a contrary intention.

Colonial copyright.

By the 5 & 6 Vict. c. 45, the copyright of books, etc., 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 (repealed by the 16 & 17 Vict. c. 107, s. 358), 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.

The Colonial Copyright Act, 1847.

In 1847 the 10 & 11 Vict. c. 95 (*c*), 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

(*a*) Sect. 29. (*b*) Sect. 1.

(*c*) This Act may, by the Short Titles Act, 1892, be cited as the Colonial Copyright Act, 1847.

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authors in such possession, and shall pass an Act or make an Ordinance for that purpose, and shall transmit the same in the proper manner to the Secretary of State, in order that it may be submitted to Her Majesty, and in case Her Majesty 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 8 & 9 Vict. c. 93) and therein before recited, and any prohibitions contained in the said Acts, or in any other Acts, against the importing, selling, letting out to hire, exposing for sale or hire, or possessing foreign reprints of books first composed, written, printed or published in the United Kingdom, and entitled to copyright therein, shall be suspended so far as regards such colony; and thereupon such Act or Ordinance shall come into operation, except so far as may be otherwise 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, 1842; 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 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. It was no doubt this kind of trade which has a tendency 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 published some years ago. 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

(*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.

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looking over the custom-house entries to-day, I have found that not a single entry of an American reprint of 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 1,000 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 Colonial Copyright Act, 1847.

The Royal Copyright Commissioners in their report in June, 1878, referring to the operation of the Colonial Copyright Act, 1847, 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 £1,155 13*s.* 2½*d.*, of which £1,084 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" (*a*).

The Canadian Acts of 1875 & 1886.

In 1875, the Dominion Parliament passed an Act (*b*) giving copyright for twenty-eight years from the time of recording the copyright as therein directed 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 the United Kingdom, who is the author of any book, map, chart, or musical composition, or of any original painting, drawing, statue, sculpture, or photograph, or who invents, designs, etches, engraves or causes to be engraved, etched, or made from his own design any print or engraving, and the legal representatives of such person the sole right and liberty of printing, reprinting,

(*a*) See the 39 & 40 Vict. c. 36, s. 42, and the 52 & 53 Vict. c. 42.
(*b*) Now replaced and substantially re-enacted by the Revised Statutes of Canada, 1886, c. 62, to be cited as "The Copyright Act."

publishing, reproducing and vending such literary, scientific, or artistic works or compositions, in whole or in part, and of allowing translations to be printed or reprinted and sold of such literary works from one language into other languages.

Term of copyright and in whom vested.

If at the expiration of the term of twenty-eight years, the author or any of the authors (when the work has been originally composed and made by more than one person) be still living, or being dead has left a widow or a child or children living, the same exclusive right is continued to such author, or if dead, then to such widow and child or children, as the case may be, for the further term of fourteen years, provided that within one year after the expiration of the first term the title of the work is again recorded, and all other regulations required to be observed in regard to original copyrights are complied with in respect to such renewed copyright (*a*).

In order to entitle an author to the benefit of copyright under this Act, the following conditions must be complied with :—

Conditions on which copyright depends

1. Such literary, scientific, or artistic works must be printed and published or reprinted or republished in Canada, or in the case of works of art, must be produced or reproduced in Canada, whether so published or produced for the first time or contemporaneously with or subsequently to the publication or production elsewhere.

2. In the case of a book, map, chart, musical composition, photograph, print, cut, or engraving, two copies must be deposited at the Office of the Minister of Agriculture ; and so in the case of paintings, drawings, statuary and sculpture, unless a written description of such works is furnished to the Minister of Agriculture.

3. Information must be given of the copyright being secured, by causing to be inserted in the several copies of every edition on the title-page, or on the page immediately following, if it is a book, or if it is a map, chart, musical composition, print, cut, engraving, or photograph, by causing

(*a*) Sect. 5.

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to be impressed on the face thereof, or if a volume of maps, charts, music, engravings or photographs upon the title-page or frontispiece thereof, the following words, "Entered according to Act of Parliament of Canada in the year , by A. B., at the Department of Agriculture." As regards paintings, drawings, statuary, and sculptures, the signature of the artist is deemed sufficient notice of the proprietorship.

4. Whenever the author of a literary, scientific, or artistic work or composition which may be the subject of copyright has executed the same for another person, or has sold the same to another person for due consideration, such author will not be entitled to obtain or retain the proprietorship of such copyright, which is by the said transaction virtually transferred to the purchaser, who may avail himself of such privilege unless a reserve of the said privilege is specially made by the author or artist in a deed duly executed.

Interim copyright.

Pending the publication or republication in Canada of a literary, scientific or artistic work, the author may secure interim copyright (*i.e.* for one month from the date of the original publication elsewhere) by depositing a copy of the title or a designation of the work intended for publication or republication in Canada. The author must publish the registration of this interim copyright in the 'Canada Gazette' (*a*). When interim copyright is secured the work must be published in Canada within one month of its original publication elswhere under a maximum penalty of 100 dollars (*b*).

Piracy.

Offenders forfeit the plate and every sheet copied, and are liable to a penalty from ten cents to a dollar for every sheet—half to the proprietor and half to the Crown.

Assignment.

The right is assignable either as to the whole or in part by an instrument in writing made in duplicate and recorded in the Office of the Minister of Agriculture (*c*).

Limitation of copyright.

Section 6 of the Act provides that "works of which the copyright has been granted and is subsisting in the

(*a*) Sect. 13 of the Act of 1886.
(*b*) Sect. 33. (*c*) Sect. 15.

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* (*a*) was accordingly argued before Vice-Chancellor Proudfoot, upon which he gave his judgment, which was

(*a*) Grant's Ch. & App. Rep., Vol. 23, p. 590.

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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 Spragge, Burton, J.A., Paterson, J.A., Moss, J.A., and their decision was again in favour of the plaintiff, Messrs. Belford's appeal being unanimously dismissed with costs (*a*).

Suggestions of Copyright Commissioners as to colonial copyright.

The suggestions of the Royal Copyright Commissioners on the subject of colonial copyright were 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 Colonial Copyright Act, 1847.

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 (*b*).

Not recommend repeal of the Colonial Copyright Act, 1847.

The Commissioners could not recommend the simple repeal of the Colonial Copyright Act, 1847. They believed that although the system of republication under a licence

(*a*) 1 Tupper's App. R. 436.
(*b*) Par. 207.

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 Colonial Copyright Act, 1847, without establishing some other system of supply would be to 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 Act until sufficient provision had been made by local law for better securing the payment of the duty upon 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 the 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—

(*a*) Par. 211.
(*b*) Par. 213.

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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 (*a*).

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; 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 (*b*).

In the case of *Routledge* v. *Low* (*c*), 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.

(*a*) Pars. 215, 216. (*b*) Pars. 225, 226.
(*c*) L. R. 3 H. L. 100.

Law previous to the International Copyright Act, 1886.

Previous to the International Copyright Act, 1886, and the Berne Convention, a foreign author registering in London a book first published in a federated country, and also delivering in London a copy in the prescribed manner, became entitled to sue in respect of any infringement taking place in the British possessions. It is clear that as all the provisions as to registration and deposit under the former Acts referred to the United Kingdom, no colonial registration or preliminary formalities in reference to the colonies were necessary.

Position of this country and her colonies under the Act.

As to the position of this country, her colonies and other nations under the Berne Convention, there are two sections of the Act which have to be considered, namely, the 9th and 10th.

The former provides that where it shall appear to Her Majesty expedient that an Order in Council under the International Copyright Acts made after the passing of this Act (*a*), as respects any foreign country, should not apply to any British possession, it shall be lawful for Her Majesty by the same or any other Order in Council to declare that such Order and the International Copyright Acts and the Act of 1886, shall not, and the same shall not apply to such British possession, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order; and the expressions in the said Acts relating to Her Majesty's dominions shall be construed accordingly; but save as provided by such declaration the said Acts and the Act of 1886 shall apply to every British possession as if it were part of the United Kingdom.

"British possessions."

The expression "British possession" is defined to mean and "include any part of Her Majesty's dominions exclusive of the United Kingdom"; and where parts of

(*a*) The Act of 1886.

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such dominions are under both a central and a local legislature, all parts under one central legislature are for the purposes of the definition to be deemed to be one British possession (*a*).

Point as to whether the Berne Convention applies to the Colonies as part of the United Kingdom.

"The result of a strictly literal interpretation would seem to be that the International Copyright Acts *ipso facto* apply to the colonies as part of one country of which the United Kingdom forms another part, while the question whether a colony is brought into the Convention as a component part of the mother country, or as a separate entity, would depend not upon the Act, but upon the Order itself" (*b*).

The 19th Article of the Convention provides that the federated countries shall have the right to introduce into the convention their colonies or foreign possessions. By the *procès verbal de signature*, France declared the accession of all the French colonies, and Great Britain, under this article declared that her accession to the Convention for the protection of literary and artistic works, was for the United Kingdom of Great Britain and Ireland and all the colonies and foreign possessions of Her Britannic Majesty. At the same time this country reserved the power of announcing at any time the separate denunciation of the Convention, by one or several of the foreign colonies or possessions in the manner provided by Article 20 of the Convention, namely: India, the Dominion of Canada, Newfoundland, the Cape, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, and New Zealand. It has been suggested by Messrs. Cutler, Smith and Weatherly, that the language of Article 19 implies the introduction of the colonies or foreign possessions as part of the

(*a*) Sect. 11.
(*b*) Cutler, Eustace Smith, & Weatherly on Musical and Dramatic Copyright, p. 101.

mother country, and it is urged that this view is strengthened in consideration of the clauses in which the mother country may reserve to herself the power of dislodging hereafter any colony from the scope of the Convention.

Importance of this point.

This view, however, is not one we are inclined to adopt. The point, however, is of considerable importance in view of the provisions of Article 2, as to the "country of origin," for if the colony is not to be regarded in the light of a separate state, the *country of origin* for all practical purposes will be the mother country, and not a colony in the case of works first published in a colony. The question is, when Article 2 of the Convention provides that the formalities necessary to obtain protection are those prescribed by the legislation of the "country of origin of the work," does it mean, in the case of a colony, the formalities required by the legislation of the colony or the mother country of which such colony is a dependency? For instance, if a work be first published in New Zealand, must it be registered at Stationers' Hall in order to obtain copyright under the International Copyright Acts?

It must be remembered that the provisions of section 8 of the Act of 1886 deal solely with the relations of Great Britain towards her colonies, and it is clear that protection can be obtained for a colonial work in the United Kingdom and in any other part of the British dominions, by registration in the colony, if the colony provides for the registration of such copyright.

In order, however, to obtain protection for a colonial work in one of the other federated countries, it is said by some that it must be registered and copies be delivered at Stationers' Hall. This is a view with which we are unable to agree. It appears to be contrary to the principle and policy of the Berne Convention, and it is

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submitted that the colony is the country of origin within the 2nd Article of the Convention, and consequently if registration is effected in that particular colony this is all that is requisite; and further, if registration is not requisite in the particular colony where the work is first published, then there is nothing in the Act of 1886 or the Convention rendering registration necessary.

Colonial copyright has received a considerable extension from the International Copyright Act, 1886, which provides that the Copyright Acts shall, subject to the provisions of the Act of 1886, apply to a literary or artistic work first produced in a *British possession* in like manner as they apply to a work first produced in the United Kingdom; provided (*a*) that the enactments respecting the registry of the copyright in such work shall not apply if the law of such possession provides for the registration of such copyright; and (*b*) that where such work is a book, the delivery to any persons or body of persons of a copy of any such work shall not be required. If, therefore, in the particular colony there is no provision for registration, then the registration must be effected in this country.

It follows, therefore, that a book produced in the colonies obtains at once the same copyright throughout the British dominions that it would have enjoyed if first produced in the United Kingdom. It has been suggested, however, that the author of a work of art would not be in a similarly favourable position; for, if his work had been first produced in the United Kingdom, he would have obtained under the 25 & 26 Vict. c. 68, a copyright unlimited by the section conferring it, but limited in its remedies to the United Kingdom. But if the author be a British subject or resident within the dominions of the Crown, he has already such a copyright by the 1st section of the Act of 1862, without depending upon the Act of

1886. But the argument seems to overlook the fact that there is nothing in the Act of 1862 directly extending to the authors of works of art copyright throughout the British dominions.

Certificate of registration.

It is also provided that where a register of copyright in books is kept under the authority of the government of a British possession, an extract from that register purporting to be certified as a true copy by the officer keeping it, and authenticated by the public seal of the British possession, or by the official seal, or the signature of the governor of a British possession, or of a Colonial secretary, or of some secretary or minister administering a department of the government of a British possession shall be admissible in evidence of the contents of the register.

It would appear that this provision would only apply to the registration of works other than books, if such registration is contained in a register of books.

Result of Act of 1886 in colonies.

Where before the passing of the Act of 1886, an Act or Ordinance has been passed in any British possession respecting copyright in any literary or artistic works, an Order in Council may be made modifying the Copyright Acts and the Act of 1886, so far as they apply to such British possession, and to literary and artistic works first produced therein (*a*). It is also provided that fresh colonial legislation may be passed and hold good within the limits of the colony passing it (*b*).

Another result of the Act of 1886, is, that works produced in the colonies are entitled to copyright in the foreign countries of the Copyright Union established under the Berne Convention, and that works produced in those foreign countries will have protection in the colonies under the Order in Council of 28th Nov. 1887.

(*a*) S. 8. (*b*) *Ib.*

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International Copyright with America.

International Copyright with America.

Until recently an English author or publisher had no right as against an American publisher who reprinted and issued his work in America. Consequently, immediately on publication of a work in this country, it might have been with impunity reproduced on the other side of the Atlantic, and there was no legal obligation on the part of the American producer to pay a single farthing in respect of the copyright. The British author or publisher had of course power to prevent the importation of these pirated copies into this country, but the real hardship (if so it may be called) was that by reason of the reproduction in America, by the American publisher, he lost that profit which would otherwise accrue from the sale of the copies in which he had an interest to the American public. American readers are infinitely more numerous than English, and the English author frequently found that, whereas in this country he had realised perhaps next to nothing, the American publisher, who had merely reproduced his work abroad, made large profits thereby.

The United States had 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 was 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 were themselves to a great extent protected by their custom in the publishing trade that the man who first re-issued any work of an English author retained a monopoly of future productions from the same pen. No other publisher would interfere with him, and the amount he paid as acknowledgment depended wholly upon his

sense of honour. In the case of publishers of reputation perhaps no great evil resulted from this arrangement, yet the English author was left completely at the mercy of the American publisher.

The printers of the United States for many years prevented any arrangement as to International Copyright between this country and America, but two elements combined to pave the way to some arrangement—First, the publishers discovered that there was a tendency on the part of their confraternity of the rapidly growing States of Chicago and San Francisco to ignore the understanding for so many years current with the great publishing houses, and the publishing business was rapidly degenerating into a mere scramble. 2nd. American authors discovered that as the publishers had it in their power to obtain the best literature of the United Kingdom for next to nothing, and were able to flood the market with cheap literature, reasonable competition was out of the question, and the want of an international arrangement acted disastrously to the cause of American literature. After numerous futile attempts to terminate the shortsighted policy of the States, an Act (51st Congress, Session II., c. 345, 1891) was passed which came into operation on the 1st July, 1891, enabling foreigners to acquire copyright on certain conditions as to printing.

The benefits of the Act are extended to a citizen of a foreign state when such foreign state permits to Americans the "benefit of copyright on substantially the same basis as its own citizens," or when such foreign state is a party to an international agreement which provides for reciprocity in the granting of copyright by the terms of which agreement the United States are at liberty to become a party thereto. The President is to determine the existence of either of these conditions by proclamation. By virtue of this authority the President has proclaimed that this country (*a*) comes within the purview of the Act of 1891 (*b*).

(*a*) Also France, Belgium, Switzerland and Germany.
(*b*) Messrs. Cutler, Smith & Weatherley, in their valuable little work

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on Musical and Dramatic Copyright, state that an impression exists in the minds of some continental authors not natives of States forming part of the Berne Convention, that by originally publishing in Great Britain and America simultaneously they may obtain American copyright; and applications to undertake such first publications as agents for the applicants are being made to London publishing firms. Such a step the authors truly state would be useless for the object proposed, and arises from a fallacy finding a resemblance between the American Statute of 1891 and the Berne Convention where none such exists. Article 3 of that document brings in works published in one of the countries of the Union, though the authors may be strangers to it, but this has no parallel in the law of the United States, under which, in order to be admitted to copyright, the author must be a citizen of a State which gives reciprocal rights to America; publication of the work in such a State, even accompanied by simultaneous publication in the United States, confers no right under American law. But they add that it would seem that a sale and assignment by the non-privileged author to the London publisher would enable the latter to obtain American copyright.

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COPYRIGHT IN FOREIGN COUNTRIES.

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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*).

Protection, however, was only afforded by privileges given by Royal edicts, and was accorded sometimes to authors, sometimes to booksellers, sometimes to persons possessing neither of these qualifications: these privileges depended on the pleasure of the king.

The protection afforded in this way by the various edicts of the French kings to the authors of literary works was finally 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.

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

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Decree of 13th Jan., 1791. The drama.

The first decree on copyright is that of 13th—19th January, 1791, concerning public performances.

Art. 1. Any citizen may open a public theatre and give representations of pieces of every kind on condition of making a declaration, previously to the establishment of his theatre, at the local municipality (*a*).

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 from such representations for the benefit of the authors (*b*).

Art. 4. The provision of article 3 applies to works already represented, whatever the former regulation may have been; nevertheless agreements which may have been made between comedians and living authors or authors dead within five years 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 (*c*).

The drama. Decree, 19th July, 1791.

Then follows a further decree on the same subject dated 19th July—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

(*a*) This liberty was suppressed in 1806, and not re-established till the decree of the 6th Jan., 1864.

(*b*) The provision as to confiscation of receipts is reproduced in Art. 428 of the penal code now in force.

(*c*) The duration of the right has been successively extended by the laws of the 3rd August, 1844, 8th April, 1854, and the 14th July, 1866.

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 seized nor held back (*arrêtée*) by the creditors of such manager. A decree was passed on the 30th Aug. 1792, relating to agreements between authors and managers.

Literary copyright. Decree, 19th July, 1793.

Then follows the decree of the National Convention of 19th—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 draughtsmen (*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:

Duration.

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

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

Art. 3. The magistrates (*officiers de paix*) (*c*) shall be bound to confiscate for the benefit of the authors, composers, painters or draughtsmen and others, their heirs or

(*a*) This enumeration is not exclusive; it applies to all works of art (see Art. 7), including architecture, and was also held to apply to manufacturing designs until the law of the 18th March, 1806. Lois françaises et étrangères, by M. Lyon-Caen. Paris, 1889. And see note to Art. 7.

(*b*) The time has been successively increased by the Laws of the 5th Feb., 1810, the 8th April, 1854, and the 14th July, 1866.

(*c*) By the law of June, 1795, these functions were transferred to

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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 (*a*).

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 (*a*).

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

Art. 7. The heirs of an author of a work of literature or engraving, or of every other production of the intellect or genius which can be classed as a work of art, shall have the exclusive property of such work during ten years (*c*).

Proprietors by descent, or any other title, of posthumous, literary and dramatic works have the same rights as the

(*commissaires de police*) police superintendents, or where there were none to the magistrates (*juges de paix*).

(*a*) But see the Penal Code of 1810, p. 633

(*b*) The deposit is now regulated by the Law on the Liberty of the Press of the 29th July, 1881. See p. 638.

(*c*) The time was successively increased by the laws of the 5th Feb., 1810, and 8th April, 1854, and is now 50 years under the law of the 14 July, 1866. 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*

author; and the provisions of the law concerning the exclusive property of authors and its duration are applicable to such proprietors (*a*).

Posthumous works.

A further law was enacted on the 1st Sept. 1793, in relation to theatres and to the right of representation and performance of dramatic and musical works. By this law the decree of the 30th Aug. 1792, was repealed and all the provisions of the laws of the 13th Jan. 1791, and the 19th July, 1793, were made applicable, and the supervision of public performances was declared to continue to belong exclusively to the municipal authorities. Managers or partners were directed to keep a register in which they should enter (the entries to be signed by the police officers on duty) at every performance the pieces played to show the number of performances of each piece.

Law of 1st Sept., 1793.

Posthumous works were dealt with by the law of the 22nd March, 1805, which enacted "that the owners, by inheritance or any other right, of a posthumous work have the same rights as the author, and the provisions of the laws on the exclusive property of authors and on their duration are applicable, provided that the posthumous

Law of 22nd March, 1805.

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.

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

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works are printed separately and without being joined to a new edition of works already published and become public property (*a*). Books of the church were specially dealt with by the law of the 25th March, 1805.

Law of 8th June, 1806.

Under the law of the 8th June, 1806, authors and managers shall be free to fix by mutual agreement the remuneration payable to the former, either in a fixed sum or otherwise.

The local authorities are to keep a strict eye on the performance of these agreements.

The proprietors of posthumous dramatic works have the same rights as the author, and the provisions relating to the property of authors and its duration are applicable to such works as is provided by the law of the 22nd March, 1805.

Law of 5th Feb., 1810.

Under the law of the 5th Feb. 1810, confiscation and fine for the benefit of the State, without prejudice to the provisions of the penal code, will take place in the following cases:

If there is a piracy, that is to say if a work is printed without the consent and to the prejudice of the author or publisher or their representatives.

In this case this shall be in addition to the damages to the author or publisher or their assigns; and the edition or the pirated copies shall be confiscated to their profit (*b*).

The penalties and the damages shall be decided by the police or criminal court according to the circumstances and the law.

Offences shall be reported by the inspectors of the press and of the book trade, police officials, and in addition by the officers in charge of the custom house as to books coming from foreign countries.

A law of the 20th Feb. 1809, regulated the publica-

(*a*) This law is applicable to musical works, and by the law of the 8th June, 1806, was declared to be applicable to dramatic works. Lois françaises et étrangères, par M. Lyon-Caen.

(*b*) Repealed by the Penal Code of 1810.

tion of manuscripts belonging to libraries and other institutions.

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 brought. These general provisions are also applicable to copyright.

Penal Code on piracy.

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

"*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 réglements relatifs à la propriété des auteurs, est une contrefaçon; et toute contrefaçon est un delit.*

"*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 réglements 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 précédents le produit des confiscations, ou les recettes confisquées, seront remis au propriétaire, pour l'indemniser*

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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 confisquées ni saisie de recettes, sera réglé par les voies ordinaires" (*a*).

The Drama. Law of 3rd Aug., 1844.

The law of 3rd August, 1844, provides that the widows and children of the authors of dramatic works shall have from that date the right during twenty years to authorize the representation and to confer the advantages arising from such works in conformity with the provisions of Articles 39 and 40 of the imperial decree of the 5th February, 1810 (*b*). Art. 39 of that decree made the widow's right dependent on the marriage agreement. Art. 40 provided that authors whether natives or foreigners (*c*) of every work printed or engraved, might assign their right to a printer or bookseller or any other person who would then be substituted in their place, for them and their representatives according to the preceding article.

Reciprocity. Decree, 28th 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 (*d*) 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 referred to by the preceding Articles

(*a*) *Code Pénal*, lib. iii. tit. ii. art. 425—429.
(*b*) Repealed by the law of the 14th July, 1866.
(*c*) Understood to be confined to works published in France. Lois françaises et étrangères, par Lyon-Caen.
(*d*) The practical importance of this decree has been considerably restrained by the numerous treaties with foreign countries. Lois françaises et étrangères, par Lyon-Caen.

are punished in accordance with Articles 427 and 429 of the Penal Code, and Article 463 (*a*) is also applicable.

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

Copyright. Law, 8th April, 1854.

By the law of 8th April, 1854, repealed by the law of the 14th July, 1866, the twenty years term of copyright vested in the children of the author was extended to thirty years (*b*).

On the 6th January, 1864, a new law was enacted in relation to theatres. It provided as follows :—

Any person can construct and carry on a theatre, on condition of making a declaration at the Ministry of the Household and Fine Arts, and at the *préfecture de police* for Paris, in the departments, at the *préfecture.*

Theatres which appear more particularly deserving of encouragement may be subsidized by the State or by the Communes. Managers (*entrepreneurs*) of theatres must

(*a*) Art. 463 merely allows the reduction of penalties where there are extenuating circumstances.

(*b*) By the law of the 9th Dec., 1857, the laws regulating literary and artistic property in the mother country were declared to be effective in the colonies of Martinique, Guadeloupe, French Guiana, Réunion, Senegal, Gorea and the French establishments in India and Oceania. [Algiers is not mentioned, but it is understood that the French laws apply generally.] Subsequent legislation is made applicable to the French colonies by the law of the 29th Oct., 1887, that is to say, the following laws :—

Articles 2, 3, 4 and 5 of the law of the 13th Jan., 1791, relating to property in dramatic works ;

Articles 1 & 2 of the law of 19th July, 1791, on the rights of authors in dramatic productions ;

The law of the 19th July, 1793, relating to literary and artistic property ;

Articles 2 & 3 of the law of the 1st Sept., 1793, relating to the property in dramatic works ;

The law of the 13th June, 1795, relating to the authorities charged with reporting offences of piracy ;

The law of the 22nd March. 1805, relating to property in posthumous works ;

Art. 10, 11 and 12 the 8th June, 1806, relating to the representation of posthumous dramatic works ;

Articles 39, 41 (1st par. & No. 7), 42, 43, 45 & 47 of the law of the 5th Feb., 1810, relating to literary property ;

The law of the 3rd Aug., 1844, relating to property in dramatic works ;

The law of the 28th March, 1852, relating to literary and artistic property in works published in foreign countries ;

The law of the 8th April, 1854, extending the duration of the rights of literary and artistic property.

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comply with the regulations, decrees, and rules, in all matters relating to public order, security and health.

The existing laws on the management and closing of theatres, and the royalty established for the benefit of the poor and hospitals shall continue to be enforced.

Every dramatic work before being represented must, according to the terms of the law of the 30th December, 1852, be examined and authorized by the Minister of the Household and Fine Arts in the case of Paris theatres and by the prefects for theatres in the provinces.

The authorization may always be rescinded on grounds relating to public order.

Dramatic works of all kinds, including pieces which have become public property, may be represented at every theatre (*a*).

Plays with child actors remain forbidden. Public displays of curiosities, marionettes, les cafés dits cafés chantants, cafés-concerts and other establishments of the same kind, remain subject to the regulations now in force.

Nevertheless, these different establishments are for the future freed from the royalty established by Art. 11, of the law of the 8th December, 1824, in favour of the Governors of the Provinces, and will not have to bear any charge other than the royalty for the benefit of the poor or the hospitals.

The actual managers of theatres which are not subsidized are, as against the public administration, freed from all clauses and conditions in their licences (*cahiers des charges*), which are contrary to this law.

All the provisions of previous decrees, orders and regulations contrary to the present are repealed.

On the 16th May, 1866, the following provision was made with regard to mechanical musical instruments.

(*a*) This is, of course, without prejudice to the rights of authors. See the circular addressed to the Prefects of the Departments by the Minister of Public Education and the Fine Arts on the 11th Feb., 1889. Copyright Magazine of the Berne Convention, 1889, p. 29.

The manufacture and sale of instruments mechanically reproducing musical airs which are private property, do not constitute the act of piracy provided and punished by the law of the 19th July, 1793 (*a*).

Copyright. Law, 14th 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 spouse of such author, whatever may be the provisions of the marriage contract (*le régime matrimonial*), and independently of the rights of such spouse under the *régime de la communauté*, has a life interest in the rights which the deceased spouse 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 (*b*).

"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 the spouse: it ceases as soon as the spouse 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.

(*a*) This was obtained by the representations of Switzerland. A provision to this effect has also been introduced in the convention between France and Switzerland of 23 Feb., 1882. A similar provision is also to be found in the Protocole de Clôture, Art. III., to the Berne Convention.

(*b*) "*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.)

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"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 representatives."

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 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.

Liberty of the press.

On the 29th July, 1881, a law was passed relating to the liberty of the press; it provides that upon publication of any printed matter, the printer (*a*) shall under the penalty of a fine of 16 to 300 francs, deposit

Deposit of literary works.

two copies for the National Collections. In Paris this deposit shall be made at the Ministry of the 'Intérieur': at the *préfecture* for the chief town of the departments: at the *sous préfecture* for the county towns of the hundred, and for other towns at the town-clerk's office. The title of the work and the size of the print shall be given. *Bulletins de votes* (voting-lists), commercial and trade circulars, and *les ouvrages dits de ville ou billoquets* are excepted from this provision.

The preceding provisions are applicable to every kind of printed matter or reproductions intended to be published.

But in the case of prints, music, and generally of reproductions other than printed matter, the deposit prescribed by the preceding Article is to be of three copies.

Colonies.

By the law of the 29th October, 1887, the provisions of the law regulating literary and artistic property in France were made applicable to the colonies.

A circular of some interest has been recently sent to the Prefects of the Departments, by the Minister of Education, on the subject of enforcing the laws for protecting copy-

(*a*) It has been proposed to alter this law and make the deposit compulsory on the *publisher* instead of the printer. Lois françaises et étrangères, par M. Lyon-Caen.

right. The minister, after referring to an earlier circular of 1867, and to complaints from the President of the Committee of authors and dramatic composers, calls the attention of the local authorities to some points of interest.

He states that the law of the 6th January, 1864 (*a*), allowing all dramatic pieces to be represented, is of course without prejudice to the rights of authors.

Authors and theatre managers can make their own agreements now as formerly, and the authorities should see to the performance of these agreements according to the law of the 8th June, 1806 (*b*).

In the representation of pieces not public property, managers must have the written consent of the author according to the law of the 13th January, 1791, and the authorities must see to this.

Dramatic works and their titles cannot be altered or modified.

The authorities cannot tax works represented nor alter the price agreed between author and manager.

Even in case of charitable representations it must be seen that the author's consent is given.

France, with Algeria and her colonies, was one of the signatories of the Berne Convention, but previously to this France had entered into a great number of treaties with other countries on the subject of copyright. The numerous treaties with the different German States on this matter were all swept away by the recent Convention with the German Empire, which came into force on the 6th November, 1883 (*c*).

The other treaties of France with their dates may be shortly enumerated as follows:—Austria and Hungary, treaty dated 11th December, 1866, formerly bound up with the treaty of commerce of the same date, but now

(*a*) See p. 635.
(*b*) *Ante*, p. 632.
(*c*) The text of these and the other copyright treaties of France are to be found *in extenso* in the work of M. Lyon-Caen.

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rendered a separate arrangement by the treaty of the 18th February, 1881; Belgium, treaty dated 31st October, 1881, determined by Belgium since the Berne Convention from the 1st February, 1892; Bolivia, treaty dated 8th September, 1887, terms published in France, 30th June, 1890; Ecuador, treaty dated 12th May, 1888, not yet ratified; Spain, treaty of 16th June, 1880; Great Britain, the treaties of 1851 and 1875, have ceased to be in force since the Berne Convention, which now regulates the relations between the two countries; Italy, treaty of 9th July, 1884, is in force, but negotiations have been commenced with a view to a new one; Luxembourg, treaty of the 16th December, 1865; Mexico, treaty of the 27th November, 1886 (the only international treaty on this subject entered into by Mexico); Holland, treaties of 29th March, 1855, and 27th April, 1860, renewed by the arrangement of the 19th April, 1884; Portugal, treaty of 11th July, 1866; Russia, the treaty of the 6th April, 1861, was determined by Russia and ceased to be in force from the 14th July, 1887, but a new treaty is on the point of being concluded; Salvador, treaty of the 2nd June, 1880; Servia, is negotiating a treaty with France; Sweden and Norway, treaty of 15th February, 1884, which was arranged to terminate on the 1st February, 1892, but has been extended; Switzerland, the treaty of the 23rd February, 1882, has been determined by Switzerland, from the 1st February, 1892.

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.

Newspapers.

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 and translations.

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

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 (*i*).

(*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.
(*h*) Fliniaux, l. c. p. 98.
(*i*) Fliniaux, l. c. p. 98. *Ante*, law of 22nd March, 1805, p. 631.

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The state.

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

Registration and deposit.

In order that an author may be fully protected, and have a right of action in cases of piracy, the printer must deposit two copies of the work at the Ministry of the Interior at Paris, and at the Prefecture for county towns: at the town clerk's office for other towns under the law of the 29th July, 1881 (*b*). 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 (*c*).

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 (*d*).

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 (*e*).

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,

(*a*) Cass. 27 May, 1842, Gros; Paris, 5 May, 1877, Peigné.
(*b*) See *ante*, p. 638.
(*c*) Prop. litt. et art.: Pouillet, Paris, 1879.
(*d*) Cass. 22 Feb. 1847, Laurent.
(*e*) Paris, 14 Aug. 1860, Peigné. Seine, Tr. Civ. 12 Jan. 1875, Vve. Michelet.

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 misdemeanour, 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 a piracy to copy without authorization a work even of small extent and to annex it to another work of a different author (*d*). 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.

(*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 Seune, Paris, 1878.
(*c*) Paris, 11 March, 1869, aff. Godchau.
(*d*) Paris, 27 June, 1812, aff. St. Georges.

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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 (*a*).

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 debit, 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 (*b*), 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 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 (*c*).

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

(*a*) Traité, Prop. litt. et art.: Pouillet, Paris, 1879.
(*b*) Prop. litt. et art.: Pouillet, Paris, 1879.
(*c*) Paris, 17 July, 1847, aff. Lecointe.

episodes (*a*); 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 (*b*); 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 (*c*); 4. That it is a piratical reproduction to publish and sell a faithful *résumé* of a play so as to injure its sale (*d*); 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 (*e*).

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.

Joint productions.

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 (*f*).

Taking plot of novel for drama.

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 (*g*).

Registration and deposit.

Published dramatic works must be deposited like other literary works—and the same with regard to music with a

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

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text. In the case of music without words there is no law compelling deposit, but in practice it is generally made. The law of deposit is now regulated by the law of the 29th July, 1881: three copies are required (*a*).

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. 452 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 by publication.

An author who publishes his dramatic work does not lose thereby the exclusive right of representation, as the law of July—August, 1791, provides that the works of

(*a*) See *ante*, p. 638.
(*b*) Traité, Prop. litt. et art.: Pouillet, Paris, 1879.

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 novel 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*

(*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, law of 16 May, 1866, and Berne Convention.
(*d*) Code du Théâtre: C. Le Senne, Paris, 1878.
(*e*) Paris, 27 Jan. 1840, aff. de Musset; Dall. V. Prop. litt. No. 187.
(*f*) Paris, 6 Nov. 1841, aff. Victor Hugo.

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des scènes et la marche générale de l'ouvrage) have not been altered (*a*).

Piracy of an unpublished play.

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 (*b*).

Right of representation independent of deposit.

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 (*c*).

Combined effect of laws of 1791 and 1793.

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 (*d*).

Penalties.

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 (*e*).

Artistic Copyright.

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 tout genre.*" 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;

(*a*) Paris, 30 Jan. 1865, aff. Scribe.
(*b*) Paris, 18 Feb. 1836, aff. Fréd. Lemaître, Dall. V. Prop. litt. No. 345.
(*c*) Code du Théâtre, &c.: C. Le Seune, Paris, 1878.
(*d*) Etude sur la Prop. des Œuvres posthumes: E. Collett & C. Le Seune, Paris, 1879.
(*e*) Code du Théâtre, Lois, Règlements, Usages, Jurisprudence, par C. Le Seune, Paris, 1878.

but the law courts have decided that the law is by analogy equally applicable in all cases (*a*).

Duration.

The duration of copyright in works of art is for the life 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 (*b*).

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 (*c*).

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 (*d*).

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 had to be deposited at the national library; and those artists who omit this formality cannot prosecute any one for piracy (*e*). The deposit is now regulated by the law of the 29th July, 1881, and three copies must be deposited by the *printer* (*f*). On the other hand, no such formality is required in the case of works of art executed on wood, marble, metal, and ivory (*g*).

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.

(*a*) Fliniaux, l. c. p. 111.
(*b*) Fliniaux, l. c. p. 111.
(*c*) Fliniaux, l. c. p. 112.
(*d*) *Ibid.*
(*e*) Paris, 6 June, 1861, Gilles.
(*f*) *Ante*, p. 638.
(*g*) Paris, 26 Feb. 1868, and Cass. 12 June, 1868, Mathias.

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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 (*a*). It is not necessary that any reciprocity 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 (*b*).

(*a*) The deposit is now regulated by the law of the 29 July, 1881, *ante*, p. 638.

(*b*) A peculiarity of the combined operation of the French law and the Convention of 1852 already referred to, 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

The French law of domicile confers on an author very 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.

a monopoly of his works. Such at least is now the reading of the law which has been acted on in Signor Rullini'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* 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. iii. 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. 40 of the decree of the 5 Feb. 1810, which assimilates foreign to national authors, *ante*, p. 634

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

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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 (*a*).

Designs.

Designs.

French law treats the registration of designs and models as a mere matter of custody. Any person who deposits a sealed packet in the prescribed form can assert ownership of the design or model for three or five years, or in perpetuity on payment of the fees chargeable. The contents of the packet are secret, known only to the depositor. There is thus no preliminary examination or discretion whatsoever with the Registrar, who simply gives a receipt for a sealed packet containing certain designs or models relating to the manufacture specified of the depositor. There is no system of marking goods for the protection of the public, no system of searches or furnishing information, no complete record of expired designs, and in fact very little system at all. The designs and models registered in Paris used to be transferred after expiry of the time for which they were deposited to the Industrial Arts Museum (*Conservatoire des Arts et Métiers*), but this is no longer done. There is therefore not even an ultimate benefit to the public from granting provisional protection (*b*).

Artistic designs are protected by the law of the 19th July, 1793; industrial designs by that of the 18th March, 1806, but there is no legal definition of either, which has been the occasion of some difficulties. Models not having been specially mentioned have been treated by the Courts as falling under the law of 1806 (*c*).

(*a*) Prop. litt. V. Cappellemas, Bruxelles et Paris, 1854.
(*b*) Barclay, Law of France relating to Industrial Property, p. 11.
(*c*) Lois françaises et étrangères, par Lyon-Caen.

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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 continued in force until the passing of the law of 1886. From 1814 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 (*a*). The first Belgian law on the subject was the decree of 21st October, 1830: a further law was passed on the 1st April, 1870.

Duration.

Until the law of 1886, to be mentioned hereafter, the law as to copyright was shortly as follows: Literary works were protected for the life of the author and twenty years after his death (Decree of 5th February, 1810).

Piracy and penalties.

Piracy was 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 (*b*). There seems to be no doubt that these articles, which were not repealed by the Belgian Penal Code of 1867, were until 1886 in force, and such is also the opinion of M. Nypels in his 'Commentaire du Code Pénal.'

Registration.

Three copies of every edition had to be deposited with the communal authorities at the locality where the author resided, signed by the printer and the publisher, in order to secure protection (*c*).

What protected.

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

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

Assignment.

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

(*a*) Some provisions of this law remain in force in the Grand Duchy of Luxembourg, and are given in the account of the laws of that country. See also the former law of Holland, p. 664.

(*b*) Page 633.

(*c*) The deposit is dispensed with by the new law.

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Dramatic and musical works.

Representation.

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

With regard to the representation of dramatic works the exclusive right belonged to the author during his life, but it did not descend to any one except his issue, or failing them his widow; to these the right of representation was given for ten years. The performance of musical works was not protected.

Artistic copyright.

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

The heirs and assigns of an artist enjoyed protection for twenty years against reproduction of his work by any process except sculpture. In the case of sculpture this protection only lasted 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 (*a*). The 1st article of all these treaties (except that of France) was, "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 enjoyed the same author's rights in Belgium as the Belgians themselves.

The effect of the treaty with France was 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

(*a*) These treaties have since the Berne Convention become useless in most cases. That with Italy was abrogated in 1889. That with France, from the 1st Feb. 1892.

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 put France on the same footing as all other countries.

The hope expressed in the last edition of this work that the law would very shortly be codified, was not realized till March the 22nd, 1886, when the long-expected codifying Act first projected in 1858, repealing all previous legislation relating to copyright governed by the New Act, was passed. The provisions of this Act which are similar to the French law are as follows:

Copyright Act of 1886.

Part I. Of Copyright in General.

Art. 1. The author of a literary or artistic work has alone the right of reproducing it or of authorizing its reproduction in any manner and in any form whatsoever.

Copyright in general.

Art. 2. This right is prolonged for 50 years after the death of the author for the benefit of his heirs or assigns.

Duration.

Art. 3. Copyright is personal property, transferable and transmissible, in whole or in part, in conformity with the rules of the Civil Code.

Copyright personal property.

Art. 4. The owners of a posthumous work enjoy copyright for 50 years from the day of publication, representation, performance or exhibition.

Posthumous work.

An order in Council shall determine in what manner the date from which the term of 50 years shall run, is to be ascertained (*a*).

Art. 5. When the work is the result of collaboration, copyright exists for the benefit of all the persons entitled for 50 years from the death of the surviving contributor.

Work in collaboration.

Art. 6. When there is joint copyright, the exercise of the right is subject to agreement. In default of agreement, no one of the co-owners can exercise it alone, the right of deciding in case of disagreement being reserved to the Court.

Nevertheless each of the owners is free to prosecute in

(*a*) See Order in Council of the 27th March, 1886, and the ministerial decree of the 3rd April, 1886.

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his own name and without the intervention of the others, any infringement of the copyright, and to claim damages for his share.

The Courts are empowered at all times to impose such limits on a permission to publish the work as they shall judge useful to prescribe; they shall be able, on the request of an opposing co-owner, to determine that he shall not participate in either the expenses or benefits of publication, or that the collaborator's name shall not appear on the work.

Anonymous work.

Art. 7. The publisher of an anonymous or pseudonymous work is considered, as regards third parties, to be the author.

As soon as the author discloses his identity, he regains full possession of his legal rights, *il reprend l'exercice de son droit.*

Limit to transferee's rights.

Art. 8. The transferee of copyright or of the object which (*materialise*) represents a work of literature, of music, or of the draughting arts cannot modify the work, for the purposes of sale or profit, nor publicly exhibit the work modified, without the consent of the author or his representatives.

Protection from seizure.

Art. 9. Literary or musical works are not at any time while unpublished, and other works of art, while they are not ready for sale or publication, are not during the life of the author, liable to seizure.

Part II. Of Copyright in Literary Works.

Extent of literary copyright.

Art. 10. Copyright is applicable not only to writings of every kind, but to lectures, sermons, addresses, speeches, or to any other verbal expressions of thought.

Nevertheless, speeches delivered in deliberative assemblies, in the public sittings of the Courts, or in political meetings can be freely published: but the author alone has the right of printing them separately.

Public documents.

Art. 11. Official decrees or orders of the administration (*Les actes officiels de l'autorité*) are not the subject of copyright. All other publications made by the State or public administrative bodies are the subject of copyright, either for the benefit of the State or such public administrative

bodies, during a period of 50 years from their date, or for the benefit of the author if he has not alienated his right in favour of the State or such administrative bodies.

An order in council is to determine the manner in which the date of publication is to be ascertained (*a*).

Translations.

Art. 12. Copyright in a literary work includes the right of making or authorizing the translation of it (*b*).

Quotations.

Art. 13. Copyright does not prevent the right of making quotations when used for purposes of criticism, argument or instruction.

Newspaper articles.

Art. 14. Every newspaper may reproduce an article published in another newspaper on condition of indicating the source, unless the article bears a *special* warning that reproduction is forbidden (*c*).

Right of representation.

Art. 15. The right of representation of literary works is regulated in conformity with the provisions relating to musical works (*d*).

Part III. Of Copyright in Musical Works.

Musical works.

Art. 16. No musical work can be *publicly* performed or represented, in whole or in part, without the consent of the author.

Art. 17. Copyright in musical compositions includes the exclusive right of making arrangements on the motifs of the original composition.

Art. 18. In the case of works composed of words or librettos together with music, the composer and the author respectively shall not be able to bring out their work with a new collaborator. Nevertheless they shall have the right of independently turning it to account, by publications, translations or public performances.

Part IV. On Copyright in Plastic Works.

Plastic works.

Art. 19. The transfer of a work of art does not carry

(*a*) See *post*, p. 661, the Order in Council of the 27th March, 1883, and the ministerial decree of the 3rd of April, 1886.

(*b*) See the Convention of Berne, 1886, s. 5.

(*c*) This article is recognised as applying to telegrams of literary or scientific merit.

(*d*) This is said to aim at public readings.

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with it the transfer of the right of reproduction to the benefit of the purchaser.

Art. 20. Neither the author nor the owner of a portrait has the right to reproduce it or exhibit it publicly without the consent of the person pourtrayed or his representatives, during 20 years from his decease; with the said assent, the owner has the right of reproduction, but the copy must not however bear an indication of an author's name.

Art. 21. The reproduction of a work of art by manufacturing processes, or by processes applied to manufactures, remains nevertheless subject to the provisions of this law.

Part V. Of Piracy and its Repression.

Piracy and its repression.

Art. 22. Every wrongful or fraudulent infringement of copyright constitutes the offence of piracy.

Definition of offence.

Any one who shall knowingly sell, expose for sale, keep in his shop for the purpose of sale or introduce into Belgic territory for commercial purposes, pirated works is guilty of the same offence.

Fine.

Art. 23. Offences contemplated by the preceding article shall be punishable by a fine of 26 to 2500 francs.

Confiscation.

Confiscation of fraudulent works or objects, as well of plates, moulds or matrices, and other implements which have *directly* served to commit this offence will be decreed against persons found guilty.

Art. 24. In the case of a performance or representation made in fraud of copyright, the receipts may be seized by the judicial police as the products of the offence, and shall be allotted to the claimant on account of the damages coming to him, but only in proportion to the part which his work shall have had in the performance or representation.

Art. 25. The wrongful or fraudulent application in a work of art, or on a musical or literary work, of the name of an author, or of any distinctive sign adopted by him to distinguish his work, shall be punishable by imprison-

ment from 3 months to 2 years, and by a fine of 100 to 2000 francs, or by one of these penalties alone (*a*).

Confiscation of the fraudulent articles shall be decreed in every case.

Any one who knowingly sells, exposes for sale, keeps in his shop, or introduces into Belgic territory, the articles specified in the first paragraph shall be punishable with the same penalties.

Art. 26. Violations of this law, except those provided for by Art. 25, can only be prosecuted on the complaint of a person asserting that he is injured.

Art. 27. If there are extenuating circumstances, the penalties of imprisonment and fine imposed by this present law, may be reduced in conformity with Article 85 of the Penal Code.

Art. 28. The following provision is added to number 23 of the first article of the law of the 15th March, 1874, on extraditions: "Likewise for the offence provided against by Article 25 of the law of copyright."

Part VI. Civil actions from Copyright (*b*).

Civil proceedings.

Art. 29. The rightful owners of copyright shall be able, with the authorization of the presiding judge of the Court of First Instance in the locality of the piracy to be obtained on petition, to have a description taken of the articles alleged to be fraudulent or of the acts of piracy, and of the implements which have directly been used to accomplish them, by one or several experts as this magistrate shall direct.

The presiding judge may by the same order forbid the holders of the fraudulent articles to part with them, may allow the appointment of a receiver (*gardien*) or even may put the articles under seal. This order shall be notified by an officer appointed for this purpose.

If it is a question of things which produce receipts, the

(*a*) This is new.
(*b*) Civil actions on copyright are governed by the provisions of the law of 1854 relating to patents.

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presiding judge may authorize a protectionary seizure of the cash by an officer to whom he shall entrust this.

Art. 30. The petition shall contain *élection de domicile dans les communes* in which the description should take place.

The experts shall be put on oath in the presence of the presiding judge before they commence proceedings.

Art. 31. The presiding judge may impose on the plaintiff the obligation of depositing security. In this case the order will only be delivered on proof that the deposit has been made. A foreigner will always be ordered to give security.

Art. 32. The parties may be present at the description, if they are specially authorized by the presiding judge.

Art. 33. If doors are shut or there is a refusal to open them, proceedings must be taken in accordance with Article 587 of the Code of Civil Procedure.

Art. 34. A copy of the report of the description shall be sent by the experts in a registered letter with the least possible delay to the person on whom the seizure is made, and the person making the seizure.

Art. 35. If in the course of 8 days from the date of the sending, to be ascertained by the postmark, or from the protectionary seizure of the receipts, a summons has not been taken out before the Court in whose jurisdiction the description has been made, the order shall entirely cease to be of effect and the holder of the articles described, or of the cash seized may claim to have the original report given up, an injunction against any use or publication by the plaintiff of his copy, the whole without prejudice to damages.

Art. 36. The consular jurisdiction has no cognizance of actions arising under this law.

The action shall be tried as a summary and urgent matter.

Art. 37. The receipts and the confiscated article may be allotted to the plaintiff on account of or to the amount of the damage sustained.

Section 7 provides for the Rights of Foreigners as follows:

Foreigners.

Art. 38. Foreigners enjoy in Belgium the rights secured by the present law, but their rights shall have no longer duration than the duration fixed by Belgian law. And if their rights cease earlier in their own country, they shall cease at the same moment in Belgium (*a*).

And section 8 contains the Transitory Provisions.

Art. 39. The present law shall not affect agreements made on the subject under the regulations of previous laws. In the case of authors or their heirs whose rights arising under the previous laws shall be existing at the date of the promulgation of this law, their rights shall for the future be governed by this law. If before this promulgation they have ceded the whole of their rights, such rights shall remain subject to the laws in force at the date of transfer (*b*).

Art. 40. All previous provisions relating to copyright governed by this law are repealed.

In the opinion of Mr. Alcide Darras, this law, which as previously stated, closely follows the law of France, is the most finished example of legislation on copyright.

Posthumous works.

With reference to posthumous works a subsequent order in council, dated the 27th March, 1886, after stating that Art. 4 of the Act of 1886 applied to literary and dramatic works, musical, and dramatic musical compositions, and to plastic works, gave notice, that special registers were open at the Department of Agriculture, &c., for the registration of (a) posthumous literary, musical, or plastic works published, represented, performed, or exhibited after the 5th April next, of which the proprietors or persons entitled should desire to obtain the benefit of Art. 4, (b) of publications made by the state or administrative bodies, the author's rights in which were reserved according to Art. 11 of the Act of 1886.

State publications.

(*a*) This is given without any condition of reciprocity.

(*b*) The prolongation now given to copyright does not hold good where neither the author nor his heirs have any longer any right.

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Registration.

Such registrations must, under penalty of forfeiture, be applied for within six months of publication, representation or performance in the case of a literary, dramatic or musical work, or of exhibition in the case of a work belonging to the plastic arts.

The persons interested shall receive a certificate of the registration applied for.

The forms of the registers, affidavits and certificates are to be determined by the Department of Agriculture. Forms were appended to the order. Further forms were issued by the Department on the 3rd April, 1886, and the same Department issued a circular to the provincial governors on the 30th April, 1886, calling their attention to the principal points in the new law (*a*).

The Berne Convention was formally approved of and adopted by the Legislature of Belgium by a law dated the 30th September, 1887. This formal approval was followed by the issue of an explanatory circular to the governors of the provinces of the 28th November, 1887.

Works in existence previous to the Convention.

In order to give effect to the 14th section of the Berne Convention (*b*), which provides as to works published or in course of publication before the 5th December, 1887, the following council order was issued the 15th November, 1887.

Order in Council.

Inventories.

Art. 1. All publishers, printers or retail dealers selling articles protected by the International Convention are invited to make a list of all works published or in course of publication before the 5th December, 1886, taken from works published in any of the countries adhering to the Convention of which the future production would be prohibited according to the terms of the 14th section.

Art. 2. The exhibition and sale of these copies will be rendered lawful by the affixing of a special stamp to be provided by the Department of Agriculture and Trade.

Works in course of publication cannot be completed and

(*a*) A letter on the new law appears at p. 78 of the Official Copyright Magazine of the Convention for the year 1888.

(*b*) *Ante*, pp. 590, 591.

put on the market, unless the parts which have appeared before the 5th December, 1887, are marked with the stamp in question.

Art. 3. Persons in possession of blocks and plates of every kind, as well as lithographing stones or other kinds of printing apparatus, of works originally published in any of the countries adhering to the Convention and constituting reproductions henceforth forbidden, are equally invited to supply lists.

Art. 4. The apparatus referred to may be used till the 5th December, 1889, after which date they must be stamped with a special mark (*estampille*).

Copies made before the 5th December, 1889, by means of apparatus bearing the mark (*estampille*), must be stamped to be lawfully put on the market. This stamp will only be applied up to the 1st January, 1890.

Art. 5. The interested parties shall certify the correctness of the list mentioned in Arts. 1 and 2, which must be sent to the Department of Agriculture, Trade and Public Works before the 5th of January next.

Art. 6. The lists must be made according to the forms annexed; after being properly filled in by the persons interested, they must be sent to the agents charged with the duty of stamping, who shall send them on to the department aforesaid with the additions of their signature and observations, if any are necessary.

Art. 7. The stamping mentioned in Arts. 3 and 4 will take place from the 5th February to the 4th March, 1888. It will be done gratuitously.

Art. 8. After the 5th March, 1888, every unauthorized reprint of works originally published in one of the countries adhering to the Convention and not become public property, which shall be put in circulation for any commercial object, unstamped, shall be considered as a piracy.

Art. 9. Every fraudulent reproduction or falsification of the stamps shall be subject to the penalties of the law.

Holland.

Copyright in Holland.

Previously to the French Revolution, Holland acknowledged the author's right as a perpetual one, capable of transmission to heirs or assigns for ever. Privileges were granted either by the Provincial Government or by the States General. These privileges however could be retracted as in the case of Rousseau in 1760, because "*le livre était impie, scandaleux, pernicieux et propre à démoraliser la jeunesse inexpérimentée de l'unique voie du salut.*" But this system was abolished under the influence of the French Revolution. The French laws put in force after the junction of Holland to that country were abrogated in 1814, and in 1817 a new code was enacted, which remained in force until the passing of the Act of the 28th of June, 1881, which had for its object the regulation of copyright and now constitutes the Dutch law on the subject. 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 2.000 copies of the original edition, to the use of the proprietor; besides a fine of not more than 1,000, 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 works of literature and art (except sculptures) were protected for the term mentioned in the above law.

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

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

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

New law, remarks on.

The new law, which was only in a draft state at the date of the last edition of this work, was finally passed on the 28th June, 1881. It may be stated that this law does not follow other countries in their aim of international protection. It only extends to works printed in Holland and the Dutch East Indies, though they need not be published in those places. There is no power to prevent the publication without leave, of another's actual work unless the author is domiciled in Holland or in the Dutch Indies. The new law does not apply to artistic works as to which the law of 1817 is still in force. Rights of sculptors are entirely unprotected (*a*).

The text is as follows (*b*) :—

Part 1. Character and extent of Copyright.

The law of 1881.

Art. 1. The right of publishing in print writings, illustrations, maps, musical and dramatic works, and oral addresses, as well as the right of performing or of representing in public dramatico-musical and dramatic works belongs exclusively to the author and his assigns.

Every performance or representation, admission to which is obtained by payment, whether for one or more occasions, even where election is required in addition, is equivalent (*assimilée*) to a public performance or representation (*c*).

Art. 2. The following persons are equivalent to authors :—

(*a*) Persons who bring out (*entreprennent*) any works mentioned in the first article when these works are made up of contributions from different collaborators.

(*a*) Les Droits Intellectuelles, par Alcide Darras, Paris, 1887, p. 349.

(*b*) The text given above is taken from the French translation of M. Pierre Dareste.

(*c*) This seems to meet the case of musical societies, which are numerous abroad.

(*b*) Public establishments, associations, foundations and societies in matters which relate to works published under their direction.

(*c*). Translators in matters relating to their translation.

In the case of works made up of contributions from different collaborators, each of these has in addition copyright in his contribution in the absence of any stipulation to the contrary.

Paragraph 2 of Art. 13, does not apply to the owners mentioned in (*a*) and (*b*) of this Article.

Anonymous works.

Art. 3. In the case of works published in print, anonymously or pseudonymously, the publisher is considered the author, and if the name of the publisher does not appear on the title page, or, if none, on the cover, the printer, until a third party makes himself known as the rightful owner in the manner prescribed in Arts. 10 and 11, except as to the period fixed by Art. 10 for the deposit.

Public documents.

Art. 4. There is no copyright in laws, decrees, orders and publications of every kind, whether verbal or written, of any public authority, except in cases to be determined by the king.

Translations.

Art. 5. Copyright includes the exclusive right of publishing in print translations of

(*a*) unpublished works, including oral addresses:

(*b*) published works, if this right is expressly reserved, for one or several languages designated on the title page, or, if none, on the cover of the original edition, and if the author publishes his translation in print within three years from the original edition.

In the case of works made up of several parts or numbers, this period is to be calculated separately for each part or number.

Art. 6. When the same work is published at the same time in several languages, one edition alone is reckoned as original, and the others are considered to be translations.

The author has the right of indicating on the title page,

or if none, on the cover, the edition which he regards as original.

In default of indication, the edition in the mother tongue of the author is reckoned the original.

Quotations.

Art. 7. Copyright in works published in print does not prevent quotations being made from them for the purpose of announcing or criticizing them.

If the source is indicated, it is permissible to reproduce in print news and articles taken from the daily or weekly papers, unless an express reservation of the copyright is placed at the head of the news or article, and the formalities prescribed in Art. 10 have been fulfilled.

Speeches.

Art. 8. Copyright in oral addresses does not prevent an account being given of debates in a public meeting.

Assignment and transmission.

Art. 9. Copyright is considered to be personal property. It is assignable in whole or in part and is transmissible by succession.

It is not liable to seizure.

Part II. Conditions of the exercise of Copyright in works published in print.

Registration.

Art. 10. Copyright in a work published in print is lost, unless the author, editor, or printer deposits at the Department of Justice, in the month of publication, two copies bearing his signature on the title page, or if none, on the cover, with an indication of his address, and the date of publication. In the case of translations, the delay fixed in Art. 5 (*b*) will be reckoned in addition.

With the deposit a declaration ought to be made, signed by the printer to the effect that the work has been printed in an establishment within the kingdom.

Art. 11. The Minister of Justice shall give to the depositors a dated certificate of the deposit.

A duplicate of the certificate shall be preserved at the Department of Justice and entered in a register which any person may inspect without payment and from which any person may require copies or extracts to be made at his own expense.

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Notice is given every month in the *Nederlandsche Staatscourant* of the works and translations deposited.

Art. 12. The exclusive right of performing or representing dramatico-musical or dramatic works is lost when these works are published in print, unless this right is expressly reserved by the author on the title page, or if none, on the cover of the original edition.

Duration for published works.

Art. 13. Copyright in works published in print lasts for fifty years from the original edition, reckoning from the date of the certificate of deposit mentioned in Art. 11.

When an author survives this period without assigning his right, he preserves it during his life.

For unpublished works.

Art. 14. Copyright in works not published in print, including oral addresses, lasts during the life of the author and thirty years after his death.

Musical and dramatic.

Art. 15. The exclusive right of performing or representing dramatico-musical and dramatic works lasts:

(1) In the case of works not published in print for the life of the author and 30 years after his death.

(2) In the case of works published with a reservation of copyright for 10 years from the date of the certificate mentioned in Art. 11.

Translations.

Art. 16. The exclusive right of publishing translations in print lasts:

(1) In the case of works not published in print, including oral addresses, as long as the copyright.

(2) In the case of works published in print five years from the date of the certificate mentioned in Art. 11.

Of works published in parts.

Art. 17. In the case of works made up of several parts or numbers, the duration of copyright is separately calculated for each part or number.

Part IV. Protection of Copyright.

Protection of copyright.

Art. 18. Independently of the civil action flowing from any infringement of copyright, whoever knowingly infringes copyright will be punishable with a fine of 50 cents to 2,000 florins.

Copies obtained by the committal of the offence, as well

as plates, moulds and matrices, belonging to the author of the offence and used in its committal, are confiscated for the benefit of the State.

Art. 19. Any one who distributes or puts publicly in sale a work which he knows to be pirated is punishable with a fine of 50 cents to 600 florins.

Pirated copies are confiscated for the benefit of the State.

Art. 20. The offences mentioned in Articles 18 and 19 are only prosecuted on the complaint of an injured person.

Art. 21. Copies confiscated under Articles 18 and 19 are delivered to the author or his assigns, if they claim them at the clerk's office within 8 days after the judgment has become absolute.

In default of claim, these copies are destroyed. If the judge is called to give damages in a civil action, he shall take into account so far as possible the copies delivered to the claimant.

Art. 22. Authors or their assigns may effect seizure and demand the delivery or destruction of copies published in defiance of their exclusive right.

This seizure cannot be made on isolated copies in the hands of persons who do not trade in articles of this kind, and who have acquired these copies for their personal use.

Articles 722 to 726 of the Code of Civil Procedure are applicable to this seizure.

Art. 23. In the case of withdrawal of the seizure, the person making it may be condemned in costs and damages.

Part V. Transitory Provisions.

Transitory provisions.

Art. 24. The right of reproduction (*kopijrecht*) or any other right of the same nature, acquired under previous legislation is secured on condition that the owner in the year following the coming into force of the law, makes a declaration on the subject at the Department of Justice.

Articles 18 to 23 of this law shall apply to this right.

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Art. 25. No copyright, which would not have constituted a right of reproduction under the previous legislation or in respect of which the formalities then required should not have been regularly observed, shall be exercised over any works published in print before the coming into force of this law, unless the author, publisher, or printer deposits at the Department of Justice, in the year following the coming into force of this law, two copies bearing his signature on the title page or if none on the cover, with an indication of his address and the date of original publication.

This date shall determine the commencement of the duration of the copyright, until there is proof to the contrary.

The copyright treated of in this Article, cannot be pleaded against works already commenced or completed before the coming into force of this law, and at this time lawful.

Art. 26. The Department of Justice shall deliver a dated certificate of deposit to the depositors mentioned in Articles 24 and 25.

A duplicate of these certificates shall be preserved at the Department of Justice, and entered in a register, which any person may inspect without payment, and from which any person may require copies or extracts to be made at his own expense.

Notice is given every month in the *Nederlandsche Staatscourant* of the declarations and works deposited, with mention of the date of original publication indicated by the depositor.

Part VI. Final Provisions.

Extent of application of law.

This law is applicable to works published in print in Holland or the Dutch Indies, and to unpublished works of authors domiciled in Holland or the Dutch Indies, including oral addresses delivered in Holland or the Dutch Indies.

Art. 28. The law is also in force (*exécutoire*) in the Dutch Indies.

Works published in the Indies.

Works published in the Indies must be deposited with the Director of Justice, who shall see that notice of them shall be given in the *Javasche courant*, and on whom shall rest the duties imposed by this law on the Department of Justice.

The *Nederlandsche Staatscourant* and the *Javasche courant* shall mutually interchange these notices as quickly as possible.

In cases provided for by Art. 22, there shall be applied in the Dutch Indies provisions corresponding to the regulations in force there, taking into consideration the difference which exists between legislation for Europeans and their like, and natives and persons like natives.

No copyright shall be exercised over a work published in the Dutch Indies, except on condition that the directions of Art. 25 have been observed in matters concerning the work.

Art. 29. All previous provisions of the legislature relating to the right of reproduction, translation, performance and representation are repealed.

Art. 30. This law shall come into force on the 1st of January, 1892.

Holland has international treaties with France (*a*), Belgium and Spain only: Germany in spite of considerable efforts has not yet been able to effect one, and has recently made considerable complaint of the amount of piracy in Holland.

Holland has up to the present time held aloof from the Berne Convention.

THE GRAND DUCHY OF LUXEMBOURG.

From the date of the French Revolution to 1817, the Duchy of Luxembourg was subject to French laws. They were replaced or modified by the Dutch law of the 25th

(*a*) Originally concluded in 1855, perfected in 1860, and restored to force in 1884 after an interruption of some years. The dates of the treaties with Belgium and Spain are 1858 and 1862 respectively.

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January, 1817 (*a*), and by various decrees of the Grand Duke made in execution of resolutions of the Germanic Diet. These resolutions have been published in the Grand Duchy in French (*b*).

By a law passed on the 23rd of May, 1888, the government of Luxembourg was authorized to join the Berne Convention, to aid in modifying the provisions of the Convention, and if it seemed useful, to withdraw from its obligations under Article 20.

On the 20th June, 1888, a declaration of adhesion to the Convention was made by the government.

On the 27th June, 1888, an Order in Council directed that the Convention and any additional documents should be inserted in the "Memorial" to be observed and put in force in Luxembourg.

The English Order in Council of the 28th November, 1887, was on the 10th August, 1888, extended to Luxembourg.

The law of the 25th January, 1817, relates to rights which can be exercised in respect of the printing and publication of literary works and productions of Art.

Art. 1. Copyright or the right of copying by means of printing, is, so far as original works are concerned, whether they are literary or artistic productions, a right exclusively reserved to the authors and their representatives of publishing in print, of selling or causing to be sold these works, in whole or in part, by abridgment or on a reduced scale, without distinction of size or binding, in one or many languages, illustrated or not with engravings or other accessories of Art.

Art. 2. Copyright as to translations of literary works originally published in a foreign country, is an exclusive right belonging to the translators and their representatives of publishing in print, selling and causing to be sold the above mentioned literary works.

Art. 3. Copyright described in Arts. 1 and 2 shall last

(*a*) See the Law of Holland.
(*b*) Lois françaises et étrangères, by M. Lyon-Caen, Paris, 1889.

for twenty years from the death of the author or translator (*a*).

Art. 4. Every infringement of the copyright aforesaid, whether by a first publication of a literary or artistic work still unpublished, or by the reprint of a work already published, will be considered piracy and punishable as such, by confiscation for the benefit of the owner of the manuscript or the original edition, of all pirated copies unsold which are found in the kingdom, and by payment, to be made to such owner, of the value of 2000 copies calculated according to the price of the legal edition, and this independently of a fine of from 100 to 1000 florins, to go to the general poor box in the district of the pirate. In addition, the pirate if he is an old offender, and having regard to the gravity of the case, may be declared incapable of carrying on for the future the business of printer, bookseller, or dealer in works of art, the whole without prejudice to the provisions and penalties against forgery (*falsification*) decreed by general laws (*b*).

The importation, the circulation or sale of all foreign piracies of original works of literature or art, or of translations of works in which there is a copyright subsisting in this kingdom are forbidden under the same penalties.

Art. 5. The provisions of the preceding Articles do not include complete or partial editions of the works of classic authors of antiquity, so far as the text is concerned, nor editions of the Bible, old or new Testaments, catechisms, psalters, books of prayers, school books, and generally calendars, and ordinary almanacks; however, this exception shall not make any change in the privileges or concessions already granted for the objects mentioned in this article, of which the term is unexpired.

It is permissible also to make the nature and merit of literary or other productions published in print known to the public by means of extracts and criticisms.

(*a*) Raised to 30 years by the decree of the 17th Aug. 1845.

(*b*) Arts. 425—429 of the Penal Code of 1810 have also been applied. It is doubtful if these articles are still in force. Lois françaises et étrangères, par M. Lyon-Caen.

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Conditions of obtaining copyright.

Art. 6. In order to claim the copyright mentioned in Arts. 1 and 2, every work of literature or art published in Holland after the promulgation of this law, must, as to every edition, whether of a first publication or a reprint, fulfil the following conditions:—

(*a.*) The work must be printed in a printing office within the kingdom.

(*b.*) The publisher must be domiciled in the kingdom, and his name alone or jointly with that of a foreign co-publisher must be printed on the title page, or other convenient place, with his address and the date of publication.

(*c.*) At every edition of the work, the publisher shall deliver to the communal administration where he lives, at the date of publication or before, three copies, of which one shall bear on the title page, or if none, on the first page, the signature of the publisher, date of delivery, and a written declaration, dated and signed by a printer domiciled in Holland, certifying, with a designation of the place, that the work has come from his press. The communal administration shall give a receipt to the publisher, and shall send on the whole immediately to the Department of the Intérieur.

Deposit.

Art. 7. The provisions of this law are applicable to all new editions or reprints of works of literature or art already published, which shall appear after its promulgation.

Art. 8. All actions resulting from this law shall be within the jurisdiction of the ordinary courts.

Decree of 2nd July, 1822.

A grand ducal decree of the 2nd July, 1822, regulates the printing and publication of official documents by private persons.

Official documents.

Art. 1. Any one may insert in the newspapers, journals, and other periodicals, also in the historical or political works of the kingdom, all official documents brought to public knowledge by the government, and may print and publish these documents together or separately, unless

the exclusive right of printing and publishing these documents together or separately has been expressly reserved by us in favour of the State printing office, or unless special concessions or privileges have been granted to this effect: nevertheless without prejudice to concessions or privileges previously acquired in a legal manner.

Art. 2. Consequently the penalties threatened by the law of the 25th January, 1817, respecting the piracy of original works, shall and ought to be applied only to pirates of documents, the right of printing and publication of which has been expressly reserved in favour of the State, or of which that right has been granted to private persons by special concessions or privileges.

Art. 3. Reservations of this nature made in favour of the State printing office, and concessions and privileges granted to private persons, shall be mentioned in the official journal.

A grand ducal decree of the 28th September, 1832, relating to piracies in printing, following a resolution of the German Diet, provided that:— Decree of 28th Sept., 1832.

Art. 1. The provisions of the law of the 25th January, 1817, should be applicable to all printers or publishers of a work appearing in one of the other States of the German Confederation (*a*), so far as they should have satisfied the provisions of that law. Rights of German author.

Art. 2. The delivery of three copies of a work which ought to be made by native printers or publishers to the communal administration of the place where they live, agreeably to Art. 6 of the said law, must, in the case of foreign printers or publishers to be domiciled, however, in a State of the Confederation, be made with the superior administration of the grand duchy.

A further decree introducing the resolution of the German Confederation of the 9th November, 1837, respecting piracy and the imitations of intellectual productions, was issued on the 11th May, 1838, without prejudice to more extensive Decree of 11th May, 1838.

(*a*) As the Germanic Confederation has ceased to exist, it may be asked whether these provisions still apply to the States formerly members of it. Note by M. Lyon-Caen.

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rights granted by the earlier law. The resolution was as follows :—

Protection.

Art. 1. No literary productions or works of art, whether already published or not, can be multiplied by mechanical means without the consent of the author or his assigns.

Art. 2. The right of an author or of a person who has acquired property in a literary or artistic work, referred to in sect. 1, passes to his heirs or successors, and shall be recognised and protected in all the States of the Confederation for at least ten years (*a*), if the work bears the name of the publishers, booksellers, or persons bringing it out. The period of ten years runs from the day of publication of this federal resolution for prints or artistic productions which have appeared within the federal territory during the last twenty years: in the case of future works from the year of publication.

In the case of works appearing in parts, the period for the whole work shall only run from the publication of the last volume or part, unless however an interval of more than three years elapses between the publication of different volumes or parts.

Art. 3. The stated minimum period of protection of the Confederated States against piracy (Art. 2) shall be extended to a longer period of twenty years at the most in favour of authors, publishers, or booksellers bringing out extensive works of a literary or scientific character.

In the case of governments whose legislation has not yet reached this extended term, a convention shall be made by the diet on the proposition of any government respectively three years after the publication of the work.

Punishment of piracy.

Art. 4. An author, publisher, or person bringing out original works which are pirated by printing or otherwise, is entitled to claim complete compensation.

Besides the penalties decreed against piracy by the legislation of the States, seizure of pirated works, and in case of works of art seizure of the implements of fabrica-

(*a*) Subsequently prolonged to the life of the author and 30 years after by the decree of 17 August, 1848.

tion, such as moulds, plates, stones, &c., shall be made in every case.

Art. 5. The sale of all pirated works mentioned in Art. 1, whether made within or without the federal territory, shall be forbidden in all the States of the Confederation under penalty of confiscation and the punishments threatened by the State laws.

Decree of the 13th July, 1838.

A further decree of the 13th July, 1838, provided that any person desiring to obtain the protection of the law and of the diet resolutions ought, in order to satisfy Art. 6 of the law of the 25th January, 1817, to fulfil the following conditions :—

(*a.*) The work must be printed or published within the federal territory.

(*b.*) The selling proprietor or publisher must inhabit this territory; his name, his address, and the date of publication must be printed on the title page or most suitable part of the work.

(*c.*) He must prove the fulfilment of condition (*a*) and the personal part of (*b*) by a duly signed certificate, to be given by the authority of which he is a subject, and must deposit the three prescribed copies with the superior administrative authority of the Grand Duchy, designated by the decree of the 28th September, 1832. This deposit shall be made with a written declaration, dated and signed, stating that the work has really come from the indicated printing office. The declaration must be officially certified both as to the signature and the contents.

These provisions apply alike to original and subsequent editions.

Decree of the 17th July, 1845.

By a decree of the 17th August, 1845, the resolution of the German Diet of the 19th June, 1845, relating to literary and artistic property, was ordered to be carried out in the Grand Duchy of Luxembourg, and to replace all former legislative provisions on the subject so far as they were opposed thereto, and it was declared that all

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the inhabitants of the Duchy who wished to enjoy the securities accorded by such resolution must fulfil the formalities of Art. 6 of the law of the 25th January, 1817.

The resolution of the diet was as follows :—

Extension of duration.

(1.) The protection assured by Art. 2 of the resolution of the 9th November, 1837, is henceforth assured for the life of the author of literary and artistic productions and thirty years after his death.

(2.) Anonymous, pseudonymous, and posthumous works and those published by *personnes morales* (academics, universities, &c.), shall enjoy this same protection for thirty years from the year of publication.

(3.) To enjoy this right throughout the States of the Confederation, it will suffice to have fulfilled the conditions and formalities prescribed on this subject by the laws of the German State in which the original appeared.

(4.) The pirate and any person knowingly selling pirated works is liable to compensate fully the persons injured by the piracy, and that jointly and severally so far as general principles of law do not stand in the way.

(5.) The compensation shall consist of the selling price of a certain number of copies of the original work, to be fixed by the court, which number may amount to 1,000 and upwards if the author proves the damage suffered is greater.

(6.) In States of the Confederation where the legislature has not fixed a higher penalty, there shall in addition be pronounced against piracy or any other unlawful multiplication by mechanical means, at the request of the injured person, pecuniary fines up to 1,000 florins.

(7.) Subject to any special provisions of the laws of each country, judges called on to decide on these offences shall, if they find it useful to call in experts, take the opinions of authors, savants and booksellers, in cases relating to literary works ; for works of music and art, that of artistes, artistic persons, and dealers in music and art objects.

Decree of the 29th May, 1857.

A decree of the 29th May, 1857, declared that the resolution of the Germanic Diet of the 12th March, 1857,

concerning the prohibition of unauthorized representations of musical and dramatic works should be in force in Luxembourg.

Musical compositions and dramatic works.

This resolution provided that the provision of a former resolution of the 22nd April, 1841, issued for the protection in the territory of the Confederation of native authors of musical compositions and dramatic works against unauthorized performance and representation of their works, should be extended as follows :—

(1.) So long as a dramatic work has not been published, it cannot be represented publicly without the permission of the author or his heirs or representatives. The author shall enjoy this exclusive right during his life : his heirs or representatives for ten years after his death.

(2.) If the author of a dramatic or musical work publishes it, he can nevertheless reserve for himself, his heirs and representatives, the exclusive right of authorizing the public representation by a declaration, followed by his name printed and placed on the first page of each copy. This reservation takes effect for the benefit of the author during his life, and for the benefit of his heirs or representatives for ten years afterwards.

(3.) Any person who, without the permission of the author, his heirs or representatives, exercises the rights of public representation of an unpublished musical or dramatic work is liable in damages.

Art. 4 of the resolution of 22nd April, 1841, shall remain in force. This article provides that the determination of the damage and of the manner of securing and realizing it, as well as the fixing of the fines which may be decreed in addition, are reserved to the laws of the different countries ; nevertheless, seizure of the gross receipts arising from every unauthorized performance or representation shall be made, without deducting expenses and without making any difference whether the piece has been represented alone or with others.

A question has been raised whether the French Penal Code of 1810 formerly in force in Luxembourg, has been

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repealed by the new Code of 1879. This Code contains no express provisions against piracy of literary and artistic works. The new Code does not expressly repeal the old law, but a circular of the Director-General of Justice states that there is ground for saying that the old Penal Code is absolutely repealed (*a*).

Art. 191 of the Penal Code of 1879 provides that any person who applies to manufactured articles, works of literature, musical compositions, drawings, paintings, or any other productions printed or engraved in whole or in part, the name of a manufacturer, author, artist, other than the author, or of a firm other than that actually manufacturing the article, shall be punishable with imprisonment of one month to six months.

And the same penalty is applicable to every merchant, commission-agent, or shopkeeper who knowingly exposes for sale or circulates any articles marked with fictitious or altered names.

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 the 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 the 23rd January, 1873. This law relates to copyright in works of literature, technical drawings

Law of 11 June, 1870.

What works protected.

(*a*) Lois françaises et étrangères, par M. Lyon-Caen.

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.

Art. 1. The right of reproducing a work of literature by mechanical processes belongs exclusively to the author of the same.

Art. 2. In regard to the rights conferred by this law, a publisher of a work composed of parts by different authors, if these parts are complete and form a whole, is in the position of an author.

Copyright in each particular part belongs to the author of the same.

Art. 3. Copyright passes to the author's heirs, can be alienated in whole or in part, by agreement or by will.

Art. 8. Protection against infringement, established by this law, subject to the provisions hereunder indicated, lasts for the life of the author and thirty years after his death. Duration.

Art. 9. The copyright of a work composed in collaboration lasts thirty years from the death of the survivor of the collaborators.

In the case of a work formed of articles by several contributors, copyright in each article lasts for the period specified in Article 8, if the author is named, for the period specified in Article 11 if the author is not named.

Art. 10. In the case of articles, dissertations, &c., inserted in periodical publications, such as journals, reviews, almanacks, &c., the author has the right (except in the case of an agreement to the contrary) to reproduce them else-

(*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 Vertrage zum Schutze des Urheberrechts, Leipzig. 1887, the Annuaire de Législation étrangère, Paris. 1877, and the Law Mag. and Rev. 4th Series, May. 1878.

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where without the consent of the publisher, or the bookseller and publisher of the work in which they have been inserted, after a period of two years from the year of their publication.

Art. 11. Published works (*a*) only enjoy protection by law for the time fixed by Article 8, if they bear the real name of the author on the title-page, or at the end of the dedication or preface.

In the case of works formed of articles by several collaborators, it is sufficient to protect these if the name of the author appears at the head or the end of the articles.

Anonymous and pseudonymous works are protected for thirty years from the date of publication; but if within thirty years from that date the author or his legal representatives disclose the true name of the author at the registry office, the work is protected for the full term of life and thirty years.

Art. 12. Posthumous works are protected for thirty years from the death of the author.

Art. 13. Academies, universities, *personnes morales*, public establishments of instruction, learned or other societies have their works protected for thirty years from publication, if, being the publishers of such works, they come under the definition of author in Article 2.

Art. 14. In the case of works published in several volumes or parts, the duration of protection is calculated from the first publication of each volume or part.

Nevertheless, in the case of works which treat of a single subject in one or more volumes, and which in consequence ought to be treated as only forming a single whole, the duration of protection runs from the publication of the last volume or part.

If, however, an interval of three years elapses between the publication of two parts or volumes, the volumes, parts, &c., already appeared, will be treated as a finished work, and those which appear afterwards as a new work.

(*a*) The French translation of the Berne Copyright Magazine renders this, works already published: M. Lyon-Caen as in the text.

Art. 17. The exclusive right of the author or his representatives does not pass by failure of heirs to the Treasury or other persons empowered to administer estates to which there are no heirs.

Art. 15. Protection in the case of publishing translations lasts in the case of Article 6 (*a*) for five years from the date of publication: in the case of Article 6 (*c*) for five years from the publication of an authorized translation.

Art. 16. 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.

Art. 39. 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. Registration.

Art. 40. The entries are to be made without any proof being demanded of the correctness of the author's claim.

Art. 41. All persons are allowed to inspect the register, and take extracts. The entries are also to be published in an official journal.

Art. 4. Every mechanical reproduction of all, or part, of a work without the consent of the rightful owner (*a*), is piracy (*Nachdruck*), and is forbidden.

Copies made by hand, if intended to take the place of printed copies, are also piracy. Piracy by copies made by hand.

Art. 5. 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, whether delivered for instruction or amusement.

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

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

(*a*) Includes author, publisher of work in parts, heirs and assigns.

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Piratical translations.

Art. 6. Translations made without the consent of the author of the original are piracy in the three following cases :

(*a.*) If a work published in a dead language is translated into a living one.

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

(*c.*) When the author reserves to himself the right of translation on the title page or head of his work, and such translation is commenced within one year, and ended within three years from the publication of the original work. The year in which the original appears is not counted. In the case of original works which appear in several volumes or parts, each volume or part is considered a separate work within the meaning of this article, and the reservation of the right of translation must be repeated on each volume or part. 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 within the same periods, in default the author will be deprived of protection against new translations.

The translation without consent of an unprinted MS. or lecture within the protection of the law (*a*) is equally piracy.

Translations enjoy the protection of this law against piracy like original works.

Exceptions.

Art. 7. The following are not regarded as piracy :

(*a.*) Citation of passages, or portions of works already published, or even incorporation of the whole of a small work already published in a large one, provided that this is substantially a scientific work with a special character of its own, or a collection of works of different authors put toge-

(*a*) Art. 5 (*a* & *b*).

ther for purposes of religion or schools, or for an educational or special literary purpose. The source or the author must be duly acknowledged.

(*b.*) The reproduction of articles from periodicals or other published papers (*a*), but novels and scientific articles are excepted, and all other writings of a certain length, where reproduction is expressly forbidden at the head.

(*c.*) The printing of laws, codes, decrees, and public documents of every kind.

(*d.*) The printing of speeches in court, in representative political, communal and ecclesiastical assemblies, in political meetings and the like.

Piracy of music.

Art. 46. 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.

Art. 47. 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.

Art. 48. 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 text of oratorios and operas are excepted.

Remedy of authors.

Art. 28. The right to bring an action for piracy belongs to any one whose copyright has been infringed or endangered.

Art. 26. The ordinary courts are competent to decide upon all claims for damages, the amount of penalties, and confiscation of pirated copies.

Art. 27. Criminal proceedings are not commenced officially, but on the initiative of the injured person.

Prescription.

Art. 33. The right to prosecute for piracy, or to bring an action for damages, is lost after a period of three years,

(*a*) This seems to refer to such things as pamphlets published irregularly.

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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.

Art. 35. 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.

Art. 36. 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.

Pen ties.

Art. 18. 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 (*Busse*), 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 in consequence of an excusable mistake, either of fact or of law, the fine is not imposed, and if the person who has committed an infringement is free from blame, he is only liable in damages to the amount of his profits.

Art. 19. In all cases the court decides whether damage has been done, its amount, and the amount and existence of the profits, taking all circumstances into consideration.

Art. 20. A person who has, whether intentionally or by negligence, caused another to infringe is subject to the same penalties and compensation.

If the infringer has done so, intentionally or with negligence, both of them are liable jointly and severally to the party injured.

The application of the penalty and liability in the case

of other persons who have taken part in infringement is governed by the principles of the ordinary law.

Art. 21. All stocks of pirated copies and the plant expressly intended for producing the same are subject to confiscation. After a proper order for confiscation, such objects 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.

Art. 22. 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.

Art. 25. 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.

Art. 61. 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.

Art. 62. 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.

Art. 50. 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

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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.

Art. 51. 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.

Art. 52. The duration of the exclusive right to public representation is the same as for copyright, viz. the life of the author and thirty years.

Art. 54. 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.

Art. 55. 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 the 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 from 1st July, 1876, and its chief provisions are as follows :

Arts. 3 *and* 14. 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 (*a*).

What is protected.

Art. 1. 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.

Persons protected.

Art. 7. 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*).

Art. 9. 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..

Duration.

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.

Art. 10. 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.

Art. 11. Posthumous works are protected for thirty years from the death of the author.

Art. 12. 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*) See *post*, p. 692.

(*b*) Gesetz betreffend das Urheberrecht an Werken der bildenden Künste, vom 9. Januar 1876. ('Reichs Gesetz Blatt,' No. 2.) Art. 7 is said to be specially intended to apply to engravings.

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Registration.

Alienation.

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

Art. 2. An artist may alienate his copyright by contract or by will.

Art. 8. 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.

Piracy.

Art. 5. Every reproduction for purposes of public circulation of a work of art without the consent of the person entitled to the copyright is forbidden.

What acts piratical.

The following acts are considered piractical :—

(*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.

Art. 6. 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*).

(*c*.) The reproduction of a work of art in a work of 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 the 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.

Duration.

Art. 1. The right to reproduce a photograph in whole or in part by mechanical means belongs exclusively to the photographer, and passes to his heirs.

Art. 6. 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.

Art. 5. Every lawful photographic or other mechanical

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

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reproduction of an original photograph must bear, either on 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.

Art. 7. 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.

Art. 2. It is not piracy to make free use of a photograph to originate a new work.

Art. 3. 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.

Art. 4. It is not piracy to copy a photograph for use in a work of industry, handicraft, or manufacture.

Remedies, penalties.

Art. 9. 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.

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

The provisions as to the remedies of the author,

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and reciprocity.

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

Germany has international treaties with France (19th April, 1883), England (1886), Belgium (12th December, 1883), Switzerland (23rd May, 1881), and Italy (1884). With Holland, Germany has for some time endeavoured to enter into relations, and an arrangement has almost been concluded between them which still wants the ratification of the Dutch Parliament.

A Convention, dated 15th January, 1892, has just been concluded with the United States, though the formal ratification is not yet complete.

Under this Convention citizens of the United States shall enjoy in the German Empire the protection of copyright in works of literature and art, as well as in photographs, against infringement on the same legal basis as that on which the subjects of the German Empire stand.

In return the government of the United States engages that the President shall make the proclamations provided for by the law of Congress of the 3rd March, 1891, with a view to extending the provisions of that law to German subjects, as soon as the Secretary of State shall receive the official communication of the sanction of this Convention by the legislative authority of the German Empire.

The Convention is to be ratified, and the exchange of ratifications is to take place as soon as possible at Washington.

Germany was one of the signatories of the Berne Convention. In consequence of the Convention and for the better giving of effect thereto, it was enacted on the 11th July, 1888, with regard to works proceeding from the other contracting countries and not at the date of the coming into force of the Convention become public property, that the following restrictions should apply in the absence of regulating treaties (*a*).

(*a*) Protocole de clôture to the Berne Convention. Sect. 4, par. 2.

That the printing of copies lawfully being made at the date of the coming into force of the Convention may be completed: these copies as well as those already lawfully printed at the same date may be circulated and sold. In the same manner apparatus such as stereotype plates, graving plates and blocks of every kind, as well as lithographed stones already in existence at the date indicated, may be used up to the 31st December, 1891.

Works which have been published in any of the contracting countries before the coming into force of the Convention, shall not enjoy protection of the exclusive right of translation provided for by Art. 5 of the Convention in the face of translations which have already been lawfully published in Germany, in whole or in part, at the date indicated.

Dramatic or dramatico-musical works which have already been published or performed in one of the contracting countries, and of which the original or a translation has been represented lawfully and publicly in Germany before the coming into force of the Convention, will not be protected against unauthorized representation either in the original language or in a translation.

This decree comes into force on the day of its publication. Its provisions are also applicable for the period elapsed since the coming into force of the Convention. Nevertheless the permission given in Art. 1 (1) to circulate and sell copies as well as to use apparatus, is subject to the condition that the copies and apparatus should bear a special stamp which must be affixed at the latest on the 1st November, 1888. The Chancellor of the Empire is to take special measures in relation to the stamping and the making of inventories of the stamped copies and apparatus.

In the event of other countries acceding to the Convention under Art. 18, the provisions contained in Arts. 1 and 2 shall be applicable to them. The date of their accession being substituted for the coming into force of the Convention, the use of the apparatus according to the

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tenor of par. 1 (1) will be permitted during four years from such date; the stamping must take place within three months of the date of accession.

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The laws relating to copyright are different in Austria and Hungary. Austria is governed by a law of the 19th October, 1846; Hungary by one passed on the 26th April, 1884. Since 1887 a treaty has existed on these matters between the two countries. This treaty, dated the 10th May, 1887, is as follows (*a*):—

Treaty between Austria and Hungary of 10th May, 1887.

The authors of works of literature or art and their successors, including their publishers, shall reciprocally enjoy, in each of the two states, the advantages which are or shall be granted therein for the protection of works of literature or art.

Reciprocal protection.

The authors of such works and their successors shall therefore enjoy, for their works published in one of the two states, the same protection and the same remedies on the territory of the other state against infringement as if this infringement had been against an author of a work of literature or art which had appeared in such other state, or against the successors of such an author.

The authors of such works or their successors living in or being under the jurisdiction of one of the two states, shall enjoy in the other state like protection and like remedies against infringement as if the infringement was made against an author living in or under the jurisdiction of the other state, or against the successors of such an author.

These advantages will not be guaranteed to authors and their successors in the other state, except on condition that the work is protected by the laws in the country of origin, and the protection shall not extend beyond the period granted in the country of origin.

(*a*) This is taken from the French translation of M. Lyon-Caen.

The expression works of literature or art includes books, pamphlets, and other writings, dramatic works, musical compositions, dramatico-musical works, works of the draughting art, paintings, sculptures, engravings, lithographs, illustrations, maps or charts of geology, geography, topography, natural history, geometry, architecture, and all technical drawings, plans, sketches, the plastic arts, and generally all scientific, literary, and artistic productions.

When by the terms of the Hungarian law of 1884, Art. 13, on copyright, registration in a public register is requisite for the protection of the individual rights of the author, this registration, if demanded by authors (or their successors) whose rights are protected by this Convention alone, may be effected at the Imperial Ministry of Commerce in Vienna, where a special register shall be established for this purpose.

The registrations made in this register shall at the end of each month be communicated to the Royal Hungarian Ministry of Agriculture, Trade and Commerce, at Buda Pesth, for publication.

Provisions will shortly be made by way of regulation as to this by the government of the kingdoms and countries represented at the Reichsrath.

The provisions of this convention shall also be applicable to works of literature and art already in existence at the date of its coming into force.

Copies made before such date, the production of which has not hitherto been forbidden, may continue to be sold.

Also, articles prepared for purposes of reproduction before the coming into force of this convention, such as engraving blocks and plates of every kind, as well as lithographing stones, if their preparation has not previously been forbidden, may be utilized during a period of four years from such coming into force.

The sale of such copies, and the further use of the prepared articles before referred to, shall not be allowed except on condition that one of the persons interested

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shall, within three months from the coming into force of this convention, demand from the government which has jurisdiction an inventory of such copies and prepared articles, and procure them to be marked with a special stamp.

Dramatic, musical, and dramatico-musical works lawfully performed before the coming into force of this convention may continue to be performed.

The present convention shall, after its ratification by the laws of the two contracting parties, come into force in the two territories simultaneously. The date shall be fixed by common agreement (*a*).

The present convention shall last ten years from such date. Unless terminated by either party it shall be prolonged for two years at the expiration of that time, and so on every two years.

The notice of termination (*dénonciation*) must be given a year before the expiration of the period fixed for the duration of the convention.

Law of 1846.

Duration of copyright.

Under the Austrian law of 1846, 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.

What works protected.

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

(*a*) Date fixed 1st July, 1889.

reproduction in the same way as an original work, but any one can make a fresh translation for himself of the original work.

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.

Registration.

There are no regulations regarding registration or deposit of copies.

Assignment.

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.

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 proportional 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

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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.

Protection for works published in the territory of the German Confederation.

Art. 38. The protection given by the law against unlawful reproduction is accorded also to literary and artistic works published in the territory of the Germanic Confederation. The necessary formalities in the State of original publication must be shown to have been fulfilled.

Works appearing in foreign countries.

Art. 39. Works appearing in foreign countries out of the territory of the Germanic Confederation, enjoy the protection given by this law in the measure in which the same rights are secured to works appearing out of Austrian territory by the laws of the foreign state.

Art. 467 of the Penal Code of Austria of 1852 which replaced Articles 25 to 31 relating to the penalties applicable in the case of piracy and to the right to damages of the law of 1846, is as follows:—

Every piracy of a literary or artistic work, and every reproduction or imitation equivalent by law to piracy, shall be punishable as a misdemeanour on the complaint of the injured person. Independently of the damages

under the civil law, any person who commits the offence, or knowingly co-operates in its committal, or who knowingly sells the products of the offence, shall incur the following penalties:—copies, reproductions, moulds, &c., shall be confiscated and the type destroyed. In the case of artistic works, unless the injured person and the pirate come to a contrary agreement, the plates, engraving stones, moulds, and other implements exclusively used for the piracy shall be destroyed.

In addition the pirate shall incur a fine of 25 to 1000 francs, or, if unable to pay, imprisonment from five days to six months. If he repeatedly commits the offence, or has been twice at the least convicted, he may be deprived of the right of exercising his trade. The confiscated copies shall also be destroyed, in so far as not applied to indemnify the injured party, by agreement between him and the offender.

Also the public representation of a dramatic or musical work contrary to the exclusive right of the author and his representatives, in whole or in part, with immaterial changes, shall be punishable as a misdemeanour. In addition to the confiscation of the manuscripts (librettos, scores, parts), which shall be unlawfully used, there shall be power to inflict a fine of 10 to 200 francs, or, in the case of inability to pay, proportional imprisonment.

The civil Code of Austria of 1811, Articles 1164 to 1171 (excluding 1169 which was repealed by the Act of 1846), contains provisions relating to publishing contracts.

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Hungary.

Up to 1884, Hungary had no law in copyright, though the *judex curialis* published provisions in 1861 declaring that the products of the intellect were protected by law. The Austrian law of 1846 was never expressly applied, though the Hungarian Courts often acted on the provisions of that law (*a*). The law was, however, very uncer-

(*a*) Lois françaises et étrangères, par M. Lyon-Caen.

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tain, and in 1884 the law previously referred to was passed; this law differs in many points from the Austrian law of 1846, and is more favourable to the author. Its provisions are as follows (*a*):

Law of 1884.

Art. 1. The reproduction of a literary work by a mechanical process, its publication and offering for sale, constitute an exclusive right for the author during the period of protection fixed by law.

When the work has several authors, and the contribution of each cannot be distinguished, each author, in the absence of agreement to the contrary, has the right of reproduction, publication and sale, after previously indemnifying the other authors.

The court shall determine the indemnity according to the circumstances on the evidence of experts, if necessary. None of the authors can be compelled against their will to put their name on the work.

When the contribution of each author can be distinguished, the consent of each author is necessary for the reproduction, publication, and offering for sale of the distinct portions pertaining to each.

Art. 2. In the case of literary works composed of articles by several persons and considered as forming one single whole, the editor takes the benefit of legal protection as an author.

Copyright in each separate article belongs to each collaborator.

In the case of collective works considered as forming one single whole, and composed of writings or articles which have not yet been published and are not yet protected by this law, the editor enjoys the same legal protection as the author.

Art. 3. Copyright can be transferred by contract or by will with or without reservation. In the absence of any disposition, the right goes to the legal heirs of the author.

(*a*) This translation is made from the French translation of M. Lyon-Caen.

The right of the Crown to unclaimed estates on failure of heirs does not extend to copyright.

When one of the authors of a work composed in collaboration dies without heirs, his rights pass to the surviving collaborators.

Execution cannot be levied on copyright as long as it belongs to the author or his heirs or legatees.

Execution can only be levied on the material profits coming to the author or his heirs or legatees from the publication or public representation of the work.

Art. 5. The reproduction of a literary work in whole or in part by a mechanical process, or its publication or offering for sale in whole or in part without the consent of the lawful owner (*a*), are considered an infringement of copyright and are forbidden. Infringement.

A copy by hand is to be treated as a reproduction by a mechanical process, when the copy so made is intended as a substitute for mechanical reproduction.

Art. 6. The following acts in addition are to be considered infringements :—

(1.) The reproduction, publication, and offering for sale without the consent of the author of an unpublished manuscript. The lawful possessor of a manuscript or of a copy of a manuscript cannot do these acts without the consent of the author.

The reproduction, &c., of verbal expositions or of lectures given for purposes of discussion or education.

Every publication made by either author or publisher contrary to the agreement between them or the law.

Printing more copies of a work than was agreed between the author and publisher.

The unlawful publication by one of the authors of a work of collaboration.

The publication in one collection without the consent of the author of speeches delivered in debates or public deliberations in different circumstances on different subjects.

(*a*) Arts. 1, 2, & 3.

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The unlawful insertion in any newspaper of telegrams and information collected and reproduced solely for the purpose of being printed in newspapers. The provisions of Art. 9 (1) shall be applied to the insertion of such communications after their publication in any paper.

Translation.

Art. 7. A translation of an original work without the consent of the author is considered an infringement in the following cases:

When the work having appeared in a dead language is published in a translation in a living one.

When the work having appeared in several languages is published in a translation in one of those languages.

When the author has reserved the right of translation on the title page or at the commencement of the original work, on condition that the (author's) translation has been commenced within a year from the publication of the original, and finished within three years. Protection ceases in the case of languages in which a translation has not been commenced in the first year. When the reservation is only made for certain languages, the work can be freely translated into any other.

In the case of original works appearing in several volumes or parts, each volume or part ought to be considered a separate work, and the reservation ought to be repeated on each volume or part. The periods relating to translations only run from the 1st of January after the publication of the original.

In the case of works intended for the stage, the translation must be finished within six months.

Information shall be given of the commencement and finishing of the translation for the purpose of being entered in a register in the period fixed by this law (*a*).

Translations of literary works not yet published and protected by this law (*b*), shall be considered an infringement of copyright.

(*a*) Arts. 42 & 44.
(*b*) Art. 6, (1) & (2).

Art. 8. Translations, like original works, are protected against unlawful reproduction and sale.

Acts which are not infringements.

Art. 9. The following acts are not considered infringements:

The literal citation of some passages or small parts of a work already published, or the insertion of small works already reproduced or published, in a work of greater size which has from its contents an independent scientific purpose, provided this insertion is made within limited bounds explained by the purpose in view, or such insertion in a collection composed of extracts from several writers for use in schools, for religious or educational objects, on condition that the name of the author or the source be clearly shewn.

The insertion of isolated communications extracted from papers and reviews other than literary and scientific works, or important communications bearing at their head a prohibition against reproduction.

The communication of public decrees and debates.

The reproduction of speeches delivered in public debates and deliberations.

The reproduction of a few articles extracted from the collective works referred to in Art. 2, par. 3.

Art. 10. The 53rd law of 1880 applies to the reproductions of laws and orders (*a*).

Duration of Copyright.

Duration of copyright.

Art. 11. Subject to the provisions contained in the following articles, the protection assured by the law against infringement lasts during the life of the author and fifty years after his death.

Art. 12. In the case of collaborative works, the period of protection runs from the death of the surviving collaborator.

In the case of collective works, the period of protection

(*a*) By which the exclusive right of publishing laws, &c., is reserved to the State Lois françaises et étrangères, par M. Lyon-Caen.

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for each article varies according as the authors of the articles are named or not.

The collections mentioned in Art. 6 (6) enjoy legal protection for fifty years after the death of the orator, but if a collection of speeches is not published during the life of the author or within five years from his death, publication cannot be made without the consent of his representatives.

Art. 13. Literary works which have appeared in the life of the author do not enjoy the protection fixed by Art. 11, unless the true name of the author or his recognized literary name appears on the title page, under the dedication, or at the end of the preface.

In collective works it is sufficient for the protection of each article if the name of the author is indicated at the commencement or end of the article.

Anonymous works.

Pseudonymous or anonymous works which shew the date of their first publication are protected for fifty years from this date. If, however, during this fifty years the name of the author has been declared and registered, the period of protection is calculated according to Art. 11.

Posthumous works.

Art. 14. A posthumous work is protected for fifty years from the death of the author. If the work is published for the first time more than forty-five years from the death of the author, but within fifty years, it enjoys protection for fifty years from publication.

Academies.

Art. 15. Academies, universities, corporations, and other persons legally constituted, as well as educational establishments, enjoy, in so far as they are considered authors of works published by them, protection for thirty years from the first publication.

Works in parts.

Art. 16. In the case of works appearing in several volumes or parts, the period of protection runs from the first publication of each volume or part.

In the case of works which treat of one and the same subject in several parts or volumes, and which consequently must be considered as forming a single whole, the period of protection runs from the publication of the

last part or volume. If, however, more than three years have elapsed between the publication of different volumes or parts, the parts or volumes already issued will be considered as an independent work, and the subsequent parts or volumes as a new work.

Translations.

Art. 17. The prohibition against translation lasts, in the case of Art. 7 (2), for five years from publication of the original work, and in the case of Art. 7 (3) five years from the first publication of the authorized translation.

Art. 18. The period of protection fixed by the preceding articles runs from the 1st January after first publication or the death of the author.

General Provisions.

Punishment for infringement.

Art. 19. Any person who intentionally or negligently commits an act of infringement is punishable for this offence by a fine up to 1000 florins, in addition to the damages payable to the author or his heirs. The fine is payable by each infringer. If the fine is not recoverable, it may be replaced by imprisonment for a time to be determined by the court in its sentence on conviction. For the purpose of this determination, an imprisonment of one day may be given for a fine of 1 to 10 florins.

If the infringer has acted unintentionally and without negligence, the penalty is not applicable, but he is under the obligation of making good the damage caused to the author or his assigns, though only to the extent of his profits.

Art. 20. Any person who causes another to infringe incurs the penalty declared by Art. 19, and is under the obligation of compensating the author or his representative according to Art. 19, even when the actual offender is not culpable under that Art., or is not bound to pay compensation.

If the principal infringer has acted intentionally or negligently, both are liable in damages severally and jointly. Other accomplices are punishable and liable to pay damages according to the general principles of law.

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Art. 21. Copies in stock, and implements intended for illegal reproduction, such as presses, moulds, metal plates, blocks, stones, &c., are confiscated, and as soon as the decision of the court has become absolute, are destroyed or are returned to their owner after having been deprived of their injurious characteristics.

When only part of a work is illegally produced, only that part and the implements employed in the production of that part are confiscated.

Confiscation extends to all copies and implements which are found in the possession of the author of the infringement, of the printer, of the bookseller, of the trader who has circulated copies, and of any accomplice.

Confiscation takes place even when the infringer has acted unintentionally and without negligence, and is allowed even against his heirs and legatees.

The injured party may take the copies and the implements used for infringement, in whole or in part, at cost price, so long as that does not affect the rights of third parties.

Art. 22. The offence of piracy is committed as soon as the first copy of a work or a manuscript the production of which is unlawful, has been published.

A simple attempt at reproduction does not involve either penalty or damages, but in such case, the finished parts and the implements may be confiscated.

Art. 23. Any person who intentionally and in course of trade offers for sale, sells, or circulates in any way a work illegally reproduced, is under the obligation of making good the damage caused to the author or his representative, and is subject in addition to the fine fixed by Art. 19.

Copies intended for sale are confiscated even when the *mala fides* of the distributor is not proved.

Art. 24. When in the case of Art. 9, information as to the source or name has been omitted, whether knowingly or unintentionally, any person who has reproduced the work or caused another to do so, is liable to a fine up to 50 florins. The same penalty is applicable to any person

who against the will of the author, mentions his name on the work (*a*).

In this case, the pecuniary penalty cannot be changed into imprisonment, and there is no cause for compensation.

Procedure.

Art. 25. The civil courts have jurisdiction to decide the amount of damages as well as to fix the fines decreed by this law, and to pronounce sentence of conviction. Jurisdiction.

Art. 26. The injured party may bring the matter before the Royal Court of Justice of First Instance, in the jurisdiction of which the infringement has been committed, or which has personal jurisdiction over the accused.

Art. 27. Proceedings can only be taken by an injured party. The injured party can before judgment declare that he does not require the infliction of a penalty. If this declaration is made, a penalty cannot be inflicted.

Art. 28. The author or publisher whose right has been injured or endangered, may take proceedings on account of piratical acts.

In the case of works already published, the person named as author on the work in question shall be considered the author until proof to the contrary.

In the case of pseudonymous or anonymous works, when no publisher is named, the agent indicated on the work in question has power to exercise the author's rights; the publisher named on the work or the agent is considered, until proof to the contrary, as the assignee of the pseudonymous author or guardian of the anonymous.

Art. 29. In actions commenced on account of infringement, the court may decide freely according to circumstances, the question of intention or negligence, the existence and the amount of damage, and the profits of the offender.

Art. 30. The court may hear experts in order to decide technical questions bearing on the point of infringement.

(*a*) Art. 1, par. (3).

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Commission of experts.

Art. 31. Permanent commissions of experts, composed of savants, writers, artists, booksellers, printers, and other persons of special knowledge, shall be formed at Buda-Pesth and Agram. These commissions shall give their opinions on questions submitted to them by the courts.

Art. 32. The presidents and members of the commissions shall be named by the Minister of Religion and Public Education, and in Croatia-Slavonia by the Ban, for a period of six years.

The members shall once for all take the oath of experts or make a solemn affirmation instead.

Art. 33. The commissions must ground their opinion as to the questions submitted to them on the information supplied to them.

Art. 34. All the members must be summoned to the meetings of the committee.

To make the decisions valid, the president and in addition five members at least must be present.

The internal regulations of the commission shall be settled by the Minister of Justice in concert with the Minister of Religion and Public Education and the Ban of Croatia-Slavonia.

Art. 35. Remuneration may be given to the commission for its opinion. In fixing this, the court shall follow the provisions of the civil code.

Prescription.

Art. 36. The right of taking proceedings in relation to the penalty to be applied in the case of piracy, and in relation to damages and profits, is lost by prescription after three years.

Prescription commences from the day when pirated copies have begun to be circulated, or from the day of publication of the work.

Art. 37. The right of taking proceedings in relation to the penalty to be imposed for offering for sale unlawful reproductions, and for damages for the injury thereby done, is lost by prescription after three years.

This commences from the last day of such offering for sale.

Art. 38. Unauthorized reproduction and offering for sale are not punishable when the person having the right to take proceedings, has not done so within the period of prescription, and within three months of the day when he became cognizant of the offence and the offender.

Art. 39. The destruction and confiscation of pirated copies or implements used in reproduction, may be claimed as long as copies intended for the market, or tools used for the purpose indicated, are in existence.

Art. 40. When it is a question of an act contrary to Art. 24, the right of action of the injured party is lost after three months from the date when the printed work has commenced to be circulated.

Art. 41. The interruption and suspension of prescription are subject to the general rules.

Registration.

Registration.

Art. 42. The register, in which registration is to be made according to Arts. 7, 13, 55, and 65, is kept at the Ministry of Agriculture, Trade and Commerce.

Art. 43. Registration is made on the verbal or written request of the interested persons, without preliminary examination into the truth or lawfulness of the facts stated.

Art. 44. Any person may inspect the register, and require verified extracts to be delivered to him.

The registrations effected shall be published in a paper to be determined by such minister.

The registration of works appearing in Croatia-Slavonia, as also the works of persons within the jurisdiction of those countries appearing in a foreign country, shall also be published in a paper appearing in Croatia-Slavonia to be selected by the Ban.

It shall be the duty of the Minister of Agriculture, &c., to make rules for the registration procedure.

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CHAPT. II.—*Musical Works.*

Musical works.

Art. 45. The provisions of Arts. 1 to 6, and 9 to 14, apply to authors of musical works in reference to their rights of reproduction, publication and sale.

Infringement.

Art. 46. The following are infringements: every arrangement of a musical work published without the consent of the author which cannot be considered as a composition in itself, notably extracts from musical works; the transcription of a musical work for one or more instruments, or voices; in addition, the reproduction without artistic variation of several motifs or melodies drawn from one and the same composition.

Art. 47. The following are not considered infringements: the quotation of isolated passages from a musical work which has already been published; further, the insertion of musical works of small extent, within limited bounds fixed by the end in view, in an independent scientific work, or in a collection of different works put together exclusively for schools and education. In addition the author, or the source from which the *morceau* is taken, must be indicated. If this is not done, Art. 24 applies.

Art. 48. Further, the use of a published work as a text for a musical composition, when the text is printed with the composition, is not to be treated as an infringement.

Words which by their very nature are only intended to be set to music, such as the words of an opera, an oratorio, &c., are excepted. These can only be set to music with the consent of the author. The author is considered to have given his consent if he has handed over the text to a composer without reserve for him to make use of.

For the publication of the text without music, the special permission of the author of the text or his assign is necessary.

CHAPT. III.—*Representation or Performance of Theatrical Works and Operas.*

Theatrical works.

Art. 49. The exclusive right of representation or performance of theatrical or musical works, or operas, belongs to the author.

Art. 50. Theatrical and dramatic musical works cannot be represented on the stage without the consent of the author, even if they have been printed or are to be found on the market.

Overtures, entr'actes or other parts taken from these works may be performed off the stage without consent.

Art. 51. Musical works which have been reproduced and put on the market can be represented or performed publicly, even without the author's consent, when the author has not reserved the right of performance on the title page or at the beginning of the work.

Art. 52. When a work has several authors, pars. 2 and 3 of Article 1 may be applied to the public representation or performance, with the qualification that for the performance of musical works accompanied by words, including operas, the consent of the composer is in general sufficient, and for the performance of these works without music, the consent of the composer is not sufficient.

Art. 53. The person who lawfully translates a dramatic work enjoys legal protection as to the public representation of his translation.

Art. 54. The public representation of an unlawful translation (*a*) or arrangement (*b*), is considered infringement.

Art. 55. Articles 11 to 18 are applicable in relation to the duration of the right of public representation or performance.

Pseudonymous works or works published without indication of the author's name (*c*), enjoy, when they have not yet been published, protection for fifty years from their first representation.

(*a*) Art. 7. (*b*) Art. 46. (*c*) Art. 13, par. 1.

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But when either the author or the assignee of a pseudonymous or anonymous work, has declared the true name of the author, for purposes of registration within fifty years, or when the author publishes within this period, his work under his true name, the duration of protection is calculated according to Art. 11.

Art. 56. The person indicated as author in the announcements of the representation may be considered as the author of dramatic, musical and dramatico-musical works not yet published, but already publicly represented or performed.

Art. 57. Any person who intentionally or negligently represents or performs publicly, without being entitled so to do, a dramatic, musical or dramatico-musical work, in entirety or with unimportant alterations, is under the obligation to the author or his representatives of making good the damage, and is punishable with the fine fixed by Art. 19.

Art. 20 is applicable to the author of an unlawful representation or performance, but so that the amount of the confiscation shall be fixed in conformity with Art. 58.

Art. 58. The gross receipts from the unlawful representations or performances may be payable by way of damages, without deduction of expenses.

If the work has been represented or performed together with other works, the proportionate part of the receipts shall be taken as the amount of compensation.

When there have been no receipts, or their amount cannot be ascertained, the judge shall estimate the damages.

When there has neither been intention nor negligence on the part of the offender, no penalty is applicable, and he is only liable in damages to the extent of his profits.

Art. 59. Arts. 3, and 25 to 44, are also applicable to the public representation and performance of dramatic, musical, and dramatico-musical works.

CHAPT. IV.—*Works of Art.*

Works of art.

Art. 60. The exclusive right of reproducing, in whole or in part, of publishing and selling works of the figurative arts, drawing, engraving, painting and sculpture, belong to the author.

Infringement.

Art. 61. The reproduction of such works shall be considered an infringement, when it takes place without the author's consent, and the copies are intended for sale.

Also, when the original work is reproduced in another art or style.

When the reproduction is not taken directly from the original, but from some copy.

When a work of the figurative arts is imitated in works of architecture, trade, or manufacture.

When the author or publisher makes a reproduction contrary to his agreement or the law.

When the publisher causes a larger number of copies to be made than he is entitled to by his agreement.

What not infringements.

Art. 62. The following are not infringements:—

(1.) An arrangement by means of which one derives several new works from one original.

(2.) Isolated copies not intended for sale. On such copies there must not be indicated the signature, the name, or the initials of the author's name, under the penalties fixed by Art. 19.

(3.) The reproduction in another art, of works placed in perpetuity in streets, public squares, and other public places of the same kind.

(4.) The reproduction of detached works of the figurative arts, within limited bounds fixed by the end in view, to explain a work essentially literary.

Art. 63. A person who lawfully reproduces the work of another in a different style ought to be considered an author in respect of the work created by him, even if the original work shall have become public property.

Art. 64. When an author alienates his work, the right

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of reproduction ought not to be considered as included in the alienation.

In the case of portraits and busts to order, this right belongs to the giver of the order.

The owner is not bound to send back the work to the author or his representative in order that he may reproduce it.

Art. 65. In other respects, Arts. 3 and 11 to 44 are applicable to creations of the figurative arts, to their authors, and to the publication of these works periodically or in a collection.

In respect to works already published, protection is allowed in conformity with Art. 13, varying with the rules according as the name of the author has been indicated on the work or not, and as the want of indication has been cured or not by registration.

Art. 66. The provisions of this law are not applicable to works of architecture or to works of the figurative arts transferred on to articles of manufacture.

CHAPT. V.—*Geological or Geographical Charts, Drawings, and Diagrams of Natural History, of Geometry, of Architecture, and other Technical Drawings and Diagrams.*

Maps, technical drawings, &c.

Art. 67. Arts. 1 to 44 of this law apply to geological and geographical charts, drawings and diagrams of natural history, of geometry, of architecture, when from their purpose they cannot be considered works of the figurative arts. But Arts. 60 to 66 of this law are applicable when from their purpose they come under the latter head.

Art. 68. The insertion of drawings and diagrams in a literary work when they only serve to explain the text are not to be considered infringements, provided that the author or the source be expressly indicated.

CHAPT. VI.—*Photographs.*

Photographs.

Art. 69. The exclusive right of reproducing by a mechanical process, of publication, and offering for sale of a work obtained by photography, belongs to the author of the original work during the period fixed by Art. 70.

For the existence of this exclusive right, there must be indicated on each copy of the impressions or reproductions (1) the name or firm and the address of the author or publisher of the original publication; (2) the year in which the impressions or reproductions were first published.

Duration.

Art. 70. The protection secured by this law belongs to the author of a photographic work or his representatives during five years from the expiration of the year in which the original first appeared.

If the impression or reproduction has not been published, the period of five years runs from the end of the year in which the original of the photographic publication was obtained.

The provisions of Art. 16 apply to photographs of works which have come out in several volumes.

Art. 71. The reproduction of a photographic work by a mechanical process without the consent of the rightful owner, and for a commercial purpose, is considered an infringement.

Art. 72. The right of reproduction of portraits obtained by photography belongs exclusively to the person who gives the order.

Art. 73. The following are not considered infringements:—

(1.) Using a photograph so as to derive different new works from the original work.

(2.) The reproduction of a photographic work when it is applied to an industrial product.

(3.) The reproduction of a photograph in another article.

Art. 74. A person who reproduces a photographic

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work of another in a different art is considered as the author of the work created by him, agreeably to Art. 63.

Art. 75. Articles 3, 8, 19 to 44, and 68, are applicable to photographs.

CHAPT. VII.—*General Provisions.*

General provisions.

Art. 76. This law comes into force on the 1st July, 1884. Its protection extends also to literary, musical, technical, photographic, and dramatic works, and works of the plastic arts, which appeared before that date.

Art. 77. Copies existing before that date, of which up to then the reproduction was not forbidden, can be circulated as in the past.

Type and other analogous means of reproduction (Art. 21) may be used, if their fabrication was not previously forbidden.

Art. 78. Dramatico-musical works lawfully represented before the coming into force of this law may continue to be represented.

Art. 79. This law applies to the works of Hungarian citizens even when they have appeared in a foreign country.

Foreign authors.

This law does not apply to the works of foreign authors. The following are excepted from this rule and enjoy protection according to the terms of this law :—

(1.) The works of foreigners published by native publishers.

(2.) The works of foreigners who have lived in Hungary at least two years in a continuous manner, and have paid taxes without break (*a*).

Art. 80. This law applies even when a Hungarian citizen violates its provisions in a foreign country to the prejudice of a Hungarian citizen.

Art. 81. The Minister of Justice and the Ban of

(*a*) The Minister of Foreign Affairs, in a letter of the 4th Feb. 1885, has expressed his opinion that these provisions in no way derogated from the special provisions contained in the Convention between France and Austria of 1866. Lois françaises et étrangères, par M. Lyon-Caen.

Croatia-Slavonia are charged with the duty of prescribing rules of procedure.

Art. 82. The Ministers of Justice, Agriculture, Trade and Commerce, Religion and Public Education, and the Ban are charged with the execution of this law.

Publishing contracts are specially dealt with by Articles 515 to 533 of the Hungarian Code of Commerce of 1875.

Austria and Hungary have not at present joined the Berne Convention. On the 11th December, 1866, Austria entered into a Convention respecting copyright with France, which was formally declared to bind Hungary in 1879. The Convention was at first tied to a treaty of commerce of the same date, but was declared to be independent by an arrangement of the 18th February, 1884, after sundry prolongations (*a*).

The only other Convention entered into by Austria was with Sardinia in 1840: this, prolonged from time to time, was replaced by the Treaty of 1890 with Italy, which came into effect on the 13th January, 1891, and is to last ten years.

Austria-Hungary is now endeavouring to enter into a treaty with England.

The relations of Germany and Austria are regulated at the present moment, in the absence of treaty, by Art. 62 of the German law of the 11th June, 1870 (*b*), Art. 21 of the German law of the 9th January, 1876 (*c*), and by Articles 38 and 39 of the Austrian law of the 19th October, 1846 (*d*).

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,

(*a*) Des Droits intellectuelles, par M. Alcide Darras.
(*b*) *Ante*, p. 680.
(*c*) *Ante*, p. 688.
(*d*) *Ante*, p. 698.

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1876 (*a*) and the two laws of the 12th May, 1877 (*b*), consolidate the whole. On the 20th June, 1882, a new law was passed to form a register, and to provide that copies should be supplied to the University library. The principal provisions of the law of the 8th June, 1876, are as follows, taking effect 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 does 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.

Public bodies enjoy protection for fifty years from first publication, and the same period of protection is given in the case of 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.

(*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.

There are no provisions in this law as to registration.

Registration.

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.

Alienation.

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.

Piracy and infringement.

The following are also piracy: (*a.*) The publication in print 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.

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.

Piratical translations.

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.

What is not piracy.

It is also no piracy for one newspaper or periodical to

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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 1,000 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 confiscation, &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

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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 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:

Who and what protected.

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.

Regulations.

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.

Duration.

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.

Commissioned photographs.

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

Penalties.

Art. 4. Penalties for infringement.

Art. 5. Destruction of illegal copies and negatives.

Procedure.

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

Prescription.

Art. 7. Right of action is lost after a lapse of two years n any case, or after a year from infringement becoming

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known to prosecutor. But the provisions of Art. 5 apply so long as the illegal photographs exist.

Reciprocity.

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.

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

Registration.

By the law passed on the 20th of June, 1882, it was provided that a register should be kept by the university library, in which it shall be lawful to enter all matters concerning the acquisition or preservation of the rights established by the laws of the 8th June, 1876, and the 12th May, 1877.

The notices referred to in Arts. 9, 20, and 34 of the first of those laws shall in future be given by entry in the register.

2. Entries will be made on written request without preliminary verification of the truth of what is alleged in the request.

Any person may require a verified extract from the register, and the public shall be admitted on fixed days and at fixed times to inspect the register.

The entries shall be published in a paper to be designated by the king.

3. A copy of every printed work as also of every new edition, an entry of which is required, must be deposited at the library of the university of Christiania, to be retained. If the entry is made before the work is published, a copy must be deposited as soon as the work has been put in the hands of the booksellers. The copy must, if possible, be bound.

4. For each entry in or extract from the register, one krone (*a*) shall be paid to the university chest.

5. The king shall give the instructions necessary for the organization of the register.

6. A complete and correct copy with plates of every

(*a*) 1*s.* 0$\frac{3}{4}$*d.*

writing, musical work, print, lithograph, wood engraving, &c., which shall have been printed or published within the kingdom during the year must, even when a copy has been deposited agreeably to Art. 3, be sent to the university library at the latest before the end of the January of the following year, unless the work is not intended for publication, or is only to appear in conjunction with other works.

If the publication has not yet taken place when the consignments for the year are made, the sending in may be delayed till the end of year following the publication.

7. The printer, in regard to the works printed by him, is responsible for the delivery prescribed in the preceding Article.

Any person who fails to observe Arts. 6 and 7 shall be punishable with a fine of 2 to 50 kroner for each copy omitted.

Proceedings to recover the fines shall be taken in the police court, and shall be instituted by the public ministry on the request of the academic college.

Art. 9. In the cases of works sent in proper time over the value of 10 kroner, the publisher is to be paid the surplus. In such cases he shall send a memorandum.

In calculating if the price exceeds this sum, the prices of different parts of a work published separately cannot be added together, unless the parts have appeared in one year.

Art. 10 provides for free postage and application of postal regulations. The university is to publish a catalogue of works published.

The preceding Arts. 6 to 11 apply to printed works published before the 1st January, 1883, and this law shall be in force from that date.

By an additional article to the treaty of commerce concluded on the 30th December, 1881, between France and Sweden and Norway, it was provided that until the conclusion of a special Convention the persons under the respective jurisdictions should enjoy in the other the treatment given to natives as respects literary, artistic, and commercial property.

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An arrangement was subsequently concluded on the 15th February, 1884 (to last till the 1st February, 1892, and since prolonged), which provided that to ensure to Swedes in France and French in Sweden the protection stipulated by the treaty, and to enable them respectively to sue for infringement, it should be sufficient for authors, publishers, and artists, to produce a certificate from a competent authority in their own country that the work enjoyed legal protection in the country of publication.

Frenchmen must obtain a certificate from the library office of the Ministry of Justice, to be certified by the Swedish legation in Paris: in the case of Swedes, the certificate will be given by the Recorder of the department of Justice, and must be certified by the French legation in Stockholm (*a*).

A similar arrangement was concluded with Italy on the 9th October, 1884. Sweden and Norway have not yet joined the Berne Convention, although they took part in the first meetings. Recently there have been projects of forming a union on the subject of copyright between Sweden, Norway, and Denmark, but the matter has not advanced. In Norway the king's speech of the 9th March, 1892, announced that a bill to amend the copyright law had been laid before Parliament. This law may lead the way to the adherence of Norway to the Convention of Berne.

SWEDEN.

Literary copyright in Sweden.

Copyright in this country was formerly perpetual (*b*). Literary copyright is now protected by the law of 10th August, 1877, as modified by the law of the 10th January, 1883, which resembles in many points those of Norway and Denmark (*c*). Artistic copyright is governed by the law of the 3rd May, 1867. The law of the 10th

(*a*) Lois françaises et étrangères, par Lyon-Caen.

(*b*) Amer. Juris. vol. x. 69, until 11 July, 1837. According to M. Lyon-Caen copyright in Sweden was formerly governed by an article of the law on the press of the 16th July, 1812, and lasted during the life of the author of a literary or artistic work. The heirs and assigns enjoyed the same right for 20 years from the death of the author.

(*c*) Ann. de lég. étraug. vii. p. 658: Paris, 1878. Lag angående eganderätt till skrift.

August, 1877, 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:

Art. 1. 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. What protected.

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

Art. 2. The author's right recognized by Art. 1, includes also the exclusive right of reproducing by printing a translation of his work from one dialect into another of the same language. Swedish, Norwegian, and Danish in this respect are considered different dialects of the same language.

(Added by the law of the 16th January, 1883). If the author in publishing a work of literature has by a notice placed at the head of the work reserved the exclusive right of translating it into one or more named languages, and if he publishes the translation in two years from the first publication of the work, it will not be permitted to any other person during five years from that date to publish a translation in the language or languages of which the right has been reserved.

Art. 3. 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. Translators.

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 (*a*). Publishers of periodicals.

Copyright lasts for the life of the author and fifty years Duration.

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