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problems intended for classical exercises is to be treated as a pirate.

Art. 33. Any one who, in good faith and without fault on his part, commits a piracy and makes profits to the detriment of third persons, must make restitution of these profits.

Art. 34. One of several co-proprietors of copyright may sue for infringement without the consent of the others, and recover his proportion of damages or profits.

Presumptions of authorship.

Art. 35. In a civil action there is a *primâ facie* presumption that the person whose name appears on the work as such is its author, and in the case of an anonymous or pseudonymous work, that the publisher named on the title-page of the work is the true publisher. In the case of an unpublished dramatic or musical work, the person who is named as its author in the announcement of the performance, or, if no one is so named, the organizer of the performance is, *primâ facie*, the author of the piece.

Precautionary measures.

Art. 36. When a civil or criminal action has been commenced for piracy, the court may, at the request of the plaintiff, with or without taking security, forbid the sale and circulation, or seize or suspend the execution or performance of a work suspected of being a piracy. If at the trial the work is pronounced to be no piracy, the plaintiff will be civilly liable in damages.

Penalties.

Arts. 37 to 43 provide penalties of varying amount for the several offences under the statute. Piracies and all plant used exclusively in the production of infringements are to be confiscated, but only if they belong to the infringer, the printer, or the person who sells or circulates the piracies.

Limitation of actions.

Civil or criminal proceedings must be commenced within two years (*a*). (Art. 45.)

Transitory provisions.

Art. 47. Works which have not fallen into the public domain at the date of the passing of this law, are to enjoy the privileges accorded by it.

Art. 48. Reproductions which have been made or commenced before the passing of this law, and which, but for this law, would not have been piracies, may be finished, sold, or distributed, and existing plant used for these reproductions may be utilized for five years from the date when this law comes into operation.

Art. 49. Translations begun or finished before the passing of this law, and which, but for this law, would not have been

(*a*) The law does not state when this period is to begin to run.

piracies, may be finished, sold, or distributed, provided they are published within seven years. Such translations may be reproduced for five years from their first publication.

Art. 50 contains similar provisions as to dramatic and musical performances for a period of five years.

Art. 51. The formalities to be prescribed (*a*) must be complied with in the case of reproductions falling within the provisions of Arts. 48 to 50.

Art. 52. This law does not apply to works of architecture. Architecture.

An ordinance of 28th June, 1899, prescribes the formalities necessary for registration under Art. 15. A request for registration must be addressed to the Minister of the Interior, and be in the form contained in the Schedule. It must set forth (1) the title of the work; (2) the name and surname of the author (if the work be not anonymous); (3) the date of publication, representation, or performance; (4) the contents of the work; (5) the date of previous registration as an anonymous or pseudonymous work where it is desired to register under the author's true name. Registration.

The registers are to be kept by the Minister of the Interior, and may be consulted and extracts obtained on payment of a fee.

Rights of Foreigners.

On the 16th July, 1894, Japan concluded with Great Britain a treaty of commerce, with a protocol annexed, by clause 3 of which it was provided that the British consular jurisdiction in Japan should cease as soon as Japan adhered to the international conventions relative to industrial property and copyright. This engagement was repeated in similar treaties with other countries. On the 18th April, 1899, Japan signified her adhesion to the Berne Convention, this adhesion to take effect from July 15 of the same year, and thereupon the consular jurisdiction ceased. Cessation of consular jurisdiction in Japan.

The Japanese law of the 3rd March, 1899, provides for international protection only in the case where there is a treaty or convention. Any foreign author, however, can obtain copyright by publishing first in Japan. Art. 28 of the above-mentioned law is as follows: Protection of foreigners.

"The provisions of this law shall apply to foreigners, so far as concerns the protection of their copyright, subject to the special stipulations, if any, contained in treaties and conventions:

(*a*) These formalities are prescribed by an ordinance of 27th June, 1899. Generally the copies and the plant must be stamped within a given time.

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in the absence of such stipulations, the protection of this law shall be accorded to those persons who shall make the first publication of their works in the Empire."

SIAM.

Law of 12th Aug., 1901.

On the 12th August, 1901, the first law on the subject of copyright was promulgated in Siam. This law relates only to literary copyright. It commences with a preamble which recites that when an author, with the resources of his imagination, intelligence, and knowledge has devoted his efforts to composing a work, and has caused it to be printed and published with a view to making a profit, it happens, particularly when the work has a considerable sale, that other persons do not fear to print and expose it for sale, and by these means cause the author to lose the profit to which he was justly entitled: that this practice is prohibited in the majority of foreign countries where all persons other than the author, or any person authorized by him, is forbidden to make extracts from his work or to copy it or publish it: consequently, Her Majesty has deemed it necessary to make a law which shall have force and vigour throughout her dominions, to protect the interests of authors in a manner conformable to justice. The main provisions of this law, which came into force on the 12th August, 1901, are as follows:

Art. 3. Any one publishing a work in the form of a book or pamphlet, and complying with the conditions of this law, possesses, with respect to his work, identical rights with those he has in any other property belonging to him.

Art. 4. Copyright includes the exclusive right of abridging, translating, circulating, or selling the work.

Duration.

Art. 5. The term of copyright is the life of the author and seven years from his decease, with a minimum of forty-two years.

Art. 6. The author's heirs can acquire copyright in his posthumous works for a period of forty-two years from the author's death.

Art. 8. The copyright in works intended for instruction and composed at Government expense vests in the Government.

Transitory provisions.

Art. 9. As to books printed and sold before this law came into force: (1) if the author was then dead, no copyright is conferred; (2) if the author were living and were also the printer and publisher of the work, he must acquire copyright with twelve months of the promulgation of this law; (3) if the

author were living, but had parted with his right to print and sell his work, he acquires no copyright; (4) if the author were still living, and had entered into a contract with a publisher under which he was entitled to a share of the profits arising from his work, he must give notice to the publisher of his intention to acquire copyright, and, if the latter consent, copyright can be obtained; if he oppose, the matter is left to the tribunals to decide.

Formalities.

Art. 10. In order that a book may acquire copyright it must be printed and submitted to the proper official for registration within twelve months from publication. If the author die before having acquired his right, the heirs must seek the right within twelve months from his death. A copy of the work must also be presented to the official having charge of the register (Art. 12), and three copies must be deposited for certain libraries. (Art. 15.) Transferees may be registered. (Art. 15.) There is a fee payable on registration. (Art. 17.)

Infringement and remedies.

Art. 16. It is forbidden to make extracts from copyright works, or to translate, copy, or sell them, whether for profit or not. It is likewise forbidden to sell piracies without the authorization of the proprietor of the copyright.

The proprietor of the copyright can recover damages for infringement, and all copies printed in violation of his rights belong to him.

Rights of Foreigners.

Foreigners.

The above law does not contain any provisions of an international character. According to Art. 7 it applies only to works printed and published for the first time in Siam, but apparently a foreigner so printing and publishing would be entitled to receive protection.

EGYPT.

Native courts.

The situation in Egypt with regard to copyright is somewhat peculiar. Article 323 of the Egyptian Penal Code, first promulgated in 1884 and extended in 1889 to the whole of Egypt, forbids piracy of books. This applies to the native courts.

Jurisdiction of the Mixed Courts.

Protection is also afforded to literary and artistic property by the Mixed Courts, which have jurisdiction in the case of civil disputes between natives and foreigners and between foreigners of different nationalities; the criminal jurisdiction of these courts is very limited. These Mixed Courts, three in number, with a Court of Appeal, were established under the Convention of 1875.

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Regulations have been established for these courts, and under Art. 34, the new courts in the exercise of their jurisdiction in civil and commercial matters, and within the limits given to them in criminal matters, are to apply the codes presented to the powers by Egypt, and in case of the silence, insufficiency, or obscurity of the law, the judge shall observe principles of natural justice and the rules of equity.

The codes are silent as to copyright, but the courts have decided that under the principles of natural justice and the laws of equity, copyright ought to be recognised.

At the date of the last edition of this work five decisions had been given by these courts and a considerable number have since then been added, the plaintiffs in the decided cases having been generally either Frenchmen or Italians. These decisions relate to the reproduction of novels in Egyptian newspapers, the unauthorized performance and execution of European musical, musical dramatic, and dramatic works and infringement of photographs.

The principle laid down by the Court of Appeal in what may be termed the leading case of the *Société des Gens de Lettres* v. *The Egyptian Gazette* (*a*) is that "copyright is a veritable right of property, founded on labour," and that the absence of any special law on the subject in Egypt ought not to have the effect of destroying this right, but that it ought to receive protection by virtue of Art. 34 of the Regulations above referred to. All property ought to be respected, including literary and artistic property, and therefore an author ought to be entitled to bring an action for damages for infringement of his rights. In conformity with the principle here laid down, it has been held that no formalities are needed to obtain copyright in Egypt, and that authors of musical and dramatic pieces cannot be compelled to allow their performance on payment of a reasonable sum. The Mixed Tribunal at Cairo has also held that the copyright in a picture remains in the artist after sale of his work, unless there has been an agreement to the contrary (*b*).

Consular jurisdiction.

By the side of the civil jurisdiction thus exercised by the Mixed Courts is the criminal jurisdiction of the consular courts of the various Christian countries. These courts primarily deal with litigation between subjects of one and the same nation, but a subject of one country is also at liberty to proceed against the subject of another country in the consular

(*a*) Reported in 'Le Droit d'Auteur,' 1889, p. 101.
(*b*) *Schiffi* v. *Lekizian*, 16th May, 1896.

court of the country of the latter, the law to be applied being the law of the defendant's country. An important judgment was delivered on the 12th March, 1896, by the consular court of France, at Cairo, and affirmed by the Court of Aix, on the 11th February, 1897, which declared that "by virtue of the principle of exterritoriality recognised by international conventions, Frenchmen in Egypt are subject to the French penal law for all crimes and offences covered by that law. . . . This privilege of exterritorality has the effect of subjecting Frenchmen to the local jurisdiction in Egypt in penal matters, and, as a necessary corollary, imposes the duty upon the French consular tribunals of trying matters deemed to be offences by French law"; and the defendant was fined under Arts. 425, 428, and 429 of the French Penal Code for infringement of the plaintiff's dramatic copyright (*a*).

M. Darras, in an able article contributed to 'Le Droit d'Auteur' (*b*), contends that not only Frenchmen domiciled in Egypt are called upon to respect the rights of authors and artists exactly as though the parties were actually in France, but that Englishmen, Germans, Belgians, Dutch., &c., are under equal obligation to respect in Egypt not only the rights of their fellow countrymen, but also the rights of all others whose rights they would be obliged to respect in their own country; so that, for example, Englishmen in Egypt may be sued in the consular courts for infringing the copyright of authors belonging to any country of the Copyright Union. However this may be with regard to the other European countries, it is not clear that the British consular courts have jurisdiction in the matter of copyright. The English consular jurisdiction rests entirely upon Orders in Council made under the Foreign Jurisdiction Act, 1890, which codified the earlier laws on the same subject (*c*), and when the Mixed Courts were established in Egypt the jurisdiction of the consular courts was, by Order in Council of 5th Februry, 1876, suspended as to such matters "as come within the jurisdiction of the Mixed Courts." It might be contended, therefore, that as the Mixed Courts have undoubtedly some jurisdiction in the matter of copyright, the British consular jurisdiction is ousted.

(*a*) *Société des auteurs et compositeurs dramatiques* v. *Jules Morrand*. 'Le Droit d'Auteur,' 1897, p. 129. (*b*) 1895. p. 165.

(*c*) See Piggott on Exterritoriality. Foreign jurisdictions exercised in consular courts exist at the present time: (1) in civilized independent States, by virtue of express treaty, as in Turkey, Persia, and China; (2) in protected States, with a settled form of government, as in the protected African communities, where the relation of suzerain and dependent State involves such a jurisdiction: (3) in countries with no settled form of government, as in the African spheres of influence, or in the Pacific islands. See Anson on the Crown, p. 282.

TUNIS.

French Protectorate.

By a treaty of 12th May, 1881, a French protectorate was established over Tunis.

The following law on artistic and literary property was passed on the 15th June, 1889, and published in the official Tunisian journal on the 20th June, 1889 (*a*).

Duration.

Art. 1. Authors of literary and artistic works enjoy during their entire life the exclusive right of sale, of reproduction, of representation or performance and circulation of their works throughout the territory of the regency of Tunis, and also the right of assigning such property in whole or in part. Nevertheless this protection is limited to (1) works published for the first time in Tunis, whatever may be the nationality of the author; (2) to works published in a foreign country, for the protection of which a diplomatic treaty can be cited.

Art. 2. The right is prolonged for fifty years after the death of the author, for the benefit of his heirs or assigns.

Definition clause.

Art. 3. The expression "literary and artistic works" includes books, pamphlets, and all other writings, dramatic or dramatic-musical works, musical compositions with or without words, works of drawing, painting, sculpture and engraving, lithographs, illustrations, geographical charts, plans, sketches, and plastic works relating to geography, topography, architecture, and sciences in general: in short, every production of the literary or scientific and artistic domain which can be published by any method of printing or reproduction (*b*).

Copyright does not exclude the right of making quotations for purposes of criticism, argument, or education.

Newspapers.

Every paper may reproduce an article published in another paper, on condition of indicating the source, unless this article carries a special warning that reproduction is forbidden.

Translations.

Art. 4. Copyright in a literary work includes the exclusive right of making or authorizing a translation of it. Copyright in musical compositions includes the exclusive right of making arrangements on the motifs of the original work.

Penalty for infringement.

Art. 5. No literary or artistic work not become public property may be publicly performed in the regency, without the formal consent in writing of the author or his assigns, under penalty of a fine of 50 piastres (*c*) at least, and confiscation of receipts for the benefit of the authors or their assigns.

(*a*) Translation taken from 'Le Droit d'Auteur,' 1889.
(*b*) This definition agrees with that in the Berne Convention.
(*c*) Piastre = 5$\frac{3}{4}$*d*. Whitaker.

Art. 6. Piracy in the territory of the regency constitutes a misdemeanor; and so also the sale, exportation, and consignment of pirated works, as well as their importation into Tunisian territory.

Art. 7. Any persons who knowingly sell, expose for sale, keep in their shops for purposes of sale, or import into the territory of the regency, with a commercial object, pirated articles, are guilty of the same offence. Piracy.

Art. 8. The offences mentioned in Arts. 6 and 7 are punishable with a fine of 50 to 2000 piastres.

Confiscation for the benefit of authors or their assigns of pirated works or articles, as well as plates, moulds, or matrices, and other implements directly employed in committing these offences, will be decreed against convicted persons.

The fabrication and sale of instruments mechanically reproducing airs of music which are private property do not constitute musical piracy (*a*).

Art. 9. The fraudulent application to a work of art, a work of literature or music, of the name of an author, or any distinctive sign adopted by him to distinguish his work, will be punishable with imprisonment from three months to two years, and a fine of 100 to 2000 piastres, or of one of these two penalties only.

The confiscation of pirated articles is to be decreed in every case.

Persons who knowingly sell, expose for sale, keep in their shops, import into the territory of the regency, or export for purposes of sale the articles pointed out in the first paragraph of this article, are punishable with the same penalties.

Art. 10. The local authorities must in every case give their assistance to authors or their attorneys for the ascertainment and repression of all acts in opposition to their rights.

Art. 463 of the French Penal Code is applicable to the acts contemplated and restrained by this law (*b*).

Art. 11. The French Courts are alone competent to take cognizance of all claims or disputes relating to this law.

Rights of Foreigners.

Rights of foreigners under the Law of 15th June, 1889, are limited by Art. 1 above set out: (1) to works published for the first time in Tunis, whatever may be the nationality of the Foreigners.

(*a*) Protocol of the Berne Convention, Art. III.
(*b*) *Ante*, p. 556, *note* (*b*).

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author; and (2) to works published abroad, and for the protection of which a diplomatic convention can be invoked.

By the treaty of 12th May, 1881, before referred to, Tunis undertook not to conclude any international act without the assent of France, but, with that assent, she has ratified the Berne Convention and the Additional Act of Paris.

M. Darras' opinion.

It is the opinion of M. Darras (*a*) that the law of 15th June, 1889, is applicable only to Tunisians who are not under the protection of some European Power. He contends that as regards France, the effect of the treaty of 12th May, 1881, is that the French tribunals are competent to punish offences against Frenchmen, and that inasmuch as a French law of 28th May, 1836, has enacted that "offences, delicts, and crimes committed in the Levant shall be visited with the penalties provided by the French laws," Frenchmen in the Levant are subjected to the penal provisions of the French laws; and that, though by a French law of 27th March, 1883, consular jurisdiction in Tunis has been suppressed, this has not had the effect of abrogating the provisions of the law of 28th May, 1836. According to M. Darras there is this special peculiarity about Tunis, that this latter law does not apply to Frenchmen only, but ought to be extended to all Europeans, because, since the establishment of the French protectorate over Tunis, all the European Powers have renounced the benefit of the Capitulations (*b*), and this, he contends, has had the effect not only of attributing competence to the French tribunals at Tunis over all Europeans, but of rendering applicable the provisions of the French penal laws. This opinion is, to some extent, confirmed by a judgment of the Tunis Court delivered the 29th December, 1900 (*c*), by which certain Italians were fined under Article 463 of the French Penal Code, though the decision of the court was based not upon the grounds suggested by M. Darras, but erroneously, no doubt (*d*), on the provisions of the Berne Convention.

SOUTH AMERICA.

In 1888 an international congress of the States of South America met at Montevideo under the auspices of the Argentine Republic and the Republic Oriental of Uruguay.

(*a*) 'Le Droit d'Auteur,' 1901, p. 91.

(*b*) See British Order in Council, 31st Dec., 1883. Piggott on Exterritoriality, pp. 209, 210.

(*c*) 'Le Droit d'Auteur,' 1901, p. 57.

(*d*) According to the provisions of the Berne Convention it is the law of the country where the piracy is committed that is applicable.

Montevideo Convention of 1889.

One of the most noteworthy results of this congress was the drawing up of a treaty for the protection of works of literature and art, which treaty was signed on the 11th January, 1889, by the delegates of the following seven South American States: the Argentine Republic, Bolivia, Brazil, Chili, Paraguay, Peru, and Uruguay. The treaty provides that a simultaneous ratification by all the signatories is not a necessary condition of its coming into force, so that it at once becomes binding upon any nations ratifying it. The treaty has been ratified by the Argentine Republic, Paraguay, Peru, Uruguay, and Bolivia, and France, Spain, Italy, and Belgium have signified their adhesion to it, though this has only been accepted by the Argentine Republic and Paraguay. In 1902 another conference of American States was held at Mexico, which resulted in a Convention, called the Pan-American Convention. Seventeen American States, including the United States, signed this Convention, but it has been so far ratified by four only, viz., Guatemala, Salvador, Costa Rica, and Paraguay.

Differences between Montevideo Convention and Berne Convention.

The Convention of Montevideo differs from the Berne Convention in its fundamental principle, for the law to be applied is the law of the author's country, and not, as in the case of the Berne Convention, the law of the country in which protection is sought. It also differs from the Berne Convention in the following particulars:

(1) It does not protect the exclusive right of performance and representation of musical and dramatic works.

(2) It comprehends photographs and choregraphical works under the terms literary and artistic works: the Berne Convention, sects. 1 and 2 of the Protocol, protects the photographs of a work of art as the work itself: other photographs are only protected in countries where they are recognized as works of art; choregraphic works are only protected in countries whose law expressly recognizes them.

(3) The exclusive right of translation lasts for the same time as copyright instead of for ten years only.

Provisions of Montevideo Convention.

The treaty provides as follows:

Art. 2. The authors of all literary or artistic works shall enjoy in the signatory States the rights accorded to them by the law of the State where the first publication or production took place.

Art. 3. The right of property in a literary or artistic work includes, for the author, the power of disposition, of publication and alienation, of translation or authorizing translation, and of reproduction under any form.

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Art. 4. No State shall be bound to recognize a longer duration of literary or artistic property than that given to authors who obtain it directly in that State.

But the duration may be limited to that accorded by the country of origin, if it be less.

Art. 7. Newspaper articles may be reproduced on condition that the publication from which they are taken be named, except articles treating of art or science, reproduction of which has been expressly forbidden.

Art. 8. Speeches delivered or read in deliberative assemblies, in courts of justice, or public meetings may be published in periodicals without authorization.

Art. 9. The following are considered unlawful reproductions: indirect and unauthorized appropriations of literary or artistic works, designated under various names, such as adaptations, arrangements, &c., when they are mere reproductions, without presenting the features of a new work.

Art. 10. Copyright shall be recognized unless proved to the contrary, in favour of the persons whose names or pseudonyms are indicated in the work.

If authors wish to conceal their identity, publishers must make it known that copyright belongs to them.

Art. 11. The liabilities incurred by persons infringing literary or artistic copyright shall be established and decided by the courts and regulated by the laws of the country where the offence has been committed.

Art. 13. It is not necessary for the coming into force of this treaty that it shall be ratified simultaneously by the signatory States. Any State which approves it, shall notify its approval to the governments of the Argentine and Uruguay Republics, in order that they may communicate it to the other contracting parties. This proceeding shall take the place of ratification.

Art. 14. When mutual approvals have been exchanged in the manner indicated in the preceding articles, this treaty shall remain in force indefinitely.

Art. 15. If any of the signatory States judges it useful to withdraw from the Convention or introduce modifications therein, it shall give notice to the other States; but it shall not be discharged until a lapse of two years after repudiation, during which period efforts shall be made to arrive at a fresh agreement.

Art. 16. Art. 13 may be extended to nations which may desire to adhere to the treaty, though they have not taken part in the congress.

The Pan-American Convention.

The Pan-American Convention is inspired by the Berne Convention and the Convention of Montevideo. It adopts the fundamental principle of the Berne Convention in conferring upon the author the protection which is accorded to natives in the country where protection is sought, but protection is only obtained on compliance with special formalities. The main provisions of this Convention are as follows:

Art. 2. Literary and artistic works comprise books, manuscripts, pamphlets of all kinds; dramatic or melodramatic works, choral music and musical compositions, with or without words; designs, drawings, paintings, sculpture, engravings, photographic works; astronomical and geographical globes; plans, sketches, and plastic works relating to geography or geology, topography or architecture, or any other science; and, finally, every production in the literary and artistic field, which may be published by any method of impression or reproduction.

Art. 3. Copyright consists in the exclusive right to dispose of a work, to publish, sell, or translate the same, or to authorize its translation, to reproduce the same in any manner, either entirely or partially. The term for which the exclusive right of translation lasts depends upon the law of the country in which protection is sought.

Art. 4. It is indispensable that the author or his representatives shall address a petition to the proper Official Department of his State, claiming recognition of his right, and accompanied by two copies of his work. If he desire that his copyright shall be recognized in other of the signatory countries, he must attach to his petition a number of copies of his work equal to that of the countries he may therein designate. The department is to distribute these copies among the countries, together with a certificate, in order that the copyright of the author may be recognized.

Art. 5. Authors who belong to one of the signatory countries or their assigns shall enjoy in the other countries the rights which their respective laws at present grant, or in the future may grant, to their own citizens, but such right shall not exceed the term of protection granted in the country of its origin.

Art. 6. The country of origin of a work in case it is published simultaneously in several of the signatory countries is to be the country according the shortest protection.

Art. 7. Translations are protected as original works.

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Art. 8. Newspaper articles may be reproduced with acknowledgment of source.

Art. 11. The reproduction in publications devoted to public instruction or chrestomathy, of fragments of literary or artistic works, confers no right of property, and may, therefore, be freely made in all the signatory countries.

Art. 12. All unauthorized indirect use of a literary or artistic work, which does not present the character of an original work, shall be considered as an unlawful reproduction.

Art. 15. The Convention shall take effect between the signatory States that ratify it, three months from the day that they communicate their ratification to the Mexican Government.

Art. 16. Signatory States, when approving the present Convention, shall declare whether they accept the adherence to the same by the nations who have had no representation at the Conference.

THE ARGENTINE REPUBLIC.

Argentine Republic.

There is no special law in the Argentine Republic on copyright. Art. 17 of the Constitution of 1869 provides that property is inviolable, and no inhabitant of the Argentine Republic can be deprived of it except by virtue of a legal decision in conformity with the law. Every author or inventor is the exclusive proprietor of his work, invention, or discovery, for the period accorded by law.

The promised law has, however, not yet appeared, and no period has been fixed by legislation for copyright.

Native authors are at present protected in their rights by the provisions of the Civil Code, of which the following are, according to M. Lyon-Caen (*a*), specially applicable to copyright.

Art. 1072. Every unlawful act committed knowingly and with the intention of injuring the person or rights of another, is considered as an offence by this Code.

Art. 1075. Every right may be the subject of an offence, whether it be a right over an external object or inseparable from the existence of the person.

Art. 1077. Every right gives rise to the obligation of making good the injury caused to another.

Art. 1083. The making good all injury, whether material or moral, caused by an offence may be reduced to a pecuniary compensation to be fixed by the judge, except in cases where

(*a*) 'Lois françaises et étrangères.'

there is an opportunity of delivering up the article which has been the subject of the offence.

Art. 1095. The right to claim the making good of damage caused by offences against property belongs to the proprietor of the thing, to the person entitled to possession of the thing or simply to hold it, as a tenant, bailee, or trustee; it belongs also to a mortgagee, who can put in force this right even against the proprietor of the mortgaged article if this latter has caused the damage.

Infringement of copyright becomes, under these provisions, a civil wrong, for which compensation may be obtained by an action for damages.

Rights of Foreigners.

Foreigners.

Although natives find protection for their works in Argentina, the rights of foreigners receive but scanty recognition, and the cases of piracy of European works, especially musical and dramatic works, have been on a large scale. In 1895 the Court of Buenos Ayres held that Art. 17 of the Constitution did not, in the absence of any treaty, confer copyright on a foreigner resident abroad, and that the works of such foreigners might be freely pirated. This decision has not met with the approval of the majority of text writers, and a more recent decision appears to be in favour of the view that the native assignee of the local rights in a foreign work can prevent piracies by others (*a*). Foreigners residing in Argentina are also probably protected.

The Argentine Republic was one of the prime movers of the Montevideo Convention, which she duly ratified. Latterly France, Italy, Spain, and Belgium have expressed their adherence to this Convention, and their adherence has been accepted by the Argentine Republic, but it has been disputed whether it was within the power of the executive to issue a decree accepting the accession of European powers. The point has been carried before the tribunals, but, it is believed, has not yet been determined.

The Republic has also signed the Pan-American Convention, but, at the time of writing, has not ratified it.

(*a*) See 'Le Droit d'Auteur,' 1903, p. 79.

BOLIVIA.

A law on literary and artistic works was enacted in Bolivia on the 13th August, 1879. It provides as follows (*a*).

Chap. I.—Of Literary Works in general.

Literary works.

Art. 1. It is lawful to publish by printing, by lithography, on the stage or in any other analogous way, any literary work without any previous censorship or restriction obstructing the free exercise of this right, subject to all liabilities incurred according to the laws.

This provision is applicable to the right of translation.

Laws.

Art. 2. It is lawful to publish laws and regulations and also all other official public decrees, on condition that the authentic text published by government is strictly adhered to.

Speeches.

Art. 3. Speeches delivered in the legislative chambers and all other speeches of an official character are included in this last provision. Nevertheless, a collection of all or part of the speeches of a particular speaker cannot be published except by the speaker himself or with his consent.

Lectures.

Art. 4. Lectures of masters and professors, also sermons, can only be reproduced by their author, except by way of abridgment.

Art. 5. Every manuscript work is the property of its author, and cannot in any case be published without his permission.

Art. 6. Private letters cannot be published without the consent of the author or his representatives, except in legal proceedings.

Duration.

Art. 7. The author of a printed or lithographed work enjoys the property in such work and the exclusive right of reproduction during his life.

Authors of writings of any kind have the right of quoting from one another, or copying fragments or passages relating to the subject of their works, on condition of indicating the author, the book, and periodical borrowed from.

Articles first published in a periodical, or forming part of some work or collection, can be reprinted by their authors, subject to agreement to the contrary.

Translation.

Art. 8. The author's rights contemplated by the previous

(*b*) This law follows closely the Portuguese Code of 1867, *ante*, p. 631. The translation is taken from the French translation in 'Lois françaises et étrangères.' par M. Lyon-Caen.

article include also the right of translation. But if the author be of foreign nationality, he only enjoys this right in Bolivia during ten years from the first publication of his work, and on condition that the translation has appeared before the end of the third year from publication.

In case of assignment, all the author's rights pass to the translator, subject to agreement to the contrary.

The translator, whether a Bolivian or a foreigner, of a work not become public property, enjoys, during thirty years, the exclusive right of reproducing his own translation, subject to the right of any other person to make a new translation from the same work.

Duration after death of author.

Art. 10. After the death of an author his heirs, assigns, or representatives, preserve the right of property mentioned in Art. 7 for fifty years.

Art. 11. The State or any other public institution which causes a work to be published enjoys the right aforesaid for fifty years from the publication of the last volume of the work.

If the work consists of a collection of writings or articles on different subjects, the fifty years count from the publication of each volume.

Art. 12. When a work has been produced by several authors, and each one of them has collaborated on the same conditions, and in his own name, the property in such work belongs to all the collaborators. The first period of duration of this property extends to the death of the last surviving collaborator, who enjoys the produce of such property jointly with the heirs of his deceased collaborators: the second period commences at his death.

If a collective work, composed of works by several authors has been undertaken, edited, and published by a single person, and in his name, the second period referred to commences to run from the death of such person.

Art. 13. The provisions of the preceding articles, so far as they relate to authors, apply to publishers to whom they have assigned their rights, following the terms of the respective agreements.

Nevertheless in this case, the duration contemplated by Art. 10 counts from the death of the author.

Anonymous works.

Art. 14. The provisions regulating works published with the author's name are also applicable to anonymous and pseudonymous works as soon as the author or his heirs or assigns reveal their identity and prove their existence.

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Art. 15. The publisher of the posthumous work of a known author enjoys copyright for fifty years from the publication.

Posthumous work.

Art. 16. The publisher of an unpublished work, of which the proprietor is unknown or cannot obtain legal recognition, enjoys copyright for thirty years from the completion of publication.

Expropriation by the State.

Art. 17. The expropriation of every published work, which is out of print, and which the author or his heirs are unwilling to reprint, although the work in question has not yet become public property, is lawful.

The State alone may proceed to this expropriation after procuring a law to this effect, and after previously compensating the author, and on condition of acting on the general principles of expropriation on the ground of public utility.

Arts. 18 and 19 relate to publishing agreements. A publisher may not alter a work, and must carry out his contract diligently (*a*).

Art. 20. Literary property is considered and regulated as all other personal property, subject to the special modifications by law prescribed, by reason of the special nature of this property.

Art. 21. In case of failure of heirs, the State does not succeed to copyright: any one may publish and reprint the works, subject to the right of creditors on the inheritance.

Art. 22. Literary property cannot be prescribed.

Art. 23. There is no property in works forbidden by the law and ordered to be withdrawn from circulation.

Chap. II.—Dramatic Works.

Dramatic works.

Art. 24. Dramatic authors enjoy property in their works in conformity with the provisions of the preceding chapter, and have in addition the following rights:

Art. 25. No dramatic work can be represented at a public theatre, where admission is obtained by payment, without the written consent of the author, his joint heirs, assigns, or representatives in the following manner:

(1) If the work be printed, this consent is only necessary after the death of the author during the time for which his heirs, assigns, or representatives enjoy copyright.

(2) If the work be posthumous, it cannot be represented

(*a*) The provisions are similar to Arts. 588 and 589 of the Portuguese Law. *ante*, p. 633.

without the consent of all the heirs or any other person who has property in the manuscript.

(3) The permission to represent a dramatic work may be given for a certain period, a certain place or several places, or for a certain number of theatres.

Art. 26. If the permission be limited, and the work has been put on the stage of a theatre not included in the permission, the net receipts of the representation or representations thus given belong to the person whose consent was necessary.

Art. 27. The author's share of the receipts of a representation cannot be seized by creditors of the theatrical venture.

Art. 28. A dramatic author who has assigned by agreement the right of representing his works, enjoys the following rights unless he has expressly renounced them.

(1) To make such changes and improvements as he shall judge necessary, on condition that he does not alter any essential parts without the consent of the manager.

(2) To require that the work so long as it is in manuscript shall not be communicated to any person outside the theatre.

Art. 29. An author who has contracted with a manager for the representation of his work, cannot, while the contract holds good, assign to any other manager in the same locality either the original text or an imitation.

Art. 30. If the piece has not been represented within the period agreed upon, or in the course of the first year where no period has been expressly fixed, the author is free to withdraw his work.

Art. 31. The judicial authority shall decide all disputes arising between authors and theatre managers.

Chap. III.—Artistic Property.

Artistic property.

Art. 32. The author of every musical work, drawing, painting, sculpture, or engraving has the exclusive right of reproducing his work by engraving, lithography, sculpture, or any other process in conformity with the provisions established in matters concerning literary property.

The provisions laid down in the preceding chapter in favour of dramatic authors are wholly applicable to authors of musical works in regard to their performance in theatres or any other places where the public are only admitted by payment.

Chap. IV.—Obligations common to Authors of Literary, Dramatic, or Artistic Works.

Obligations.

Art. 33. To enjoy the advantages granted by this law, the author or the proprietor of every work reproduced by typography, lithography, engraving, sculpture, or any other process, must observe the following provisions:

Deposit.

Art. 34. Before putting on the market copies of any published work he must deposit a copy with the Minister of Public Education, a second with the Procureur of the District, and a third at the library of the seat of Government. A receipt must be given for these deposits, which must be entered on the registers established for this purpose free of charge.

If a musical or dramatic work be in question, or a work relating to musical instruction (*a*) or art, copies must be deposited in the manner prescribed in the preceding article. If the work be a lithograph, an engraving, or a sculpture, or a work relating to one of these arts, the deposit and registration must be made in the same manner with the Council of Education. Nevertheless in this case the author may deposit the original drawings in place of the copies.

Art. 35. The library and institutions mentioned in the preceding article must publish the registrations respectively made by them in the Municipal Bulletin.

Art. 36. Certificates extracted from the register aforesaid are presumptive evidence of the copyright in the work with the results flowing from such right, subject to proof to the contrary.

Arts. 37 to 42 relate to the penalties for piracies. The provisions are practically identical with Arts. 607 to 612 of the Portuguese Code (*b*).

Rights of Foreigners.

Foreigners.

The rights of foreigners are efficaciously protected by Art. 9 of the law of 13th August, 1879, which is as follows:

"Foreign authors shall enjoy the same advantages as those which are accorded to Bolivian authors resident in the foreign country."

This is a liberal provision, as most countries permit foreign

(*a*) The corresponding section of the Portuguese Code says, "relating to dramatic literature or musical art": It may be doubted whether the difference does not lie only in the fact that the two laws have had different French translators.

(*b*) See *ante*, p. 636.

residents to acquire copyright. The rights of foreigners in the matter of translations are, however, cut down by the 8th Art. given above (*a*); and, in order to acquire copyright in Bolivia, foreign authors must comply with the formalities required by Art. 34.

Bolivia was one of the signatories of the Montevideo Convention and the Pan-American Convention, but she has only ratified the former (*b*). She has a treaty with France, dated the 8th September, 1887, by which the subjects of either country enjoy on the territory of the other the same rights of copyright as natives.

BRAZIL.

History of copyright legislation.

Legislation in Brazil on the subject of copyright is of modern growth, for with the exception of some crude provisions in the Criminal Code of 1830, the monarchy was entirely opposed to any such legislation.

When the form of government was altered to a republic in 1889 a new Penal Code was promulgated (11th October, 1890), which contained a special chapter on literary and artistic property, which is still in force; and the Constitution of 24th February, 1891, by Art. 72, s. 26, provided that "authors of literary and artistic works are guaranteed the exclusive right of reproducing their works by printing or any other mechanical process. The author's heirs shall enjoy this right for the period that the law shall determine." No law was, however, passed until the 1st August, 1898, when the law which now mainly regulates copyright in this country came into force. This law repeals "all contrary provisions" in other laws, and this, it is conceived, practically amounts to a repeal of the provisions of the Penal Code of 1890, so far as they relate to copyright, except as to penalties.

The law of 1st August, 1898, is as follows (*c*):

Law of 1st August, 1898.

Art. 1. The rights belonging to the author of a literary, scientific, or artistic work consist of the exclusive liberty of reproducing or authorizing the reproduction of his work by publication, representation, performance, or any other means whatsoever.

Art. 2. Defines literary, scientific, and artistic works nearly in the words of Art. 4 of the Berne Convention as comprehending "books, pamphlets, and all other writings; dramatic or dramatico-musical works, musical compositions with or

(*a*) *Ante*, p. 694. (*b*) 5th November, 1903.
(*c*) Translated from the French translation in 'Le Droit d'Auteur,' 1898, p. 101.

without words; works of painting, sculpture, architecture, engraving, lithography, photography; illustrations of all sorts; charts, plans, and sketches; in fact, every production whatsoever in the literary, scientific, or artistic domain."

Duration of copyright.

Art. 3. The following are the periods of protection: (1) For the right of reproduction in any form whatsoever, fifty years from the 1st January of the year of publication; and (2) for the right of translation, public representation, and performance, ten years, dating in the case of translations from the 1st January of year of publication, and in the case of public representations and performances from the first authorized representation or performance (*a*).

Assignability.

Art. 4. Copyright is personal property, assignable and transmissible in whole or in part, in conformity with the following rules: (1) Assignments *inter vivos* shall only be valid for thirty years, after which the copyright, if still subsisting, shall revert to the author; (2) at every new edition the author has the right to either correct and revise his work or regain his copyright on making compensation to the assignee as prescribed by this law.

Art. 5. An assignee of copyright may not modify the work for sale or exploitation.

Art. 6. In the absence of a legal publishing agreement the copyright is presumed to remain vested in the author, and the publisher must pay the author at least one half of the sale price of the whole edition.

Art. 7. Copyright is protected from the author's creditors.

Posthumous works.

Art. 8. Posthumous works are protected for the same periods as prescribed in Art. 3, but the right of translation and public performance runs from the 1st January of the year in which the author dies.

Collaborations.

Art. 9. Collaborators, in the absence of agreement to the contrary, enjoy equal rights, and the authorization of all is necessary for reproduction. Disputes are to be determined by the courts.

(*a*) Art. 345 of the Penal Code of 11th October, 1890, forbids the reproduction of any literary or artistic work by means of printing, engraving, lithography, or any other mechanical process during the life of the author or of the person to whom he has assigned his property (!) and ten years after his death, if he leave heirs; and as to translations, Art. 347 simply forbids to translate and sell any writing or work without the author's leave; and Art. 348 likewise forbids public performance of musical and dramatic works. It will be noticed that the provisions of the law of 1898 are conceivably less favourable to the author than those of the Penal Code of 1890, for, under the former, copyright might possibly cease whilst the author was still living. As Art. 72 of the Constitution has enacted "that the *heirs* of authors shall enjoy this right during the period that the law shall determine," could the provisions of the Code of 1890 (as we have seen, not necessarily repealed) be invoked if they were more favourable to the author than those of the law of 1898?

Art. 10. The consent of one collaborator is sufficient to authorize the stage production of a theatrical work, but the others are to be indemnified.

Anonymous and pseudonymous works.

Art. 11. In the case of anonymous and pseudonymous works the copyright is vested in the publisher until the author makes himself known.

Art. 12. Translations are protected as original works, but the translator can only prevent other translations during the period mentioned in Art. 3 (2).

Formalities.

Art. 13. In order to obtain copyright it is indispensable to register and deposit at the National Library within two years expiring on the 31st December of the year following that in which the term fixed by Art. 3 commences to run: (1) one perfect copy of a work of art, literature, or science, printed, photographed, lithographed, or engraved; (2) a perfectly clear photograph of minimum dimensions of 18 by 24 centimetres of works of painting, sculpture, architecture and design, sketches, &c. (*a*).

Performing rights.

Art. 14. The right of performance of a literary work is regulated by the provisions as to musical works.

Musical compositions.

Art. 15. No public performance or execution, in whole or part, of a musical work may take place without the author's consent; but after a work has been published and put in sale it is understood that the author gives his consent to its performance where no payment is exacted.

Art. 16. Copyright in a musical work includes the exclusive right to make arrangements and variations in the *motifs*.

Artistic works.

Art. 17. The transfer of an artistic work does not carry the right of reproduction for the profit of the proprietor of the work; but the artist may only reproduce it if he declare that the work is not original.

Art. 18. The reproduction of a work of art by industrial processes, or the application of a like work to industry, does not deprive a like work of its artistic character; but it remains subject to the provisions of this law.

Piracy.

Art. 19. Any deceitful or fraudulent infringement of copyright constitutes the offence of piracy. Any one knowingly selling piracies, exposing them for sale, having them on his premises for sale, or importing them into the country for commercial purposes, is guilty of the same offence.

(*a*) Regulations as to registration and deposit were issued on 11th June, 1901. A demand for registration must be addressed to the director of the National Library, and the demand must indicate nationality, profession, domicile of the author, title of work, place and date of first publication, reprinting, representation or performance, and all essential elements of the work. A fee of two milreis is charged for registration.

Art. 20. Accomplices are subject to the same penalties as the authors of these offences.

Art. 21. The following are to be considered piracies: (1) translations of foreign works (*a*); (2) reproductions, translations, representations, and performances, without the consent of the author, if necessary, when modifications, additions, or suppressions have been made to the works without the author's consent.

Not piracy.

Art. 22. The following will not be considered piracies: (1) reproduction of passages or fragments of published works, or the insertion, entire, of short writings in the body of a large work, provided the latter be a scientific work or a compilation of writings of various authors, composed for the purpose of public instruction, the source to be acknowledged; (2) reproduction in journals or periodicals of news, political articles, extracts from other journals and periodicals, or the reproduction of speeches at public meetings of whatever nature. The journal from which the extracts are taken should be named, and the author alone has the right to publish an article or a speech separately; (3) reproduction of official and state documents; (4) reproduction, in books and journals, of passages for criticism or polemics; (5) reproduction, in the body of a writing, of works of figurative art to illustrate the text, on condition of expressly naming the author; (6) reproduction of works of art found in streets or public places (*b*); (7) reproduction of portraits or busts executed on commission, when made to the order of the proprietor of the object.

Penalties.

Arts. 23 to 47 relate to the penalties for infringement and procedure for recovery thereof. Under the Code Penal fines were inflicted and confiscation of piracies decreed, but the fines were ridiculously small, and operated rather as an encouragement than a deterrent to piracies. The provisions of the Code Penal as to penalties are expressly retained by Art. 23 of the law of 1898, but, in addition to the fines, the pirate is now made liable in damages, and the piracies and all instruments of piracy are liable to confiscation. Unauthorized performances of musical and dramatic works are punished by forfeiture of the receipts and imprisonment. One collaborator may sue for infringement without joining the others.

(*a*) See this clause more fully set out *post*, Rights of Foreigners.

(*b*) As to what are "public places," compare the Swiss decisions under a similar clause, *ante*, p. 650.

Rights of Foreigners.

Foreigners.

The Penal Code of 1890 left it doubtful whether foreigners could claim protection under its provisions, but this doubt was set at rest by Art. 72 of the Constitution of 24th February, 1892, which restricted rights of property to "Brazilians and foreigners resident in the country." The law of 1898 is likewise conceived in a strictly national spirit, Art. 1 providing that the rights thereby accorded are conferred "upon natives and foreigners residing in Brazil (*a*) according to the terms of Art. 72 of the Constitution, provided they fulfil the conditions established by Art. 13."

There is, however, one clause in the law of 1898 that seems to afford some protection to foreign works. Clause 21 (1) is in the following terms: "Translations of foreign works in the Portuguese language, not expressly authorized by the authors and made by foreigners not domiciled in the Republic, and not printed there, are to be considered piracies. Authorized translations must bear the inscription 'translation authorized by the author,' and such alone may be imported, sold, or performed in the territory of the Republic." Though the object of this article is, admittedly, simply to exclude the wretched translations that had been previously freely imported from Portugal in large quantities, it may operate indirectly to give some protection to the foreigner (*b*).

Brazil has a treaty with Portugal, dated the 9th September, 1889, by which the two countries reciprocally assured to authors writing in the Portuguese language and artists of either of the two countries the protection to which natives are entitled in either country. A treaty, concluded on the 31st January, 1891, with France—which country has suffered particularly from Brazilian piracies—was rejected by the Brazilian Chamber.

Brazil signed the Convention of Montevideo, but it remains unratified by her.

CHILI.

Copyright in literary and artistic works is regulated in Chili by the law of the 24th July, 1834, and is further sanctioned by the Civil Code of 1855, Art. 584. Authors can take civil proceedings for damages under Art. 2314 of the Civil Code, or proceed criminally against the offender

(*a*) The law does not state what length of residence is necessary.
(*b*) See 'Le Droit d'Auteur,' 1898, p. 114.

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under Art. 471 of the Penal Code, which provides that the punishment of minor transportation or banishment (*a*), or a fine of 100 to 1000 pesos may be inflicted on any person who commits any fraudulent act relating to literary or artistic property, and that copies, implements, or articles pirated, fraudulently imported or circulated, may be confiscated for the benefit of the injured person, and that engraving plates and implements used for the committal of the offence may be confiscated where only useful for that purpose.

The law of 24th July, 1834, provides as follows (*b*):

Duration.

Art. 1. Authors of any kind of writing, or compositions of music, painting, drawing, or sculpture, and, in short, all persons to whom the first conception of a work of literature or *de belles lettres* belongs, shall have the exclusive right during their life of selling, causing to be sold, or circulating in Chili reproductions of their works, whether by printing, lithography, moulding, or any other process intended to reproduce or multiply copies.

Art. 2. Their legatees or heirs shall enjoy the same right for five years, which may be extended to ten, if the government thinks fit; but if the inheritance devolves on the treasury, the work shall become public property.

Art. 3. Authors and their heirs may transfer their rights to any person.

Posthumous works.

Art. 4. The proprietor of the MS. of a posthumous work shall enjoy copyright for ten years, with no extension: the period shall run from first publication, and on condition that the work is published separately and not in an edition comprising the works of the author published in his lifetime: in this case the posthumous work shall share the fate of those works.

Art. 5. The possessor of posthumous MSS. containing corrections of a work published in the lifetime of the author shall enjoy copyright for ten years, with no extension, on condition that he brings the MSS. before the ordinary court in the year following the death of the author, and clearly proves that they are his.

Dramatic works.

Art. 7. Theatrical pieces shall, in addition, be protected against representation in any theatre in Chili without the written consent of the author or his heirs during the life of the author and five years from his death, during which latter period the copyright belongs to the heirs.

(*a*) Enforced residence in a fixed locality.

(*b*) From the French translation in 'Lois françaises et étrangères,' par M. Lyon-Caen.

Art. 8. When a work has been composed by a body of several persons, they shall enjoy copyright for forty years from first publication.

Art. 9. Translators of works and their heirs shall enjoy the same rights as authors and their heirs.

Art. 10. To enjoy the rights given by these articles, it is not necessary to obtain any title from government, but it will suffice to deposit three copies of the work at the public library of Santiago and to mention the proprietor at the head of the work. Deposit.

Art. 11. The government may grant an exclusive privilege for five years to persons reprinting interesting works, provided the reprint be correct and handsome.

Art. 12. If the author or publisher do not desire to enjoy copyright, and do not fulfil the formalities prescribed by Art. 10, the printer must deposit three copies as aforesaid.

Art. 13. Printers must also deposit at the library two copies of every periodical, paper, or separate publication printed by them, and send one copy to the Ministry of the Interior and one to each Procureur fiscal.

Art. 14. After the expiration of the periods previously mentioned, every work shall become public property, and any person may take advantage thereof as seems good to him.

Art. 15. If any person reprint, engrave, or imitate the work of another, or contravene in any way the provisions of this law, the person interested may bring him before the judge, who shall decide the matter summarily according to the laws in force relating to encroachments on the property of another. Piracy.

Art. 584 of the Civil Code of 1855 provides that the productions of talent or intellect are the property of their author. This property is regulated by special laws.

Rights of Foreigners.

Art. 6 of the law of 24th July, 1834, provides "that foreigners who publish their works in Chili shall enjoy the same rights as Chilians, and if they publish in Chili a new edition of works published in another country, they shall enjoy like rights for ten years." This clause seems a model of bad draftsmanship. Literally construed, foreigners publishing at any time in Chili would obtain copyright, and the foreigner publishing a new edition would apparently not need to be the proprietor of the copyright in the author's native country. Whether such a literal construction would prevail Foreigners.

is not, however, certain. At any rate, the foreigner must make the deposit required by Art. 10. Chili has signed the Convention of Montevideo and the Pan-American Convention, but, hitherto, she has ratified neither. On the 25th May, 1896, the United States proclaimed Chili as being entitled to the benefit of the Chace Act, and by a treaty with the same country, dated the 6th December, 1898, it was agreed that publications made in violation of the copyright laws of the country of destination should not be allowed to be carried as postal packages between the two countries.

COLUMBIA.

Law of 20th October, 1886.

Copyright in Columbia is governed by the law of the 20th October, 1886, which has taken most of the provisions of the Spanish law of the 10th January, 1879.

The law of 1886 on literary and artistic property is as follows (*a*):

Definitions.

Definitions and general provisions.

Art. 1. Literary and artistic property, or copyright, consists in the privilege accorded to authors by law of profiting by their works, during a fixed period and in consideration of certain previous formalities.

Art. 2. For the purposes of the law, an author means a person who has produced an original work; also a person who recasts or compiles, or who makes an abridgment or summary of another work, on condition that in these various works he keeps within the limits allowed by law and international treaties.

Who entitled to copyright.

Art 3. The benefits of this law can be claimed by any Columbian who publishes a work in a foreign country, even in a country with which there is no literary convention.

Art. 4. Any person who first publishes an unpublished work, not belonging to any person, from a manuscript of which he is the proprietor, is equivalent to an author.

Art. 5. The State, corporations, and persons constituted by law also enjoy literary copyright, so long as they have a legal existence.

Art. 6. For the purposes of this law, a literary or artistic work means any original production resulting from individual effort or labour of intellect, imagination, or art.

Not only works completely original are considered to belong to the person producing them, but also those of which the

(*a*) Translation taken from 'Lois françaises et étrangères,' par M. Lyon-Caen.

elements, though drawn from other authors, have been selected with discernment, clothed with a new form, and intelligently adapted to a purpose more or less general.

Art. 7. Ideas, philosophical or scientific, conceptions or systems, and other parts of human knowledge, apart from the particular form with which the author or artist has clothed them, do not constitute private property and may be freely presented under new forms.

Art. 8 relates to scientific discoveries and inventions.

Art. 9. Every work of the intellect, after having been published by printing, engraving, or any other analogous process, and after the fulfilment of the legal formalities, constitutes a property regulated by the ordinary law without other limits than those resulting from the law.

Duration.

Art. 10. Literary and artistic property belongs to authors for life, and after their death to persons lawfully acquiring it for eighty years.

Art. 11. Literary property is subject to the restrictions imposed on the press by Art. 42 of the Constitution.

Literary copyright is also subject to restraint by the censorship to which the government may, according to the laws, subject dramatic representations for reasons of public morality or public honour.

Restrictions on publication.

Art. 12. No one may reproduce a work in whole or in part without the consent of the author. This prohibition applies in the case of literary or artistic works, not yet published or registered, which have been taken down in shorthand, or by notes, or copied, during a public or private reading, performance, or exhibition.

Art. 13. Any person may freely reprint works become public property; but if the works are by a known author it is not permissible to suppress his name or to make interpolations in the work, without making a suitable distinction between the original work and the modifications or additions so made or introduced.

Transfer.

Art. 14. Literary property is transferable like all personal property. The author may assign it gratuitously or for value, in whole or in part. In the absence of express stipulation, the assignee will take the rights belonging to the author or his heirs.

The author may also by an express declaration abandon his work to the public.

Art. 15. In the case of transfer by acts *inter vivos*, literary property belongs to the purchasers for the life of the author

and eighty years after his death, if he does not leave heirs of necessity. If he leave such heirs, the right of the purchaser will last for twenty-five years after the death of the author, and will then revert to the heirs of necessity for fifty-five years.

Art. 16. The assignee has no right to introduce changes or modifications into the work without the leave of the author or his family after his death.

Art. 17. An author entrusted with the preparation of a literary or artistic work for an agreed remuneration does not acquire any right of property in it.

In such case, the property belongs to the employer, and the person executing the work has only a right to the promised remuneration.

Transitory provisions.

Art. 18 (*Transitory*). The prolongation of literary copyright shall benefit authors whose privilege has not expired at the date of the promulgation of this law, and also their assigns in like case, but they must register.

Art. 19 (*Transitory*). Authors whose privileges have expired may also recover their copyright and enjoy the new benefits given by this law, on condition of fulfilling the formalities of registration and deposit, or only the formality of registration if the work be out of print.

Publishers who have reprinted such works during the period when they were public property, may continue to sell the copies already printed, on condition of having them counted and stamped, under the superintendence of the author, in order to prevent any fraudulent reprinting.

Art. 20 (*Transitory*). The widow and surviving children of a Columbian author may also recover copyright according to the conditions prescribed by the last article.

Penalty of non-registration.

Art. 21. If a work be not registered in the prescribed period, it becomes public property for ten years from the day of failure to register.

Art. 22. During a period of a year from the expiration of such ten years, the author or his assign may recover the copyright on condition of registration, but he cannot prevent the sale of copies lawfully printed during the period of forfeiture. But he may use the precaution mentioned in Art. 19 (2). If the author does not take advantage of the second opportunity, copyright is lost for ever.

Art. 23. When works are published in successive parts, and not at one time, the periods fixed by the preceding articles only run from the completion of the work.

Art. 24. An author who bequeaths a manuscript of his own, or who enjoys copyright in a printed work, may by will suspend the printing or prohibit the reprinting for eighty years.

Registration.

Art. 27. A general register of literary property is to be opened at the Ministry of Public Education, and special registers in the secretary's office of the provincial governments.

The general register includes the entries directly requested by authors or their attorneys, and also the entries made in the provincial registers which the provincial governors must transmit every six months.

Art. 28. In order to obtain the advantages of this law, the person interested must request and obtain the making of the entry which concerns him, in the general or provincial register, and this within the period and according to the formalities indicated in this law. A certificate of registration, delivered to the person who registers a work, is *primâ facie* evidence of title until proof to the contrary is given.

Art. 29. Registration is regulated by the following provisions:

(1) The request for registration must be made according to the form published by the Ministry of Public Education.

Deposit.

(2) If the work be printed, three signed copies must be deposited, one for the Ministry of Public Education and the two others for the National Library. If registration be made in a provincial register, the governor must transmit two copies to the Ministry aforesaid, one for the Ministry and the other for the National Library: the third must be delivered to the provincial library if there be one, or to some other public institution of the chief town of the province.

(3) If the work be a periodical, registration and deposit must be made of a collection of numbers, not exceeding six months. Registration effected by the proprietor of a periodical magazine secures at the same time protection of the author's rights and the right of reproduction belonging to his collaborators.

(4) If the work has been represented in public, but not printed, a single MS. copy must be deposited.

(5) In the case of a work of art which is unique, such as a picture, bust, or any other work of painting or sculpture, there is no necessity to register or deposit, but the work will be protected in spite of the omission.

Art. 30. Registration may be made within one year from the

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publication of the work; but the author enjoys protection from the date of publication: protection will not be lost unless the provisions of the law are not fulfilled within the year.

Art. 31. There is no fee for registration.

Art. 32. Every assignment of literary or artistic property must be made by a legal document to be entered on the proper register; in default of this formality, the purchaser cannot avail himself of the right.

The law, or if there be none, the regulation made for the execution of the law, is to fix a duty on the transfer of literary property.

Letters.

Art. 33. Letters are the property of persons to whom they are sent, but not for purposes of publication. This right belongs only to the writer, except where publication of a letter which is to be used as evidence in legal proceedings, is authorized by the court having jurisdiction.

Art. 34. Letters of deceased persons may not be published within eighty years from their death without the permission of the family council.

Lectures and speeches.

Art. 35. A paid professor preserves the right of publishing his lectures, subject to any stipulation to the contrary.

Art. 36. Parliamentary speeches, if published officially, may be freely reproduced in the papers or magazines.

But the parliamentary speeches of one speaker cannot be published in a separate collection without his permission.

Anthologies.

Art. 37. It is lawful to quote from an author with a transcription of the required passages, provided the passages taken be not so numerous or consecutive as to be liable to be considered as a literal imitation which may cause damage to the original work.

Art. 38. It is lawful also to reproduce selections, in verse or prose, in collections intended for schools or with a special literary aim, on condition that no injury is done to any author by reason of the number of pieces taken from him, and that the reproduction is not made against the express wish of the poet or writer.

The author of an anthology or a selection only acquires, on the ground of his work of compilation, property in the novel arrangement adopted by him, and in the prefaces, notes, and commentaries added by him.

Translations and abridgments.

Art. 39. Translations and abridgments of a work cannot be made without the author's consent, unless they be foreign works (*a*).

(*a*) See Rights of Foreigners, *post*.

Art. 40. Translators and persons who make abridgments are proprietors of their own translation or abridgment, but unless they have acquired from the author the sole right of presenting his work in the new form, they cannot oppose the publication of other translations or abridgments, every translation or abridgment constituting property in favour of the person making it.

Art. 41. If a question arise before the court whether a translation or an abridgment, where there are slight variations, but where the intellectual work does not justify copyright, is only an imitation of a previous translation or abridgment, the court is to take the advice of experts.

Compilations.

Art. 42. Compilations of works or of information which are public property, constitute private property if they present a work novel in its method and arrangement.

A compiler cannot oppose other persons making a work of the same kind, if they follow a new method with a distinct difference of form.

Art. 43. A person who reduces a work, which is public property, to smaller dimensions, or extracts the substance of it in any manner, is the proprietor of his personal work, and may prevent any reproduction of it, but he cannot prevent other persons publishing other *résumés* of the same work.

Art. 44. A collection of songs and popular tales constitutes property when it is the result of direct investigations made by the author or by his agents, and is on a special literary plan.

MSS.

Art. 45. MSS. preserved in the archives and public libraries cannot be copied or published without the permission of the proper authority.

This permission is to be granted by government to the person who first asks for it, and there shall be allowed to him a period not exceeding three years for publication, and the profits as sole publisher for a period of ten to forty years according to circumstances, in order to stimulate the publication of old or curious MSS.

If at the expiration of the period fixed, the grantee has not published the work, he loses the entire rights.

Anonymous works.

Art. 46. The publisher who, as assignee, exercises the rights of proprietor, is to be considered the proprietor of anonymous or pseudonymous works, until the author establishes his title.

If the author make himself known, he is to be substituted for the publisher in the rights belonging to him.

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Posthumous works.

Art. 47. Not only works published after the death of an author, but also works published orally during his life and printed only after his death, are to be considered posthumous works; also printed works which the author at the time of his decease has left so remodelled, augmented, or corrected that they can be considered new works.

Art. 48. The proprietors, by inheritance or any other title, of a posthumous work have copyright in it; they may print it separately or jointly with other works which are still private property.

But they may not publish it with works become public property, under penalty of losing their copyright.

Collaborative works.

Art. 49. The author or editor (*directeur*) of a collective work is the proprietor of it, and he is under no other obligations to his collaborators than those imposed upon him by agreement. The agreement may contain different terms.

A collaborator who does not reserve to himself by express stipulations any right of ownership, can only claim the payment agreed upon, and the editor of a collective work to which he gives his name is to be considered as the author in the eye of the law.

Art. 50. Works made in collaboration constitute an indivisible work so long as they are kept together in the form in which they were produced; and the duration of the second period of copyright commences from the death of the surviving collaborator.

But each of the collaborators may freely dispose of the part contributed by him, if a stipulation to this effect has been made at the time when the joint work was entered on.

Newspaper articles.

Art. 51. The editors or managers of papers, subject to agreement to the contrary, have only the right of once publishing articles by writers whom they pay. These writers preserve the property in their works and the right of publishing them in such form as they think fit.

Art. 52. Productions published in papers can be reprinted in other papers under the express condition of naming the paper from which they are taken.

Exception must be made where notice is formally given in the paper that the editor or author reserves the right of reproduction of special articles.

Art. 53. Where the title of a work is not generic, but is characteristic and particular, as happens particularly in the case of the na of papers and reviews, this title cannot, without the proprietor's permission, be adopted for an analogous

work of such kind that the public may have doubts between the two, or that the second may be considered a republication of the first. This is a case of piracy.

Official documents.

Arts. 54, 55, and 56 provide that laws, regulations, and official documents may be reproduced by anybody; pleadings, &c., belong to the parties; but permission of the court is necessary for the publication of a copy or extract from a judgment.

Dramatic and musical works.

Art. 57. No person may perform, in whole or in part, in a theatre or any public place, a dramatic or musical composition without the previous consent of the proprietor (*a*).

Art. 58. The proprietors of dramatic or musical works may, in giving permission, fix at pleasure the royalties payable for representation; if they do not fix them, they can only recover the royalties established by regulation.

Art. 59. Ballads are public property, and a person publishing them has no exclusive right of restraining their communication.

Art. 60. Musical compositions, as well as arrangements, variations, &c., on a theme or air which is public property, constitute property for the benefit of the author or composer.

Arrangements of this nature, if founded on an original composition, are subject to the previous authorization of the original author.

Transpositions are assimilated to translations in literary subjects; the question whether they constitute an unlawful reproduction may only be decided after a report of experts.

Works of painting and sculpture.

Art. 61. Any person may stop his bust or portrait being exhibited or sold without his consent; but no one may deprive a dealer acting *bonâ fide* of the possession except by paying him an equitable compensation.

The permission of the family is necessary for the reproduction or sale of a bust or portrait of a deceased person.

A final and perpetual assignment of the right of publishing a portrait can only result from a formal contract.

Art. 62. The question whether a painter or a sculptor preserves the right of exclusive reproduction, by engraving or analogous process, of a work which he has alienated, is generally to be answered in the negative, and in particular cases, according to the stipulations of the contract of alienation.

Piracy.

Any person who registers or sells as his own, or who publishes as public property a work of private property, commits a fraud or forgery in respect of literary property;

(*a*) But as to foreigners, see Rights of Foreigners, *post*.

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also any person who violates in any way the rights recognized by this law.

Art. 64. Piracy executed in a foreign country also constitutes the offence if the products be sold in Columbia. The liability falls not only on the importer, but the consigner from abroad, and the consignee who introduces them.

Art. 66. Also a printer who keeps for himself a larger number of copies than belongs to him under his agreement with the author.

Art. 67. The following are considered aggravating circumstances: the reproduction, executed abroad, of the work of another, if it be afterwards imported into Columbia; the alteration of the title, the adulteration of the text, and all other alterations of the truth maliciously committed to the injury of the author.

Penalties.

Art. 68. Pirates are punishable with a fine varying from the amount of the injury caused to treble this amount; in addition, confiscation may be ordered of all pirated copies to be delivered to the injured party.

Art. 69. If the author of a piracy be not known, the publisher, printer, and vendor are to be successively responsible, subject to their right of proving that they acted in good faith, by surprise or by mistake.

Art. 70. Any person who imports from a foreign country copies of an unlawful publication will be obliged in every case to hand over the copies in his possession to the injured proprietor and to pay to him the value of those sold.

If it be proved that the author has given notice to booksellers in good time of a pirated publication and that they have subsequently introduced copies of this publication, in addition to the penalties above indicated, a fine of 100 to 500 francs will be inflicted on them; in case of a second offence, in addition to the other penalties correctional imprisonment for a period of from two to six months.

Not piracy.

Art. 71. As doctrines, opinions, and systems do not constitute literary property within the terms of Art. 7, a person who reproduces ideas, while changing their form, arrangement, or performance, will not be considered a pirate.

But if he attribute to himself a method or system invented by another, the injured author is to have a civil action and be able to obtain from the Courts an order that his name be indicated and the honours of the invention attributed to him.

Jurisdiction.

Art. 72. The ordinary courts are competent to try all questions raised by frauds in respect of literary property, and to

decide the civil actions which private persons are entitled to bring in defence of the rights given to them by this law. The right of action always belongs to the proprietor of the work, or to the person who has acquired the right of another or is his legal representative.

French and Spanish law to be followed.

Art. 73. If a contest arise on the question whether there has been a lawful reproduction of ideas in a work, or an unlawful reproduction of materials belonging to another, the judge or court which has cognizance of the case, may order an examination or reference to experts, and in the absence of previous decisions settling the law, is to specially adhere to the principles sanctioned by French and Spanish law in relation to literary and artistic property.

Rights of Foreigners.

Foreigners belonging to Spanish speaking colonies.

In treating the rights of foreigners the law of 1886 draws a distinction between Spanish speaking countries and others, as appears from the following clauses:

Art. 25. Authors, natives of countries where the Spanish language is spoken, and the legislation of which accords literary copyright, shall, within the limits of this law, enjoy in Columbia the rights hereby given by means of a civil action before a judge having jurisdiction, without the necessity for any treaty or diplomatic intervention.

Art. 65. It is also piracy to reproduce in Columbia copyright works, printed in Spanish in countries with which reciprocity exists in respect of literary property.

Other foreigners.

Authors of countries not falling within the above category, can only obtain protection in Columbia by virtue of treaties; but treaties are difficult to arrange, by reason especially of Article 26 of the same law, which declares: "No reservation of the right of translation can be made in International Conventions entered into by the Government, except in the case of works written in a foreign language, and printed in a country where Spanish prevails, as, for example, works in Latin, Basque, or Catalan, printed in Spain." Again, Article 39, which forbids unauthorized translations, adds: "But works of a foreign author, printed in a country with a foreign language, may be freely translated wholly or partially on the single condition that the author's name is not concealed"; and yet again, Article 57, forbidding unauthorized performances of dramatic and musical works, adds: "If the work be a foreign one, originating from another country where the Spanish language is

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spoken, and with which reciprocity exists in respect of literary property, the above prohibition shall refer only to works the authors of which expressly reserve the right of representation." There is, it will be noticed, a marked distinction between the language of Article 39 and Article 57, the former expressly stating that foreign works may be freely translated, but the latter making no such express declaration as to the right of performing foreign musical and dramatic works. From this difference in language it might perhaps be contended that foreigners are to be protected in their performing rights, but such a construction is rather strained. Columbia has signed, but not ratified, the Pan-American Convention. She has also a treaty with Spain, dated the 28th November, 1885, containing the most-favoured-nation clause, and one with Italy, dated 27th October, 1892 (*a*). A treaty with San Salvador, signed on the 24th December, 1900, does not appear to have been yet ratified by Columbia.

COSTA RICA.

Law of 26th June, 1896.

At the date of the last edition of this work Costa Rica had no special law on the subject of copyright, but a complete law has since been passed—viz., on the 26th June, 1896. The main provisions of this law are as follows (*b*):

Art. 1. Intellectual property is of the same character and subject to the same rules as movable property.

Art. 2. It includes all kinds of scientific, literary, and artistic works, by whatever means produced.

Duration.

Art. 3. Copyright lasts for the life of the author and fifty years after his death (*c*).

Title of alience.

Art. 4. In case of alienation, the alienee becomes the proprietor of the copyright during his life and then his successors are entitled for twenty years after, but after that period the copyright re-vests in the author or his heirs or legatees for a period of thirty years.

Art. 5. In case of failure of heirs, the property falls into the public domain.

Art. 6. The State, communes, official and private corporations, are entitled to the benefits of this law, but, except in the case of private corporations, copyright will last for twenty-five years only.

(*a*) These treaties may be found in the Collection of Copyright Treaties recently published by the International Bureau at Berne.

(*b*) From the French translation in 'Le Droit d'Auteur,' 1896.

(*c*) But see Art. 63 *et seq.*

Art. 7. Literary and scientific works belong to their authors, and may not, under any pretext, be published or translated without their consent.

Literary copyright.

Art. 8. Private letters cannot be published without the authorization of the writers.

Art. 9. No one may reproduce the works of another without the permission of the proprietor.

Art. 10. It is permissible to publish commentaries, supplements, notes, and critical observations on the subject of the work, provided no more of the text be taken than is necessary for this purpose.

Performing rights.

Art. 11. Unauthorized publication is forbidden of scientific or literary productions recited, played, or performed in public or private, and noted, stenographed, or obtained by phonograph or any other means; and (Art. 12) the same applies to professional lectures in universities, colleges, and schools; but (Art. 13) these provisions are not to prevent the publication of extracts.

Official records, newspapers, &c.

Art. 14. It is permissible to publish in journals, pamphlets, books or sheets, public documents emanating from the government, provided they have been officially published, and the reproduction conforms to the official text; but (Art. 15) complete or partial collections of speeches delivered in Congress or in an official capacity may not be published without consent.

Art. 16. Periodicals may reproduce publications inserted in other periodicals, unless forbidden (*a*).

Art. 17. Authors and translators of productions inserted in journals or reviews may, in the absence of contrary agreement, publish them in collections.

Translations.

Art. 18. A translator enjoys copyright in his translation, but without the right to prevent other translations.

Art. 19. The possessor or publisher of a work may not alter it without the author's consent.

Art. 20. Unlawful works are not protected.

Anonymous and pseudonymous works.

Art. 21. The publisher of an anonymous, pseudonymous, or posthumous work has the rights of the author, but (Art. 22) the author, translator, or proprietor of an anonymous or pseudonymous work may obtain the copyright on proving his title.

Art. 23. The property in posthumous works belongs to the author's heirs or legatees for a term of fifty years (*b*).

(*a*) The Supreme Court of Justice in Costa Rica held, on the 14th July, 1903, that telegrams published in the Official 'Gazette' could, by virtue of Art. 14, be reproduced by newspapers, though the 'Gazette' purported to forbid such reproduction. Art. 14 is not confined to "official" documents. 'Le Droit d'Auteur,' 1904, p. 32.

(*b*) The law does not state whether this term runs from the author's death or from publication,

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Art. 24. Amongst posthumous works are included: (1) works which have never been published in the author's lifetime; (2) abridgments, transformations, annotations, or corrections amounting to a new work and left by the author at his decease.

Art. 25. When a work has been alienated, the courts are to decide whether the modifications are sufficient to make the work a new work within Art. 24 (2).

Dramatic and musical works.

Art. 27. The provisions as to literary copyright all apply equally to musical and dramatic works, save that (Art. 28) the exemption mentioned in Art. 10 does not apply to musical works.

Art. 28. The author's consent is necessary for altering a musical composition in any way by introducing accompaniments, making transpositions, arrangements, changing the text, &c.

Art. 29. No dramatic or musical work may be performed in whole or in part in a theatre or public place without the authorization of the author or proprietor, and (Art. 30) this prohibition extends to performances given by societies so constituted as to receive a money contribution.

Art. 31. Authors or proprietors of musical and dramatic works must determine the rights of performance, otherwise they can only claim those fixed by the executive power.

Art. 32. In the absence of contrary agreement, half of the rights belong to the author of the music and half to the author of the libretto.

Art. 33. Copies of unpublished dramatic or musical works may not be made, sold, or lent on hire, without the author's permission.

Art. 34. Authors of a lyrico-dramatic work may publish and sell their work separately.

Art. 35. If the author of the libretto of a lyrico-dramatic work forbids performance the author of the music may substitute another libretto, and *vice versâ*.

Art. 36. When a dramatic or musical work is performed in public the title may not be altered or the text curtailed, changed, or added to without the author's consent.

Art. 37. The rights belonging to the author or proprietor of a dramatic or musical work are not subject to the creditors of the manager of the performance.

Artistic copyright.

Art. 38. The author of a work of art has the exclusive right of reproduction by any means, without exception.

Art. 39. Authors of plans, sketches, designs, maps, and other like works enjoy the benefits of this law.

Art. 40. The provisions relative to literary works apply equally to artistic works.

Arts. 41 to 48 relate to patents.

Registration and deposit.

Arts. 49 to 62 relate to the formalities necessary to obtain copyright. Authors must register at the Office of Public Libraries, and deposit three signed copies of their works within a year from the day when the printing of the work is finished (*a*), without which no copyright can be obtained (*b*). (Art. 53.) In the case of musical and dramatic works which have been performed but not printed, it will be sufficient to deposit a signed manuscript copy (Art. 55), and in the case of artistic works, such as pictures, statues, architectural models, and such like works it will be sufficient to deposit an engraving, design, or photograph of the work. Registrations will be published in the official journal within eight days.

Retrospective operation.

The benefits of this law are extended to scientific, literary, and artistic productions produced before this law came into force, provided they are registered within six months from the date of its doing so.

Forfeiture of copyright.

Art. 63. Scientific, literary and artistic works, which have not been registered within the period appointed by law, fall into the public domain, but after ten years from the day when that period expires; authors or proprietors, or their heirs or legatees, have the right to recover the copyright on duly registering within a year, in default of which the work falls definitely into the public domain.

Art. 64. Likewise scientific, literary, and artistic works which have not been reprinted (*réimprimées*) by the author or proprietor within a period of twenty-five years, fall into the public domain.

Art. 65. Dramatic and musical works which have been registered and deposited in accordance with the provisions of Article 55 fall into the public domain, if they have not been published within thirty years from the date of registration.

Art. 68. It belongs to the Minister of Instruction to declare the forfeiture of the copyright in a work. Such a declaration is to be inserted within eight days in the official journal (Art. 69), and, if not, any interested person may require it to be inserted.

(*a*) What if the work be not printed? The law seems to make no special provision for this, and yet it is clear that pictures, &c., must be registered. The word used in the French translation is "impression."

(*b*) But see Art. 63.

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Penalties.

Art. 71. Infringers are punishable, civilly and criminally, as provided by Art. 496 of the Penal Code (*a*).

Art. 72. The persons responsible for fraudulent piracy committed by publication are successively, (1) the author of the piracy; (2) the publisher; and (3) the printer, unless they respectively prove absence of guilt. In the case of fraudulent piracies committed by performance or public exhibition (Art. 73) the persons responsible are, (1) the person on whose account the performance or exhibition is organised; or, in default, (2) the persons who perform or exhibit the work.

Rights of Foreigners.

Foreigners.

The last article of the law of 1896 provides that, "Foreigners resident abroad shall enjoy in Costa Rica the rights hereby conferred on natives and foreigners resident in the Republic, provided the laws of their nation accords equal advantages to citizens of Costa Rica."

Costa Rica has copyright treaties with the following countries: Spain (14th November, 1893) (*b*), Guatemala (15th May, 1895), Salvador (12th June, 1895), Honduras (28th September, 1895), and France (28th August, 1896), and the President of the United States on the 19th October, 1899, issued a proclamation according Costa Rica the benefit of the Chace Act, 1891. Costa Rica was one of the signatories of the Pan-American Convention, and this Convention was ratified by her on the 13th July, 1903 (*c*).

ECUADOR.

Art. 27 of the Constitution of Ecuador of 1884, provides that every person shall enjoy liberty of industry, and within the conditions fixed by law, the exclusive property in his discoveries, inventions, and literary works (*d*).

A law was passed concerning literary and artistic property on the 3rd August, 1887.

Literary and artistic property.

Art. 1. This law determines the rights of authors in literary

(*a*) The punishments are imprisonment, minor banishment (see note, p. 703, *ante*), or a fine of from 101 to 666 piastres. Copies and instruments of piracy are liable to forfeiture, as to the latter, only if they can be used for no other purpose.

(*b*) This treaty, however, only seems to have come into force on the 20th June, 1896, the ratifications not having been exchanged till that date.

(*c*) There is also a Convention, called the Central American Convention, signed but not ratified by Costa Rica, but this Convention does not appear to be of importance and will probably merge in the Pan-American Convention.

(*d*) 'Lois françaises et étrangères,' par M. Lyon-Caen, from which work the translation of the law of 1887 is taken.

and artistic works for the purposes of the protection laid down for their benefit by Art. 27 of the Constitution.

Definition of author of literary works.

Art. 2. The following are considered authors in matters of literature:

(1) A producer of a written or oral work.
(2) A translator.
(3) A proprietor of an unpublished work, not legally belonging to any other person, which he publishes for the first time.
(4) The compiler of historical or legislative documents, when the directors of the archives interested (in such subject) or the government have not anticipated him in this publication, and have accorded him permission to make it.
(5) The compiler of popular productions, such as songs, traditions, &c., provided that the publication is made with a literary object.
(6) The publisher or compiler of works which are no longer private property.

Definition of authors of artistic copyright.

Art. 3. The following are considered authors, in matters of art:

(1) The creator of a work.
(2) The composer of variations on a musical theme, on condition that these variations constitute in the opinion of experts a new creation.
(3) The compiler of popular musical works having no known proprietor.
(4) The author of transpositions or instrumentations made with the permission of the author of the original work.
(5) An artist, a geographer, an engineer, a draughtsman, a calligraphist, or a sculptor, each in respect of his original work and copies which can be made from it by any process whatsoever, unless, however, he has alienated the original.
(6) The reproducer of a work with the author's permission.
(7) The publisher of works of which the privilege has ceased.

Art. 4. The State and corporations clothed with the character of *personnes morales*, if they make publications in conformity with this law, enjoy the same rights as authors.

Art. 5. Literary and artistic works referred to in Art. 1456 of the Civil Code are not to enjoy the protection given by this law (*a*).

(*a*) Books of which the circulation is forbidden, and obscene pictures, &c.

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Art. 6. Except in the cases contemplated in Arts. 2 and 3 no work may be reproduced, in whole or in part, without the permission of the author, his heirs or assigns; and this permission ought to be mentioned on the reproduction of literary works.

Art. 7. Philosophical and scientific, &c., systems are not protected so far as they are organic systems of human knowledge, but only as work materialised by word or pen.

Nevertheless, the inventor of a system can apply to a judge to obtain recognition of his title as inventor against a person who has profited by the invention in a fraudulent manner (*a*). The decision of the judge must be published in the official journal.

Art. 8. Works relating to artistic or trade processes are subject to the provisions of this law, but the invention itself, the products, &c., to which the work is devoted, are to be regulated by the special law on such matters.

Duration.

Art. 9. The property is secured during the following periods:

(1) The life of the author, and fifty years after his death, as respects his heirs.

(2) Fifty years.

(3) Twenty-five years.

The benefit of the first of these periods is accorded to the authors mentioned in Art. 2 (1) and Art. 3 (1) and (5).

Of the second period to translators, compilers of historical or legislative documents, government, *personnes morales*, authors of variations on musical themes.

Of the third period to all other persons.

Art. 10. The duration of protection runs from publication.

Art. 11. In matters relating to posthumous works, not only works published for the first time after the death of the author are to be considered posthumous works, but also works already published which the author may have augmented or corrected, &c. In this case the duration of the privilege runs from the publication of the modified work.

Art. 12. In the case of works published in parts, the duration of privilege runs from the completion of publication.

Art. 13. On the expiration of the period of duration, the work becomes public property.

Abridgments and extracts.

Art. 14. No one may publish abridgments or epitomes of a literary work, alter it, or publish it with commentaries without the author's permission.

The prohibition does not extend to extracts in the form of

(*a*) Compare the Law of Columbia, *ante*, p. 707.

quotations for a critical work, to passages or works of small size, which accompanied by critical remarks are presented as forms for instruction, or to parts of musical works inserted in systems used for teaching music.

Art. 15. When an abridgment or epitome of a didactic or technical work belonging to another has been edited on a more methodical plan, or illustrations have been added to it, the General Council of Public Education may permit the publication of the abridgment or epitome, giving to its author the benefit of a privilege corresponding to that of an original author.

The circumstances of the case are to be considered by three experts, named, one by the original author, one by the author of the abridgment or epitome, and the third by the Council General. If the decision of the experts be favourable to the author of the abridgment, he is bound to deliver to the author of the original work a compensation in specie of which the amount is to be fixed by the Council itself.

Art. 16. The author of an abridgment of a work become public property only possesses a right relating to the abridgment and cannot oppose the author of another abridgment of the same work having a like privilege.

Art. 17. The existence of a privileged translation of a work does not prevent the publication of a new translation of the same work. Translations.

Art. 18. Every translation must indicate the name of the author of the translated work, but this does not prohibit translations of anonymous works.

Art. 19. The assignment of the copyright in a literary work does not confer the right of altering the text in any manner whatsoever except with the author's permission. Assignment.

All additions and alterations which are made ought to be separated from the text in such manner as to be sufficiently distinguishable.

Every violation of this provision gives the author or his heirs a right to demand the restoration of the original text, otherwise all copies of the works are to be confiscated for their benefit.

Art. 20. The Government has the exclusive right of publishing official documents and laws in a special collection. This provision only prohibits private persons from publishing such collections, and does not prevent the reproduction of these documents in other periodical magazines when once they have been published in any periodical official magazine. Official documents.

This provision is not opposed to the right of property of

jurisconsults who publish the laws of the Republic accompanied by doctrinal commentaries and studies.

Legal documents.

Art. 21. Permission of the court having cognizance of a suit is necessary for the publication of documents relating thereto: the court may grant absolute or partial leave, taking into consideration the material interests and the reputation of the persons involved in the suit.

Anonymous works.

Art. 22. When an author has published works anonymously or under a pseudonym, and without recording his true name in the register, the publisher is to be considered the author for the purposes of the privileges attached to that title.

Posthumous works.

Art. 23. The heirs or proprietors of a posthumous work who publish it in a collection with other works of the same author already become public property, lose their right of property in such work: they can only preserve their right while they publish this work separately.

Letters.

Art. 24. Letters belong to the persons to whom they were sent, but only so far as regards the actual property in them. With regard to publication it is different, this right being reserved exclusively to the author, and in cases provided for by law, to the judge. After the death of the author, the right passes to his heirs.

Notwithstanding the provisions in the first paragraph, persons who retain letters which have been sent to them, are able to publish them, when this publication is necessary to protect their personal honour, or to sustain an argument entered upon for the defence of religion, morality, or country.

Works or speeches of officials.

Art. 25. Written or oral works, which have been produced by their authors in the exercise or the accomplishment of their duties or public functions, and which for this reason, have been published officially may be reprinted in periodical magazines; but the right of publishing them in a separate collection is reserved exclusively to the author.

Works executed for pay.

Art. 26. When an author has produced his work for a certain remuneration, copyright in the work belongs to the person or corporation, who has procured it to be made, subject to any agreement to the contrary.

Art. 27. In the case of collaborative works, the agreements between the collaborators are to be adhered to, so far as they are not contrary to this law.

Magazines.

Art. 28. Every work published in a periodical magazine can be reproduced in another, unless the author expressly reserves the right of reproduction, but such work cannot be published in a separate edition.

Art. 29. If the editor or person who brings out a periodical magazine reserves to himself the property in the publications therein inserted, these cannot be reproduced in another magazine.

Otherwise reproduction of such works can be freely made, on condition that the magazine from which they are taken be indicated.

Art. 30. An author who has undertaken the editorship of a periodical publication under an agreement, cannot reserve to himself property in the works which he inserts therein, with a view to prevent their reproduction: this right belongs to the proprietor (of the magazine). Nevertheless, the author preserves property in any separate publication made by him of his articles.

Art. 31. The proprietor of a periodical publication may prevent another periodical being started under the same title.

Art. 32. Portrait-painters and sculptors cannot sell reproductions of portraits or busts made by them, without the permission of the interested person. Portraits and busts.

Art. 33. Dramatic works are protected against reproduction in the same manner as other works of literature. Dramatic works.

Art. 34. They cannot be represented in public theatres without the author's permission. The latter is free to fix, at the time of giving permission, such royalties as he thinks fit.

Art. 35. The rights above mentioned, conferred upon a dramatic author in respect of the representation of his works, are secured to him for his life. The rights endure for twenty-five years after his death for the benefit of his heirs, if there be not other assigns. Duration.

Art. 36. The extent of the respective rights of the authors of a dramatico-musical work are to be determined by the agreement between them.

Art. 37. Although the author of musical transpositions made without the permission of the author of the original work is not admitted to enjoy the privileges recognised by the law, he is however to have the right of preventing the performance of his transpositions, when no remuneration is given to him.

Art. 38. Literary and artistic property may be transferred by any title whatsoever. Assignment.

Art. 39. The persons who are heirs according to the ordinary law are to be considered heirs from the point of view of this law.

Art. 40. Grounds of disability fixed by the civil law in

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respect of succession to ordinary property also hold good so far as they are applicable, in matters of literary and artistic property.

Art. 41. An author may abandon his rights to the public by express declaration.

Art. 42. When an author has granted to a citizen of Ecuador the exclusive right of translating or making an abridgement or epitome of his works, such person may prevent any work analogous to his own being made in Ecuador.

The same provision applies in like cases in regard to artistic property and the representation of dramatic works permitted by a foreign author to an Ecuadorian theatrical enterprise.

Registration.

Art. 43. In order to enjoy the right of property in this matter, the author or person who procures a work to be made must register the title of his work, and the reservation of his rights.

Art. 44. A special register for entering literary and artistic property and another for agreements relating thereto is to be opened in the cantonal registration offices.

Art. 45. The officer charged with the duty of registration, must demand before proceeding to registration that the author shall deliver to him three copies of his work if printed: one for the Ministry of Public Education, another for the National Library, and the third for the Provincial Library, or if none, for the local municipality: the receiver must inscribe on each of them a statement of registration and must mark them with the office stamp.

In the case of a periodical, it will be sufficient to register the first number, but subject to the continuing obligation on the author or proprietor to deposit three copies of the subsequent numbers for the destinations aforesaid.

Art. 46. In the case of an artist, or sculptor, it will be sufficient to preserve the right of copying or reproduction, if this reservation be entered on the register.

Nevertheless engravers, lithographers, and other artists, who are proprietors of works of which copies can be multiplied by a mechanical process, must in addition to registration deposit three copies of their works above-mentioned.

Art. 47. In the case of dramatic works, and musical works joined with them, which are presented for registration while not yet printed, it is sufficient to deposit a MS. copy.

Art. 48. Every agreement relating to artistic or literary

property must be entered on the register in order to be effective.

Art. 49. The period allowed for registration is six months to be reckoned from publication, or in the case of the works mentioned in Art. 47, three months from the date of representation.

Art. 50. The formalities relating to the registration and transfer of literary and artistic property do not require a fee.

Art. 51. A special section has to be opened in the register for the registration of anonymous and pseudonymous works, in which the identity of the author must be stated.

The officer charged with registration is bound to secrecy in this respect, and in the reports given by him to the Minister of Public Education, he must only enter the fact of registration. But he is relieved from this obligation on the requisition of a judge in criminal proceedings relating to a work, or when the production of the entry on the register may be necessary to support rights conferred by this law.

Art. 52. The ordinary judges have jurisdiction in litigation relating to literary and artistic property. Jurisdiction.

Art. 53. The following are considered fraudulent acts: Piracies and remedies therefor.

(1) Registering as a man's own the work of another.
(2) Publishing a work under similar circumstances.
(3) Publication of a work made before the expiration of the legal duration of a privilege or agreement.
(4) The fact of omitting in a reproduced work, a reference to the agreement between the author or publisher, or the permission relating to the reproduction.
(5) Plagiarism.
(6) Piracy of an edition, outside the territory of the Republic.
(7) The introduction and sale of pirated copies.
(8) The dramatic representation and musical performance of a work without the author's permission.
(9) The reproduction and putting on sale of editions made in fraud of authors who live under the jurisdiction of a State with which Ecuador is bound by treaty on this subject.
(10) The fact of a printer, publisher, lithographer, &c., reserving to himself a larger number of copies than that agreed on.

Art. 54. In every case where a fraudulent act has been committed the author, or proprietors interested, have the right of seizing all copies of the work of a fraudulent

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character, and of claiming restitution of the value of copies sold, without prejudice to the compensation they may obtain for the damage caused to them.

Art. 55. If plagiarism be only partial, the author has only the right of claiming from justice an insertion in the official journal of a notice mentioning the proceedings taken by him in the matter.

Art. 56. An action for plagiarism can only be instituted in respect of published works.

Art. 57. Legal proceedings in relation to fraudulent acts can only be instituted against the author of the acts. If proceedings cannot be taken against him, proceedings may be taken successively and in the following order against the publisher, printer, importer, vendor, and possessor.

The judge must at the request of the person interested, and for the duration of the proceedings, order sequestration of all copies of the work existing in the Republic.

Art. 58. If there be aggravating circumstances, the offenders, in addition to the penalty of confiscation, is liable to a fine graduated by the judge, and varying from 50 to 500 sucres (*a*).

Art. 59. On a second offence the fine will be doubled.

Art. 60. The following are to be considered aggravating circumstances:

(1) The putting on the market editions whose fraudulent character has been the subject of a notice by the author to the public.

(2) Any marked alteration of the text.

(3) The fact of publication of the work outside Ecuador.

(4) The fact of pirating the title and frontispiece of a work.

Art. 61. The penalties prescribed by this law against alteration of the text are to be applied, without prejudice, to the penal proceedings which may be taken according to circumstances.

Art. 62. The right of instituting proceedings in relation to artistic and literary property belongs, according to the circumstances, to the author, his heirs, or assigns.

Art. 63. Whenever it is a question of deciding if two works be identical or if one be taken from another, and the judge thinks it useful, the question may be submitted by him for a previous examination by three experts, two to be named by the parties and one by the judge.

(*a*) = 5 francs nominally.

Art. 64. Every citizen of Ecuador who publishes a work outside the territory is also to enjoy the rights recognized by this law, on condition of fulfilling the legal formalities.

In such case, the period for registration is double.

General provisions.

Art. 65. The period fixed for registration of the rights recognized by this law, and in order to obtain their benefit, is in regard to works previously published by Ecuadorian authors to commence to run from the coming into force of this law.

Art. 66. The executive authorities may publish a regulation for carrying out this law.

Rights of Foreigners.

Foreigners.

The above law does not expressly refer to foreigners, and perhaps "authors" will be restricted to native authors, but, at any rate, Art. 42 would seem to be applicable to foreign authors, and enable them to grant to an Ecuadorian citizen the exclusive right in Ecuador of translating, abridging, epitomising, or performing their works. Under Art. 64, citizens of Ecuador can obtain copyright in that country, though publishing abroad. Ecuador has two copyright treaties in force, viz., with Mexico (10th July, 1888) and with France (9th May, 1898). She has signed, but not ratified, the Pan-American Convention.

GUATEMALA.

The following law was passed on the 29th October, 1879 (*a*):

Definition. To what copyright extends.

Art. 1. The inhabitants of the Republic have the exclusive right of publishing and reproducing, as often as they think fit, in whole or in part, their original works, whether by manuscript copies or transcripts, or by printing, lithography, or any analogous process.

Art. 2. The right recognized by the preceding article extends to oral or written lectures and to every speech of whatever nature, delivered in public.

Art. 3. Reports placed before, and speeches delivered in political assemblies, scientific or literary articles, and original poems inserted in periodical publications, are included in the works mentioned in Art. 1, so far as the right of forming collections of them is concerned.

(*a*) Translation taken from 'Lois françaises et étrangères,' par M. Lyon-Caen. The law is very similar to that of Mexico; see *post*.

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Art. 4. Private letters cannot be published without the consent of the two persons between whom they have been exchanged, or their heirs, unless this publication be necessary to establish or maintain some right, or the public welfare, or the progress of science requires it.

Duration.

Art. 5. Literary copyright is perpetual. After the death of an author it passes to his heirs according to law.

Rights of assignee.

Art. 6. The author and his heirs can alienate their property like any other property, and the assignee acquires all the author's rights, according to the terms of the contract.

Art. 7. If the author, after an assignment of one of his works, subsequently makes essential modifications in the work, the assignee cannot oppose the author or his heirs publishing or alienating the corrected work.

Art. 8. The judge must give his decision in the case mentioned in the preceding article, after a report from experts; he may, in addition, take the advice of such learned societies as he thinks fit to consult.

Posthumous works.

Art. 9. The heirs and assigns have the same rights as an author, in relation to posthumous works.

Anonymous works.

Art. 10. Anonymous or pseudonymous works are comprised in the works to which the provisions of this law apply, from the time when the author, his heirs or representatives, establish their right of property.

Institutions.

Art. 11. Academies and other scientific and literary institutions have property in the works published by them.

Collaborative works.

Art. 12. In the case of the publication of a dictionary, an encyclopædia, or any other work composed by several persons, whose names are known, if it be impossible to determine the part of which each is the author, the property shall belong to all. If such persons cannot agree about the use of them, the decision of the majority will be binding: if a majority be not constituted, the judge is to decide.

Art. 13. In the case provided for by the last article, if one of the authors dies without leaving heirs or assigns, his right accrues to his collaborators.

Art. 14. Where, in the case of such a work, the authors of determined parts are known, or it can be proved who they are, each of them shall enjoy the property in the part of which he is author, in conformity with the principles of law; but the complete work cannot be again published without the agreement of the majority.

Art. 15. If a work composed by different collaborators has been published by a single person, he is to have the entire

property, subject to the right of each author to republish his own composition, either separately or in a collection.

Art. 16. In such case the publisher cannot publish the said compositions separately without the consent of their authors.

Periodicals.

Art. 17. With regard to political periodicals, the only property recognized is that in scientific, literary, or artistic articles contained in them, whether these articles are original works or translations; but any person publishing any passage from the unprotected part must cite the title and number of the periodical from which the quotation is taken.

Translations.

Art. 18. Every author may reserve the power of publishing translations of his works; but in such case, he must declare whether his reservation is limited to particular languages or is extended to all.

Art. 19. If an author does not make this reservation, or has assigned the right of translation, the translator is to enjoy, in regard to his translation, the author's rights; but he cannot prevent the work being translated by others unless the author has also given to him the right of preventing any other translation.

Annotations, abridgments, &c.

Art. 20. No one may reproduce the work of another, under the pretext of annotating it, commenting on it, completing it, or making an improved edition, without the leave of the author; but any person annotating or making additions to the work of another, can publish his annotations and additions separately, in which case he will be considered as the proprietor of them.

Art. 21. The permission of the author is also necessary for the publication of an abridgment or epitome. Nevertheless, if an epitome or abridgment is of such value or importance that it constitutes a new work or is of general utility, the government may authorize its printing, after a previous hearing of the interested parties and two experts to be named by each.

In such cases, the author or proprietor of the original work has a right to demand that his name be preserved on the abridgment, and he may claim compensation, which is to be fixed after hearing the same interested parties and experts.

Publishers.

Art. 22. A publisher who is neither the heir nor the assign of the proprietor of a work or translation, is only to have the rights given to him by the agreement made with him.

Art. 23. The publisher of a work previously become public property is only to have a right of property during the time required for publication and a year afterwards, and this right does not enable him to prevent other editions being made outside the territory of the Republic.

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Art. 24. A work is to be considered as public property when its author or proprietor dies without leaving successors.

Cessor of copyright.

Art. 25. The publisher of an anonymous or pseudonymous work has the same rights as the author, subject to the provisions of Art. 10.

In the case contemplated by that article, the proprietor is to recover all his rights, and the publisher must place at his disposal the copies in existence, or their value, but if the publisher be proved to have acted not *bonâ fide*, proceedings may be taken against him according to the penal law.

Art. 26. The nation is the proprietor of MSS. preserved in the Public Archives, and consequently these MSS. cannot be published without the permission of the government.

Art. 27. The nation is also proprietor of works published by Government, subject to any agreements made with the authors or publishers.

Registration.

Art. 28. To secure copyright, the author or his representative must apply to the Ministry of Public Education, for the purpose of obtaining legal recognition of the right.

Deposit.

Art. 29. The author of every printed book must deposit four copies, of which one is to be placed in the National Library, another in the Public Archives, and the others at the Ministry of Public Education.

A similar deposit must be made for each edition or new translation.

Art. 30. The said Ministry must give the person interested a certified copy of the order recognizing in his favour the property in the work, which copy will be a sufficient title.

Art. 31. When a work is published without the author's name, he must append to the copies mentioned in Art. 29, if he wishes to enjoy copyright, a sealed envelope containing his name, and marked by him in such manner as he thinks fit.

Art. 32. Every author, translator, or publisher must insert on the title-page of published books his name, the date of publication, and such conditions or legal information as he thinks necessary.

Subject to the exception provided for by the preceding article, a person neglecting to fulfil the formalities of this article cannot exercise his rights of property.

Penalties.

Art. 33. Any person reproducing the work of another without the consent of the author or his representatives, will incur the following penalties:

(1) Confiscation of all copies of pirated works found in his

possession: these to be delivered to the author or his representatives.

(2) To pay compensation for the damage and injury suffered by the proprietor. The compensation to be fixed by the judge after hearing the parties and obtaining a report by experts.

(3) To pay the expenses of the proceedings (*procédure*) and the personal expenses of the suit (*frais personnels de l'instance*).

If the offence be repeated, in addition to these penalties, a fine from 100 pesos to 1500.

In the case of a fresh repetition, in addition, *arrêt majeur* (*a*), graduated according to circumstances.

Injunction.

Art. 34. When the author or proprietor of a work learns that it is on the point of being secretly printed or circulated, he may demand from the judge of first instance of the department where the piracy is committed, that the printing or vending of the work be at once prohibited, and the judge will be bound to do justice to this demand according to the law.

Rights of Foreigners.

Foreigners.

The above law only confers copyright on "inhabitants of the Republic." (Art. 1.) Guatemala has copyright treaties with Costa Rica (15th May, 1895), France (21st August, 1895), Honduras (2nd March, 1895), Salvador (27th March, 1895), and Spain (25th May, 1893) (*b*). She has also signed and ratified (24th April, 1902) the Pan-American Convention.

HAITI.

Law of 8th October, 1885.

By the law of literary and artistic property passed on the 8th October, 1885, after a preamble stating that the law on this subject, already sanctioned in the Penal Code and the law of the 25th October, 1864, required modification and extension, it was enacted as follows (*c*):

Definition.

Art. 1. The expression "literary and artistic works" includes books, pamphlets, writings of every kind, dramatic works of every kind, musical compositions with or without words and

(*a*) *Arrêt majeur.* From four months' to a year's imprisonment. 'Lois françaises et étrangères,' par M. Lyon-Caen.

(*b*) The text of these treaties may be found, translated into French, in the Collection of Treaties published by the Official Copyright Bureau at Berne in 1904.

(*c*) 'Lois françaises et étrangères,' par M. Lyon-Caen, from which work the present translation has been made.

arrangements of music, works of drawing, painting, sculpture, and engraving, lithographs, geographical charts, plans, scientific sketches, and generally every kind of literary, scientific, or artistic work capable of being published by any method of printing or reproduction.

Deposit.

Art. 2. Authors of these works shall enjoy the right of property hereinafter mentioned, and the privilege of proceeding against pirates or vendors of their works, on the sole condition of depositing at the secretary's office of the Department of the Interior five copies, to be sent on to the different public libraries by the chief of the said department.

Art. 3. This deposit shall be made:

(1) In the case of a work published by a Haitian in Haiti or a foreign country, in the year of publication.

(2) In the case of a work so published before the promulgation of this law, within a period of two years.

Posthumous works.

Art. 4. The proprietors of posthumous works, by inheritance or other titles, are in the position of authors, and shall enjoy the same rights and the same privileges, subject to the condition of printing their works separately and observing the provisions of this law.

Duration.

Art. 5. Authors shall have the exclusive right during their life of selling, causing to be sold, circulating, representing, translating or causing to be translated into another language, all their works whatsoever, of assigning the property in whole or part, and making use of the appropriate processes of reproduction of every class of work.

Widows and children, and other heirs.

Art. 6. The same privilege, which extends to widows for their life, shall pass to children for twenty years, and if there be no children, for ten years to the other heirs or proprietors, after which the work shall become public property.

Piracy.

Art. 7. Any person publishing, reproducing, exhibiting or representing, without the written consent of the author or his representatives, a literary or artistic work, of which he is not proprietor, commits the offence of piracy, and shall be punishable according to the Penal Code and these provisions.

Art. 8. The authority having jurisdiction is bound to confiscate, on the first demand of authors, their heirs, or the other proprietors, and for their benefit, all copies or reproductions of any work printed or engraved, painted, or drawn by any process, or sculptured, without the consent mentioned in the preceding article.

Art. 9. The pirate shall further be condemned by the court having jurisdiction, at the request, and for the benefit of the

proprietor, in a sum equivalent to the price of 1000 copies of the original publication.

Art. 10. The vendor of pirated publications, if he be not found to be the pirate, shall be condemned, also for the benefit of the proprietors, in a sum equivalent to the price of 200 copies of the original.

Art. 11. This law repeals all contrary laws and provisions, and shall be carried into effect by the secretaries of the Departments of the Interior and Justice.

By the Penal Code of 1835, it is provided as follows: Penal Code.

Art. 347. Every publication of writings, of a musical composition, a drawing, a lithograph, a painting, or any other production, printed or engraved, in whole or in part, in violation of the laws and rules relating to copyright is a piracy, and every piracy is a misdemeanour.

Art. 348. The sale of pirated works, the importation into Haitian territory of works which, after having been printed in Haiti, have been pirated in a foreign country, are an offence of the same kind.

Art. 349. The penalty against the pirate or importer will be a fine of 100 gourdes (*a*) to 1000 gourdes: against a vendor, 16 to 80 gourdes.

Confiscation of the pirated publication will be decreed against the pirate, importer, or vendor.

Plates, moulds, and matrices of pirated articles will be also confiscated.

Art. 350. Every director or theatre manager, every society of artistes representing in a theatre dramatic works in violation of the laws and regulations respecting copyright, shall be punishable with a fine of 24 to 80 gourdes and confiscation of the receipts.

Art. 351. In the cases provided for by the four preceding articles, the products of the confiscations or the confiscated receipts shall be handed over to the proprietor in compensation so far of the injury suffered by him: the remaining compensation, or the entire compensation, if there has been neither a sale of confiscated objects nor a seizure of receipts, will be regulated in the ordinary way.

Rights of Foreigners.

The above law has no special provisions as to foreigners. Foreigners. Haiti was one of the original signatories of the Berne Convention

(*a*) Gourde = a peso or 5-franc piece. Whitaker.

in 1886, and she has also ratified the Additional Act of Paris, 1896, and the "Interpretative Clause." She has signed, but not yet ratified, the Pan-American Convention.

HONDURAS.

No special copyright law.

Honduras has no special law relating to copyright beyond some rudimentary provisions in the Penal Code of 29th July, 1898, and the Civil Code of 31st December, 1898. By Art. 523 of the former it is provided that any fraud in the matter of literary or industrial property shall be punishable with "minor banishment" for a period of from thirty-one days to a year. Art. 444 of the Civil Code declares that "the author of a literary, scientific, or artistic work has the right to exploit it or dispose of it as he pleases," and Art. 445 enacts that "the laws relating to intellectual and industrial property shall designate the persons to whom this right shall belong, the modes of exercising it, and its duration. Where no such provisions are made, the general rules established by this Code with regard to property shall apply."

Honduras has copyright treaties with Costa Rica (28th September, 1895), Guatemala (2nd March, 1895), Nicaragua (20th October, 1894), and Salvador (19th January, 1895) (*a*), and has signed, but not yet ratified, the Pan-American Convention.

MEXICO.

The Civil Code of 1871 contains full provisions on literary and artistic property (*b*).

Title 8.—*Labour.*

Art. 1245, following Art. 4 of the Constitution of the 12th February, 1857, provides that every one shall be at liberty to follow the profession, trade, or employment which suits him, provided it is useful and honest, and to appropriate its produce. This double power can only be withdrawn by a judicial sentence, or

(*a*) These treaties will be found, translated into French, in the Collection of Treaties recently published by the International Bureau at Berne.

(*b*) This Code was replaced by a new Code in 1884. We have not been able to obtain this latter Code, but the alterations made by it in the law of copyright are of a minor character, and the law given in the text may be safely taken as giving substantially the Mexican law of copyright at the present day. See 'Le Droit d'Auteur,' 1896, p. 82. Some of the alterations are referred to in the notes.

a decree of government made in conformity with law, when the rights of others or of society have been violated.

Art. 1246. Property in the productions of labour and industry shall be ruled by the same laws as ordinary property except in the cases for which this code contains special provisions.

Literary property.

Art. 1247. Inhabitants of the Mexican Republic shall have the exclusive right of publishing and reproducing as often as seems good to them, in whole or in part, their original works, either by manuscript, printing, lithography, or other analogous process.

Art. 1248. With regard to publication, the provisions of the law regulating the liberty of the press shall be observed.

Art. 1249. The right recognised by Art 1247 shall apply to oral and written lectures and all other speeches delivered in public.

Art. 1250. Pleadings, and speeches delivered in political assemblies, do not constitute literary property except in the case when it is intended to form a collection of them.

Art. 1251. The provisions of this chapter apply to MSS.

Art. 1252. Private letters cannot be published without the consent of the two correspondents or their heirs, except where publication becomes necessary for proof or defence of a right, in the public interest, or to aid the progress of science.

Perpetual duration.

Art. 1253. An author shall enjoy literary copyright during his life: after his death it shall pass to his heirs, according to the law.

Power of alienation.

Art. 1254. An author and his heirs can alienate literary like any other property, and the assignee shall succeed to all the author's rights, according to the terms of the contract.

Arts. 1255 and 1256. If the assignment be made for a shorter period than that fixed in certain cases for the duration of copyright, the assignor shall recover all his rights at the expiration of the period agreed upon: if for a longer period, the assignment will be void as to the excess.

Posthumous works.

Art. 1257. In respect to posthumous works, the heir or assign shall have the same rights as the author.

Art. 1258. The publisher of a posthumous work by a known author, if he be not the heir or assign of the author, shall have copyright for thirty years.

Anonymous works.

Art. 1259. Anonymous and pseudonymous works shall be subject to the provisions prescribed by this chapter, provided that the author, his heirs, or representatives legally prove their title to the copyright.

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Modification by author after assignment.

Arts. 1260 and 1261. If an author after having assigned his copyright in a work, make substantial changes therein, the assignee cannot prevent the author or his heirs from publishing and assigning the work thus altered.

For the purpose of deciding such a case, the judge shall take the opinion of two experts to be respectively named by each party. He may in addition consult such persons or bodies as shall seem good to him.

Works published by academies.

Art. 1262. Academies and other literary or scientific institutions shall enjoy copyright in works published by them during twenty-five years.

Collaborative works.

Art. 1263. When several authors have compiled in common an encyclopædia, a dictionary, a newspaper or other work and their names are known, but it is impossible to distinguish the share of each in the composition, the copyright shall belong jointly to them all, and Arts. 1367 and 1368 shall regulate the exercise and division of the property between the different persons entitled.

Art. 1264. In such case, if one of the authors shall die without leaving heirs or assigns, his right shall accrue to his collaborators.

Art. 1265. If the authors of such a work are known, and it is possible to distinguish who is the author of each article, each one of the collaborators shall enjoy his own copyright according to law, but the publication of the entire work can only be made with the consent of the majority.

Art. 1266. If a work composed by several authors has been the enterprise of or published by a single person or a corporation, such individual or corporation shall have the property of the entire work, reserving the right of each author to republish his articles either separately or together.

Art. 1267. In the case referred to in the last article, the publisher cannot publish the articles separately without the consent of their authors.

Newspapers.

Art. 1268. In political newspapers, only scientific literature or artistic articles, whether original or translated, shall be subjects of copyright. Nevertheless, any person who publishes an extract from the parts of the paper not capable of being the subject of copyright, must indicate the title and number of the paper borrowed from.

Translation.

Art. 1269. An author may reserve the right of translation, but he must state whether he does so for a special language or for all.

Art. 1270. If an author has not reserved this right or has

assigned it to another, the translator shall have in his translation the same rights as an author, but shall not be able to prevent others making another translation, unless the author has also assigned this right to him (*a*).

Art. 1272. If a translator take proceedings against a new translation asserting that it reproduces the first, and does not constitute a new work from the original, the judge shall act according to the provisions of Art. 1261 before giving his decision.

Annotations.

Art. 1273. No one may under pretext of annotating, commenting on, adding to or improving the edition, reproduce the work of another without his leave. Any person, however, who has made additions or annotations to the work of another, may publish them separately; in which case his additions or annotations shall constitute a literary property for his benefit.

Abridgments.

Art. 1274. Permission is also required for the making of abridgments or epitomes of a work. Nevertheless, if an epitome or an abridgment has such merit or such importance that it constitutes by itself a new work, or is of extreme utility to the public, the government, after a hearing of the parties interested, and two experts named respectively by each party, may permit its publication.

Art. 1275. In such case the authors of the original work shall be entitled to a compensation at the rate of 15 to 30 per cent. on the net produce of every edition published of the abridgment.

Publishers' rights.

Art. 1276. If the publisher is neither heir nor assign of the owner of copyright in a work or a translation, he shall have no other rights than those given to him by any agreement which may have been made.

Art. 1277. The publishers of a work become public property shall only have the exclusive right during the time necessary for publication, and one year in addition. This right does not imply a power of stopping editions made out of Mexican territory.

Art. 1278. The publisher of an anonymous or pseudonymous work shall enjoy copyright, subject to the provisions of Art. 1259.

Art. 1279. In the case provided for by that article, the proprietor shall recover all his rights, and the publisher shall put at his disposal the existing copies or their value. If the publisher be proved to have acted in bad faith, proceedings may be taken against him according to law.

(*a*) Art. 1271 relates to foreign works. See Rights of Foreigners, *post*.

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Art. 1280. Any person who publishes for the first time a MS. of which he is lawfully possessed, shall have the right of publication during his life.

Laws.

Art. 1281. Any one may publish laws, other decrees of government, and judicial decisions, but after the official publication has taken place, the publisher must adhere to the authorized text. Nevertheless, no one may publish a collection of the federal laws or the laws of a particular state of the Mexican Republic without having previously obtained the consent of the central government or the particular state.

Art. 1282. In the exceptional cases when literary copyright is temporary, the period of duration shall run from the date of the work. If this be unknown, from the 1st January of the year following that in which the work, or the last volume, part, or number appeared.

Dramatic works (*a*).

Art. 1283. Dramatic authors, besides the exclusive right of publication and reproduction, shall have also an exclusive right of representation.

Duration.

Art. 1284. A dramatic author shall enjoy the exclusive right of representation during his life: at his death, this right shall pass to his heirs, who shall enjoy it for thirty years.

Art. 1285. Assignees of the right of representation shall only enjoy it for the life of the author and thirty years after his death.

Art. 1286. At the expiration of the periods established by the preceding articles, the works shall, so far as regards the right of representation, become public property.

Art. 1287. The creditors of the theatrical management cannot seize the part of the receipts belonging to the dramatic author.

Authors and managers.

Art. 1288. An author may in the agreement between him and a manager for the representation of his piece, limit the number of representations, and insert such conditions as may seem good to him; he may stipulate, accordingly, that it shall only be played during a certain time, in a certain town, or in a certain theatre.

Art. 1289. An author may make such alterations and corrections in his piece as he thinks proper, but must not alter any essential part without the approval of the management.

Art. 1290. The management shall not under any pretext whatever communicate the piece while in manuscript to any person outside the theatre, without the express permission of the author.

(*a*) A number of these provisions resemble very closely the law of Portugal.

Art. 1291. The author of a dramatic work which has been accepted may not assign the right of representation to another theatrical management except under provisions in his agreement, nor may he publish or put on the stage an imitation of his piece.

Art. 1292. When the work is not represented at the time and according to the conditions agreed on, the author may freely withdraw it.

Art. 1293. When the agreement does not determine the time of representation, the piece may be withdrawn by the author if a year have elapsed since the day of acceptance, without the piece having been played.

Art. 1294. The same right belongs to the author of a piece which has not been played for five years without good cause.

Art. 1295. In the cases contemplated in the three last articles, the author is not bound to return the money he has received.

Posthumous dramatic works.

Art. 1296. Posthumous dramatic works cannot be represented without the permission of the heirs or assigns in the enjoyment of the rights given by Arts. 1284 and 1285.

Art. 1297. The publisher of a posthumous theatrical piece, who happens to be in the position contemplated by Art. 1258, shall only have the dramatic property for twenty years.

Art. 1298. The publisher of an anonymous or pseudonymous theatrical piece shall have the dramatic property during thirty years. But if the author, his heirs, or assigns legally establish their rights, they shall recover the property, and accordingly all intervening agreements made as to the representation of the piece, shall come to an end.

Collaborations.

Art. 1299. When a theatrical piece has been composed by several authors, each one of them has the right of authorizing the representation, unless there is a contrary agreement, or some good reason is alleged: this shall be subject to the consideration of the administrative authority, after a previous reference to experts.

Art. 1300. In the case referred to in the last article, the heirs and assigns shall have the same right. But if one collaborator leave several heirs or assigns, their opinions taken in the manner prescribed in Art. 1367, shall only count as one vote and shall only represent that of the author whom they have succeeded.

Art. 1301. In the same case, if one of the authors of the piece should die without leaving any heirs or assigns, the property

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shall accrue to the others; but the portions of the receipts which would have been allotted to the deceased shall be devoted to the encouragement of theatres.

Assignment.

Art. 1302. The assignment of the right of publication of a dramatic work does not carry with it the right of representation, unless expressly agreed.

Art. 1303. All the provisions relative to authors shall apply to translators.

Art. 1304. Where dramatic property has a fixed duration, the period shall run from the first representation.

Art. 1305. All the provisions contained in Arts. 1254–1257 and 1269–1272, respecting the right of publication, apply also to the right of representation.

Artistic property. Definition of author.

Art. 1306. The following persons shall have the exclusive right of reproduction of their original works: authors of geographical and topographical charts, of scientific and architectural, &c., drawings, and the authors of plans, prints, and drawings of every kind; (2) architects; (3) artists, engravers, lithographers, and photographers; (4) sculptors for such of their works as are completely finished as well as for their designs and casts; (5) musicians; (6) calligraphists.

Art. 1307. Artistic copyright is governed so far as the right of reproduction of the original work is concerned, by Arts. 1251–1253, 1266, 1273–1279, and 1282, in the cases referred to in such articles respectively, so far as such articles are applicable to works of art.

Musical composition.

Art. 1308. The right of performance of musical compositions is regulated by Arts. 1283–1302, and Art. 1304.

Art. 1309. For legal purposes the author of the music is considered as being also the author of the words, reserving to the author of the words a right to protect himself by written agreement.

Art. 1310. Musical copyright shall give the author the exclusive right of making agreements as to arrangements to be composed on the *motifs* or themes of the original work.

Art. 1311. The owners of artistic copyright may reproduce or authorize reproduction to the exclusion of all others, either in whole or in part, of the works the subject of the copyright, and that either by the same or a different process, in different or the same proportions.

Art. 1312. The author of a lawful reproduction shall have the rights of the artist himself in such manner as is fixed by agreement.

Rights of

Art. 1313. The purchaser of a work of art is not presumed

to have acquired at the same time the right of reproduction where it has not been expressly so agreed.

purchaser of a work of art.

Art. 1314. An artist who executes a work to order loses the right of reproducing it in the same branch of art.

Art. 1315. The possessor of a sculptural design shall be presumed to have the right of reproduction, unless there be an agreement to the contrary.

Piracy. Definition.

Art. 1316. The following acts, in the absence of the lawful owner's permission, constitute piracy.

(1) Publication of works, speeches, lectures, and original articles referred to under the heading Literary Property.
(2) Publication of translations of such works.
(3) Representation of dramatic works and performance of musical compositions.
(4) The publication and reproduction of artistic works whether effected by the same process as that employed by the artist or by a different process.
(5) The omission of the name of the author or translator.
(6) Change of the title of a work, suppression or modification of any part.
(7) Publication of a larger number of copies than agreed upon in conformity with Art. 1363.
(8) The reproduction of an architectural work, when to effect this it is necessary to penetrate into a private house.
(9) The publication and performance of a musical piece composed of extracts from other pieces.
(10) The arrangement of a musical composition for separate instruments.

Art. 1317. Also, the reproduction or representation of a work when done in violation of the conditions or after the time fixed in certain cases by the preceding articles.

Art. 1318. Also, the announcement of a performance of a dramatic work or musical composition, even though the piece should not be represented, and whether the announcement did or did not contain the name of the author or translator, in every case where the author has not given his consent.

Art. 1319. Also, the sale of pirated works either in the Mexican Republic or elsewhere.

Art. 1320. Also, the publication of a work in contravention of the provisions contained in the press law.

Art. 1321. Also, every publication or reproduction not expressly provided for by the following article:

Art. 1322. The following acts do not constitute piracy:

(1) The literal quotation or insertion of a selection or passage taken from a published work.

(2) The reproduction of or an extract from articles in a review, a dictionary, a newspaper, or a composition of a similar kind, provided that the writing from which the extract has been borrowed be indicated, or that the reproduction be not, in the opinion of experts, made to an undue extent.

(3) The reproduction of a poem, a memoir, a speech, &c., in a critical or historical work of literature, a paper, or in a book intended for the use of an educational establishment.

(4) The publication of chosen selections from different works.

(5) The separate publication of additions or corrections made to or in a work.

(6) The publication of the works of an author dying without heirs or assigns or who has neglected the legal formalities prescribed for the preservation of copyright.

(7) The publication of anonymous or pseudonymous works, but subject to the restrictions expressed in Arts. 1259 and 1279.

(8) The representation of a drama, or the performance of a musical work, in whole or in part, when it takes place without stage accessories in a private house or at a public gratuitous concert.

(9) The representation or performance of a dramatic or musical work of which the receipts are intended for charity.

(10) The publication of the libretto of an opera, or the words of any musical composition where the author has not expressly reserved his literary copyright.

(11) The translation of a published work, subject to the provisions of Arts. 1269 and 1272.

(12) The reproduction of a sculpture, if there be such essential differences between it and the original work that, in the opinion of experts, the former ought to be considered a new work.

(13) The reproduction of works of sculpture standing in squares, promenades, cemeteries, and other public places.

(14) The reproduction of works of painting, engraving, or

lithography, by processes of the plastic arts and *vice versâ*.

(15) The reproduction of a sculptural design already sold when the reproduction is essentially different.

(16) The reproduction of works of architecture, in the case of public monuments or the exterior parts of private houses.

(17) The use of artistic works as designs for manufacturing productions.

Art. 1323. Any person contravening the provisions of Arts. 1316–1321, shall forfeit for the benefit of the proprietor all pirated copies in existence, and shall pay the price of any missing copies required to complete the edition. Penalties.

Art. 1324. If the proprietor does not desire to recover the copies, the pirate shall pay to him the value of the whole edition.

Art. 1325. The price per copy to be paid by the pirate shall be the actual price of copies of the legal edition; and if that be exhausted the price of copies at the commencement of publication of the work shall be looked to.

Art. 1326. If the legal edition of the work be published by subscription, the price payable by the pirate shall be, not that of the subscription, but the actual price in the book market at the date of the publication.

Art. 1327. If the edition be the first published, the pirate shall pay the market price of copies, the right being reserved to the proprietor of complaining against the smallness of this.

Art. 1328. If the piracy has been executed otherwise than by mechanical processes, the price shall be fixed by experts.

Art. 1329. Where the number of copies forming a fraudulent edition is unknown, the pirate shall not only forfeit the copies seized, but shall pay in addition the value of 1000 copies, a right being reserved to the proprietor to prove that this amount is less than the damage he has suffered.

Art. 1330. Plates, moulds, and matrices used in manufacturing the fraudulent edition shall be destroyed: this does not apply to type.

Art. 1331. The provisions of Arts. 1323 to 1327 shall apply also in case the pirated edition has been manufactured outside the Mexican Republic.

Art. 1332. Any person representing a theatrical piece or performing a musical composition in violation of Art. 1316 (3) Piracy of musical and

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and (9) and Arts. 1317–18, shall pay to the proprietor the gross receipts of the unlawful representation or performance.

dramatic pieces.

Art. 1333. If the representation or performance include different pieces or compositions, the receipts shall be divided into shares proportional to the number of acts or *morceaux*, and if the calculation cannot be made in that way, it shall be made by experts.

Art. 1334. The proprietor shall have the right of seizing the receipts before, during, and after the representation.

Art. 1335. The value represented by season tickets shall be brought into the account of the receipts.

Art. 1336. Copies distributed to actors, singers, and musicians, and also librettos and scores, shall be destroyed.

Art. 1337. The proprietor shall have a right to stop the performance, in which case the last article shall apply, and the proprietor shall be allotted a compensation to be fixed by experts.

Art. 1338. In addition to the proprietor's right to the receipts, he shall receive compensation for the damage caused to him. This shall be fixed by the judge, on the advice of experts.

Art. 1339. For the purposes of the law any person who, on his own behalf, undertakes or executes a piracy shall be civilly responsible.

Art. 1340. If the infringement has been produced out of the Republic, the person selling will be responsible.

Art. 1341. Actors and artistes who take part in a piracy on another's account are not civilly responsible.

Art. 1342. No person other than the proprietor can put in force the rights mentioned in this part of this law.

Art. 1343. The judge shall take the advice of experts in all doubtful cases.

Art. 1344. In copyright actions, the judge who shall have jurisdiction is the judge where the proprietor resides.

Art. 1345. The administrative authority of a State shall have power to stop the performance of a dramatic work, sequestrate the receipts, seize pirated works, and generally to take any measure of urgency.

Art. 1346. Judgments given in cases of literary, dramatic, or artistic property, shall be appealable or not, according to the amount in litigation; but no appeal shall lie from orders of urgency made in conformity with the last article.

Art. 1347. If proceedings be once commenced in vindication of copyright, the subsequent abandonment of them by

the proprietor will not discharge the pirate from civil responsibility.

Art. 1348. Independently of the above-mentioned penalties, the pirate shall be liable to the penalties prescribed by the Penal Code for the offence of fraud.

Registration.

Art. 1349. In order to obtain copyright, the author or his attorney must present himself at the Ministry of Public Education, to procure legal recognition of his rights.

Deposit.

Art. 1350. The author of a book shall deposit two copies (*a*).

Art. 1351. Every author of a musical work, an engraving, a lithograph, or an analogous work, shall deposit *one* copy (*b*).

Art. 1352. The author of a work of architecture, painting, sculpture, or other work of the same kind, shall present a drawing, sketch, or plan with information as to the dimensions and essential points of the original.

Art. 1353. The copies mentioned in Art. 1350 shall be deposited, one in the National Library, the other in the Public Archives.

Art. 1354. The copy of a musical work shall be deposited at the Philharmonic Society (*c*).

Art. 1355. The copy of engravings, &c., and the descriptive account mentioned in Art. 1352 at the School of Fine Arts.

Art. 1356. The author of an anonymous work, who wishes to enjoy copyright, must also append a sealed envelope containing his name.

Art. 1357. A register in which the deposited works are to be entered shall be kept at the Library, the Philharmonic Society, and the School of Fine Arts. The entries in the register shall be published monthly in the official journal.

Art. 1358. Office extracts from the registers shall be *prima facie* evidence of copyright, subject to proof to the contrary.

Art. 1359. A proprietor who does not fulfil the formalities prescribed in Arts. 1350–52 shall be liable to a fine of twenty-five pesos and shall remain liable to the deposit (*d*).

Art. 1360. Every new edition, translation, or reproduction requires a fresh deposit.

Art. 1361. The right of representation shall be legally recognised in accordance with the literary or artistic copyright.

Art. 1362. When an unpublished work, whether dramatic

(*a*) Said now to be three copies. 'Le Droit d'Auteur,' 1890, p. 100.
(*b*) Subsequently altered to *two* by the Code of 1884.
(*c*) Now one in the Conservatoire National, and the other in the Public Archives. Code of 1884.
(*d*) Peso = 4*s.* 3½*d.*

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or musical, is performed without the consent of the author, he shall be allowed to prove his title in the ordinary way, and as soon as proof is given, the general provisions of this law shall apply to the person responsible for the unlawful representation.

Art. 1363. Agreements for the publication of a work ought to fix the number of copies to be printed. If this be not done, an action for piracy on this ground will not lie.

Name, &c., of author to appear on copyright works.

Art. 1364. Every author, translator, and publisher must put on the cover of the book or musical composition, at the foot of an engraving, and at the foot of or some other visible place of an artistic work, his name, the date of publication, the conditions of reproduction or the legal information which he shall consider proper.

Art. 1365. An author who has not observed the provisions of the preceding article, cannot exercise the rights conferred by this law on the fulfilment of such provisions.

Art. 1366. The assignee of a copyright having a limited duration shall only enjoy it for the unexpired period accorded by law.

Art. 1367. If the different co-proprietors of a work do not agree as to the exercise of the rights conferred upon them by law, the decision of the majority shall prevail, subject to the provisions of Art. 1299. If the majority does not decide, the judge shall.

Art. 1368. In the case contemplated by the preceding article, the product shall be divided proportionately, if it be possible to determine the share taken by each collaborator in the joint work, or in equal parts, if this cannot be done.

Art. 1369. For legal purposes, a person who has procured a work to be made at his expense, shall be considered as the author, subject to any agreement to the contrary.

Art. 1370. When an author's inheritance has devolved on the Public Treasury, according to law, copyright shall be extinguished, and the work become public property, without prejudice to the rights of creditors of the proprietor.

MSS. belonging to the State.

Art. 1371. The nation shall have copyright in all manuscripts of the archives, and federal administrations, as well as of the federal district and California. Consequently no one of these manuscripts may be published without the permission of the government.

Art. 1372. Permission will also be necessary for the publication of MSS., and the reproduction of artistic works

belonging to academies, colleges, museums, and other public institutions.

Art. 1373. Publication and reproduction of MSS. and artistic works belonging to the different states of the Republic cannot take place without the permission of their respective governments.

Art. 1374. If the works mentioned in the three preceding articles have been acquired by the State by agreement with the author, the terms of the agreement shall be adhered to.

Works published by government.

Art. 1375. Works published by government shall become public property ten years after their publication. This period shall be computed according to Art. 1282, and subject to the exception mentioned in Art. 1281.

Art. 1376. Nevertheless the government may prolong or restrict the period given by the preceding article, as it shall think desirable.

Works already published.

Art. 1377. Authors, translators, and their heirs, whose copyright is not extinguished at the date of the promulgation of this law, shall profit by its provisions, but they must, in order to obtain this benefit, fulfil the formalities prescribed by Arts. 1349–52.

Art. 1378. If the author or his heirs have alienated the copyright before the passing of this law, the assignee shall keep the right during the whole period assigned by the law in force in relation to copyright at the date of the assignment, and at the expiration of such period the property shall return to the author or his heirs, who shall enjoy it to the exclusion of other persons, and in conformity with the provisions of this law (*a*).

Prescription.

Art. 1379. Literary and artistic property shall be prescribed after ten years, to be calculated in the manner mentioned in Art. 1282; dramatic property in four years, counting from the first representation or performance.

Art. 1380. Property the subject of this law shall be considered personal property, subject to the modifications inherent to its special nature, and by which the law distinguishes it from other personal property.

Art. 1381. When the reproduction of a work shall be considered desirable, and the author does not reproduce it, the government may decree the reproduction: in such case it

(*a*) Two new clauses have been added by the Code of 1884, providing that when the author, translator, or publisher of a work which has fallen into the public domain dies without having established his right of property, his heirs cannot claim it, and that it is lawful for authors, translators, and publishers to fix a shorter period than that prescribed by the law for the enjoyment of their property in their works. 'Le Droit d'Auteur,' 1896, p. 82.

shall undertake it on the State's account or put it up to auction, subject to compensation to be paid to the proprietor and to the accomplishment of the other terms prescribed for expropriation on the ground of public utility.

Art. 1382. There can be no copyright in publications prohibited by law or withdrawn from circulation by a judicial sentence.

Translations.

Art. 1385. The translator of a work written in a foreign language shall have the same rights in his translation as an author.

Rights of Foreigners.

Foreigners residing in Mexico.

Articles 1383 and 1384 enable a foreigner residing in Mexico to obtain copyright in his work, whether he publishes in Mexico or abroad. These clauses are as follows:

Art. 1383. For legal purposes there shall be no distinction between Mexicans and strangers; it is sufficient if the work be published on Mexican territory.

Art. 1384. If a Mexican or a foreigner residing in Mexico publish a work outside the territories of the Republic, he may enjoy copyright, on condition of conforming to the provisions of Arts. 1349 to 1352.

Foreigners residing abroad.

As regards works of foreigners published abroad by authors who are not resident in Mexico, these are only protected on condition of reciprocity. Art. 1386 provides:

For legal purposes authors residing in foreign countries are to be treated precisely as Mexican authors, provided that Mexicans enjoy equal rights in the country of origin of the work.

As to this provision, the Mexican Minister in Paris in the year 1881 made an authorized communication to the Society of Comparative Legislation in Paris to the effect that "the reciprocity required by the law of Mexico is not subordinated to Mexican authors enjoying abroad the rights accorded in Mexico to foreign authors, but only to the law of the country according to Mexican authors the same rights as to natives. The Mexican law being more liberal than the laws of other countries, it follows that the foreign author enjoys in Mexico more extensive rights than in his own country (*a*)." This last assertion must not, however, be taken too literally, for, in the first place, foreigners must comply with the complicated and often expensive (*b*) formalities prescribed by Arts. 1349 *et seq*;

(*a*) Darris, 'Du droit des auteurs et des artistes,' p. 315. 'Le Droit d'Auteur,' 1895, p. 149.

(*b*) See 'Le Droit d'Auteur,' 1898, p. 135.

and, secondly, in the matter of translations foreigners are placed in an inferior position to natives by Art. 1156, which enacts: "Authors not residing on national territory and publishing their works abroad, enjoy the rights accorded by Art. 1154 (*a*) for a period of *ten* years."

Treaties and conventions.

The Pan-American Convention was signed at Mexico, and it is to the Mexican Government that the ratifications have to be communicated, yet Mexico has not herself yet ratified the Convention, though she has signed it. There are copyright treaties in force between Mexico and the following countries: Belgium (7th June, 1895), Ecuador (10th July, 1888), France (27th November, 1886), Italy (16th April, 1890), San Domingo (29th March, 1890), and Spain (26th March, 1903). On the 27th February, 1896, the President of the United States proclaimed Mexico as being entitled to the benefit of the Chace Act.

NICARAGUA.

Nicaragua.

Nicaragua has no law on literary and artistic property and no copyright treaty except one with Honduras, dated the 20th October, 1894. She has signed the Pan-American Convention, but only *ad referendum* (*b*).

PARAGUAY.

Paraguay.

Paraguay has no special law existing on copyright. A law was passed between the years 1862 and 1865, but it fell into disuse and has been so completely forgotten that in 1889 the actual text could not be found in the archives (*c*).

The Constitution of the 24th November, 1870, Art. 19, provides that every author or inventor has the exclusive property of his work, invention, or discovery, during the time fixed by law.

No law on the subject having been yet promulgated, literary property is protected in the same way as other property by the Civil and Penal Codes. Art. 342 of the Penal Code of the Province of Buenos Aires, adopted in Paraguay in the year 1880, enacts that "any one who publishes a literary production without the author's consent shall, if no copies have been circulated, be liable to a fine of from 25 to 500 pesos fuertes,

(*a*) According to Art. 1154 the author must reserve his rights of translation.
(*b*) She has also signed the Central American Convention. See under "Costa Rica," *ante*, p. 720, note (*e*).
(*c*) 'Lois françaises et étrangères,' par M. Lyon-Caen.

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otherwise "the fine shall be doubled, without prejudice to confiscation. The like penalties will be incurred by any one performing or causing to be performed a dramatic piece without the author's consent." Apparently these penalties do not exclude an action for damages.

At the instigation of the Argentine Republic, Paraguay was a signatory of the Convention of Montevideo, which she ratified on the 2nd September, 1889; and she has accepted the adhesion to that Convention of Spain, France, Italy, and Belgium. She has also signed the Pan-American Convention, but only *ad referendum*.

PERU.

Law of 3rd November, 1849.

Copyright in Peru is regulated by the law of the 3rd November, 1849, passed in execution of Art. 174 of the Constitution of the 1st November, 1839, which proclaimed the inviolability of intellectual property. The Constitution of 1860 now in force has in Art. 26 reaffirmed the principle of the earlier constitution by declaring that property is inviolable whether it be material, intellectual, literary, or artistic: no one can be deprived of his property except for some reason of public utility, recognized by law, and on payment of a previously fixed compensation (*a*).

The law of 1849 on literary property provides as follows:

Duration.

Art. 1. Authors of writings, geographical charts, engravings, and musical compositions, of whatsoever kind, shall enjoy during their life the exclusive right of being able to sell or circulate their works in the territories of the Republic, and the power of assigning their right in whole or in part.

Art. 2. The following are excepted from the right recognized in Art. 1: books and writings contrary to religion or good morals, and paintings or engravings which offend public morals; these works will be prosecuted in conformity with the laws.

Art. 3. The author's heirs and assigns shall enjoy the same rights for twenty years from his death.

Posthumous works.

Art. 4. The legitimate proprietors of a posthumous work shall enjoy the exclusive right during thirty years.

Deposit.

Art. 5. In order to prove at any time the copyright of a book, engraving, &c., it shall suffice to deposit a copy in the public library, if there be one, and another copy in the archives of the prefecture of the department where the work is published, except where there is a question or opposition

(*a*) 'Lois françaises et étrangères,' par M. Lyon-Caen. from which work the translation of the law of 1849 is taken.

raised by another person: in this case, the question must be decided by the tribunals. If the author desire not to disclose his name, he shall deposit at the prefecture a sealed and closed envelope, in which his name shall be inscribed.

Art. 6. Any person publishing or selling within the Republic pirated publications shall incur a fine of 200 to 500 pesos for the benefit of the author, to whom there shall, in addition, be handed over all the copies. Penalties.

Art. 7. Any person importing into or selling in the Republic publications made in a foreign country of works, the copyright of which belongs to another, shall be liable to confiscation of all copies in his possession; these shall be allotted to the proprietor of the work.

Art. 8. The author of a translation or version shall enjoy the same rights, provided he has fulfilled the formalities prescribed by Art. 5. Translations.

Art. 9. After the expiration of the periods mentioned in this law, the works, whatever they may be, shall become public property, and any citizen may freely print and sell them.

Rights of Foreigners.

The law of 1849 not having defined who are to fall within the category of "authors," and being conceived in generous terms, M. Darras has observed that possibly it might be held applicable to foreigners, whether resident in Peru or not, and whether publishing in Peru or abroad (*a*), but this view is probably too optimistic. At any rate, whilst Peru has ratified the Convention of Montevideo on the 25th October, 1889, she has expressly declared that she will not accept the accession of countries not invited to take part in the Congress of Montevideo in the same form as the accession of Spanish American countries invited to, but not represented at, that Congress (*b*). She has consequently refused to accept the adhesion of France, Italy, Spain, and Belgium to the Convention. Peru has noother copyright treaty. Foreigners.

SALVADOR.

Until the year 1900 copyright in Salvador was regulated by Art. 610 of the Civil Code of 1880, but on the 2nd June, 1900, a law was passed, of which the provisions are as follows: Law of 2nd June, 1900.

Art. 1. Authors of writings of every kind, musical compo- Copyright and its duration.

(*a*) 'Le Droit d'Auteur,' 1897, p. 139.

(*b*) See note under the heading "Peru" in the Collection of Copyright Treaties published by the International Bureau at Berne in 1904.

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sitions, works of painting, design, sculpture, and, in short, all original works, are to have during their lives the exclusive right of selling, manufacturing, or putting in circulation their works reproduced by printing, lithography, moulding, or any other process of reproduction or multiplication whatsoever.

Art. 2. Their heirs are to enjoy the same right for twenty-five years, but the work falls into the public domain, if the treasury be the heir. Likewise the work falls into the public domain if the heirs do not within a year make use of their rights or renounce them before the Minister of "Fomento."

Art. 3. Authors and their heirs may transfer their rights to third persons.

Art. 4. The proprietor of a posthumous manuscript containing corrections made by the author of a work published during his life, is to enjoy the property therein for a fixed period of twenty-five years.

Art. 6. Theatrical pieces may not be performed on any stage in Salvador without the permission of the author during his life or of his heirs during the period of twenty-five years granted them.

Art. 7. Corporations are entitled to copyright for fifty years from publication.

Art. 8. Translators of Latin or Greek works are protected for the like period as authors.

Formalities.

Art. 9. No Government document is necessary to confer copyright; it is sufficient to previously deposit a copy of the work with the Minister of "Fomento," and to indicate on the frontispiece to whom it belongs. Works manifestly immoral or contrary to public order will be forbidden.

Art. 10. The Government may accord privileges for a maximum period of five years to any one reprinting interesting works, provided the edition be correct and the permission of the proprietor be obtained.

Art. 11. At the expiration of the periods fixed by the preceding articles, a work may be considered common property, and any one may exploit it at his pleasure.

Penalties.

Art. 12. The penalties for piracy are a fine of from 100 to 1000 pésos and damages.

Art. 13. Authors or printers must send copies of their works to countries with which there may be treaties to this effect (*a*).

Periodicals.

Art. 14. Publications which have appeared in periodicals may be freely reproduced.

Art. 15. These provisions are without prejudice to treaties still in force.

(*a*) See the provisions of Pan-American Convention, *ante*, p. 691.

Rights of Foreigners.

Art. 5 of the above law provides that "foreigners who publish their works in Salvador shall enjoy the same rights as natives: likewise when, after they have been published abroad, a new edition shall be made in Salvador." Salvador has ratified the Pan-American Convention (decree of 16th May, 1902), and has treaties with the following countries: Costa Rica (12th June, 1895), France (2nd June, 1880), Guatemala (27th March, 1895), Honduras (19th January, 1895), and Spain (23rd June, 1884). A treaty, concluded on the 24th December, 1900, with Columbia does not appear to have been ratified by the latter country. Foreigners.

URUGUAY.

Uruguay has no special law on copyright, but the Civil Code of 1868, Art. 443, provides that the productions of talent or intellect are the property of their author, and that this property is to be regulated by special laws. Uruguay.

Uruguay has ratified the Convention of Montevideo, but has not accepted the adherence of any European country (*a*). She also signed, but has not ratified, the Pan-American Convention.

VENEZUELA.

The first copyright legislation in Venezuela was a law of the 19th April, 1837, which was replaced by a law of 12th May, 1887, closely modelled on the Spanish law of the 10th January, 1879, with the important exception that copyright was made *perpetual* in Venezuela. The law of 12th May, 1887, was a sufficiently satisfactory law, but in the year 1894 it was repealed and replaced by a new law of the 17th May, 1894, which required authors to comply with rigorous formalities in order to obtain copyright. The main provisions of the law of 17th May, 1894, are as follows (*b*): Early copyright laws.

Art. 1. "Author" means any person who composes a scientific, literary, or artistic work, and "translator" means any one who expresses a work in another language, distinct from that in which the original work or composition is expressed or written. Law of 17th May, 1894.

Art. 2. The right an author possesses over his composition, and the right acquired by translators over translated works or compositions, constitute intellectual property, which is sacred and inviolable like any other property, and is to be governed by

(*a*) See *ante*, p. 492, *note* (*c*). (*b*) From 'Le Droit d'Auteur,' 1895, p. 114.

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the rules of the common law, subject to any restrictions established by law.

Art. 3. Copyright in an original work belongs legally to its author, or in the case of a translation to the translator, provided no pre-existing (*a*) international treaty prevents.

Duration.

Art. 4. Copyright is, by its nature, perpetual, and the following persons are to enjoy it: (a) Authors in respect of their works; (b) translators with respect to their translations; (c) persons who alter, abridge, make extracts from, or reproduce original or translated works with the consent of their proprietors; (d) publishers of unpublished works the proprietors of which are unknown, provided they make legitimate use of their rights; (e) assignees; (f) the heirs and representatives of proprietors; and (g) the nation, when the proprietor dies without heirs.

Transfer.

Art. 5. Copyright may be assigned by acts *inter vivos*, and the assignee obtains copyright in perpetuity, provided the rules and formalities established by the common law are observed.

Right of reproduction.

Art. 6. The author of a scientific, literary, or artistic work has the sole right of reproduction in any form or by any means, and (Art. 7) the author of a literary or scientific work has the right of translation.

Collaborations.

Art. 8. Copyright in collaborations, in the absence of contrary agreement, belongs to the joint authors in equal shares, but each of them may sue for infringements.

Commentaries, &c.

Art. 9. The consent of the proprietor of the copyright is necessary to the publication of the works of another, even though accompanied by notes, comments, and additions, but commentaries, criticisms, and notes upon any work may be published, provided only the portions or texts necessary for the object in view be inserted.

Art. 10. As regards works of art, and, in particular, musical works, any reproduction or copy falsifying the original is a piracy, and the consent of the author or his representatives is necessary before reproducing the work of another in the same or any other dimensions.

Anonymous works.

Art. 11. The publisher of an anonymous or pseudonymous work is to be deemed its author, until the author proves his title.

Art. 12. A translator has copyright in his translation, but without the right to prevent other translations.

Translations.

Art. 13. A work may not be modified or altered without the consent of its author or his representatives.

Piracy.

Art. 14. Copyright in literary and scientific works extends

(*a*) *Sic.* The word is ambiguous and may mean either existing previously to this law or to the date when the work is published.

to all written or spoken exposures of their ideas, comprising not only works that have been published, but writings of all kinds. Consequently, no one may publish, without the author's permission, either in pamphlet or any other form, (a) oral lessons and lectures; (b) pleadings or written judgments; (c) parliamentary, academic, or other speeches, except in political journals.

This provision is not to affect the right of courts and tribunals to draw up authentic copies or documents.

Art. 15. Authors of speeches or writings the subject of the last preceding clause may publish or reproduce them in pamphlet or in any form they please.

Performing rights.

Art. 16. An injunction may be obtained against the unlawful public performance or execution of a literary or musical piece.

Art. 17. If the performance takes place in spite of the injunction the proprietor of the work is to be entitled to the total receipts, which may be recovered in a summary manner.

Art. 18. The author or proprietor of a dramatic or musical composition has the right to claim from the proper person that which the performance or execution of his work has produced (*a*) in a theatre or place of public spectacle, on conforming to the rules of the common law.

Art. 19. In case of performance of a lyrico-dramatic work, created in collaboration by the author of the libretto and of the music, the receipts or products are, in the absence of agreement to the contrary, to belong to the proprietors in equal shares, and (Art. 20) the author of the libretto and the musical part have each the right to print and sell separately the part of the work which he has created, but, in publishing the musical part, the text corresponding to the song may be added.

Formalities.

A register is established in the office of the governor of the federal district and in each of the offices of the State Presidents in which scientific, literary, and artistic works will be entered in chronological order. (Arts. 22 and 23.) The entry in the register is to give (a) the name and domicile of the person making the entry; (b) the title of the work; (c) the name of the author, translator, &c.; (d) the place and date of printing; (e) the edition, volumes, form, number of pages, and all other details which, in the opinion of the interested party, ought to be registered the better to assure his rights. (Art. 24.)

Request for protection.

Art. 25. In order to enjoy the benefits hereby conferred the author or translator or his representative should, before printing, engraving, or lithographing, address to the governor of the

(*a*) *i.e.*, semble, net receipts. Under the preceding clause he is entitled to gross receipts.

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district or the State President a request, containing the title of the work or composition, and, where registration is sought, the delivery of a "patent" to assure the copyright to the person entitled thereto.

Art. 26. Upon receipt of the request, the President or Governor must, in his presence, take the oath of the applicant that the work in question, if original, or the translation has not been printed, engraved, or lithographed previously either in Venezuela or abroad (*a*), after which the title is to be registered, and (Art. 27) a sealed patent delivered to the applicant in the prescribed form.

Art. 28. Besides the titles of written works, those of engravings, lithographs, architectural plans, geographical plans, and other artistic works, for which protection may be sought, are to be inscribed in the register or list kept at Caracas or in each State capital. At the bottom of these works are to be placed the words "Registered according to law," and underneath the signature of the proper authority (*b*).

Art. 29. The "patent" must be printed on the back of the title-page, and published at least four times in the official 'Gazette.

Art. 30. There are no fees for registration, but the patent is to be on properly stamped paper.

Art. 31. Six copies of the work must be deposited at the registry.

Penalties.

Art. 32. The offence of falsification in prejudice of intellectual property is to be punished according to the Penal Code (*c*). Any fraudulent action or breach directed against the said property constitutes this offence; consequently all are equally culpable who knowingly sell, expose for sale, or import pirated or falsified works. The responsibility falls, in the first place, on the author of the fraud, and, in his default, on the publisher and the printer, unless they respectively prove their innocence.

Art. 33. Besides the penal consequences, falsifiers or usurpers of intellectual property are to suffer confiscation of the piracies to the proprietor of the copyright, and the instruments of piracy to be destroyed.

Art. 34. Modification of the title of the work, alteration of the text and so forth, will be deemed aggravations of the offence.

Arts. 35 and 36 relate to procedure.

Posthumous works.

Art. 38. The property in posthumous works belongs to the

(*a*) This is no real protection to a foreign work, it only prevents a pirate from obtaining copyright in the work he has pirated.

(*b*) Presumably a copy of the signature.

(*c*) According to Art. 301 of the Penal Code of 1897, pirates are liable to imprisonment for a period of from one to twelve months and to a fine of from 50 to 2000 bolivars.

heirs or representatives of the author. Alterations, additions, annotations, and corrections left by an author relating to a previous work are considered posthumous works.

Rights of Foreigners.

Foreigners. The only clause in the above law expressly referring to international rights is Art. 37, which authorizes the government "to conclude treaties and arrangements with friendly nations with a view to better realizing the doctrine upon which this law is based, provided that the government shall not accord to foreigners rights in excess of, or modifying, those conferred by the legislature upon intellectual property." No treaty has yet been concluded under the provisions of this article, and it is impossible to say whether, in the absence of a treaty, a foreigner is entitled to any protection in respect of his works in Venezuela. The law of 1894 does not define "author."

UNITED STATES.

Copyright the creature of statute. In the United States copyright in a published work depends entirely upon the legislation of Congress (*a*), but unpublished works are protected by the common law, as in England (*b*).

Copyright Act, 1870. The Constitution of 4th March, 1789, authorized Congress to "encourage the development of useful sciences and arts by according to authors and inventors for a limited term the exclusive right in their writings and discoveries," and this provision is the source of the federal legislative power in matters of copyright. Several earlier laws were passed by Congress relating to copyright, but all these were repealed in 1870, and the entire law on the subject embodied in an Act, though no alteration was made by this last law in the duration of copyright.

In 1873-4 the Copyright Act, with all other Statutes of the United States, was revised, and there have been since that date various amendments made in the law, notably by the Act of 1891, commonly known as the Chace Act (*c*).

Subjects of copyright. The subjects of copyright under the Copyright Act of 1870 are "books (*d*), maps, charts, dramatic or musical compositions,

(*a*) 21 Davis' Rep. Supreme C. (Amer.) 244.

(*b*) *Tabor* v. *Hoffman*, 118 N. Y. 30; *Hoyt* v. *Mackenzie*, 49 Am. Dec. 178; *Johnson* v. *Roberts* (1899), 159 N. Y. 70; 'Harvard Law Review' (1904), p. 266. In *Wright* v. *Eisle* (83 N. Y. 887) it was held that an architect who had filed his plans with the city building department had lost his common law right by publication. See also Sect. 4967 of the Act of 1891.

(*c*) The statutes will be found in the Appendix D. The principal statute is founded upon the English Statute of Anne.

(*d*) It seems that in the United States a title will not be protected under the

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engravings, cuts, prints or photographs, or negatives thereof, or of any paintings, drawings chromos, statues, statuaries, and of models or designs intended to be perfected as works of the fine arts" (*a*).

Pictures.

By section 3 of the amending Act of 18th June, 1874, it is enacted that in the construction of that Act the words "engraving," "cut," and "print" shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law. This provision does not render it necessary for the courts to enter into discussions as to the merits of a work; but "pictorial illustrations" are opposed to "prints or labels designed to be used for articles of manufacture." A circus "poster" has been held entitled to protection (*b*).

The right of reproducing a picture may be severed from the ownership of the picture.

By section 4952 of the Act of 1870, as amended by the Chace Act of 1891, copyright may be acquired by "the author, inventor, designer, or proprietor . . . and the executors, administrators, or assigns of any such person." The assignee of the right of reproducing a picture falls within this provision, and it has been held that such a person can prevent the importation into the United States of photographs of the original picture taken abroad (*c*). But apparently, in such a case, the picture itself, if published, must have been copyrighted in the United States (*d*).

Speeches, lectures, &c.

There does not appear to be any express provision conferring protection upon speeches in the United States, but in the year 1894 Professor Henry Drummond obtained an injunction against the publication, under his name, of a garbled edition of some lectures delivered by him at Glasgow in Scotland (*e*). This injunction was granted, not upon the ground of copyright, but on the ground of the Professor's common law right to prevent publication under his name of a work which was not effectively his.

copyright laws independently of the contents of the book. This was the decision of the United States Circuit Court in the *Benn-Leclerq Case*. But the Courts will protect a title as a trade mark: *Oxford University* v. *Wilmore Andrews Publishing Co.*, 38th April, 1900, New York Federal Court; *Gannett* v. *Rupert* ('Publishers Weekly,' 16th Jan., 1904).

(*a*) As to what articles are entitled to protection, see 'Information Circular,' No. 27, Appendix D.

(*b*) *Bleistein* v. *Donaldson Lithograph Co.* (1903), 102 O. G. 1553.

(*c*) *Werkmeister* v. *Pierce & Bushnell*, Federal Court, Massachusetts, 7th August, 1894; *Werkmeister* v. *The Springer Lithographing Co.*, Federal Court, New York, 4th October, 1894.

(*d*) *Werkmeister* v. *Pierce & Bushnell*, on appeal, 24th January, 1896.

(*e*) *Drummond* v. *Artemus* (1894), 60 Fed. Rep. 339.

The term of copyright in the United States is an original term of twenty-eight years from the time of the registration of the title of the work (*a*), with an additional term of fourteen years to the author, inventor, or designer if he be still living, or his widow or children if he be dead, provided he or they comply with the same formalities as are required in regard to original copyrights, within six months *before* the expiration of the first term, and within two months from the date of renewal, cause a copy of the record thereof to be published for the space of four weeks in one or more newspapers printed in the United States (*b*).

Duration of copyright.

The resulting or contingent term secured to the author by the above section will not pass under an assignment of "the copyright of the book," for the word "copyright" embraces only the term capable of being secured at the date of the assignment (*c*), and it is doubtful whether a general assignment by the author of all his interest in the copyright would deprive his widow and child or children, living at the date of the assignment, of their rights in the event of the author's death (*d*).

Assignment of copyright.

Copyrights are assignable in law by any instrument of writing, and such assignments must be recorded in the office of the Librarian of Congress within sixty days after their execution; in default of which they will be void as against any subsequent purchaser or mortgagee for a valuable consideration without notice (*e*).

Deposit of title and published copies.

Copyright in a published work is dependent upon the accomplishment of certain formalities. By sect. 4956 of the Act, as amended by the Act of 1891, it is provided that no person shall be entitled to a copyright unless he shall on or before the date of publication in the United States or any foreign country deliver at the office of the Librarian of Congress or deposit in the mail within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, a printed (*f*) copy of the title of the book or other article, or a description of the painting, drawing, statue, statuary, or model or design for a work of the fine arts, for which he desires a copyright, nor unless he also, not later than the day of publication in the United States or any foreign country, delivers at

(*a*) Sect. 4953. (*b*) *Ib.* 4954.

(*c*) *Pierpont* v. *Fowle*, 2 Wood & Min. 23.

(*d*) See cases decided under a similar provision contained in the 8 Anne, c. 19; *Carnan* v. *Bowles* (1786), 2 B. C. C. 80, and *Kennett* v. *Thompson*, there cited; and *Rundell* v. *Murray* (1821), Jacob 315. (*e*) Sect. 4955.

(*f*) A written copy apparently will not be a compliance with the Act.

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the office above, or deposits in the mail addressed as aforesaid, two copies of such copyright book or other article, or in the case of a painting, drawing, statue, statuary, model or design for a work of the fine arts, a photograph of the same.

Copies to be printed from type set in United States.

Then it is provided by the Act of 1891 that in the case of a book, photograph, chromo or lithograph, the two copies required to be delivered or deposited must be printed from type set within the limits of the United States, or from plates made therefrom, or from negatives or drawings on stone made within the limits of the United States, or from transfers made therefrom.

This "manufacturing clause," it will be noticed, is confined to the case of books, photographs, chromos, and lithographs, and it has been held that compositions of a musical or dramatic character, though in the form of books, need not be printed from type set in the United States (*a*); and, though the section requires that the type shall be set in the United States, it does not state that the actual printing shall be done there, and the Treasury Department has decided that sheets printed abroad from types set up in the States is not prohibited from importation under sect. 4956 as amended by the Act of 1891 (*b*).

The registration of the title of a work and the deposit of two copies not later than the day of publication are absolutely essential in order to obtain copyright; if either requirement be omitted the work falls into the public domain. The law also renders it necessary before proceedings be taken for infringement, that there shall be inserted on the several copies of every edition published, on the title-page or the page immediately following, if it be a book, or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some visible portion thereof, or on the substance on which the same shall be mounted, the following words, viz., "Entered according to Act of Congress, in the year ——, by A. B. in the office of the Librarian of Congress at Washington"; or, at his option the word "copyright," together with the year the copyright was entered, and the name of the party by whom it was taken out: thus, "Copyright, 18—, by A. B." (*c*). Failure to perform this

Publication of notice of entry for copyright prescribed.

(*a*) *Littleton* v. *Oliver* (1894), 62 Fed. Rep. 597.

(*b*) 'Le Droit d'Auteur,' 1904, p. 6.

(*c*) Sect. 4962 and Act of 1874, s. 1. Art. 5 of the law of 3rd February, 1831, enacted that no one should "enjoy the benefits of this law" without making the necessary inscription. It was under this last mentioned law that the cases of *Mifflin* v. *White* (1902), 190 U. S. 260, and *Mifflin* v. *Dutton* (*ib.* 265) were decided. In the years 1858 and 1859 'The Professor at the Breakfast Table,' by Oliver Wendell

condition does not apparently imperil the copyright, but only renders the proprietor incapable of suing for infringement. The words must, however, be inserted in every edition of the work.

Penalty for false publication of notice of entry.

A penalty of 100 dollars is imposed upon any person inserting or impressing such notice or words of the same purport in or upon any book, map, chart, dramatic or musical composition, print, cut, engraving or photograph, or other article, whether capable of protection or not, for which he has not obtained a copyright, or who knowingly circulates or sells a work containing a notice relative to protection in the United States without such protection having been obtained, half of such penalty to belong to the person suing for such penalty and the other half to the use of the United States (*a*).

Formalities must be strictly complied with.

Copyright in published works being in the United States entirely a creature of statute the formalities prescribed by the law must be strictly followed. Any departure therefrom will endanger the copyright or the right to sue for infringement; but where the copyright in a story belonged to the Daily Story Publishing Co., and they granted a licence to publish this story to the 'St. Louis Globe Democrat,' the latter agreeing to print the necessary copyright notice with the story, but neglecting to do so in fact, Judge Kohlsaat of Chicago held that the Daily Story Publishing Co. were not prejudiced by the omission of their agents, and his decision was affirmed by the Court of Appeal (*b*).

Magazines and periodicals.

There is no provision in the United States Act similar to that in sect. 19 of the English Literary Copyright Act providing that registration of the first number of a magazine shall entitle all subsequent copies to protection, but, on the contrary, sect. 11 of the Act of 1891 enacts that for the purposes of the Act each volume of a book in two or more volumes, when such volumes are published separately, and each number of a periodical shall be considered an independent publication, subject to the form of copyrighting provided by the Act. Moreover, it would seem that registration of the number of a

Holmes, and the 'Minister's Wooing,' by Harriet Beecher Stowe, were being published serially in the 'Atlantic Monthly,' but, apparently, the proprietors of that magazine neglected to obtain copyright protection until a date when only a few chapters remained unpublished. The stories were then issued in book form and copyrighted by their respective authors. The remaining parts were thereafter published in the succeeding numbers of the magazine and were copyrighted by the publishers, and notice of such copyright in their name was printed in the magazine. It was held that the parts which had appeared in the magazine prior to any copyright being obtained had become public property, and that as to the remaining parts the author's copyright was vitiated by the copyright notice printed in the magazine giving the name of the publishers instead of the author as proprietor of the right.

(*a*) Sect. 4963 as amended by the law of the 3rd March, 1897.

(*b*) 31st October, 1902.

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periodical in which a story appears does not necessarily have the effect of securing copyright for that story, but that the story ought to be separately entered under its own title (*a*).

Translation and dramatization.

By the Act of 1891 the right of dramatizing or translating his work is reserved to the author.

Right of public performance.

The right of representation and performance of unpublished works is protected by the common law, and the owner of the right can sue for infringement without compliance with any formalities, performance not being considered publication in America (*b*). But, once the work is published, the right of representation and performance are conditional on the published work having been duly entered as copyright.

The Act of 1891 did not protect the right of performance of musical compositions, and in the case of public performance of a dramatic composition without consent of the proprietor, the latter's only remedy was to sue for damages. The law of 1st January, 1897, now imposes penalties for infringing the performing rights in either dramatic or musical compositions when published, but a difficulty has been experienced in protecting the common law right of performing manuscript plays, for a purely civil action had no terrors for strolling theatrical companies moving rapidly from one State to another. Recently, however, several of the States have passed laws imposing penalties of fine or imprisonment for unlawful performances of unpublished plays or musical compositions (*c*).

(*a*) *Mifflin* v. *White Co.* (1902), 190 U.S 260; cf. *Tribune Co. of Chicago* v. *Associated Press* (Chicago Federal Court, 1902).

(*b*) *Palmer* v. *Dewett* (1870), 23 L. T. 823.

(*c*) The right to pass copyright laws is reserved to the Federal legislature, but the laws referred to in the text relate strictly to property which has not secured copyright. Laws protecting unpublished plays and musical compositions have been passed by the following States: New York and Pennsylvania, New Jersey, Ohio, Louisiana, and Oregon. Proposals for similar laws are before the Parliaments of Massachusetts, Virginia, Rhode Island, Kentucky, and Iowa. A curious "copyright" case has been decided in the New York United States Circuit Court by Judge Lacombe. Miss Loie Fuller asked for an injunction against Miss Minnie Renwood Bemis to restrain her from dancing the "serpentine" dance during the summer on the roof of Madison Square Garden. Miss Fuller asserted that she originated the dance, and, having secured the copyright, it was her own exclusive property. Judge Lacombe thought otherwise, and refused to grant the injunction. He said: "It is essential to such a composition that it should tell some story. The plot may be simple, it may be but narrative or a representation of a single transaction, but it must repeat or mimic some action, speech, emotion, passion, or character, real or imaginary. When it does, its ideas thus expressed become subject of copyright. An examination of the description of the complainant's dance, as filed for copyright, shows that the end sought for and accomplished was the illustrating and devising of a series of graceful movements combined with an attractive arrangement of draperies, lights, and shadows, telling no story, portraying no character, depicting no emotion. The mere mechanical movements by which effects are produced on the stage are not subjects of copyright. Surely the dance described here conveyed, and was designed to convey, to the spectator no other idea than that of a comely woman illustrating the poetry of motion in a singularly graceful fashion, and, while such an idea may be pleasing, it can hardly be called dramatic."

The penalty for the infringement of the copyright in a book is the forfeiture of every copy thereof to the proprietor, and the payment of such damages as he may recover in a civil action. The penalty for infringing the copyright in any map, chart, dramatic, musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts, is the forfeiture to the proprietor of the copyright of all plates on which the same shall be copied, and every sheet thereof either copied or printed, and of one dollar for every sheet of the same found in his possession (*a*), either printing, printed, copied, published, imported, or exposed for sale; and in case of a painting, statue, or statuary the forfeiture of ten dollars for every copy of the same in his possession or by him sold or exposed for sale (*b*).

Remedy for infringement of copyright.

The legislature, moreover, acting on the theory that in order to give effective protection to the proprietor of the copyright, the American market must be secured to him, but, apparently, considering that that market is only valuable in the case of books in the English language, by sect. 4956 of the Act, as amended by the Act of 1891, prohibits the importation of copyright books in the English language. That section enacts that during the existence of American copyright the importation into the United States of any copyright book, chromo, lithograph, or photograph, or any edition or editions thereof, or any plates of the same not made from type set, negatives or drawings on stone made within the limits of the United States are prohibited, except in cases specified in paragraphs 512 to 516 inclusive in section 2 of the Act entitled "An Act to reduce the revenue and equalize the duties on imports, and for other purposes," approved October 1, 1890; and except in the case of persons purchasing for use and not for sale, who import subject to the duty thereon, not more than two copies of such work at any one time; and except in the case of newspapers and magazines not containing in whole or in part matter protected under the provisions of the Act, unauthorized by the author, which were thereby exempted from prohibition of importation. Provided, nevertheless, that in the case of books in foreign languages, of which only translations in English are copyright, the prohibition of importation is to apply only to the translation and the importation of the books in the original language is to be permitted.

Prohibition against importation.

(*a*) *Thornton* v. *Schreiber*, 17 Davis Rep. (Amer.) 612.
(*b*) Sects. 4964–5 as amended by the Act of 1891, sect. 3.

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The Act approved on 1st October, 1890, referred to in the above section, is that known as the "McKinley Act," and Arts. 512 to 516 contained the "free list," which included works printed over twenty years, books and pamphlets (*a*) printed exclusively in a language other than English, those made for the use of the blind, those imported for the public libraries and learned societies, and those imported *bonâ fide* by immigrants, provided they have been in use for a year at least. The "McKinley Act" has been repealed and a new Act was substituted in 1897, which contains a very similar "free list," and apparently sect. 4956 is now to be read as though the "free list" of the 1897 Act were referred to instead of the "free list" of the Act of 1890.

The "free list."

Regulations issued by the Treasury.

The interpretation of the Customs Laws of the United States has been committed to the Treasury Department, and in the year 1891 the following regulations were issued by that department:

1. "Copyrighted" books and articles of importation which are prohibited by sect. 4956 of the Revised Statutes, as amended by sect. 8 of the said Act, shall not be admitted to entry. Such books and articles, if imported with the previous consent of the proprietor of the copyright, shall be seized by the collector of customs, who shall take proper steps for the forfeiture of the goods to the United States under sect. 3082 of the Revised Statutes.

2. "Copyrighted" books and articles imported contrary to the said prohibition without the previous consent of the proprietor of the copyright being primarily subject to forfeiture to the proprietor of the copyright, shall be detained by the collector, who shall forthwith notify such proprietor in order to ascertain whether or not he shall institute proceedings for the enforcement of the right to the forfeiture. If the proprietor institutes such proceedings and obtains a decree of forfeiture, the goods shall be delivered to him on payment of the expenses incurred in the detention and storage, and duties accruing thereon. If such proprietor shall fail to institute such proceedings within sixty days from date of notice or shall declare in writing that he abandons his right to the forfeiture, then the collector shall proceed as in the case of articles imported with the previous consent of the proprietor.

(3) "Copyrighted" articles, the importation of which is not

(*a*) French almanacs containing twelve pages, one for each month, the days weeks, and feast days being indicated, and blank spaces left for notes, have been permitted free entrance. 'Le Droit d'Auteur,' 1904, p. 6.

prohibited but which, by virtue of sect. 4965 of the Revised Statutes as amended by sect. 8 of the said Act, are forfeited to the proprietor of the said copyright when imported without his previous consent, and are, moreover, subject to the forfeiture of one dollar or ten dollars per copy, as the case may be, one-half thereof to the said proprietor and the other half to the use of the United States, shall be taken possession of by the collector, who shall take the necessary steps for securing to the United States half of the sum so forfeited, and shall keep the goods in his possession until a decree of forfeiture is obtained, and the half of the sum so forfeited, as well as the duties and charges accrued are paid, whereupon he shall deliver the goods to the proprietor of the copyright. In case of failure to obtain a decree of forfeiture, the goods shall be admitted to entry.

Books printed in foreign languages may be imported.

As to books in foreign languages the Treasury Department decided on the 13th April, 1899, that "books translated and printed exclusively in a language other than English are not subject to the prohibition against importation provided in Art. 3 of the law of 3rd March, 1891, and may be imported, free of duty, although the editions in the English language may be copyrighted in the United States." Art. 3 above referred to, on the other hand, provides that "in the case of books in foreign languages, of which only translations in English are copyrighted, the prohibition of importation shall apply only to the translation of the same, and the importation of the books in the orginal language shall be permitted." It follows, therefore, that if an English translation has alone secured copyright in America, there is nothing to prevent the importation of the original work, provided it does not contain a word of English (*a*). It would also seem to follow from the above-mentioned decision of the Treasury that if an original work in a foreign language has secured copyright in the United States, the owner of the copyright cannot prevent importations of copies in the original language; but, of course, though the author cannot prevent importation, he is not therefore deprived of the remedies given him by sects. 4964–5 (*b*). The Treasury Department has recently decided that works *printed* abroad from type set in the United States or from plates made therefrom may be imported into the States, inasmuch as sect. 4956 does not require that the work shall be printed in America, but only that the material for printing shall be made there (*c*).

Works printed abroad from type set in the States may be imported

(*a*) 'Le Droit d'Auteur,' 1899, p. 119.
(*b*) *Ante*, p. 765.
(*c*) 'Le Droit d'Auteur,' 1904, p. 6.

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UNITED STATES.

Rights of Foreigners.

Until 1891 copyright could not be obtained except by an American citizen or person permanently residing in the States.

Until recent times a foreign author or publisher had no right as against an American publisher who reprinted and issued his work in America. The first Copyright Act of 1790 was expressly applicable only to citizens of the United States or persons resident there, and this provision was maintained in all subsequent amendments of the law, until the year 1891. Moreover, according to the interpretation placed upon this provision, a temporary residence in the States, even though with a declared intention of becoming a citizen, was not sufficient. Captain Marryat, the well-known novelist, a subject of Great Britain, and an officer under our government, being temporarily in the United States, took the required oath of his intention to become a citizen, and then took out a copyright for one of his books and assigned the same to the plaintiff; but it was nevertheless held that the author was not "resident" within the meaning of the Copyright Act, so as to be entitled to a copyright in his book (*a*).

But where the intention of continuing in the United States existed at the time of publication, the courts held the author to be a resident within the meaning of these Acts. Thus in *Boucicault* v. *Wood* (*b*), it appeared that the plaintiff, who was a native of Great Britain, had been in the United States from 1853 to 1861, when he returned to the former country. During this period he had registered certain plays which he had written and taken the usual steps to secure the copyright. The defence was, that the plaintiff, being a foreigner, was not entitled to copyright in this country. The jury was directed

(*a*) *Clay* v. *Collier*, 56 Niles Reg. 262 : Betts, J. The assignee of the work composed by a non-resident alien could not under these Acts have obtained a copyright in respect thereof. Three suits were begun by Messrs. A. and C. Black, of Edinburgh, and the Scribners, their American agents, against an American firm which had published a pirated edition of the 'Encyclopædia Britannica' from photographic plates, charging infringement of the American copyright law because the republication contained articles written by Americans and protected by the copyright laws of this country. The defendants entered demurrers based on the general ground that the publishers of the 'Encyclopædia Britannica,' in employing American authors to treat of American topics and then publishing their articles under copyright, thereby laid a trap for the American public and American publishers, and therefore a court of equity would not interfere to protect such a fraud. Judge Shipman overruled the demurrers, and declared that the assignments in no way permitted other parties to infringe authors' copyrights. The decision, which was given on the 25th June, 1890, in the United States Circuit Court, was of the greatest importance to the plaintiffs, as there were at the time three photographic editions of the 'Encyclopædia Britannica' selling at about a seventh of the price of the authorized edition. The case has been followed by Judge Townsend on 25th April, 1893 (*Black* v. *Allen*).

(*b*) 2 Bliss 38 ; 7 Amer. Law Reg. 539, 545.

to find whether Boucicault, when he entered his copyright, intended to make the United States his home. It was found that such intention then existed in his mind, and accordingly the copyright was held to be valid.

The evils of this system.

It followed from this state of the law that 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 obligation on the part of the American publisher to pay a single farthing in respect of the copyright. British authors and publishers were the chief sufferers, by reason of the common language of the two nations. Authors had, of course, power to prevent the importation of these pirated copies into this country, if they could discover the guilty persons, but the real hardship (if so it may be called) was that by reason of the reproduction in America, by the American publisher, they lost that profit which would otherwise have accrued from the sale of the copies, in which they had an interest, to the American public. American readers are infinitely more numerous than English, and the English author frequently found—and, it may be said, still finds—that whereas in this country he had realised perhaps next to nothing, the American publisher, who reproduced his work, 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 has always been one of the greatest difficulties in the way of any arrangement and settlement of the question being come to. Though the works of American authors are becoming increasingly popular in England, yet they are far less in demand here than the works of British authors are 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, practically, the only way in which an English author could secure any remuneration was by making an arrangement with an American publisher whereby he agreed to let the publisher have advance copies of his work, so as to enable the publisher to secure the American market in advance of his rivals. Of course, it was only writers of established reputation who were able to obtain even such an arrangement

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as this, and, generally, the English author was left completely at the mercy of the American publisher.

The Chace Act, 1891.

After numerous futile attempts to remedy this state of affairs, some slight relief has been afforded by the Chace Act of 1891. Under this law the restriction of copyright to citizens of the United States and persons resident there has been suppressed (*a*), and, except for the somewhat paltry provision that the fee to a foreigner on registration of copyright is half a dollar more than to an American, the rights of foreigners are assimilated to those of natives, provided, nevertheless (*b*), that foreigners, in order to enjoy the benefits of the Act, must be citizens or subjects of a foreign state or nation which permits to Americans "the benefit of copyright on substantially the same basis as its own citizens," or of a state or nation which is "a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States of America may, at its pleasure, became a party to such an agreement" (*c*).

What countries comply with the necessary conditions.

Whether a state or nation to which a foreigner belongs fulfils either of the above-mentioned conditions is not a matter to be determined by the tribunals, but by the executive, a proclamation by the President being conclusive evidence in a court of justice that a particular nation does comply with the necessary conditions in the matter of reciprocity (*d*). Proclamations have been issued with regard to the following countries: Great Britain, Belgium, France, and Switzerland (1st July, 1891); Italy (31st October, 1892); Denmark (8th May, 1893); Portugal (20th July, 1893); Spain (10th July, 1895)(*e*); Mexico (27th February, 1896); Chili (25th May, 1896); Costa Rica (19th October, 1899); Netherlands (20th November, 1899); and Cuba (17th November, 1903)(*f*).

Differences between Chace Act and Berne Convention—(a) protection

It would be a mistake to suppose that there is any analogy between the American Chace Act and the Berne Convention. Under the Berne Convention the nationality of the author is of no importance; provided the work be published in some

(*a*) Sect. 1 of the Act of 1891. The Act has no retrospective operation.
(*b*) Sect. 13 of the Act of 1891.
(*c*) The President of the United States has determined that the Berne Convention is not such an international agreement as is referred to in this section. See 'Le Droit d' Auteur,' 1891, p. 94.
(*d*) See Sect. 13 of the Act of 1891.
(*e*) Since the conclusion of peace, the war between Spain and America has not affected the position of Spain. No fresh proclamation was considered necessary. See exchange of Notes between the respective Governments, 29th January and 26th November, 1902.
(*f*) Germany has a special treaty with the United States on the subject of copyright. See *post*.

country of the Union it obtains copyright throughout the Union, although the author be not a subject of the country in which he publishes. In America the person taking out copyright must be a subject of a "proclaimed" country. For instance, a citizen of an unproclaimed country cannot, by publishing simultaneously in, say, Great Britain and America, obtain American copyright (*a*), and citizens of unproclaimed countries resident in America would appear now to be in a worse position than they were before the Chace Act, and to be incapable of acquiring American copyright there unless they become naturalized.

Only granted to subjects of proclaimed countries.

Again, under the Berne Convention, an author having obtained copyright in the country of first publication and complied with the formalities required by the law of that country obtains copyright in the other countries of the Union without having to accomplish any other conditions or formalities, but American law does not recognize any copyright other than American copyright, and the effect of the Chace Act is merely to permit foreigners to obtain American copyright under certain conditions.

(b) formalities prescribed by American law must be observed.

Whether, therefore, a foreigner secures copyright in his work in any or what other country or not is immaterial—if he seeks protection in America he must accomplish exactly the same conditions and formalities as a native author, but whilst these formalities are burdensome enough for the native, they are doubly burdensome to the foreigner. In addition to registration of the title a deposit of copies of the work must be made not later than the day of publication of the work in America or any other country; and, moreover, if the work to be protected be a book, photograph, chromo or lithograph, the copies have to be printed from type set within the limits of the United States (*b*). Finally, every copy must have inscribed upon it "Copyright, 1 , by "—an inscription which, in the case of a work of art, to most eyes will seem a disfigurement. To add to the difficulties of painters and sculptors there is a decision of the Court of Appeal, on appeal from the Circuit Court of Massachusetts, that reproductions of an original work will only be protected in America if the original itself have these words inscribed upon it at the time of publication in a foreign country, even though the work be intended to remain abroad or is in the hands of a

Difficulties of obtaining copyright in America.

(*a*) He might, however, assign his MS. to a British publisher before publication. See *Cutler, Smith, & Weatherley* on Musical and Dramatic Copyright.

(*b*) The actual printing may, however, be done abroad and the book imported in sheets, provided the type itself has been set in America. See *ante*, p. 767.

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private purchaser, and only reproductions are proposed to be published in America (*a*). According to the same decision, the public exhibition of a picture is equivalent to publication.

It will be gathered from the above that many difficulties lie in the way of a European author receiving protection for his works in the United States. It is not easy to arrange for a simultaneous publication on two sides of the ocean, and in the case of periodical literature it is practically impossible. To well-known and popular authors of the day the "manufacturing clause" may be a comparatively slight obstacle, but publishers are not likely to run the risk of publishing an American edition of the work of an unknown or unrisen author, and foreign photographs must go wholly unprotected, since it would be impossible to transport the objects to be photographed to America in order to "make" the negative there.

At the same time it would be incorrect to say that the Chace Act had been productive of no benefit to foreign authors. Branch publishing houses have been opened in America by several of the larger British publishing houses, and in the year 1902–03 over 9000 foreign works were registered at Washington (*b*), of which the majority probably were musical works, which, as we have seen, do not require to be printed from type set in America (*c*).

Stories published serially.

We have pointed out the difficulty in securing copyright for a foreign magazine in America. This difficulty presses especially upon the writers of serial stories, and it has been suggested that the difficulty may be got over by producing the book in America simultaneously with the first instalment being issued in England, and producing also in England, say eight copies of the book at a prohibitive price—five for the libraries, the rest for those who like buying scarce articles; this would be publication simultaneously of the whole book here and in America, but not a publication that would injure the run in the serial.

There is no doubt that the publication in the columns of a newspaper from type set within the limits of the United States would satisfy the American Act and afford a valid protection of the American copyright, and the author or his assigns would be left free to publish in book form if and when he desired. This is mentioned because undoubtedly in many

(*a*) *Werkmeister* v. *Pierce & Bushnell*, 24th Jan. 1896. See 'Le Droit d'Auteur,' 1897, p. 90.

(*b*) 'Le Droit d'Auteur,' 1903, p. 127.

(*c*) It would seem that in cases where the illustrations form the chief value of a book, practical protection could be obtained by securing copyright for the illustrations without securing it for the text.

cases new writers find it much easier to secure American publication in serial than in book form.

How far foreign authors entitled to copyright in alterations.

A question has been raised, seeing that the Chace Act has no retrospective effect, as to how far foreign authors are entitled under section 5 of the Chace Act to American copyright in alterations, or revisions of, or additions to, their books previously published in the States. The proviso to that section enacts "that the alterations, revisions, and additions made to books by foreign authors heretofore published, of which new editions shall appear subsequently to the taking effect of this Act, shall be held and deemed capable of being copyrighted as above provided in this Act, unless they form part of the series in course of publication at the time this Act shall take effect." The opinion of Sir Horace Davey (when at the Bar) and Mr. J. Rolt was taken by the Society of Authors (*a*) upon the point whether British authors are entitled to copyright under this section in cases where they have absolutely parted with their English copyright in such alterations, revisions, or additions, or in the books to which they relate. The opinion was as follows: "English authors will, in our opinion, be entitled to American copyright in alterations, revisions, or additions to their books previously published in the States, unless the additions form part of a series or of a work published in parts in course of publication at the time when the Act takes effect. Where an author has already parted with his English copyright in such alterations or additions, or in the books to which they relate, he would not, in our opinion, be entitled to American copyright, unless under some special agreement or reservation in his favour."

Proposals to amend the Chace Act.

The amendments of the Chace Act proposed since 1891 have been numerous, but the strong protectionist sympathies of the American people—and, in particular, of the Typographical Union—have hitherto prevented any modification of the "manufacturing clause" in the Act. There is at the present time before Congress a proposal which seems to have some chance of passing into law, whereby books originally published in a foreign language may obtain copyright within a year of their first publication in another country, but, whilst this proposal might afford some measure of relief to continental authors, it would afford none to British authors.

Conventions and treaties.

The entry of America into the Copyright Union would be an event hailed with satisfaction by literary men throughout

(*a*) This Society—founded with the object of protecting the interests of authors generally—has done excellent service in elucidating the copyright law. The Copyright Bills of 1900 were promoted by the Society.

the world, but, for the present, her "manufacturing clause" remains an insuperable barrier. Nevertheless, such an intelligent nation will surely sooner or later recognize that the piratical editions of foreign works that are sold in the country for a few cents must prejudicially affect her native literature, and the day when she enters the Union will mark the close of many a copyright controversy.

In the year 1902 the United States signed the Pan-American Convention, but only *ad referendum*.

A treaty relating to copyright matters which has been concluded by America with Germany is dated the 15th January, 1892, and provides as follows:

1. The citizens of the United States of America shall enjoy in the Empire of Germany the protection of copyright in works of literature and arts, and also in photographs against piracy, on the same legal basis with which the subjects of the Empire are treated.

2. In return, the government of the United States engages that the President of the Republic will make the proclamation provided for by Art. 13 of the law of Congress of the 3rd March, 1891, with the view of extending the provisions of this law to German subjects, as soon as the Secretary of State shall have received the official communication of the ratification of the treaty by the legislation of the German Empire.

3. The present treaty shall be ratified at Washington as soon as possible.

It shall come into force three weeks after the exchange of ratification, and shall only apply to works not then published. It shall remain in force until three months after it has been determined by either of the contracting parties (*a*).

Recently a treaty has been concluded with China (*b*), by the terms of which, in consideration of obtaining the benefits of the American copyright law in favour of his subjects, the Chinese Emperor undertakes to protect against infringement for a period of ten years from registration, upon the same basis as trade marks are protected, American books, prints, or engravings prepared specially for the use and education of the Chinese or translations of works into Chinese; but the Chinese are to be at liberty to print and sell original translations into their language of all American works.

(*a*) This treaty causes a good deal of dissatisfaction in Germany, and the German Government has been urged to denounce it. See under Germany, *ante*, p. 586.

(*b*) Dated the 8th October, 1903; promulgated in the United States 13th January, 1904. 'Le Droit d'Auteur,' 1904, p. 14.

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HAWAÏ.

In the year 1898 Hawaï was annexed by the United States. This country possessed a copyright law dated the 23rd June, 1888, the provisions of which were set out in the last edition of this work, and this law was provisionally kept in force until the 14th June, 1900, when a United States law providing for the "establishment of a government in Hawaï" came into force. This last-mentioned law had the effect of repealing the Hawaïan copyright law of 1888 (*a*), and apparently copyright in Hawaï is now governed by the laws of the United States.

CUBA, PORTO RICO, and the PHILIPPINES.

There has been considerable doubt as to the position of the three colonies of Cuba, Porto Rico, and the Philippines, which, after the war with America and Spain, ceased to be under Spanish dominion; and, in the case of the Philippines, at any rate, this doubt seems still to exist.

Effects of Spanish-American War.

These countries had no special copyright laws of their own, but the Spanish law on the subject extended to them; and, moreover, when Spain joined the Berne Convention she joined on behalf of her colonies as well as on behalf of herself. The loss of these colonies to Spain, therefore, endangered the rights both of Spaniards and natives, and of authors publishing in the various countries of the Copyright Union.

Treaty of Peace.

The rights of Spaniards were safeguarded to some extent by the Treaty of Peace concluded at Paris on the 10th December, 1898, which came into force on the 11th April, 1899. Art. 13 of this treaty provides that "the rights of property secured by copyrights and patents acquired by Spaniards in the Island of Cuba, and in Porto Rico, the Philippines and other ceded territories, at the time of the exchange of the ratifications of this treaty, shall continue to be respected. Spanish scientific, literary, and artistic works, not subversive of public order in the territories in question, shall continue to be admitted free of duty into such territories for the period of ten years, to be reckoned from the date of the exchange of the ratifications of this treaty."

Spanish works, therefore, published before the 11th April, 1899, are entitled to copyright, under the Spanish law of 1879, for the life of the author and eighty years after, and they are admissible free of duty for ten years from the same date. The Treaty of Peace is, however, silent as to the rights of persons

(*a*) See a despatch, dated 7th September, 1900, from the British consul at Honolulu to the Foreign Office. 'Le Droit d'Auteur,' 1900, p. 157.

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Ordinances of military governor of Cuba.

other than Spaniards who have published before the 11th April, 1899.

As to Cuba the situation was a little cleared by four ordinances published by the military governor during the period of the American occupation. The first ordinance (*a*) referred to deals with the rights of foreigners, and prescribes as follows (*b*):

1. Authors of foreign scientific, literary, and artistic works, their agents or representatives, shall enjoy in the island of Cuba the protection conferred by the Spanish Copyright Law of 10th January, 1879 (*c*), for the period during which these works are protected in the country of origin, provided it does not exceed that prescribed by the said law, and that the conditions required by it and by the Rules for its Execution (*d*) be fulfilled.

2. The general register provided by Art. 33 of the above-mentioned law shall be kept by the State and Government Department.

3. Foreign works must be entered in the general register. For this purpose a certificate issued by the competent authority of the country of origin of the work, duly legalized and establishing ownership in favour of the person seeking registration, should be presented.

4. The civil governors and municipal mayors shall not suspend the performance or recitation of foreign literary or musical works by virtue of Art. 63 of the Rules for Execution unless the person claiming such suspension establishes that he is the proprietor of the work, or the agent of the proprietor, by presenting the certificate of registration issued by the officer charged to keep the general register, or, in default, the agent's authority.

5. Registration of foreign works shall be gratuitous, and proprietors or their representatives can obtain, free of cost, certificates of registration.

By the second ordinance, dated 13th February, 1901, it is declared that for the purpose of registration of foreign copyrights it shall be sufficient to produce a document executed in the presence of a notary public or other public officer authorized to take oaths or declarations, provided the document contains, in full, the titles or certificates relating to the property delivered in the country of origin of the work, and

(*a*) Ordinance No. 119, dated 19th March, 1900.
(*b*) Translated from 'Le Droit d'Auteur,' 1903, p. 37.
(*c*) See *ante*, p. 623. (*d*) These are the rules referred to, *ante*, p. 629.

that the officer in whose presence the document is executed certifies that the original certificates have been produced to him.

The third ordinance, dated 13th June, 1901, deals with the rights of natives, and is as follows (*a*):

1. Rights of property in the matter of patents, copyrights, and trade marks duly acquired in Cuba, the Island of Pirios, and the Island of Guam, in accordance with the provisions of the Spanish law, and which existed on the 11th April, 1899, in these islands, or any of them shall subsist in their integrity for the entire periods for which they have been granted: the proprietors shall be protected and maintained in their said rights, provided always that the original or duly certified copy of the certificate of registration of the trade mark or copyright be deposited at the office of the governor of the island where protection is sought . . . and the original certificate or duly certified copy thereof shall be received and deposited at the office of the governor of the island, for all the purposes of this ordinance, without the necessity for any other certification.

2. The rights of property accorded by the United States in the matter of patents (including designs), those concerning trade marks, prints, and labels registered at the office of patents for the United States, and those concerning copyrights duly registered at the office of the Library of Congress, shall be maintained and protected by the civil government of the said islands, provided that a duly certified copy . . . of the certificate of registration of copyright . . . be deposited at the office of the governor of the island where protection is desired.

3. The person, firm, partnership, or corporation guilty of violating the rights protected by virtue of the observance of the provisions of this ordinance shall be liable to the civil and penal punishments created and established by the Spanish laws relative to the aforesaid matters which remain in force in the said islands.

4. The provisions of existing ordinances in conflict with this ordinance are revoked.

The fourth ordinance (dated 26th February, 1902) contains provisions as to the form of register prescribed by Art. 33 of the Spanish law and paragraph 3 of the military ordinance of 19th March, 1900.

Cuba entitled to benefit of Chace Act.

In spite of the proclamation of the independence of Cuba these military ordinances seem to be still in force, for on the 17th November, 1903, the President of the United States issued a proclamation declaring that Cuba was a country which

(*a*) Translated from the French translation in 'Le Droit d'Auteur,' 1903, p. 38.

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"permits to citizens of the United States the benefit of copyright on substantially the same basis" as to Cubans, and, as we have seen, there is no copyright law in force in Cuba unless it be found in these ordinances.

Porto Rico and the Philippines.

On the 12th April, 1900, the United States Congress passed a law for the government of Porto Rico, and, by virtue of this, apparently copyright in that country is regulated by the United States law on that subject, but in the Philippines there is apparently no copyright protection at the present time, that country being, presumably, still in a belligerent state.

TABLE SHOWING THE DURATION OF THE PRINCIPAL PERIOD OF COPYRIGHT PROTECTION IN THE VARIOUS FOREIGN COUNTRIES OF THE WORLD.

Austria	30 years from death of author.
Belgium	50 years from death of author.
Bolivia	*Id.*
Brazil	50 years from 1st January in year of publication.
Chili	5 years from death of author.
Columbia	80 years from death of author.
Denmark	50 years from death of author.
Egypt	(?) Perpetual.
Ecuador	50 years from death of author.
Finland	*Id.*
France	*Id.*
Greece	15 years from day of publication.
Guatemala	Perpetual.
Haiti	Life of author and his widow and 20 years more if there be children, 10 years if none.
Holland	50 years from publication or during the life of author, whichever shall be the longer.
Hungary	50 years from death of author.
Italy	1st period: life of author or 40 years from publication, whichever shall be the longer: 2nd period: 40 years (*a*).
Japan	30 years from death of author.
Luxembourg	50 years from death of author.
Mexico	Perpetual.
Monaco	50 years from death of author.
Norway	*Id.*
Peru	20 years from death of author.
Portugal	50 years from death of author.
Roumania	10 years from death of author.
Russia	50 years from death of author.
Salvador	25 years from death of author.
Spain	80 years from death of author.
Siam	7 years from death of author or 42 years from publication, whichever shall be the longer.
Sweden	50 years from death of author (10 years from death of author for works of art).
Switzerland	30 years from death of author.
Tunis	50 years from death of author.
Turkey	40 years from publication or during the life of author, whichever shall be the longer.
United States	28 years from registration, with a further period of 14 years on re-registration.
Venezuela	Perpetual.

(*a*) During the second period the copyright is not exclusive. The work may be reproduced by any one paying a percentage to the proprietor.

PART VII.

ARRANGEMENTS BETWEEN AUTHORS AND PUBLISHERS.

A FEW remarks may, perhaps, be here advantageously offered on compacts, arrangements, and stipulations between authors and publishers, and we trust they may prove profitable both to the former and the latter. Arrangements between authors and publishers.

In these days, when literature and commerce march in open array, and their pace is so rapid and great; when on the one hand a few authors write for fame, some for gain, and many for both; and on the other hand publishers regard their writings purely from a commercial point of view, estimating their worth (at least to them) by the amount of profit likely to accrue from the publication, two antagonistic parties frequently come into contact.

Authors who compose exclusively for fame are, on the assumption that they ever existed, rapidly becoming extinct, whilst those who write for gain are much on the increase. The spirit of the age is commerce, and almost every transaction of the present day is regarded in a commercial light (*a*).

Thus we have two parties in opposition: the one estimating the value of his work in proportion to his toil and labour in its composition, the other computing it in proportion as he conceives the public may become purchasers. The publisher could not undertake to requite or recompense the author according to the degree of exertion employed by him; for what amount of drudgery and toil may not be expended upon a work which would not even cover the expenses of printing and publication? Publishers invariably act like merchants,

(*a*) "Avarice," said Goldsmith, "is the passion of inferior natures; money, the pay of the common herd. The author who draws his quill merely to take a purse, no more deserves success than he who presents a pistol."—'An Inquiry into the Present State of Polite Learning,' chap x.

whose principle is to risk as little capital as possible, and to replace *that* with profit as early as feasible.

The reward due to the author.

The reward due to an author is thus justly referred to by Mr. Serjeant Talfourd: "We cannot describe the abstract question between genius and money, because there exist no common properties by which they can be tested, if we were dispensing an arbitrary reward; but the question how much the author ought to receive is easily answered: so much as his readers are delighted to pay him. When we say that he has obtained immense wealth by his writing, what do we assert, but that he has multiplied the sources of enjoyment to countless readers, and lightened thousands of else sad, or weary, or dissolute hours? The two propositions are identical, the proof of the one at once establishing the other. Why, then, should we grudge it any more than we would reckon against the soldier, not the pension or the grant, but the very prize-money which attests the splendour of his victories, and in the amount of his gains proves the extent of ours? Complaints have been made by one in the foremost rank in the opposition to this bill [a bill for the extension of copyright], the pioneer of the noble army of publishers, booksellers, printers, and bookbinders, who are arrayed against it, that in selecting the case of Sir Walter Scott as an instance in which the extension of copyright would be just, I had been singularly unfortunate, because that great writer received during the period of subsisting copyright an unprecedented revenue from the immediate sale of his works. But, sir, the question is not one of reward—it is one of justice. How would this gentleman approve of the application of a similar rule to his own honest gains? From small beginnings, this very publisher has, in the fair and honourable course of trade, I doubt not, acquired a splendid fortune, amassed by the sale of works, the property of the public—of works, whose authors have gone to their repose, from the fevers, the disappointments, and the jealousies which await a life of literary toil. Who grudges it to him? Who doubts his title to retain it? And yet this gentleman's fortune is all, every farthing of it, so much taken from the public, in the sense of the publishers' argument; it is all profits on books bought by that public, the accumulation of pence, which, if he had sold his books without profit, would have remained in the pockets of the buyers. On what principle is Mr. Tegg to retain what is denied to Sir Walter? Is it the claim of superior merit? Is it greater toil? Is it larger public service? His course, I doubt not, has been that of an honest, laborious tradesman;

but what has been its anxieties compared to the stupendous labour, the sharp agonies, of him whose deadly alliance with those very trades whose members oppose me now, and whose noble resolution to combine the severest integrity with the loftiest genius, brought him to a premature grave,—a grave which, by the operation of the law, extends its chillness even to the results of those labours, and despoils them of the living efficacy to assist those whom he has left to mourn him? Let any man contemplate that heroic struggle, of which the affecting record has just been completed, and turn from the sad spectacle of one who had once rejoiced in the rapid creation of a thousand characters flowing from his brain and stamped with individuality, for ever straining the fibres of the mind, till the exercise which was delight became torture, girding himself to the mighty task of achieving his deliverance from the load which pressed upon him, and with brave endeavour, but relaxing strength, returning to the toil, till his faculties give way, the pen falls from his hand on the unmarked paper, and the silent tears of half-conscious imbecility fall upon it—and to some prosperous bookseller in his counting-house, calculating the approach of the time (too swiftly accelerated) when he should be able to publish for his own gain, those works fatal to life; and then tell me, if we are to apportion the reward of the effort, where is the justice of the bookseller's claim? Had Sir Walter Scott been able to see, in the distance, an extension of his own right in his own productions, his estate and his heart had been set free; and the publishers and printers, who are our opponents now, would have been grateful to him for a continuation of labour and rewards which would have impelled and augmented their own" (*a*).

Contracts between authors and publishers should be in writing.

Contracts between authors and publishers are not, as in some countries, notably Germany, regulated by any special law, but their validity, construction, and enforcement depend upon the ordinary rules of law governing contracts relating to dealings with personal property. It is always advisable that they should be in writing, and if they are not to be performed within a year, writing is necessary under the Statute of Frauds (*b*).

(*a*) Speech in the Commons, April 25, 1838, 42 Parl. Deb. 560.

(*b*) But a contract by a printer to print, and find the paper for printing a number of copies of a work, is not a contract for the sale of goods within the 4th section of the Sale of Goods Act, 1893; and the printer consequently may recover the price in an action for work, labour, and materials, where the contract is a verbal one; *Clay* v. *Yates* (1856), 1 H. & N. 73. And a printer who is employed to print certain numbers, but not all consecutive numbers, of an entire work has a lien upon the copies not delivered for his general balance due for printing the whole of those numbers; *Blake* v. *Nicholson* (1814), 3 M. & S. 167. But it seems that by the

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In *Sweet* v. *Lee* (*a*), it appeared that the agreement for the publication of a dictionary of legal practice was contained in a memorandum, which was signed with the initials of the publisher and of the author, and was to the effect that the latter should receive £80 a year for five years, and £60 a year for the rest of his life if he should live longer than five years. This was held to be void under the Statute of Frauds; because, being a memorandum of an agreement not to be performed within a year, no consideration was expressed on the face of it, and it was without any signature other than the initials of the parties. The plaintiff, therefore, was not entitled to damages claimed to have been sustained by the failure of the defendant to perform his agreement to prepare a new edition. Nor, although the contract was void, could the plaintiff, having paid for several years the sums mentioned in the memorandum, recover the money so paid on the ground of failure of consideration.

MSS. sent on approval.

Offer and acceptance are essential to every valid contract. If an author sends his manuscript to a publisher on approval, this is an offer by the author that the publisher shall have the right to publish on terms to be agreed upon, and if the latter publish without any agreement as to the author's remuneration, the law will imply a promise to pay a reasonable price for the work. What, short of actual publication, amounts to an acceptance of an author's manuscript will depend upon the circumstances of the case, but if the publisher retain the article and has it put into type and a proof sent for revision to the writer, the latter may generally treat this as an acceptance of his manuscript and sue the publisher for the price, even though the article is never, in fact, published (*b*).

An action maintainable for not supplying a work agreed to be furnished.

If an author agree in writing to supply a bookseller or publisher with a manuscript of a work to be printed by the latter, an action for damages can be maintained for refusing to furnish the same (*c*), provided the work be one which, if published,

custom of trade a printer cannot recover for the printing of a work before the whole is completed and delivered; *Gillett* v. *Mawman*, 1 Taunt. (1808), 137, see also *Adlard* v. *Booth* (1837), 7 C. & P. 108. A contract to satisfy the Statute of Frauds need not appear from one document, but may be collected from any number of documents, provided they be sufficiently connected: see *Boydell* v. *Drummond* (1811), 11 East 142; *Mayor* v. *Pyne* (1825), 3 Bing. 285; *Pearce* v. *Gardner* (1897), 1 Q. B. 688.

(*a*) (1843), 3 Man. & Gr. 452.

(*b*) *Macdonald* v. *National Review*, Westminster County Court, 16th May, 1893; *Pall Mall Gazette*, 17th May, 1893.

(*c*) *Gale* v. *Leckie* (1817), 2 Stark, N. P. C. 107: 19 R. R. 692; the Court of Chancery, however, could not compel him; *Clarke* v. *Price* (1819), 2 Wills. C. C. 157.

would not be libellous (*a*), or would not subject the author to punishment (*b*).

Should the work be stopped the author must be paid for work already done.

Where, however, the author was engaged for a certain sum to write an article to appear, among others, in a work called 'The Juvenile Library,' and before he had completed his article, and before any portion of it had been published, the work in which it was to have appeared was discontinued, Lord Chief Justice Tindal held that the publishers were not entitled to claim the completion of the article in order that it might be published in a separate form for general readers, but were bound to pay the author a reasonable sum for the part which he had prepared (*c*).

Payment to author's representative for part of work finished.

Where a work called the 'Elements of Mechanical Philosophy' was published in parts, the agreement between the author and publisher being that each part should be paid for when issued, and after the publication of a complete part the progress of the work was interrupted by the death of the author, it was held that the representatives of the deceased author were entitled to payment of the stipulated price of the published part (*d*).

No specific performance of agreement to write book.

A Court of Equity will not, however, decree specific performance of an agreement to write a book (*e*). It has no power to go so far, and were it capable of making such an order, there would be no means of enforcing it.

In the case of *Clarke* v. *Price* (*f*), the defendant, Mr. Price, entered into an agreement with the plaintiffs, dated the 27th of April, 1814, "to compose and write the cases in the Court of Exchequer, commencing with Easter Term, 1814, and to be

(*a*) *Lyne* v. *Sampson Low & Marston*, 'Times,' 17th Feb., 1873.

(*b*) *Gale* v. *Leckie*, *supra*, and see *Brook* v. *Wentworth* (1795), 3 Anstr. 881; *Cowan* v. *Milburn* (1867), L. R. 2 Ex. 230; 36 L. J. (Ex.) 124; 16 L. T. 290. A contract for the publication of a book which it is unlawful to publish is not valid. But where this defence is set up, and the work is not produced, and no evidence of its character is offered, the jury are not to pronounce that the book is obnoxious; *Gale* v. *Leckie*, *supra*. A printer cannot maintain an action against a publisher for money due for printing an obscene book; *Poplett* v. *Stockdale* (1825), 1 Ryan & M. 337. But where a printer, after printing part of a book, received the manuscript of the other part and found it to be libellous, it was held that he was not bound to print the libellous part, and was entitled to recover for what he had printed; *Clay* v. *Yates* (1856), 1 Hurl. & N. 73; *Lyne* v. *Sampson Low & Marston*, *supra*.

(*c*) *Planché* v. *Colburn* (1832), 5 Car. & Pay. 58; on ap. 8 Bing. 14.

(*d*) *Constable* v. *Robinson's Trustees*, 14 Fac. Dec. 166, 1st June, 1868. One judge, however, dissented, thinking the contract was one for the entire work, and that the object of partial payment was the accommodation of the author, and not any qualification of the original obligation. If a bookseller undertakes to publish a work in parts, and before the completion he dies, the subscriber has a claim upon the estate to complete the work, for otherwise these parts which he has purchased upon the faith of the work being completed are useless.

(*e*) Specific performance of an agreement for the sale of copyright (even though personal chattels, such as stereotype plates, printed sheets, &c., are included in the contract) will be decreed; *Thombleson* v. *Black* (1836), 1 Jur. 198.

(*f*) (1819), 2 Wills. C. C. 157.

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published periodically," on the terms of sharing the profits; and it was agreed that the plaintiffs should be at liberty to relinquish the undertaking if they should think it advisable. As the first and second volumes were published, the defendant, for certain considerations, assigned the copyright in them to the plaintiffs. Afterwards, in 1817, the terms of the arrangement were altered, and the following agreement was executed: "Memorandum, Mr. Price agrees with Messrs. Clarke to receive for his interest in the agreement for the Exchequer Reports, dated the 27th of April, 1814, commencing at the third volume, the sum of, &c. Mr. Price agrees to give any further assignment of the copyright and future interest to Messrs. Clarke at their expence." The defendant having subsequently entered into an agreement with other publishers, who were made defendants, to report the cases in the Exchequer; the bill was filed, praying to have a specific performance of the agreements of 1814 and 1817, by permitting the plaintiffs to print and publish the reports of cases in the Exchequer so long as he should continue to compose and write them, upon the terms of those agreements, and by executing an assignment of the copyright; and also praying an injunction. *Morris* v. *Colman* (*a*) was relied upon. Lord Eldon, C., dissolved an injunction which had been obtained *ex parte*, apparently assuming that the agreement bore the construction contended for by the plaintiffs. His lordship said: "The case of *Morris* v. *Colman* is essentially different from the present. In that case Morris, Colman, and other persons were engaged in a partnership in the Haymarket Theatre, which was to have continued for a very long period, as long, indeed, as the theatre should exist. Colman had entered into an agreement which I was very unwilling to enforce—not that he would write for the Haymarket Theatre, but that he would not write for any other theatre. The court could not compel him to write for the Haymarket Theatre, but it did the only thing in its power—it induced him indirectly to do one thing by prohibiting him from doing another. There was an express covenant on his part contained in the articles of partnership. But the terms of the prayer of this bill do not solve the difficulty, for if this contract is one which the court will not carry into execution, the court cannot indirectly enforce it by restraining Mr. Price from doing some other act. This is an agreement which expressly provides that Mr. Price shall write and compose reports of cases to be published by the plaintiffs. In

(*a*) (1812), 18 Ves. 137.

Morris v. *Colman* there was a decree directing the partnership to be carried on, it could not be put an end to, and it was the duty of the parties to interfere. But I have no jurisdiction to compel Mr. Price to write reports for the plaintiffs; I cannot, as in the other case, say that I will induce him to write for the plaintiffs by preventing him from writing for any other person, for that is not the nature of the agreement. The only means of enforcing the execution of this agreement would be to make an order compelling Mr. Price to write reports for the plaintiffs, which I have not the means of doing. If there be any remedy in this case, it is at law. If I cannot compel Mr. Price to remain in the Court of Exchequer for the purpose of taking notes, I can do nothing. I cannot indirectly, and for the purpose of compelling him to perform the agreement, compel him to do something which is merely incidental to the agreement. It is also quite clear that there is no mutuality in this agreement."

No specific performance of agreement to publish.

Likewise an author cannot, it is thought, have specific performance of an agreement by a publisher to publish the author's manuscript (*a*).

An author may bind himself not to write upon a particular subject.

But an author may bind himself not to write upon a particular subject, or only for a particular person; for a bond or covenant to that effect would not resemble one in restraint of trade.

Thus, in the case quoted in *Clarke* v. *Price*, where Colman had contracted with the proprietors of the Haymarket Theatre not to write dramatic pieces for any other theatre, the Lord Chancellor maintained that such a contract was not unreasonable upon either construction, whether it was that Mr. Colman should not write for any other theatre without the licence of the proprietors of the Haymarket Theatre, or whether it gave to those proprietors merely a right of pre-emption. If, said he, Mr. Garrick were now living, would it be unreasonable that he should contract with Mr. Colman to perform only at the Haymarket Theatre, and Mr. Colman with him to write for that theatre alone? Why should they not thus engage for the talents of each other? I cannot see anything unreasonable in this; on the contrary, it is a contract which all parties may consider as affording the most eligible, if not the only, means of making this theatre profitable to them at all as proprietors, authors, or in any other character which they are by the contract to hold (*b*).

(*a*) *Stevens* v. *Benning* (1854), 6 D. M. & G. 223. 229: *Warne* v. *Routledge* (1874), L. R. 18 Eq. 497. 499.

(*b*) *Morris* v. *Colman* (1812), 18 Ves. 437. In *Montague* v. *Flockton* (1873), L. R.

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But court will not interfere until there be an actual publication.

But in *Brooke* v. *Chitty* (*a*), where the defendant had undertaken not to write or edit any work upon the criminal law, except a work of which the plaintiff had purchased the copyright, and an advertisement of an edition of Burn's 'Justice of the Peace,' by the defendant, had appeared, Lord Brougham refused to grant an injunction, observing that the defendant was at liberty to write in his closet what he pleased, and that the court would not interfere until there was a violation of the alleged undertaking by actual printing and publication.

So, when an author sells the copyright of a work (*b*) published under his own name, and covenants with the purchaser not to publish any other work to prejudice the sale of it, it seems that another publisher who has no notice of this covenant, may be restrained from publishing a work subsequently purchased by him from the same author, and published under his name, on the same subject, but under a different title, and though there be no piracy of the first book (*c*).

If an author undertakes to compose a work and dies before completing it, his executors or administrators are discharged from the contract, for the undertaking was merely personal in its nature, and by the intervention of the contractor's death has become impossible to be performed (*d*). And if an author

16 Eq. 189, it was held that a contract between a manager of a theatre and an actor must be understood to be for the exclusive services of the latter during the period for which he had been engaged, though there was no express agreement that he should not act elsewhere. The case has been disapproved in *Whitwood Chemical Co.* v. *Hardman*, L. R. [1891], 2 Ch. 416, on the ground that there was no negative covenant, and cannot now be considered good law.

(*a*) 2 Cooper's Cases, 216; see *Brook* v. *Wentworth* (1795), 3 Anstr. 881.

(*b*) A contract for sale of a copyright is enforceable in equity; *Thomkeson* v. *Black* (1837), 1 Jur. 198.

(*c*) *Barfield* v. *Nicholson* (1824), 2 Sim. & Stu. 1: 2 L. J. (Ch.) 90: 25 R. R. 144. But where, in an action by several plaintiffs for piracy of copyright, it appeared that the defendant, the author, had published the work in question pursuant to the conditions of a *cognovit* given by him to one of the plaintiffs and another person, in an action for not performing an agreement to write the work in question, it was held that this was a sufficient defence; *Sweet et al.* v. *Archbold* (1834), 10 Bing. R. 133; cited Curtis on Copy. 231.

(*d*) *Marshall* v. *Broadhurst* (1831), 1 Tyrrh. 349, by Lord Lyndhurst. So in *Cooke* v. *Colcraft* (1773), 2 W. Bl. 856, S. C. 3 Wils. 380, one Wm. Cooke, the plaintiff's intestate, being a newsman and entitled to receive every morning thirty copies of the 'Daily Advertiser,' assigned his right to the same, and all other his business of a newsman, to the defendant, and covenanted "that he the said Wm. Cooke should not thereafter exercise the business of a newsman, but should use his utmost endeavours to procure for the said defendant his customers in the said business," and in consideration of the premises, the defendant covenanted to pay 8*s.* per week to the said Wm. Cooke, his executors, and assigns, during the lives of said William Cooke and Ann his wife, and the survivor of them: Cooke died, and his wife took out administration and commenced the business of a newspaper vendor on her own account: the court held that the administratrix was not bound by the covenant, and grounded their judgment on the difference of expression in the two clauses, viz., that Cooke himself, without naming his executors, &c., should abstain from the business of a newsman, but that the payment was to be made to him, his executors, &c., and that this was now payable to the plaintiff not as wife but as administratrix of Wm. Cooke, and was assets for

becomes bankrupt his trustee has no power to compel him to complete the work (*a*).

Independent of agreement to the contrary, author at liberty to publish a continuation of his work.

But where no such covenant had been entered into and the publisher had agreed with an author for an edition of a history to be written by the latter, in four volumes, and had obtained subscriptions for all that could fall within his edition, the court held that the author was at liberty to publish a continuation of the history which embraced part of the period and also much of the matter contained in the last of the four volumes (*b*).

'The Edinburgh Philosophical Journal.'

An arrangement was entered into between Dr. Brewster and Professor Jameson, on the one part, and an Edinburgh publishing firm on the other part, for the publication of a work to be edited by the former, called 'The Edinburgh Philosophical Journal,' the agreement to be binding for five years, or till the termination of the twentieth number of the journal. On the title-page the journal was stated to be "conducted by Dr. Brewster and Professor Jameson." After the twentieth number had appeared, Dr. Brewster, having differed with the firm, published a prospectus of "No. 1 of the 'New Series of the Edinburgh Journal,' conducted by Dr. Brewster," whereupon the firm presented a bill of suspension and interdict of a work under this title, on the ground that they were the proprietors of the original journal, the publication of which they intended to continue, and that the proposed work was an invasion of their property. The Lord Ordinary, on the ground that the copyright of the publication in question was the property of the complainers, passed the bill, and granted the interdict. The Court of Session recalled the interlocutor as deciding the question to be discussed on the passed bill; but at the same time remitted to pass the bill and continue the interdict (*c*).

'The London Journal.'

Where, in 1857, the defendant, being the proprietor of a weekly publication, 'The London Journal,' the price of which was 1*d*., assigned his copyright and interest therein to the plaintiff for £24,000, and entered into a covenant with the plaintiff that he would not directly or indirectly, alone or in partnership with any other person or persons, engage himself or be concerned in bringing out or publishing any weekly periodical of a nature similar to 'The London Journal,' selling

the payment of his debts: besides, it would be very hard, the court said, to bar her from exercising a lawful occupat[illegible]n for her own livelihood in consequence of this personal covenant o[illegible] [illegible]er husban[illegible].

(*a*) *Gibson* v. *Car*[illegible] [illegible]), 8 M. & W. 343.

(*b*) *Blackie & Co.* v. [illegible], May 26, 1827: 5 Sess. Cas. 719 (N.E.) 671.

(*c*) *Constable* v. *Brewster*, 3 Scotch Sess. Cass. 215.

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at 1*d.* per copy, or commit any act or default which might tend to lessen or diminish the sale or circulation of the said periodical, or the profit to be derived by the plaintiff from the future printing or publishing thereof, and in May 1859, the defendant issued an advertisement announcing the publication by him, on the 1st of June following, of a daily newspaper, to be called 'The Daily London Journal,' and to be sold at 1*d.*, the plaintiff obtained an injunction. The injunction was appealed against, but without effect, Sir J. L. Knight Bruce, L.J. (*dissentiente* Sir G. J. Turner, L.J.), confirming the order, upon the plaintiff undertaking to abide by any order the court might make as to damages, and to bring an action against the defendant within one week (*a*).

'London Society.'

So also in the case of *Clowes* v. *Hogg* (*b*), an injunction was applied for on behalf of Messrs. Clowes and Messrs. Wrigley, the proprietors of a magazine called 'London Society,' to restrain the defendant, Mr. James Hogg, the younger, from publishing a magazine under the name of 'English Society,' or with a cover only colourably differing from that used for the plaintiff's magazine. It was only sought to restrain the defendants from selling the Christmas number of his intended magazine with a cover similar to that used by the plaintiffs. 'London Society' was brought out by the defendant in its present form in 1863, but some time afterwards Messrs. Hogg, of whose firm the defendant was a member, became indebted to Messrs. Wrigley, paper makers, and a mortgage of the magazine was executed as part of an arrangement to pay the debt; the defendant at the same time entered into a covenant not at any time to do, or cause to be done, anything which might injure the said publication or decrease its value. The copyright in the magazine was subsequently assigned to the plaintiffs absolutely, subject to the before-mentioned mortgage. The magazine continued to be edited by the defendant, and was published at 217 Piccadilly. In May 1870, the plaintiffs, under the terms of their agreement with the defendant, gave him three months' notice of dismissal, and informed him that the magazine, 'London Society,' would in future be published by Messrs. Bentley, and would be edited by Mr. Blackburn. Upon this intimation the defendant proceeded to make arrangements for bringing out another magazine, entitled 'English Society,' and upon the termination of his notice of dismissal,

(*a*) *Ingram* v. *Stiff* (1859), 5 Jur. 917 : 33 L. T. 195.
(*b*) W. N. (1870), V.-C. M. 268 ; see *Hogg* v. *Kirby* (1803), 8 Ves. 115. And see *Sedon* v. *Senate*, cited 2 V. & B. 220.

he issued a circular in terms almost identical with the circular issued when the plaintiffs' magazine was first published, and which, it was alleged, contained expressions indicating that the defendant's magazine was a substitute for, or a continuation of, the plaintiff's magazine; and the defendant further threatened that he should endeavour to drive the rival publication out of the field. The defendant stated in his circular that he had ceased to be connected with 'London Society,' but proposed to carry into the new magazine whatever knowledge and spirit he had been able to impart into the old work, and announced that, with the aid of the well known masters of the pen and pencil with whom he had so long been associated, he proposed "to continue all those sketches of London society and those studies of English life for which we have won some reputation." The covers of the two magazines had a general resemblance in colour, but the defendant's cover exhibited the picture of a lady in the place where a coat of arms appeared upon the plaintiffs' magazine. Vice-Chancellor Malins said, if the question had arisen between two independent publishers, he should have had some difficulty in deciding that the cover of the defendant's magazine was so close an imitation of that of the plaintiffs' as to entitle him to an injunction; but as the defendant had entered into a covenant not to do anything to injure the magazine entitled 'London Society,' which covenant he thought was still in force so long as there was any money due upon the mortgage, and as the whole course of conduct pursued by the defendant evinced, in his opinion, an evident intention on the part of the defendant to injure the sale of the plaintiffs' magazine, and to lead the public to believe that his magazine was a continuation of, or a substitute for, the magazine of the plaintiffs', he had no hesitation in granting the injunction. But since there had been some amount of delay by the plaintiffs, in consequence of which the defendant had been induced, as he alleged, to expend a large sum of money in preparing the January number for publication, he thought it would be right to allow that number to appear in its intended form.

It sometimes happens that the original proprietor's name forms part of the title of a publication, as, for instance, 'Fraser's Magazine,' 'Walford's Antiquarian,' 'Lloyd's Weekly London Newspaper.' When a paper bearing the name of the original proprietor is assigned by him, the assignee acquires the right to use the original proprietor's name in connection with the paper, and any attempt to injure the property assigned will be restrained

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by the court. Thus, in *Ward* v. *Beeton* (*a*) the defendant had been the originator and proprietor of a work called 'Beeton's Christmas Annual.' In 1869 he sold this and his other works to Messrs. Ward, Lock and Tyler, and entered into a contract with that firm, by which, in return for a certain salary, he undertook to give all his services to that firm. He edited 'Beeton's Christmas Annual' for the firm for some years; but the latter, becoming discontented with the way the work was done, in 1874 put it into another writer's hands. Thereupon the defendant issued an advertisement announcing that he had nothing whatever to do with the 'Beeton's Christmas Annual' issued by the plaintiffs, and that he was preparing his usual annual, which, under the name of 'Jon Duan,' would be issued not by Messrs. Ward, Lock and Tyler, but by Messrs. Weldon and Co. Upon these facts an injunction was granted to restrain the defendant from publishing any such advertisements.

Breach by publisher of publishing agreement.

An author has a right to sue a publisher for breach by the latter of a publishing agreement. An author and publisher entered into an agreement under which the author was to edit the whole of the plays of Shakespeare (to be called the 'Temple Shakespeare'), and was to write an introduction, notes, and glossary for each play. The publisher was to pay the author a royalty, and the copyright was vested in the publisher. One of the clauses of the agreement was that in the event of a cheaper or other form of edition of any or either of the plays being thought advisable by the publisher it should form the subject of an agreement with the author on similar *pro rata* terms to those embodied in that agreement. Subsequently, the publisher produced a 'Temple Shakespeare' for schools, with notes, introduction, and glossary written by a person other than the author. The court held this to be a breach of the publishing agreement, and on the author bringing his action, whilst refusing an injunction restraining the publication of the school edition, ordered a reference to Chambers to assess the damages the plaintiff had suffered (*b*).

As to the alteration of an author's work by another.

When a publisher is the absolute owner of the copyright, he is entitled, without the consent of the author, to publish successive editions of the work with additions and corrections; and, in bringing out new editions, may make such omissions and other changes in the original as will not injure the reputation of the author. But such revision when done by another, cannot lawfully be represented as having been made by the

(*a*) (1875), L. R. 19 Eq. 207.
(*b*) *Dallaney* v. *Dent* (1903), 88 L. T. 338.

author of the original: and if the publisher issues a new edition under the author's name so incorrect as to be injurious to the author's reputation, he renders himself liable to an action for damages (*a*).

When, however, a portion of the work is written to be published under the name of another, the author would have no remedy in case of its alteration or variation (*b*). This was decided in *Cox* v. *Cox* (*c*). The defendant, a house agent, having prepared a book on the sale of estates, applied to the plaintiff, a barrister, to correct the work, and to supply the legal matter necessary to complete it, for which the plaintiff was to be paid a certain remuneration, according to the number of pages the work might contain. "No agreement," said the Vice-Chancellor in passing judgment, "was come to as to the name under which the work was to appear. The case, therefore, stood thus: The defendant said, 'I am going to write a work, which you shall correct and put into shape, and a part of which you shall supply for a certain remuneration.' If that be so, the plaintiff was evidently in the subordinate position of assisting in the production of a work which was to come out in the name and as the work of the defendant. The work would be partly the defendant's own composition, and it would be partly the work of the plaintiff; but it was to come out as one entire publication, and to be paid for at one uniform rate. The bulk of the matter was apparently to be supplied by the defendant. The plaintiff employed himself in the preparation of a treatise on the law of vendor and purchaser and landlord and tenant, the whole of which the defendant desired to have compressed into one printed sheet. The plaintiff, on the other hand, thought that no information of value on the legal incidents of the property treated of could be condensed within that compass, and he extended this portion of the work to three sheets and a half. The defendant then said: 'If you will reduce this matter to one-half of its present magnitude, I am willing to print it; if not, I decline to print it at all.' This was an absolute rejection of the plaintiff's contribution, except upon the terms of reducing it in quantity to the extent which the defendant required. The plaintiff, on the other hand, was

(*a*) See *Archbold* v. *Sweet* (1832), 1 Moo. & Rob. 162; 5 Car. & Pay. 219.

(*b*) The name of the editor appearing upon the title-page forms no part of the title; and the Master of the Rolls refused to restrain by injunction the proprietors of a journal from omitting the publication of the editor's name on the title-page, although the agreement between the proprietors and editor provided that the title of the journal should not be altered without mutual consent; *Crookes* v. *Petter* (1860), 6 Jur. 1131; 3 L. T. 225.

(*c*) (1856), 11 Hare, 118.

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resolved that the whole should be printed or none. There was at this point of the transaction great difficulty in the way of any arrangement. The defendant said, 'I will have only one sheet and three-quarters of legal matter.' The plaintiff insisted that he should have three sheets and a half, or none. Then what followed? The plaintiff looked over the manuscript again, but did not reduce it to the required dimensions; and the defendant, although it had not been so reduced, took the manuscript in the state in which it had been left (which he could only have been entitled to do under the contract), and he began to print the work. The plaintiff proceeded to correct the proof sheets; but (as he states), when he began to find that the legal portion of the work was introduced in a mutilated form, he intimated his refusal to consent to any alteration; and in this state of things the application is made for the injunction. I have stated what appears to me to be the substance of the contract between the parties, up to the time of the discussion as to the space which the legal matter should occupy; and that contract the plaintiff has, by the fourteenth paragraph of the bill, treated as subsisting, for he thereby claims £60 as the unpaid part of the remuneration on the whole contract. On the other hand, the defendant, having taken the manuscript and used it, cannot, I think, dispute his liability to pay for it, according to the terms of the contract. But that would be a question for a court of law. Something was said with regard to the possible effect of the alteration of the plaintiff's portion of his work, as affecting his reputation; but, as it was held in Sir James Clarke's case (*a*), the possible effect on reputation, unless connected with property, is not a ground for coming to this court, though it may be an ingredient for the court to consider when the question of a right of property also arises. . . . A serious question was then adverted to—but it is one which does not arise in this case—how far a party who had purchased a manuscript has a right to alter it, and produce it in a mutilated form? How far, in a case in which the property has completely passed, it is to be assimilated to a case of goods sold and delivered, and thenceforward in the complete dominion of the purchaser? A qualified contract may be made; an essay may be supplied to a magazine or an encyclopædia, on the understanding that it is to be published entire: and it may be accepted by the editor, and paid for as what it purports to be. In the instance of an essay which had been accepted in that shape, the question

(*a*) *Clarke* v. *Freeman* (1850), 11 Beav. 112.

might arise whether any curtailment could be allowed under that special contract. But here there is no such special contract. The contract is, that the plaintiff shall supply the defendant with the matter which is required, in such a form as to enable the defendant to publish it as his own. I can find no circumstances from which any such special contract as I have mentioned can be inferred. The plaintiff has, indeed, sought to make it a stipulation that his contribution of the legal materials shall not be published otherwise than entire; but this stipulation has no foundation in the original contract, upon which his case rests. It may well be that this part of the work may suffer in value from the alterations made by the defendant, but no one will probably expect to find the law set forth with any great amount of precision in a work issued by a house agent for the guidance of his customers in dealings of a simple character. If any such mistakes should occur in the legal portion of the work, as the plaintiff apprehends, he will have the remedy in his own hands, by correcting the errors in a subsequent work, in which he may publish his treatise in a distinct form.

The plaintiff would have had this right by analogy to the principle that a publisher acquiring from an author a right to publish a treatise in a particular work, such as in the 'Encyclopædia Britannica,' would not be entitled to make the publication in another work not embraced in the contract, nor to publish generally beyond his licence (*a*). But it must be borne in mind that the opportunity of correcting the errors by separate publication could not have arrived until the expiration of twenty-eight years from the first publication.

Where no agreement purchaser of copyright need not publish.

We have already considered (*b*) how far and to what extent editors of newspapers are entitled to make alterations in communications made to them and articles sent for insertion. The same principle is applicable in the case of authors and publishers. But it may be well to mention here that it is apprehended that where the copyright in a work is sold outright, and there is no express agreement to publish the same, the proprietor may decline to publish, notwithstanding that the author may fail by reason of this to acquire additional reputation. The author should have made the publication by the purchaser part of the agreement had he considered this material to his interests.

(*a*) *Stewart* v. *Black*, 9 Sess. Cass. 3nd Series, 1026; cited Phillips on Copy. 178. As to bookseller's lien on the copyright for his disbursements, see *Brook* v *Wentworth* (1795), 3 Anstr. 881.

(*b*) Chapter Newspapers, *ante*, p. 252.

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To what extent proprietor of periodical may delay publication of articles.

It is more questionable, however, to what extent the proprietor of a periodical could delay publication where he had acquired the copyright under the 18th section of the Copyright Act, 1842, for here, as the duration of right in the owner of the periodical is limited, and the twenty-eight years would run from the time of publication, the author might argue that, as by the action of the owner of the periodical, his right to separate publication was indefinitely postponed, there was an implied understanding that the publication should be forthwith.

Alterations in work by assignee of owner of copyright.

In an important case recently tried, the subject as to alteration of a work by the assignee of a publisher, and the consequent effect on the reputation of the author, was considered. Mr. Sidney Lee sought to restrain Mr. Gibbings from publishing as a new and complete work of the author, with the date 1892 on the title-page, mutilated copies of 'The Life of Lord Herbert of Cherburg,' prepared by the author for Mr. Nimmo in 1886, and issued by him in that year. The court declined to interfere on an interlocutory application, and intimated that Mr. Lee's only remedy was for a libel against Mr. Gibbings. It seems that Mr. Nimmo having sold 395 copies to the public, sold the rest of the issue to Mr. Gibbings as a remainder, which Mr. Gibbings issued as a new book, with the date 1892, omitting the introduction and the index.

There can be no doubt that such an issue was calculated to damage the reputation of the author, for apart from the question of mutilation, no opportunity was afforded him of introducing matters having reference to the life in question which might have come to his knowledge since the appearance of the first issue. Mr. Justice Kekewich, in his judgment, said: "The legal side of the case is one of considerable interest, and not at all free from difficulty. I regard the defendant for this purpose as the owner of the copyright of this work. He is not, I am aware, the owner of the copyright, but he has purchased the unpublished sheets of the plaintiff's work, and as regards these unpublished sheets he stands in Mr. Nimmo's place, and is the owner of the copyright (*a*). He has Mr. Nimmo's assent to their publication. He has even Mr. Nimmo's assent to the publication in the present form, and he, therefore, though having no right to multiply copies in the sense of printing further copies and publishing anything else but these sheets, can deal with these sheets as he pleases, provided he gives the

(*a*) This, we submit with deference, is too broad a definition of Mr. Gibbings' rights.

plaintiff no cause to complain. He thinks fit, that is to say, he finds it convenient to his trade, to publish the plaintiff's work in a mutilated form. The word 'mutilated' may or may not imply something in derogation of the work, or of the defendant's manipulation of it; but strictly speaking the form is mutilated. The index is left out. I do not myself attribute very great importance to that in such a work as this, but I only speak for myself in saying that. There are other parts left out, including the introduction, and I should certainly say that the omission of the introduction to such a work as this was very nearly leaving out the principal part of the work. Then the date is altered, so as to give the impression that it is a new work. I am told that is not so; that nobody would suppose that was a work published in 1892 because the figures '1892' are on the title-page. I suppose that there are some people who would regard 1892 as meaning nothing. I confess to be amongst them who have regarded it as meaning that the work was published in 1892 and not in 1886; but that is a question of injury to the plaintiff to which I will come presently, and not otherwise a mutilation of the plaintiff's work. The omission of the introduction does seem to me to be a very cogent instance of mutilation. Is the defendant entitled to do that? There is no law compelling a man to publish the whole of the work because he has the copyright in the whole. Nor can he be prevented from publishing extracts from the work. Whether it is right for him to publish extracts without saying they are extracts, or whether he can publish a work in a mutilated form without indicating in the least that there has been that mutilation, is a question, to my mind, of some difficulty.

"The question resolves itself into this: Does he thereby injure the author's reputation? For that, what is the author's remedy at law? His remedy in law is, I think, undoubtedly libel or nothing. Injury to reputation is the foundation of the remedy in an action of libel. It is what you have to prove in order to get your damages, and if one endeavoured, which I am not intending to do, to frame the innuendo in an action of libel by the plaintiff against the defendant, it would necessarily point to the injury of the reputation of the author hereby informing the public that this mutilated work was really the work of the plaintiff, whereas, in fact, his work was something far superior, and that this would be discreditable to him. That would be necessarily the general line of complaint.

"It comes, therefore, to a question on this part of the case

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whether I ought to grant an injunction now to restrain a libel before that question has been before a jury, which is the avowedly proper tribunal for the purpose of determining whether a libel exists or not. The jurisdiction of the court to restrain a libel is undoubted. It has been affirmed over and over again, even in those cases in which the court has refused to grant an injunction, in particular the last case of *Bonnard* v. *Perryman* (*a*). Of late years there has been no such thing as an injunction to restrain a libel except in the recent case, where Mr. Justice Chitty distinguished trade libels from other libels, and granted an injunction (*b*), a decision with which, within the last week or two, I have had occasion to express my entire concurrence (*c*). But with that exception, as far as I know, the court has not of late granted an injunction to restrain a libel before the point has been submitted to a jury, in other words, an interlocutory application.

"Now ought this to be an exceptional case? I see no reason for making an exception in favour of a case such as this. The balance of convenience does not seem to me to point in favour of granting an injunction, because, though the sale of the work will no doubt go on, and though if it goes on it is injurious to the plaintiff's reputation—the injury will be continued—yet the injury must to a great extent be done by the mere publication, and after all success in the ultimate result would be quite satisfactory to the plaintiff. I mean, if it were eventually determined that the plaintiff was right and could sustain an action of libel against the defendant by reason of this publication, then, not by the damages awarded, but by the mere verdict of the jury, he would have, I will not say rehabilitated, but maintained his reputation at the level at which it before existed. It cannot be suggested that the mere sale of a few copies more or less would place him in any worse position if eventually he succeeded, and of course, if he did not, then he has no reason to complain.

"Now, on the balance of convenience, I think I ought not to grant an injunction, especially it being of course understood that I express no opinion whether it is a libel or not. That is really the reason why the court in these cases does not grant an injunction, because if it granted an injunction, or even if it refused it on any other ground than the one I have mentioned, the court would be obliged to express an opinion, that

(*a*) [1891], 2 Ch. 269.
(*b*) *Collard* v. *Marshall* [1892], 1 Ch. 571.
(*c*) *Pink* v. *Federation of Trades* (1892), 67 L. T. 258.

the court ought not to express an opinion on a matter that is to be left to a jury.

"But the plaintiff's case has been put by Mr. Renshaw on another ground, which strikes me as extremely deserving of attention, though I do not think I ought to grant an injunction on that ground at the present moment. He says this is like the case of *Clarke* v. *Freeman* (*a*), and *Clarke* v. *Freeman* may be considered for this purpose as decided quite differently from the way in which it was decided. In that I follow him. I do not think that after the observations of Vice-Chancellor Malins, Lord Cairns, and Lord Selborne on that case, I ought to hesitate to regard it as really erroneously decided, and I do not think that, having regard to Lord Cairns's observations on p. 310 of the second Chancery Appeals in the case of *Maxwell* v. *Hogg* (*b*), I ought to doubt what the proper decision should have been in *Clarke* v. *Freeman*, or on what ground that proper decision would have been rested, because he says—distinctly speaking, be it remembered—in the Court of Appeal: 'It always appeared to me that *Clarke* v. *Freeman* might have been decided in favour of the plaintiff on the ground that he had a property in his own name.' The question of whether a libel was a fit subject for an injunction either on motion or at the trial was not discussed in *Clarke* v. *Freeman*. It is not discussed by Lord Cairns, it is not discussed by Lord Selborne, and it is not discussed by Vice-Chancellor Malins, but they disapprove of the decision, and Lord Cairns says because the plaintiff had a property in his own name, the name was invaded by the actions of the defendant, and the plaintiff could therefore restrain the defendant from doing what he did on that ground. That is entirely independent of libel.

"Now, can I decide this case on that ground in favour of the plaintiff? I think not, and I think not because when you come to test that argument, according to my present opinion, you really come back again to the question of libel in this case, though you would not have done so in *Clarke* v. *Freeman*. The plaintiff's case on this part of it is, 'The defendant is publishing as my own what is not my own; that is to say, I am the author of an entire book, the defendant is publishing only part of it, and such part that really he is not publishing my work at all; he is bringing out what I never sanctioned as my work, and which cannot be fairly represented as my work, and therefore I complain of him using my name in connection

(*a*) (1850), 11 Beav. 112.
(*b*) (1867), 2 Ch. App. 307.

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with a book that is not mine.' It comes back to this: Is the book the plaintiff's or not? It is avowedly only part of it; but is it such a substantial part of it that it may be fairly called the plaintiff's? It is so unless the mutilations are such as to give the plaintiff a right of action for libel. So that, try it as you will, it comes back to the same point, and I think, therefore, I should be doing wrong in seizing hold of the doctrine, not of *Clarke* v. *Freeman*, but which ought to have been supported in *Clarke* v. *Freeman*, to give the plaintiff relief which ought, on the other hand, to be denied him, because he is really bringing an action of libel. I therefore, on those grounds, must refuse the motion, without expressing any opinion whether what has been done is injurious to the plaintiff's reputation or not.

"This is really the whole question in the case. If the case is tried out, there is nothing else to be tried, and therefore the proper way to deal with the costs is to make the costs of both parties costs in the action" (*a*).

Where agreement is for a specified number of copies.

Where the agreement is for the exclusive publication of a specified number of copies, that number only can be printed and sold, and until their sale the author cannot revoke the authority given to the publishers, or himself publish the work.

An agreement that the publisher shall publish a second edition, if demanded by the public, and print as many copies as they can sell, gives them the right, when such demand arises, to publish and sell as many copies as can properly be considered to belong to that edition, and to prevent the author or any other person from publishing until such copies shall be sold (*b*).

Agreements as to style of publication.

The publisher is bound to observe the terms of the contract between himself and the author as to the manner and style of the publication, and the price at which it shall be issued to the public, but if the price at which the work is to be sold be not fixed by the agreement, or otherwise arranged by the author and publisher, the latter is the proper person to determine the same. At the same time, he would not be permitted to fix upon a style, or sell at a price, which would be clearly injurious either to the literary reputation or the pecuniary interests of the author without his consent.

When neither the time during which the publication is to

(*a*) Verbatim report in 'The Athenæum' of Aug. 13, 1892; reported also 67 L. T. 263. With great deference we consider the decision in *Lee* v. *Gibbings* to be open to grave objections. In *Drummond* v. *Artemus* (1894), 60 Fed. Rep. (Amer.) 339, the American Courts restrained the publication of a garbled edition of Prof. Drummond's lectures, though the lectures had no copyright in America.

(*b*) *Pulte* v. *Derby*, 5 McLean (Amer.) 328.

last, nor the number of editions or copies to be published, is specified, the publisher is not bound to publish more than the first edition; and the author, by giving proper notice, may end the contract and prevent the publication of any further editions (*a*). But the publisher is at liberty to continue publishing successive editions on the terms of the contract until the receipt of such notice; and the author is not entitled to restrain the publication or sale of any edition on which the publisher has incurred expense before receiving notice to end the agreement (*b*).

After parting with copyright, author cannot reproduce matter in any other book.

After an author has parted with the copyright in a book, he is not at liberty to reproduce substantially the same matter in another work. Even in the absence of any special agreement, the second publication would be an infringement of the copyright in the first (*c*).

A writer agreed with a publisher to edit a translation of Montaigne, adding notes and a biographical sketch of the author, for a particular sum, which was to be increased by other sums as further editions should be published. It was intended that the publisher should have the sole right of multiplying copies of the work, but there was no assignment to him of the copyright. After the publisher's death, his widow and executrix, with the author's knowledge and assent, registered the copyright in her own name. On the publication of a fresh edition, the widow paid the author money, and gave him copies of the work on the same terms as were contained in the agreement made with her husband in his lifetime, and on three occasions, when the author claimed remuneration on those terms, she did not repudiate all liability, but disputed merely the amount. This was held to be evidence from which a jury might infer an agreement on the part of the widow to remunerate the author on the same scale as in the agreement with her husband, in consideration of the author assenting to her registering the copyright in her own name (*d*).

Warranty on sale of copyright.

Where the executor and son of a deceased author, in reply to an offer from a publishing house relating to one of his father's works, replied that he would be happy to treat with them "respecting the copyright" in it; and, in another letter,

(*a*) *Reade* v. *Bentley* (1857), 3 K. & J. 271; 4 Id. 656; *Warne* v. *Routledge* (1874), L. R. 18 Eq. 497. In this last case it was held that no agreement could be implied on the part of the author not to bring out a second edition until all the first edition was sold.

(*b*) *Reade* v. *Bentley*, *supra*.

(*c*) *Rooney* v. *Kelly*, 14 Ir. Law Rep. (N.S.) 158; *Colburn* v. *Simms* (1843), 2 Hare, 543.

(*d*) *Hazlett* v. *Templemore* (1866), 13 L. T. 593.

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Copyright of articles in the proprietor of periodicals.

A person may be the proprietor of a copyright in the separate parts of a periodical simply by reason of his employment of the writers (*b*). It appears but reasonable, that where the proprietors of a periodical employ a gentleman to write a given article, or a series of articles or reports, expressly for the purpose of publication therein, to imply that the copyright of the articles so expressly written for such periodical, and paid for by the proprietors and publishers, shall be the property of such proprietors and publishers; otherwise the author the day after his article had been published by the persons for whom he contracted to write it, might republish it in a separate form, or in another serial, and there would be no correspondent benefit to the original publishers for the payment they had made (*c*).

How far proprietor of periodical can interfere with editor.

Without determining the extent to which the owners of the copyright in a journal are justified in interfering with the editor in his editorial capacity, where the remuneration of the editor depends upon the success of the journal, the court refused to restrain the proprietors from altering articles proposed to be inserted by the editor, or inserting others contrary to his wish, it being the province of a jury to determine the amount of damage, if any, which the editor sustained by reason of the conduct of the proprietors (*d*).

Where an editor and publishers have formed a partnership for the publication of a magazine of which they are joint owners, the editor, having taken steps to dissolve the partnership, with the view of establishing another periodical, is at liberty to advertise the discontinuance of the first magazine.

(*a*) *Sims* v. *Marryatt* (1851), 17 Q. B. 281.

(*b*) *Lawrence and Bullen* v. *Aflalo* (1904), A. C. 17; but see Jervis, C.J., in *Shepherd* v. *Conquest* (1856), 25 L. J. (C.P.) 127; 17 C. B. 127.

(*c*) Where publishers of a magazine employ and pay an editor, and the editor employs and pays persons for writing articles in the magazine.—*Semble*, the copyright in such articles is not vested in the publishers under 5 & 6 Vict. c. 45, s. 18: *Brown* v. *Cooke* (1846), 11 Jur. 77: 16 L. J. Ch. 140. Printers have a lien on undelivered copies of a work printed by them, for the balance due in respect of the whole work: *Blake* v. *Nicholson* (1814), 3 M. & S. 167.

(*d*) *Crookes* v. *Petter* (1860), 6 Jur. 1131; 3 L. T. 225.

The title of the latter and the right to publish it are partnership property, and may be sold for the benefit of the partners. But the editor may advertise its discontinuance by himself, or as far as he is concerned (*a*).

Construction of agreements between authors and publishers.

Should an author, in consideration of a sum of money paid to him, agree that certain persons shall have the sole power of printing, reprinting, and publishing a particular work for all time, that would be parting with the copyright; but if the agreement be that the publishers, performing certain conditions on their part, should, so long as they perform such conditions, have the right of printing and publishing the book, that is a very different agreement.

In the case of *Sweet* v. *Cater* (*b*) the agreement, after reciting that the author had prepared a tenth edition of his work, which the publishor was desirous of *purchasing*, and that it had been agreed that a certain printer should print a given number of copies, and the publisher should pay to the author *for the said tenth edition* a certain sum, went on to direct that the work should be in a given number of volumes, and should *be sold* to the public for a given price. It was objected that the plaintiff, the publisher, was not under this agreement the *proprietor of the copyright* within the meaning of the statute (54 Geo. III. c. 156, s. 4), but a mere licensee to sell a given number of copies. The court overruled the objection, holding that the copyright was equitably vested in the publisher, on the ground that the contract was obligatory on both parties, that the plaintiff was bound to sell, and therefore the author was bound to abstain from doing anything which would interfere with the sale. The court, moreover, were of opinion that the equitable right to the copyright endured until the number of copies fixed by the terms of the agreement had been exhausted. It is to be regretted that the court did not advert to the question whether the words of purchase of the agreement—viz. that the publisher was to pay for *the edition* independently of the implied contract on the author not to do any act which might interfere with the sale, an equitable copyright in the work.

Agreements for division of profits, personal.

Where there was an agreement in writing between an author and certain publishers, that they should print, reprint, and publish his book, upon the condition that the author should prepare it all before a certain day, and should correct the press, and that the publishers should direct the mode of printing,

(*a*) *Bradbury* v. *Dickens* (1859), 27 Beav. 53; *Hogg* v. *Kirby* (1803), 8 Ves. 215.
(*b*) (1841), 5 Jur. 68; 11 Sim. 572.

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and pay all the expenses and take all risk of publishing, and out of the produce should first repay such expenses, and then divide the profits between themselves and the author equally; and that if all copies should be sold and a new edition should be required, the author should prepare the same, and the publishers should print and publish it on the same conditions; and that, if all the copies of any edition should not be sold in five years from the date of publication, the publishers might sell the remaining copies by auction or otherwise, in order to close the account; it was held to be a personal contract by the author, and not a contract for an assignment of the copyright; and, consequently, the benefit thereof could not be assigned by the publishers (*a*).

The benefit of right to publish not transferable by publisher.

The case referred to is the leading case of *Stevens* v. *Benning*, in which the original contract was between Mr. William Forsyth and Messrs. Saunders and Benning, for the publication of a treatise on the 'Law relating to Compositions with Creditors.' After the issue of the second edition one of the parties became bankrupt, and there was an assignment by his assignees and a partner of the bankrupt to Messrs. Stevens and Norton, who then endeavoured to restrain the issue of a third edition by William Granger Benning for the author.

"The principle question then is," said Vice-Chancellor Wood, "whether this agreement is a personal engagement or not. It would be difficult for me to say that, in a contract of this kind, the author is utterly indifferent into whose hands his interests under such an engagement are to be entrusted.

"It is not merely a question of his literary interests, but certain publishers undertaking to incur the expenses of bringing out the work, and fixing the price, the author is to have a share of the profits; and they are to decide in what shape the book is to come out, and at what price it is to be sold, and are to account with him. I must say, that, in my opinion, these are peculiarly personal considerations; and that this contract bears the impress of being a personal contract in all these respects. It could not be a matter of indifference to Mr. Forsyth that the assignees in bankruptcy of Mr. Benning should be at liberty to transfer the future right of fixing the price of this and subsequent editions, and the right to call upon him to fulfil his duty of preparing a new edition, and the risk which might be incurred in conducting it, and the other benefits

(*a*) *Stevens* v. *Benning* (1854), 1 K. & J. 168, affirmed, 6 D. M. & G. 223: 1 Jur. (N.S.) 74; *Reade* v. *Bentley* (1857), 3 K. & J. 271; *Hole* v. *Bradbury* (1879), 12 Ch. D. 886; 48 L. J. (Ch.) 673. See *Pulte* v. *Derby*, 5 McLean (Amer.) 332.

and obligations of the agreement, to any one they might think proper; possibly to some one not even carrying on the trade of a bookseller, as might happen in case of an absolute sale to the best bidder. Regarding the agreement as a contract for the purchase of a limited right, according to the view of the Vice-Chancellor of England in *Sweet* v. *Cater* (*a*), it is still impossible that it should be indifferent to Mr. Forsyth that it should pass from a respectable firm in London to booksellers residing in a remote part of the country, or to other persons unable to fulfil the engagements entered into with him. The contract, therefore, is one which involves personal considerations; and framed as it is, I must regard it as a special kind of agency, under which the agents were bound to sell, and to the risk of there being no profits upon themselves" (*b*).

Nor whether author receives a royalty.

For similar reasons to those assigned above, a contract whereby the author is to receive a royalty on the copies sold is not transferable by the publishers, but it seems doubtful whether, where a definite sum has been agreed upon for the privilege of publication, the benefit of the contract could not be assigned by the publisher, for though the literary interests of the author might possibly be affected to some extent, yet the change of publishers could not, at least directly, cause him any pecuniary injury.

Otherwise where he receives a sum down.

Bankruptcy of publisher.

In the event of the publisher becoming bankrupt, the copyright in any work belonging to the bankrupt will pass to his trustee in bankruptcy; and should the publisher be a joint-stock company, upon the liquidation of such company any copyrights will vest in the liquidator (*c*).

If the contract between the author and the publisher, however, be one which is not assignable on the part of the publisher, if, in short, it be one involving personal skill on the part of the publisher, it is possible his position might be regarded so far in the light of a trustee, as to bring the copyright under the category of trust estates which would not pass to the trustee in bankruptcy. It must be remembered that if the author is not paid the consideration for the sale of the copyright down, but the same is payable by instalments, then, on the bankruptcy of the publisher, the author would merely be entitled to a dividend on his debt, while the copyright sold might possibly be earning dividends for the payment of other creditors of the publisher.

(*a*) (1841), 11 Sim. 579.
(*b*) 1 Kay & J. 174; on appeal, 6 De G. M. & G. 223.
(*c*) *Griffith* v. *Tower Publishing Co.* (1897), 1 Ch. 21.

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To meet this contingency it has been suggested that where the consideration for the sale of the copyright is not paid down, or where a royalty only is payable to the author, there should be an agreement between the author and publisher by which, in the event of the bankruptcy of the latter, the copyright should revert to the author until the whole of the purchase-money has been paid, or the royalties secured. It would seem, however, in the one case, to be the better course not to assign the copyright until full payment of the purchase-money, where this is payable by instalments; and the other case does not seem to require any special provision, for, assuming the interest to be such as would pass to the trustee in bankruptcy, still he could not stand in any better position in relation to the author than the publisher did, and if sales were made would certainly be bound to pay over the royalties according to the agreement with the author.

Stevens v. *Benning* followed.

This case of *Stevens* v. *Benning* was followed by Lord (then Mr.) Justice Fry in the case of *Hole* v. *Bradbury* (*a*). The plaintiffs alleged themselves to be the owners of the copyright of a book called 'A Little Tour in Ireland,' and they brought the action to restrain the defendants, who were publishers, from publishing the book. The copyright had not been assigned to the defendants by writing or by entry at Stationers' Hall. The book was composed by two joint authors, one of whom was a plaintiff, and the other was dead. The personal representative of the deceased joint author was the other plaintiff. The defendants alleged that before the first publication of the book, which was first published by a firm to whose business the defendants had succeeded, an arrangement had been made between that firm and the deceased joint author, acting on behalf of himself and his co-author, that the firm should engrave the illustrations and print and publish the book. If there were a loss from the publication, the firm were to bear the whole of it. If there were a profit they were to pay half of it to the plaintiff and the deceased joint author. The profits were to be ascertained after debiting the costs of the engraving, printing, and publication. The defendants alleged that this was an agreement for the sale of the copyright, and that they, as successors of the original firm, were entitled by assignment from them to the benefit of the agreement. No member of the original firm was a partner in the defendants' firm. The defendants had in their possession the blocks from which the illustrations to the first edition of the

(*a*) (1879), 12 Ch. Div. 886.

book had been printed, the drawings on the block having been made by the deceased joint author himself. It was held that the alleged agreement was a mere publishing agreement, and did not amount to a sale of the copyright, and that the benefit of the agreement was not assignable without the consent of the authors. Consequently, the defendants could derive no benefit from the agreement, and the injunction must be granted. And, as by the terms of the agreement, the cost of engraving was to be paid out of the gross profits, the blocks were not the property of the defendants, and must be delivered up to the plaintiffs.

Application of principle to case of limited company.

These cases have been recently followed by Lord (then Mr.) Justice Stirling in the case of *Griffith* v. *Tower Publishing Company & Moncrieff* (*a*). The plaintiff was the author of a story called 'The Angel of the Revolution,' and he entered into a profit-sharing agreement with the Tower Publishing Company —a limited company—whereby the latter were to have the sole right of producing the work in volume form, the copyright to remain with the plaintiff. The company became insolvent, and in a debenture holders' action the defendant Moncrieff was appointed receiver and manager of all the property and assets of the company comprised in or subject to a debenture issued by them, including the plaintiff's works. Moncrieff having informed the plaintiff of his intention to sell the plaintiff's books together with all the company's rights under the above-mentioned agreement to another firm, not approved of by the plaintiff, the latter obtained an injunction restraining the assignment, the court holding that no distinction could be drawn between contracts with a company and with an individual, for confidence might be reposed in the former equally with the latter.

Agreement for division of profits a joint adventure terminable by notice.

An agreement similar to that in *Stevens* v. *Benning*, and without specifying a particular edition, constitutes a joint adventure between the parties (*b*), which either party is at liberty to terminate upon notice after the publication of a given edition, if at the date of such notice no fresh expense has been incurred by the party to whom such notice be given.

In the case of *Reade* v. *Bentley*, by a memorandum of agreement made in November 1852, between the plaintiff and the defendant, it was agreed that the latter should publish, at his

(*a*) (1897), 1 Ch. 21.

(*b*) Joint owners of a copyright may make a contract between themselves as to the printing and publishing of the work, and neither will be permitted to set up against the other his original rights as a joint owner in violation of such contract; *Gould* v. *Banks*, 8 Wend. (Amer.) 568.

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own expense and risk, a work entitled 'Peg Woffington,' of which the former was the author; and, after deducting from the produce of the sale thereof the charges for printing, paper, advertisements, embellishments (if any), and other incidental expenses, including the allowance of 10 per cent. on the gross amount of the sale for commission and risk of bad debts, the profits remaining of every edition that should be printed of the work were to be divided into two equal parts, one moiety to be paid to the plaintiff, and the other to the defendant. Subsequently the same parties entered into a similar agreement relative to the publication of another work entitled 'Christie Johnstone,' of which the plaintiff was also the author; and they signed for that purpose a memorandum of agreement, which, except as to the date and the title of the work, was in the same words as the former. Two editions of the former work and four of the latter having been published by the defendant, and no fresh expenditure having been incurred by him since the publication of those editions, the plaintiff claimed a right to terminate the joint adventure between them, and to prevent the defendant from publishing any further edition of either work.

The main question to determine was, what was the effect of the agreement which had been entered into between the plaintiff and the defendant?

It was contended by the plaintiff that the case was one of simple agency; that by the effect of the agreement the defendant became a mere agent of the plaintiff. "But," observed the Vice-Chancellor, "it is clear that he became more than that. A mere agent may be paid, as the defendant was to be paid, by a share of the profits; but a mere agent never embarks in the risk of the undertaking; and here the defendant took upon himself the whole expense and risk of bringing out the work. Clearly, therefore, the case is something more than one of simple agency."

Sir W. Page Wood, in passing judgment, made the following observations: "Agreements between authors and publishers assume a variety of forms. Some are so clear and explicit that no doubt can arise upon them. Thus, where an author assigns his copyright, the transaction is one which every person understands, and which leaves no room for uncertainty as to the rights of the parties. Again, where, as in *Sweet* v. *Cater* (*a*), the author assigns a particular edition, the rights of himself and the publisher are equally clear; and although in that case the

(*a*) (1841), 5 Jur. 68; 11 Sim.

point did not require determination, the court observed, and justly observed, that, where an author has sold an edition of a given number of copies to one publisher, he is not at liberty, before they are sold, to publish the same work himself or through another publisher, in such a manner as to compete with the edition he has sold, but is bound to afford to the purchaser a full opportunity of realizing the benefit of his contract. The case before me, like that of *Stevens* v. *Benning* (*a*), is of an intermediate description. Here, as there, the author does not sell, or purport to sell, any interest whatever in the copyright. It was contended, and very strongly, in *Stevens* v. *Benning*, that the author had done so; but I held that he had not, and my view was affirmed by the Lords Justices. Here also, as there, the publisher was to publish at his own risk. Nevertheless, in *Stevens* v. *Benning*, the agreement contained other provisions, considerably more definite than any in this case. It pointed to a series of editions to be published for the author by the same publisher, as to every one of which the author himself stipulated, as part of the contract, that he would assist in the publication. Here the agreement is simply that the publisher shall publish the work at his own expense and risk, and, after deducting all the expenses specified in the memorandum and an allowance of £10 per cent., the profits remaining of every edition that shall be printed of the work are to be divided into two equal parts, one of which is to be paid to the author, and the other to the publisher.

"It was contended for the defendant that if the effect of the agreement was not an assignment of the copyright (which it is now clearly decided that it could not be), it resulted in a joint adventure, in which the defendant was to have a licence to publish the work; and that, from the nature of the case, and by the terms of the agreement, that licence was irrevocable. In *Stevens* v. *Benning* I considered the agreement must be regarded as creating, to a certain extent, a joint adventure, and Lord Justice Knight Bruce adopted the same view. He says, it must be observed, that such interest, if any, in the copyright of the author's work as the other parties to the agreement acquired under it, they acquired, not exclusively of the author, 'but by way of joint adventure with him, or of partnership with him, in respect and for the objects of which he undertook the fulfilment by himself personally of certain duties to them, and they undertook the fulfilment by themselves personally of certain duties to him' (*b*). Community of risk does not appear

(*a*) (1854), 1 K. & J. 168; 6 D. M. & G. 223.

(*b*) 6 D. M. & G. 223, 229.

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to me to be by our law, any more than it was by the civil law, essential to constitute a partnership; one partner being at liberty to contract with another that he will take all the losses of the concern upon himself. Lord Justice Turner looked upon the agreement in *Stevens* v. *Benning* in the double light of a licence and a partnership, speaking, however, less decidedly as to its being a partnership. He says: 'Next, if there was a partnership, then, if the agreement does not affect the copyright, the partnership was not in the copyright, but in the copies printed under the licence contained in the agreement' (*a*)—viewing it, therefore, as a licence for the publication of the work, and then a joint adventure between the author and publisher in the copies so to be published. If that were the effect of the agreement in the present case, the question would still remain, whether the licence be irrevocable.

"The plaintiff does not attempt to interfere with the publication of an edition which the defendant had commenced, and incurred expense in preparing for publication, before he exercised the option of determining the agreement. His claim is limited to editions about which no such expense had been incurred by the defendant; and his argument is, that, unless he has a right to determine the agreement as to all such editions, the consequence will be, that, during the whole of the defendant's life, he may be under an obligation to the defendant, while the defendant will be under no reciprocal obligation to him. It is true that, according to *Stevens* v. *Benning*, a licence like the present would, I apprehend, be restricted to the defendant personally, and would not extend to his executors, or to any future partner or assignee; but if the defendant's construction be correct, it follows that, so long as he lives and is willing to continue publishing fresh editions of the work, so long, according to the doctrine in *Sweet* v. *Cater*, the plaintiff will be precluded from asserting a right to publish any competing edition. The defendant could compel the plaintiff to abstain from publishing a single copy of the work, so long as he expressed his readiness to continue publishing. But the plaintiff has no reciprocal power. He could never compel the defendant to publish more than a single edition of the work. His powers are limited to what the contract gives him; and, according to the contract, when the defendant has published a single edition the contract on his part is fulfilled. That is a position of considerable hardship for an author, and one which ought to be clearly shown, upon the face of a contract, to have

(*a*) 6 D. M. & G. 231.

been contemplated by the parties who entered into it . . . In the present case, no new expense has been incurred by the defendant, either in printing, advertising, or otherwise, as regards 'Peg Woffington,' since the publication of the second edition, and, as regards 'Christie Johnstone,' since the publication of the fourth edition; and that being, as I have already intimated, the true test in construing the agreement, it appears to me, that, when those editions were published, the period had arrived at which the parties intended a division of profits to take place, and at which the plaintiff became entitled to terminate his agreement with the defendant. This is the only conclusion at which I can arrive, after a very careful consideration of the contracts. But it is much to be regretted that contracts should be framed with such uncertainty, when it would have been so easy to make them certain" (*a*).

Agreement not to sell under a certain price.

The defendant, having printed a book, sold 300 copies of it to the plaintiff, a bookseller, at 40*s.* a copy, and agreed by letter "only to sell to others at 48*s.* in quires, and single copies at 50*s.* until the plaintiff's 300 copies were sold, or the plaintiff should consent." The letter also contained these words: "I do not expect you to sell under 48*s.* and 50*s.*, but do as you like." The plaintiff, when he had sold part of the 300 copies, went into partnership with C. and transferred all his stock at the cost price; and also sold some copies at 45*s.* and 46*s.* An action being afterwards brought by him against the defendant for selling copies under the stipulated price, it was contended on behalf of the defendant, first, that the plaintiff was bound by implication not to sell the work himself under the price at which the defendant was to sell, and that his selling at 45*s.* and 46*s.* was an answer to the action, as being against the good faith and honour of the contract, inasmuch as it would tend to prevent the defendant from selling his copies at all; secondly, that the contract was put an end to by the plaintiff going into partnership with C., and transferring his interest to the firm at 40*s.* a copy, because the undertaking of the defendant was only to continue in force till the 300 copies were sold by the plaintiff, and his parting with them to a firm of which he was only a partner, was, in fact, a selling, just as much as it would be in the case of a joint stock company (*b*).

Denman, C.J., in summing up, said: "It seems that the defendant left the plaintiff at liberty to sell as he pleased, but bound himself down not to sell under the prices stated, and

(*a*) *Per* Wood, V.-C., in *Reade* v. *Bentley* (1857), 1 K. & J. 656, 669.
(*b*) *Benning* v. *Dore* (1831), 5 Car. & P. 427.

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this is an answer to some part of the argument urged in favour of the defendant. You will have to say, first, whether the agreement was made; of this, there does not seem any doubt; and then, whether it was broken; and if it was, you must spell out the damage as well as you can from the evidence. It is a very difficult thing to ascertain the amount of damage. I think, in considering that subject, you may reasonably consider, as damage must arise from the effect produced upon the price of the work in the market by the defendant's having sold copies at a sum lower than the stipulated price, whether the plaintiff's own selling at 45*s.* and 46*s.* might not have contributed to that depreciation. If you are satisfied that the agreement was broken, then you will have to say to what extent the plaintiff has been injured."

Ordinary agreement between authors and publishers not a partnership.

The ordinary agreement between authors and publishers to the effect that the former shall contribute the manuscript, and the latter shall in the first place defray the cost of the bringing out of the work, and repay himself out of the proceeds of the sale, and that the net profits shall be divided, is not properly a partnership, and the author is not liable for paper and printing supplied and executed for the publisher (*a*).

In all agreements between authors and publishers the terms should be distinctly stated, and the respective rights of the parties clearly defined. The number of copies of which the edition is to consist should be declared, for otherwise a publisher might, if so disposed, print 20,000 as one edition (*b*). But a person who has acquired the right to publish one edition only of a work, cannot publish another edition, without authority.

Construction of the word "edition."

The meaning of the word "edition," and the construction to be placed upon it, were fully discussed in *Reade* v. *Bentley*. It was argued that where a work has once been sterotyped, the term "edition" was no longer applicable; and that when a work is published in what are called "thousands," 20,000 or 30,000 being circulated, each thousand could not properly be called an "edition." Wood, V.-C., however, thought that not merely in point of etymology, but having regard to what actually takes place in the publication of any work, an "edition of a work was the putting of it forth before the public, and if

(*a*) See *Gardiner* v. *Childs*, 8 C. & P. 345; *Reade* v. *Bentley* (1857), 3 K. & J. 271, and 4 *Ibid.* 656; *Wilson* v. *Whitehead* (1845), 10 M. & W. 503; *Gale* v. *Leckie* (1817), 2 Stark. 107; *Venables* v. *Wood*, 3 Ross, L. C. on Com. Law, 529, cited Lindley on Partnership, 22.

(*b*) *Per* Wood, V.-C., in *Reade* v. *Bentley* (1857), 4 K. & J. 656, 669; 27 L. J. (Ch.) 254; *Sweet* v. *Cater* (1841), 11 Sim. 572; 5 Jur. 68; *Stevens* v. *Benning* (1854), 1 K. & J. 168; 6 D. M. & G. 223; *Benning* v. *Dore* (1831), 5 C. & P. 427.

this were done in batches at successive periods, each successive batch was a new edition; and the question whether the individual copies had been printed by means of movable type or by stereotype, did not seem to him to be material. If movable type were used, the type having been broken up, the new edition was prepared by setting up the type afresh, printing afresh, advertising afresh, and repeating all the other necessary steps to obtain a new circulation of the work. In that case the contemplated break between the two editions was more complete, because, until the type was again set up, nothing further could be done. It made no substantial difference as regards the meaning of the term 'edition,' whether the new 'thousand' had been printed by a resetting of movable type, or by stereotype, or whether they have been printed at the same time with the former thousand or subsequently. A new 'edition' is published whenever, having in his storehouse a certain number of copies, the publisher issues a fresh batch of them to the public. This, according to the practice of the trade, is done, as is well known, periodically. And if, after printing 20,000 copies, a publisher should think it expedient for the purpose of keeping up the price of the work, to issue them in batches of a thousand at a time, keeping the rest under lock and key, each successive issue would be a new 'edition' in every sense of the word" (*a*).

In many cases an advantage would accrue by a publisher so doing; for when an author sells the copyright of a work to a publisher for a certain specified time, the publisher has the right, after the expiration of that period, of selling copies of the work he has printed before the expiration of the time limited.

Right of the publisher to sell copies on hand prior to the expiration of his copyright.

This was decided in the important case of *Howitt* v. *Hall* (*b*). Mr. William Howitt applied for an injunction to restrain the defendants, Messrs. Hall and Virtue, the publishers, from selling or otherwise disposing of any copies of an original work called 'A Boy's Adventures in the Wilds of Australia,' of which Mr. Howitt was the author and registered proprietor. It appeared by the affidavits that in the year 1854, a negotiation was entered into with the defendants by Mrs. Mary

(*a*) *Per* Wood, V.-C., in *Reade* v. *Bentley* (1857), 4 K. & J. 656, 667. See *Blackwood* v. *Brewster*, 7 Dec. 1860; 23 Sess. Cas. 2nd Series, 142. In this case it was held that an editor, under an agreement that he should prepare every new edition of a work, and should receive a certain sum for his services, is not entitled to superintend, or to claim payment for, the reprinting of a part of the work to replace copies destroyed by fire. The copies reprinted under such circumstances do not form a new edition, but go to replace the part of the edition destroyed.

(*b*) (1862), 10 W. R. 381; 6 L. T. 348.

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Howitt, the wife of the plaintiff, who was then in Australia, for the sale to them of the copyright of the work in question for four years, for a sum of £250. This negotiation, after some discussion as to the precise date from which the contract was to commence, resulted in an agreement being entered into on behalf of the plaintiff, which was afterwards confirmed on his return from Australia by the following memorandum signed by him:

"Gentlemen,—I confirm the agreement entered into with you by Mrs. Howitt on the 14th of March, 1854, for the publication of 'A Boy's Adventures in Australia,' being a copyright of four years from that date.

"WILLIAM HOWITT."

On the same day the defendants sent for the plaintiff's signature a receipt for the £250, "being the purchase-money, as agreed, for the copyright and sole right of sale for four years" of the work in question. In October 1857, the work having then gone through two editions, the defendants contemplated issuing a third and cheap edition, and accordingly gave notice of their intention to Mr. Howitt, by whom it was revised previously to publication. No further copies had been printed, and the term of four years expired in March 1858. In February of 1862, the plaintiff, being about to bring out a uniform edition of the juvenile works of Mrs. Howitt and himself, and having, as he stated, only then for the first time discovered that the defendants were continuing to sell the work and to advertise it for sale, wrote to them complaining of this as an infringement of his copyright and a breach of contract, and asking for compensation. In reply to this application, the defendants insisted on their legal right to sell the remaining stock, as their own *bonâ fide* property, when and as they pleased; but at the same time they expressed their willingness to sell it by auction during the present month of March, so as not to stand in the way of the new edition. This suggestion, however, the plaintiff declined to accede to, and filed his bill praying for an account of the profit made by the defendants since March 1858, and for an injunction. Vice-Chancellor Wood said, that the purchase of the copyright carried with it the right of printing and publishing, and the defendant was entitled to continue selling after the expiration of the four years' term the stock printed by him under his purchase. "The Copyright Acts were directed against unlawful

printing; and when, as in this case, the defendant had acquired the right of lawfully printing the work, he was at liberty to sell at any time what he had so printed. The words 'sole right of sale' might or might not have been superfluous; but after four years the right to print the work reverted to the author, who had taken care to secure himself in this respect. It had been suggested that the effect might be to destroy the copyright in the author altogether, as the publisher who had purchased the copyright for a limited period only might during that period print off copies enough to last for all time. A nice question might indeed arise as to the number of copies of which an edition might consist, but a publisher was not likely to incur the useless expense of printing copies enough to exhaust the demand for all time, and have them lying upon his hands unprofitably. Besides this, even if the effect of a sale for four years might operate in this way to deprive the author of all copyright in his work, the answer was that he had not guarded himself against such a contingency. If a manifest case of fraud upon the author were established, the court would know how to deal with it. But nothing of the sort was shown. The defendants had acted quite *bonâ fide*, and were making a perfectly legitimate use of their contract, and their motion must be refused."

Assignor after assignment of copyright may sell copies remaining on hand.

So also it has been held that after he has assigned his copyright, the assignor is free to sell any copies of the book which he had printed before the assignment was made (*a*), but of course this was in the absence of any express agreement between the parties and of the existence of any circumstances from which any implied agreement to the contrary might have been inferred.

But the right is not an exclusive right.

The right of the publisher in the one case, and of the assignor in the other are not exclusive rights. Thus where the plaintiffs had orally agreed with Mrs. Cook to publish at their own expense a book written by her and entitled 'How to Dress on £15 a Year as a Lady, by a Lady,' to sell at a shilling a copy, and to pay her a penny for each copy sold, nothing was said as to how many copies, or how long the plaintiffs should publish, or whether they should be the sole publishers. When forty-four thousand copies had been printed, and forty-two thousand sold, the author notified to the plaintiffs the termination of the agreement, and immediately authorized the defendants to issue a new edition. The plaintiffs now sought to restrain such publication until the copies printed by them

(*a*) *Taylor* v. *Pillow* (1869), L. R. 7 Eq. 418.

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under the agreement should be sold. Sir George Jessel, M.R., held that the plaintiffs were entitled to be the exclusive publishers while the agreement lasted; but that after its termination, though they were at liberty to sell the copies previously printed, they had no power to prevent the author or any person claiming under her from publishing (*a*).

"Looking at the nature of the book," said the Master of the Rolls, "and to the circumstance that it was a term of the agreement that the publishers should publish at their own risk, and pay the royalty, I think the contract, so long as it existed, must be taken to be an exclusive contract, that is to say, that so long as Messrs. Warne and Co. were allowed to publish so long no one else could publish—neither the lady herself, nor an assign from her. That being established, what is the next right it gives to either party? On the determination of the partnership adventure, or whatever you choose to call it, what right had Messrs. Warne and Co. in the book? There is authority upon the subject, but I do not think it wants authority. I think it is plain that no termination of the agreement could deprive them of the right of selling the copies which they have themselves printed under this arrangement. Whether the arrangement was at will or for a term, the publishers must retain the right of selling for their own benefit (subject to the royalty), the copies which they have printed at their own expense, in reliance upon that agreement. So far I go with the plaintiffs; but the plaintiffs then want me to import something else—not only that the publishers should have the right to sell any copies they might have printed before the disagreement, but that the owner of the copyright should not have the right to publish at all, so long as any copies remain unsold. I cannot find that in the agreement, and it does not seem to be reasonable to import it; because it would come to this, that if the publishers printed a very large number of copies it would deprive the authoress of the copyright altogether. I cannot import such an unreasonable term into the agreement.

"Then it is said, that, if you give the publisher no protection, the result may be that the author may publish another edition a day or two after the publishing of the first edition, and so destroy the value of the remaining copies of the first edition remaining unsold. That may be. And it is said that that is so unreasonable that you must infer some stipulation to prevent it. Why? No doubt partnerships at will have their

(*a*) *Warne* v. *Routledge* (1874), L. R. 18 Eq. 497.

inconveniences as well as their conveniences. There is no reason why I should make persons take up a totally different position from that which they have agreed to take up, because it might be convenient to one of the parties after the termination of the arrangement. If you do want that protection for a term of years or for a definite term, you must contract for it. That is all. But I cannot import such a term into the contract. If I did, I should make partnerships at will involve consequences that the partners never dreamt of."

This decision must be received with considerable caution. The Court held that so long as the arrangement between the parties held good the publishers had the exclusive right of publication. They must have had this by reason of an implied agreement to that effect, there being nothing express on the subject in the contract. It was implied in consideration of the expense incurred by the publishers, and must in reason be held to continue so long as there were any copies printed with the consent and concurrence of the author remaining unsold.

And of what value was the exclusive right of publication to the publisher, if this right was determinable at any moment by the author? In short, the right existed so long as it was of no value, but the moment it might have had any value it ceased to exist.

Effect of bankruptcy of publishers where author entitled to share profits.

In a case in the Irish Bankruptcy Court it appeared that Curry and Co. had published three novels by Charles Lever, under an agreement that they should bear the expense of publication and pay to the author a specified sum for a certain number of copies, and should divide with him the net profits on the copies sold beyond that number. While a large number of printed copies remained unsold Curry became bankrupt, when Lever claimed to be entitled as partner to one half of the unsold stock, and to have a special lien on the other half, entitling him as a preferred creditor to be paid in full for whatever balance might be due to him. The commissioner held that if Lever were a partner in the unsold stock, he was a mere dormant and secret partner; and, as the whole of the stock had been in the possession and disposition of the bankrupt, it passed to the creditors under the Bankruptcy Act; and that, for the same reason, Lever had no special lien on it. The commissioner said that the question as to whom the copyright belonged was not within the jurisdiction of the court; but he expressed the opinion that, as Curry had been permitted to advertise himself as the owner, the

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copyright should be dealt with as his property in bankruptcy (*a*).

Accounts between authors and publishers.

Where there is an agreement between an author and publisher of a profit-sharing character, a fiduciary relationship is thereby established between the parties, and the author is entitled to an account from the publishers (*b*). Upon this point a valuable opinion was, in the year 1893, obtained by the Society of Authors (*c*) from Lord Justice Cozens-Hardy, when at the Bar, and Mr. J. Rolt. According to this opinion, the publisher must produce all books and documents necessary for the proper vouching of the accounts: he is not entitled to charge the author at a higher rate for the expenses of printing, paper, &c., than he himself actually pays, and must give the author the benefit of all trade commissions and discounts.

(*a*) *In re Curry* (1818), 12 Ir. Eq. 382. As to publisher's commission, see case of *Gatty* v. *Pawson*, 'Times,' March 9, 1873.
(*b*) *Barry* v. *Stevens* (1862), 31 Beav. 258.
(*c*) As to this Society, see note (*a*) *ante*, p. 773.

APPENDICES

APPENDIX (A).

8 Anne, c. 19 (1709).

An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the Time therein mentioned.

Repealed by 5 & 6 Vict. c. 45, § 1.

By 7 Geo. II. c. 24, the sole liberty of printing and publishing the Histories of Thuanus, with additions and improvements, during the time therein limited, is granted to Samuel Buckley.

8 Geo. II. c. 13 (1735).

An Act for the Encouragement of the Art of designing, engraving, and etching historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers during the Time therein mentioned.

Whereas divers persons have, by their own genius, industry, pains, and expense, invented and engraved, or worked in mezzotinto, or chiaro-oscuro, sets of historical and other prints, in hopes to have reaped the sole benefit of their labours: And whereas printsellers and other persons have of late, without the consent of the inventors, designers, and proprietors of such prints, frequently taken the liberty of copying, engraving, and publishing, or causing to be copied, engraved, and published base copies of such works, designs, and prints, to the very great prejudice and detriment of the inventors, designers, and proprietors thereof: For remedy thereof, and for preventing such practices for the future, may it please Your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in the present Parliament assembled, and by the authority of the same, That from and after the twenty-fourth day of June which shall be in the year of our Lord one thousand seven hundred and thirty-five, every person who shall invent and design, engrave, etch, or work, in mezzotinto or chiaro-

After 24th June, 1735, the property of historical and other

prints vested in the inventor for fourteen years.

oscuro, or from his own works and invention shall cause to be designed and engraved, etched, or worked, in mezzotinto or chiaro-oscuro, any historical or other print or prints, shall have the sole right and liberty of printing and reprinting the same for the term of fourteen years, to commence from the day of the first publishing thereof, which shall be truly engraved with the name of the proprietor on each plate, and

Proprietor's name to be affixed to each print.

Penalty on print-sellers or others pirating the same.

printed on every such print or prints; and that if any print-seller or other person whatsoever, from and after the said twenty-fourth day of June one thousand seven hundred and thirty-five, within the time limited by this Act, shall engrave, etch, or work as aforesaid, or in any other manner copy and sell, or cause to be engraved, etched, or copied and sold, in the whole or in part, by varying, adding to, or diminishing from the main design, or shall print, reprint, or import for sale, or cause to be printed, reprinted, or imported for sale, any such print or prints, or any parts thereof, without the consent of the proprietor or proprietors thereof first had and obtained in writing signed by him or them respectively in the presence of two or more credible witnesses, or, knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors shall publish, sell, or expose for sale, or otherwise or in any other manner dispose of, or cause to be published, sold, or exposed to sale, or otherwise or in any other manner disposed of, any such print or prints, without such consent first had and obtained as aforesaid, then such offender or offenders shall forfeit the plate or plates on which such print or prints are or shall be copied, and all and every sheet or sheets (being part of or whereon such print or prints are or shall be so copied or printed), to the proprietor or proprietors of such original print or prints, who shall forthwith destroy and damask the same; and further, that every such offender or offenders shall forfeit five shillings for every print which shall be found in his, her, or their custody, either printed or published, and exposed to sale or otherwise disposed of, contrary to the true intent and meaning of this Act, the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons that shall sue for the same, to be recovered in any of His Majesty's Courts of Record at Westminster, by action of debt, bill, plaint, or information, in which no wager of law, essoign, privilege or protection, or more than one imparlance shall be allowed.

Not to extend to purchasers of plates from the orighal proprietors.

II. Provided nevertheless, That it shall and may be lawful for any person or persons who shall hereafter purchase any plate or plates for printing from the original proprietors thereof to print and reprint from the said plates without incurring any of the penalties in this Act mentioned.

Limitations of actions for anything done in pursuance of Act.

III. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever for doing or causing to be done anything in pursuance of this Act, the same shall be brought within the space of three months after so doing; and the defendant and defendants in such

action shall or may plead the general issue, and give the special matter in evidence; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become non-suited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs, for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law. General issue.

IV. Provided always, and be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons for any offence committed against this Act, the same shall be brought within the space of three months after the discovery of every such offence, and not afterwards, anything in this Act contained to the contrary notwithstanding. Limitation of actions for offences against this Act.

V. Repealed by 30 & 31 Vict. c. 59.

VI. And be it further enacted by the authority aforesaid, That this Act shall be deemed, adjudged, and taken to be a Public Act, and be judicially taken notice of as such by all judges, justices, and other persons whatsoever, without specially pleading the same. Public Act.

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12 GEO. II. C. 36 (1739).

An Act for prohibiting the Importation of Books reprinted abroad, and first composed or written in and printed in Great Britain; and for repealing so much of an Act made in the Eighth Year of the Reign of her late Majesty Queen Anne as empowers the limiting the Prices of Books.

Repealed by 30 & 31 Vict. c. 59.

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7 GEO. III. C. 38 (1766).

An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of King George the Second, for Encouragement of the Arts of designing, engraving, and etching historical and other Prints; and for vesting in, and securing to, Jane Hogarth, Widow, the Property in certain Prints.

WHEREAS an Act of Parliament passed in the eighth year of the reign of His late Majesty King George the Second, intituled "An Act for the Encouragement of the Arts of designing, engraving, and etching historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers, during the Time therein mentioned," has been found ineffectual for the purposes thereby intended: Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after Preamble, reciting Act 8 Geo. II.

The original inventors, designers, or engravers, &c., of historical and other prints, and such who shall cause prints to be done from works, &c., of their own invention,

the first day of January, one thousand seven hundred and sixty-seven, all and every person and persons who shall invent or design, engrave, etch, or work in mezzotinto or chiaro-oscuro, or, from his own work, design, or invention, shall cause or procure to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro, any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, shall have, and are hereby declared to have, the benefit and protection of the said Act and this Act, under the restrictions and limitations hereinafter mentioned.

and also such as shall engrave, &c., any print taken from any picture, drawing, model, or sculpture; are entitled to the benefit and protection of the recited and present Act;

II. And be it further enacted by the authority aforesaid, That from and after the said first day of January one thousand seven hundred and sixty-seven, all and every person and persons who shall engrave, etch, or work in mezzotinto or chiaro-oscuro, or cause to be engraved, etched, or worked, any print, taken from any picture, drawing, model, or sculpture, either ancient or modern, shall have, and are hereby declared to have, the benefit and protection of the said Act and this Act, for the term hereinafter mentioned, in like manner as if such print had been graved or drawn from the original design of such graver, etcher, or draftsman; and if any person shall engrave, print and publish, or import for sale, any copy of any such print, contrary to the true intent and meaning of this and the said former Act, every such person shall be liable to the penalties contained in the said Act, to be recovered as therein and hereinafter is mentioned.

and those who shall engrave or import for sale, copies of such prints, are liable to penalties.

III. and IV. repealed by 30 & 31 Vict. c. 59.

Penalties may be sued for as by the recited Act is directed,

V. And be it further enacted by the authority aforesaid, That all and every the penalties and penalty inflicted by the said Act, and extended, and meant to be extended, to the several cases comprised in this Act shall and may be sued for and recovered in like manner, and under the like restrictions and limitations, as in and by the said Act is declared and appointed; and the plaintiff or common informer in every such action (in case such plaintiff or common informer shall recover any of the penalties incurred by this or the said former Act) shall recover the same, together with his full costs of suit. Provided also, that the party prosecuting shall commence his prosecution within the space of six calendar months after the offence committed.

and be recovered with full costs: provided the prosecution be commenced within six months after the fact.

The right intended to be secured by this and the former Act, vested in the proprietors for the term of twenty-eight years from the first publication.

VI. And be it further enacted by the authority aforesaid, That the sole right and liberty of printing and reprinting intended to be secured and protected by the said former Act and this Act, shall be extended, continued, and be vested in the respective proprietors, for the space of twenty-eight years, to commence from the day of the first publishing of any of the works respectively hereinbefore and in the said former act mentioned.

VII. And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing, or causing to be done, anything in

pursuance of this Act, the same shall be brought within the space of six calendar months after the fact committed; and the defendant or defendants in any such action or suit shall or may plead the general issue, and give the special matter in evidence; and if, upon such action or suit, a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become non-suited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs; for the recovery whereof he shall have the same remedy as any other defendant or defendants, in any other case, hath or have by law.

Limitation of actions.

General issue.

Full costs.

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15 GEO. III. C. 53 (1775).

An Act for enabling the two Universities in England, the four Universities in Scotland, and the several Colleges of Eton, Westminster, and Winchester, to hold in perpetuity their Copyright in Books, given or bequeathed to the said Universities and Colleges for the Advancement of useful Learning and other Purposes of Education; and for amending so much of an Act of the Eighth Year of the Reign of Queen Anne as relates to the Delivery of Books to the Warehouse-keeper of the Stationers' Company, for the Use of the several Libraries therein mentioned.

WHEREAS authors have heretofore bequeathed or given, and may hereafter bequeath or give, the copies of books composed by them, to or in trust for one of the two universities in that part of Great Britain called England, or to or in trust for some of the colleges or houses of learning within the same, or to or in trust for the four universities in Scotland, or to or in trust for the several colleges of Eton, Westminster, and Winchester, and in and by their several wills or other instruments of donation, have directed or may direct, that the profits arising from the printing and reprinting such books shall be applied or appropriated as a fund for the advancement of learning, and other beneficial purposes of education within the said universities and colleges aforesaid: And whereas such useful purposes will frequently be frustrated, unless the sole printing and reprinting of such books, the copies of which have been or shall be so bequeathed or given as aforesaid, be preserved and secured to the said universities, colleges, and houses of learning respectively in perpetuity: May it therefore please Your Majesty that it may be enacted, and be enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the said universities and colleges respectively shall, at their respective presses, have, for ever, the sole liberty of printing and reprinting all such books as shall at any time heretofore have been, or (having not been heretofore published or assigned) shall at any time hereafter be bequeathed, or otherwise given by the author or authors

Preamble.

Universities, &c., in England and Scotland to have for ever the sole right of printing, &c., such

books as have been, or shall be, bequeathed to them, unless the same have been, or shall be, given for a limited time.

of the same respectively, or the representatives of such author or authors, to or in trust for the said universities, or to or in trust for any college or house of learning within the same, or to or in trust for the said four universities in Scotland, or to or in trust for the said colleges of Eton, Westminster, and Winchester, or any of them, for the purposes aforesaid, unless the same shall have been bequeathed or given, or shall hereafter be bequeathed or given, for any term of years, or other limited term, any law or usage to the contrary hereof in anywise notwithstanding.

After June 24, 1775, persons printing or selling such books shall forfeit the same, and also 1*d.* for every sheet;

II. And it is hereby further enacted, That if any bookseller, printer, or other person whatsoever, from and after the twenty-fourth day of June one thousand seven hundred and seventy-five, shall print, reprint, or import, or cause to be printed, reprinted or imported, any such book or books; or, knowing the same to be so printed or reprinted, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, any such book or books; then such offender or offenders shall forfeit such book or books, and all and every sheet or sheets, being part of such book or books, to the university, college, or house of learning respectively, to whom the copy of such book or books shall have been bequeathed or given as aforesaid, who shall forthwith damask and make waste paper of them; and further, that every such offender or offenders shall forfeit one penny for every sheet which shall be found in his, her, or their custody, either printed or printing, published or exposed to sale, contrary to the true intent and meaning of this Act; the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same; to be recovered in any of His Majesty's Courts of Record at Westminster, or in the Court of Session in Scotland, by action of debt, bill, plaint, or information, in which no wager of law, essoin privilege, or protection, or more than one imparlance, shall be allowed.

one moiety to His Majesty, and the other to the prosecutor.

Nothing in this Act to extend to grant any exclusive right longer than such books are printed at the presses of the universities.

III. Provided nevertheless, That nothing in this Act shall extend to grant any exclusive right otherwise than so long as the books or copies belonging to the said universities or colleges are printed only at their own printing presses within the said universities or colleges respectively, and for their sole benefit and advantage; and that if any university or college shall delegate, grant, lease, or sell their copyrights, or exclusive rights of printing the books hereby granted, or any part thereof, or shall allow, permit, or authorize any person or persons, or bodies corporate, to print or reprint the same, that then the privileges hereby granted are to become void and of no effect, in the same manner as if this Act had not been made; but the said universities and colleges as aforesaid shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid, in like manner as any author or authors now may do under the provisions of the statute of the eighth year of her Majesty Queen Anne.

Universities may sell Copyrights in like manner as any author.

No person subject to penalties for printing, &c., against this Act, unless some provision be made whereby the property of every such book as is intended by this Act to be secured to the said

IV. And whereas many persons may through ignorance offend