vest in the person who may be thus authorized to publish, is a point admitting of great doubt. But it seems that under the statutes, in England, an assignment in writing has been held necessary to pass the copyright in an unpublished work. The 8 Anne, c. 19, § 1, declared that "the author *and his assignee or assigns* shall have the sole liberty of printing," and that "if any *other* bookseller, printer, or other person, &c. shall print, reprint, &c. *without the consent of the proprietor first had and obtained in writing, signed in the presence of two or more credible witnesses, he shall forfeit,*" &c. Upon this statute, Lord Macclesfield, C. is said to have held, that the author might grant the right of the copy to a subsequent publisher, after it had been once published by the person to whom he had originally delivered the manuscript, the bare delivery amounting only to a license to print the first edition.[1] In a more modern case, Lord Ellenborough said, that "the statute having required that the consent of the proprietor, in order to authorize the printing or reprinting of a book by any other person, shall be in writing, the conclusion from it seemed irresistible that the assignment must also be in writing; for if the license, which is the lesser thing, must be in writing, *a fortiori* the assignment, which is the greater thing, must also be." The plaintiff, who claimed as an assignee, was therefore nonsuited.[2] This decision, whether correct or

[1] Viner's Abr. 278.
[2] Power *v.* Walker, 3 M. & S. 7. It must be owned that this reasoning is not satisfactory. The stat-

not, has been since followed, and the settled construction of this and the subsequent act 54 Geo. III. c. 156, is, that a parol assignment is not sufficient to give to the assignee the privileges conferred by the legislature upon the author.[1]

The act 5 and 6 Vict. c. 45, § 15, declares, that "if *any* person shall, in any part of the British dominions, print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, *without the consent in writing of the proprietors*, &c. he shall be liable," &c. This evinces a clearer intention, that all transfers of copyright shall be in writing, than appeared from the former acts; and the provisions of the 13th section, which provide a mode of transfer by a memorandum to be made in the books of the stationers' company, to be of the same force and effect as if *made by deed*, show the understanding of parliament as to the previously existing law.

The question recurs, then, what does the party acquire, as against the author and the public, at

ute does not require that the license to any other person than *the author* shall be in writing, but it declares that no other person than the author *and his assignee* shall print without a license in writing. The question turns upon the force of the word *assignee*, and the general intention of the act. See also S. C. 4 Campb. 8.

[1] Clementi *v.* Walker, 2 B. & C. 861. Power *v.* Walker, 3 Maule & Selw. 9. Barnett *v.* Glassop, 1 Bing. N. C. 633. In Latour *v.* Bland, 2 Starkie's N. P. C. 382, it was held, that a publication for six years, by a person (not the composer) of music, was not sufficient in itself to prove that the copyright had been transferred; and that the receipt of the proprietor for the price of the copyright would not bar the action. But where a copyright in music was not asserted against violation for *fifteen years*, the court of chancery refused an injunction until the right should be established at law. Platt *v.* Button, 19 Ves. 447.

common law, who receives a manuscript from the author, under a parol license to publish it, no assignment in writing being made of the copyright? In the first place, it seems to be admitted that an author may dedicate his work to the public, and that such a dedication may be inferred from long silence, from the absence of any conveyance of the property, from long acquiescence in its publication by various persons, and other circumstances.[1] In the second place, an author may, by unequivocal acts of a like nature, dedicate his work to an individual. Thus, where the plaintiff gave her manuscript to a publisher, with a parol license to publish it at his own risk and expense, and disclaimed any intention to receive any emolument from it, and the defendant published it for fourteen years (the first term under the statute then in force) and continued to publish and sell it afterwards, and the plaintiff then applied for an injunction to restrain its farther publication by the defendant; Lord Eldon refused the injunction, upon the ground that the defendant had been licensed to publish without any limitation of time.[2]

In this case, the question was left undecided, whether the right to publish did not remain in the plaintiff concurrently with the defendant, or whether the defendant had acquired any right as against the public. The defendant declined an offer made by

[1] 4 Burr. 2245, 2346. Platt *v.* Button, 19 Ves. 447. Folsom *v.* Marsh, 2 Story's R. 109. Rundell *v.* Murray, Jacobs R. 311, 316.

[2] Rundell *v.* Murray, Jacobs R. 311.

the court to try his title to the copyright, and his counsel expressly disclaimed any such title, admitting that there was no legal assignment of it.[1] The case therefore proceeds upon the effect of a parol license to publish, and admits that such a license conveys no copyright to the *exclusion* of the author.

Under such circumstances, the rights acquired by a publisher under a parol license depend upon the fact of there being or not being a limitation in point of time, in the license itself. If there is no limitation as to time, the inference is admissible that the author gave a concurrent authority to publish indefinitely. But the inference does not go beyond a concurrent authority. There can be no presumption that the author intended to convey the copyright, for the law requires that to be in writing; and there have been cases where such a presumption has been rejected.[2] These cases show that the author retains the copyright, where there has been no assignment in writing, and may defend it by action or injunction against his licensee, where the license was not indefinite in point of time.[3] But it seems that a conveyance of the copyright may be proved by the defendant's admissions that he has conveyed it, although he does not refer to the mode of the conveyance.[4]

[1] Rundell *v.* Murray, Jacobs R. 312, 316.

[2] Storace *v.* Longman, 2 Campb. 27, n. Latour *v.* Bland, 2 Starkie's N. P. C. 382. Power *v.* Walker, 4 Campb. 8.

[3] Ibid.

[4] Power *v.* Walker, 4 Campb. 9, note.

As a mere licensee, therefore, a publisher under a parol license can maintain no action at law against a third person, because he has no legal title.[1] But according to the modern doctrine, he may, if he have a clear equitable title, maintain a bill for an injunction against any other person than the author, or his assignee.[2] And where the party claims as assignee of an assignee, he will not, in equity, be put to pro-

[1] Power *v.* Walker, 4 Camph. 9, n. There is a *dictum* of Lord Ellenborough, to the effect that the first publisher of a book, however he procured the copy, has such a property that he may bring an action at law against any person pirating it. Cary *v.* Kearsley, 4 Esp. N. P. C. 168, 169. Mr. Godson cites this case as authority for the same position. Godson on Patents and Copyright, 2d ed. p. 427. The book in question was Cary's Road Book. The defendant's counsel examined a witness, an officer of the post-office, to prove that the survey stated to have been made by the plaintiff was at the expense of the post-office, in order to show that the copyright belonged to the post-office and not to the plaintiff. Lord Ellenborough said, "I do not know that that will protect the defendant; at law, the first publisher, *even though he has abused his trust, by procuring the copy*, has a right to it, and to an action against a person who publishes it without authority from him. It may be a ground in equity, as between the person entitled and the person who first published it; but it does not destroy the right of the latter to sue a person pirating that right." I do not understand this to be law, as broadly stated. All copyright depends on title derived from the author; and unless there has been a transmission of title from him, the publisher can maintain no action for piracy, though, under some circumstances, he may obtain an injunction.

[2] Mawman *v.* Tegg, 2 Russ. 385. Sweet *v.* Shaw, 3 Jurist, 217. 2 Story's Eq. Jurisp. § 935. The impolicy of suffering literary works to be published under parol agreements, and the fatality of the supposition, that a copyright can be conveyed without writing, were strongly illustrated in the case of some of Mr. Moore's Irish Melodies. Mr. Moore sold his work to W. Power, of Dublin, who agreed verbally with J. Power, of London, his brother, that he (J. Power) should have the sole publication and sale of it in England; J. Power brought an action on the 8 Anne, c. 19, against one Walker for pirating the words of two of the songs, and was nonsuited for want of a legal title, being a mere licensee. Mr. Moore, the author, then brought an action in his own name against the same defendant, for the same piracy, and was nonsuited, because he had been heard by some of the witnesses to say, that he had parted with all his interest in the copyright to W. Power. See 4 Campb. 8, 9, n. But see Nicol *v.* Stocdale, 3 Swanst. 687.

duce the original assignment to his assignor, but the proof of want of title will be thrown on the defendants.[1]

An equitable title, which will support a bill for an injunction, occurs, where the legal right has not been vested, but from the dealings between the actual owner and the party bringing the bill, such party has acquired a limited equitable right in the copyright, to the extent of being entitled to be one of the publishers, or the sole publisher of the work, for a given or an indefinite time. But it is necessary that the party should have a real interest in the work, and not be a mere agent to sell it. Thus, where a publisher was employed by the board of admiralty, under direction of the crown, to publish a work, consisting of a narrative of a voyage undertaken by persons employed for that purpose by the crown, but the profits were to be at the disposal of the lords of the admiralty, it was held, that the publisher had not such an interest in the work as would enable him to sustain an injunction against another person for republishing it.[2] But where it was agreed, in writing, between an author and a publisher, (after reciting that the author had prepared a tenth edition of his work, and the publisher was desirous of *purchasing the same*,) 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

[1] Morris *v.* Kelley, 1 Jac. & W. 481.

[2] Nicol *v.* Stockdale, 3 Swanst. 687.

sum, and that the work should be sold to the public for a given price, it was held that the publisher was not a mere licensee to sell a given number of copies, but that being bound by the agreement to sell, and the author being bound to abstain from doing anything which would interfere with the sale, the publisher had a limited equitable interest in the copyright, to the extent of being entitled to be the sole publisher, until the number of copies fixed by the terms of the agreement should be exhausted.[1]

It is not settled in England, whether a conveyance of copyright must be by deed, as well as in writing. The cases which have held that a transfer in writing is necessary, did not decide whether a writing, not being a deed, would be sufficient.[2] In a more recent case, Lord Ch. J. Tindal expressed an opinion that nothing short of a deed would answer; but the pleadings did not admit of the question being raised.[3] The act 5 and 6 Vict. c. 45, s. 13, which makes an assignment by entry in the register as valid *as if it had been made by deed*, has been supposed to show the understanding of parliament, that the usual and necessary mode of transfer of copyright is by deed.[4]

The preceding observations may aid us in determining the effect of the contracts which ordinarily

[1] Sweet *v.* Cater et al. 5 Jur. 68, cited Drewry on Injunctions, p. 211. See also Mawman *v.* Tegg, 2 Russ. 392. Sweet *v.* Shaw, 17 Law J. 216.

[2] Power *v.* Walker, 4 Camph. 8. Clementi *v.* Walker, 2 B. & C. 861.

[3] De Pinna *v.* Polhill, 8 Car. & P. p. 78.

[4] See Appendix, p. 70.

take place between the writers of articles for magazines, and other periodical works, and the proprietors of such works. Does the mere transmission of a manuscript essay or article to the conductor of a magazine, for publication, coupled with the receipt of such compensation as may be paid for it, carry with it the whole title of the copyright, so as to exclude the author from reprinting it in any other form thereafter? There is, doubtless, an implied contract on the part of the writer, not to reprint his essay at such a time, or in such a manner, as to deprive the party who has purchased the liberty of printing it, of the benefit of being the sole publisher thereof, for a reasonable length of time, which must depend on the circumstances of the case. Hence, the writer could not, without a breach of his implied contract, print his essay in another periodical, published simultaneously with the work for which he had originally written it. But where the law requires a written assignment of copyright, and no such assignment has been made, and there is no stipulation on the part of the writer never to re-print his essay, it would seem that the right to republish it, after a reasonable time, must remain with him at common law. But whether the projector and proprietor of a work, in which different persons have written parts, at his request, and have been paid for the same as contributors, without having made a legal assignment of their copyrights, is to be deemed the author and proprietor of the work, so as to en-

title him to protection as against the public, is a different question. This point came before Sir John Leach, V. C., and he was of opinion that such a projector and proprietor was to be deemed the author and proprietor within the intendment of the statute of Anne, for the purposes of protection in a court of equity.[1]

Perhaps the provisions of the recent English statute on this subject may be regarded as, in part, declaratory of the previously existing law. Those provisions are made retrospective; manifesting thereby an intention to apply, by statute, to previously existing rights, principles understood to be already in existence, upon which the contracts might be presumed to have been made. The statute declares, in substance, that where essays, articles, &c. have been or shall be written for publication in, or as part of any encyclopedia, review, magazine, periodical work, or work published in a series of books in parts, or any book whatsoever, on the terms that the copyright therein shall belong to the proprietor, pro-

[1] Barfield *v.* Nicholson, 2 Law Journ. 90, 102. In this case, the vice chancellor said, "I am of opinion, that, under that statute [8 Anne, c. 19] the person who forms the plan, and who embarks in the speculation of a work, and who employs various persons to compose different parts of it, adapted to their own peculiar acquirements — that he, the person who so forms the plan and scheme of the work, and pays different artists of his own selection, who, upon certain conditions, contribute to it, is the author and proprietor of the work, if not within the literal expression, at least, within the equitable meaning of the statute of Anne, which, being a remedial law, is to be construed liberally." S. C. 2 Sim. & Stu. 1. As to the property in a review, and the right to prevent the publication of works handed out to the public under false colors, as continuations of a former established work, see Hogg *v.* Kirby, 8 Ves. 215.

jector, publisher or conductor of the work, and paid for by such proprietor, &c. the copyright thereof shall be the property of such proprietor, &c. who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given by the act to the authors of books; except that in the case of essays, articles, &c. forming part of, or first published in reviews, magazines, or other periodical works of a like nature, after the term of twenty-eight years from the first publication thereof respectively, the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by the act, provided, that during the twenty-eight years, the proprietor of the review, magazine, &c. shall not publish any such essay, article, &c. separately or singly, without the consent of the author or his assigns previously obtained; and provided also, that these enactments shall not affect the rights of any such author, who, by any contract, express or implied, may have reserved, or shall reserve to himself the right of separate publication; but that every author, so reserving the right of separate publication, shall have the copyright in his composition, when published, in a separate form, according to the act, without prejudice to the right of the proprietor of the review, magazine, &c.[1]

There have been several decisions in England,

[1] Act 5 & 6 Vict. c. 45, § 18. See Appendix, p. 73.

upon contracts between authors and publishers, which may illustrate the subject at present under consideration. Where an author agreed, in writing, to supply a bookseller with the manuscript of a work to be printed by the latter, the profits to be equally divided between them, Lord Ellenborough held that an action could be maintained for damages for refusing to supply the manuscript.[1] But where an 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 was published, the work in which it was to appear was discontinued, Lord C. J. Tindall 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.[2] The contract in this case does not appear to have been in writing.

Where an author sells the copyright of a work 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 pub-

[1] Gale *v.* Leckie, 2 Stark. N. P. C. 107. But if the author be justly apprehensive that the work, when published, will subject him to punishment, it seems that he may refuse to deliver the manuscripts. *Ib.* A contract with the proprietors of a theatre, not to write pieces for any other theatre, is lawful, as a similar restraint of a performer would be; not resembling a covenant restraining trade generally. Morris *v.* Colman, 18 Ves. 437.

[2] Planché *v.* Colburn, 5 C. & P. 58.

lisher, 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.[1]

But 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; and it was held that this was a sufficient defence.[2]

Although the interest in a manuscript does not pass to assignees under a commission of bankruptcy, yet the copyright of a printed book does so pass; and it seems that it is not necessary that there should be any instrument in writing between the bankrupt and his assignees.[3]

The provisions of the act 5 and 6 Vict. c. 45, with regard to the assignment of copyright, apply to dramatic and musical compositions, as well as books. The assignment of the copyright of a play was formerly held to have carried with it the sole right of representation also, which was secured to the author

[1] Barfield *v.* Nicholson, 2 Sim. & Stu. 1. 2 Law Journal, 90.

[2] Sweet et al. *v.* Archbold, 10 Bing. R. 133.

[3] Mawman *v.* Tegg, 2 Russ. R. 385, 392. Keene *v.* Harris, cited 17 Ves. 338. Longman *v.* Tripp, 2 New R. 67.

by the 3 Wm. IV. c. 15.[1] But in order to obviate the effect of this decision, it is now provided, that no assignment of the copyright of any book consisting of or containing a dramatic piece or musical composition, shall be holden to convey to the assignee the right of representing or performing such dramatic piece or musical composition, unless an entry in the registry book shall be made of such assignment; wherein shall be expressed the intention of the parties, that such right should pass by the assignment.[2]

As to prints and engravings, it being enacted by the 8 Geo. II. c. 13, § 1, that before a print can be copied with impunity, the consent of the proprietor must be given in writing, signed in the presence of two witnesses, it is manifestly necessary to a valid assignment, in England, that it should be in writing.

The fourth section of the 54 Geo. III. c. 56, provides, that "no person who may purchase the right or property of a new and original sculpture or other matter above mentioned of its proprietor, by deed in writing, signed by such proprietor in the presence of and attested by two witnesses, shall be subject to any action for copying, casting, or vending the same." The assignment of copyright in sculpture must therefore be by deed signed in the presence of two witnesses, and attested by them.

In the United States, the act 30th June, 1834, § 1, provides, that all deeds or instruments in writing,

[1] Cumberland *v.* Planché, 1 Ad. & Ellis, 580.

[2] Act 5 & 6 Vict. c. 45, § 22.

for the transfer or assignment of copyrights, being proved or acknowledged in such manner as deeds for the conveyance of land are required by law to be proved or acknowledged in the same state or district, shall and may be recorded in the office where the original copyright is deposited and recorded; and every such deed or instrument that shall in any time hereafter be made and executed, and which shall not be proved or acknowledged and recorded as aforesaid, within sixty days after its execution, shall be judged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration without notice.[1]

This statute seems to recognize the doctrine, that transfers or copyright must be in writing, but it does not expressly declare that they shall be so. It applies to all kinds of literary property which can, in this country, be the subjects of copyright.

As to what passes by a general assignment of copyright, it is to be observed, that, after the publication of a book, the exclusive right to print and reprint it, or the estate of copyright, as it may be called, becomes a right for such term only as is provided by statute. In the United States, as was formerly the case in England, the statutes secure a resulting or contingent term to the author, in case he shall be living at the time of the expiration of the first term; and if the author be not living at the

[1] Act of Congress, 30th June, 1834, § 1. See Appendix, p. 100.

expiration of the first term, the second term goes to his widow, child, or children, if living.[1] By a general assignment of copyright, it is clear that the whole of the author's interest for the first term, passes to his assignee; but whether the resulting or second term passes, so as to exclude the author and his representatives, and to enable the assignee to secure such term by complying with the directions of the statute concerning the renewal of the copyright, is a question of some difficulty. In England, upon the statute 8 Anne, c. 19, which gave a second term of fourteen years to the author, if living, at the end of the first term, it was held that a general assignment of all the author's "interest" in a copyright conveyed the contingent as well as the present interest.[2]

In the United States, in a case where a publisher agreed with an author, that the latter should prepare a certain book for the press, and the publisher engaged to pay the author a certain sum "for the copyright of the said book," it was held, that the resulting term, under the statute, did not pass to the publisher, and that the word "copyright" embraced only the term then capable of being secured, which at the time of the contract constituted the copyright of the book.[3]

[1] Act Feb. 3d, 1831, § 1, 2.

[2] Carnan *v.* Bowles, 2 Bro. C. R. 80, and Rennet *v.* Thompson, there cited. Godson, p. 429, 2d edit. In Rundell *v.* Murray, Jacobs R. 315, Lord Eldon said, "I conceive that an author will not be taken to have assigned his contingent right in case of his surviving the fourteen years, unless the assignment is so expressed as to purport to pass it."

[3] Per Woodbury, J. in Pierpont *v.* Fowle, Circuit of the U. States, at Boston, May Term, 1847. See 1 Woodbury's R.

In like manner, the question may arise, whether a general assignment of copyright, by the author, will deprive his representatives of the additional term of fourteen years, given by the act of congress of 3d February, 1831, § 2; or whether the author himself has any power over this additional term, so far as the interests of his representatives are concerned. The statute provides that the author, if living at the expiration of the first term of twenty-eight years, shall have a further term of fourteen years, on making a new entry for that purpose. This contingent interest the author may undoubtedly assign. But if the author is not living at the end of the first term, the additional term vests in his widow and child, or children, living at the time. It is not easy to see how the author can dispose of this interest. It is not created for him, but for his family; it vests only in case of his death, and the policy of the statute, it seems to me, has removed it from his control.[1]

[1] See Appendix, p. 93.

CHAPTER IX.

INFRINGEMENT OF COPYRIGHT.

HAVING considered the nature and duration of that species of property which is protected under the denomination of copyright, we have now to treat of its violation, in the various forms of which the law has taken cognizance, and for which it has provided a remedy. It is obvious, that this species of property must be exposed to a great variety of injuries, some of which, from their subtle and ingenious character, may elude the meshes of the law. But the principles on which this kind of property depends, and the doctrines which are already well established in English and American jurisprudence, will be found hereafter, when fully carried out, to extend an adequate and just protection to literature, even if such protection is not now administered with all the success that could be desired. In endeavoring to trace the just scope of these principles and doctrines, we must bear in mind that while the primary object of the law of copyright is protection to the product of all literary labor, the interests of knowledge de-

mand a reasonable freedom in the use of all antecedent literature. To administer the law in such a manner as not to curtail the fair use of existing materials, in any department of letters, is one of the great tasks of jurisprudence. It proposes to itself, first, the vindication of rights acquired by genius, discovery, invention, and labor, in the productions of the mind; secondly, the acknowledgment upon motives of public policy, of the right to a fair use by any writer of all that has been recorded by previous authors. The discovery and application of the rules which are to determine what such a fair use is, in a given case, is one of the most difficult of legal problems. Questions of this nature have justly been said to belong to the metaphysics of the law. But the law would ill deserve the name of a science, if its professors were unable to discharge the duties which the interests of society impose upon them, however subtle the distinctions may be with which they have to deal. It is the boast of the law, through which it claims rank among the sciences, that it is able to regulate the rights of men by principles; and this ought to be no less true of it, when it deals with subjects of a metaphysical character, than when it adjudicates controversies of the most simple nature.

The examination heretofore made into the nature of this property, has shown, that while the public enjoys the right of reading the intellectual contents of a book, to the author belongs the exclusive right

to take all the profits of publication which the book can, in any for n, produce. His exclusive right includes the whole book and every part of it. Hence it follows, that this right may be invaded in several ways; 1. By reprinting the whole work, verbatim; 2. By reprinting, verbatim, a part of it, either with or without acknowledgment of the source from which the extract or passage is taken; 3. By imitating the whole or a part, or by repro lucing the whole or a part with colorable alterations and disguises, intended to give to it the character of a new work; 4. By reproducing the whole or a part under an abridged form.

With regard to each of these forms of infringement, it is to be observed, that the question of intention does not enter directly into the determination of the questio n of piracy. The exclusive privilege, which the law secures to authors, may be equally violated, whether the work complained of was written with or without the *animus furandi*— the intention to take what be.ongs to another, and thereby to do an injury. A party may mistake his own rights, or the rights of the author whose book he makes use of in the compilation of his own. The fact of his having made such a mistake, or th e degree of good faith with which h e has acted, cannot settle a question which depends upon other elements.[1]

To decide the question of piracy upon the motives

[1] Emerson *v.* Davies, 3 Story's R. 768. Folsom *v.* Marsh, 2 Story's R. 100.

of the party charged with the infringement, would reduce the exclusive right secured to authors by the law to a much lower scale of value and efficiency than the law intends to give to it. The most direct and palpable piracies would escape correction, where the party charged could make it appear that he had acted innocently. The privilege of authors would be rendered of no value whatever, where the existence of the right admitted of a reasonable doubt before adjudication; since the defendant would only have to show that such a doubt existed, and then to claim the benefit of that doubt in establishing his innocent intention.

It is necessary, therefore, in every inquiry whether a piracy has been committed, to look at the complex character of the question. It involves, first, an inquiry into the existence of the exclusive right claimed by the author whose book is supposed to have been infringed; and, secondly, the determination of the question whether this right has been infringed by what has been done by the party charged with an infringement.

The elements by which the first of these questions is to be determined, have been already pointed out. The second question forms the appropriate subject of discussion in the present chapter. Before considering particular forms and cases of piracy, the general doctrines, on which the solution of this question depends, may be here cursorily examined.

The statutes which secure the exclusive rights of

authors, do not define, in any terms, what shall constitute an infringement of copyright. It is left to the tribunals to decide, in each case, upon the circumstances of the case, whether a violation of the right has been committed. On the one hand, the courts must regard the existence of the exclusive right, when established or admitted; and on the other, the principle of public policy, which admits of some use of all antecedent literature. This last consideration, however, will not sanction direct and palpable injuries to the author, in whom the law has vested the sole right to take the profits of his own book and of every part of it. It becomes, therefore, a most material inquiry, in all cases, to ascertain whether the author has sustained or is likely to sustain any injury by the publication of which he complains; and perhaps it will be found that this is the test by which the question of infringement ought to be determined, in nearly all doubtful and difficult cases.

I am not aware of any recorded decision, or of any principle of law, which would deny redress to an author who should prove a direct injury, upon the ground that the writer who had caused it had made a justifiable use of his work. It is easy to imagine cases, where the use which a subsequent writer makes of a previous publication is apparently within the limits of the general right of selection, or citation, or tacit adoption; but if an injury can be proved to be the effect, I know of no rule of law, by

which, consistently with the strict right of the previous author, such use can be pronounced to be admissible. The question, whether very trifling injuries will be redressed by one class of the public tribunals, is entirely aside from the strict right to redress from some tribunal, which depends upon no considerations of judicial convenience, or limits of jurisdiction. Notwithstanding some *dicta* in a few cases, and the general principle, (which cannot be established at a fixed line,) by which what is called the fair use of a previous publication is obscurely hinted at, I apprehend that the doctrine of our law is and must be, that where an injury is caused, an infringement is, in point of strict right, made out.

1. Piracy, by reprinting the whole work *verbatim*.

In cases of this kind, there can ordinarily be no question to be determined, except the existence of the copyright. The object with which the original work is thus taken, and the form in which it is used, are immaterial. It is equally a violation, whether the whole of a smaller work is inserted in a larger one, or whether it is reprinted by itself, with notes or additions, if the reprint works an injury to the proprietor.[1]

[1] There are some very doubtful *dicta* of Lord Ellenborough, on this subject. In the case of Cary *v.* Kearsly, 4 Esp. N. P. C. 168, 170. Erskine put this case: "Suppose a man took Paley's Philosophy, and copied a whole essay, with observations and notes, or additions at the

2. Piracy by reprinting any part of a work, *verbatim*.

This class of cases involves the inquiry — What use can lawfully be made of a previous publication, protected by copyright, in the way of quotation?

end of it, would that be piracy?" His lordship is reported to have answered, "That would depend on the facts of whether the publication of that essay was to convey to the public the notes and observations fairly, or only to color the publication of the original essay, and make that a pretext for pirating it; if the latter, it could not be sustained. That part of the work of one author is found in another, is not of itself piracy, or sufficient to support an action; a man may fairly adopt the work of another; he may so make use of another's labors for the promotion of science and the benefit of the public; but having done so, the question will be, 'Was the matter so taken used fairly with that view, and without what I may term the *animus furandi?*"—The motives of public benefit and advancement of the interests of science are dangerous grounds on which to allow the taking of another's property; although these great objects are to be so far kept in view, as to justify a fair use of previous publications, that is, a use which does no injury. But whether any use, which works a direct injury, can be justified, is the *crux argumenti*. We may suppose a perfectly honest and praiseworthy intention to refute a book, believed to be erroneous, by means of commentary; and for this purpose the whole text of the work is republished. What tendency has the intention of the commentator to prove that the original author's copyright has not been infringed? That question has but two elements: first, whether the work is under the protection of copyright; second, whether anything has been done to render the exclusive privilege less valuable to the proprietor. If both these questions are answered affirmatively, the object or purpose with which the injury was done cannot palliate the responsibility.

There is a similar *dictum* of Lord Erskine's, in Matthewson *v.* Stockdale, 12 Ves. 275, where he said, "I admit no man can monopolize such subjects as the English Channel, the Island of St. Domingo, [charts] or the events of the world; and every man may take what is useful from the original work; improve, add, and *give to the public the whole, comprising the original work*, with the additions and improvements; and in such a case there is no invasion of any right." This is extravagant; but it has been equalled by a *dictum* of Sir L. Shadwell, V. C. in a recent case, where, however, the point was not involved. "Any person may copy and publish the whole of a literary composition, *provided he writes notes upon it, so as to present it to the public, connected with matter of his own.*" Martin *v.* Wright, 6 Simons, 298. Mr. Justice Story has laid down the doctrine, that if the work of the defendant substantially includes the essential parts of the plaintiff's, *so as to supersede it*, it is a violation of the plaintiff's copyright, although the plan and objects of the defendant's book may be different from those of

By quotation, as here used, I mean the transfer of sentences, or passages, or paragraphs, *literatim*, whether with or without acknowledgment of the source from which they are taken.

The first circumstance to which we have to attend, in this inquiry, is, whether the use of matter by quotation, in a given case, tends to, or does, in fact, injure the sale of the book from which the extract is taken. The original author of the extract has the exclusive right to publish and sell it; and it is therefore a very material inquiry, to ascertain how far he is injured, or is likely to be injured, by its publication by another person.

It will be apparent, on reflection, that the quantity of matter taken cannot be decisive of this question. The most material and valuable part of a book, or other publication, may be embraced in a few paragraphs or even sentences, which contain all that is in fact original with the author. If a person, who had made a discovery in science, should choose to enunciate it in a work, of which, by securing the copyright, he intended to reap the profits, and should introduce the statement of his discovery into a general treatise on the branch of science to which it belonged, the matter of his treatise at large might be far from being original, while the portion of the

the plaintiff's. Emerson *v.* Davies, 3 Story's R. 768, 797. See also Mawman *v.* Tegg, 2 Russ. 385; Campbell *v.* Scott, 11 Simons, 31. In France, the same principles are applied. Any republication, either by inserting a smaller in a larger work, or with the addition of notes or commentaries, is there treated as a piracy. Renouard, tom. ii. pp. 15, 16, 19, 20. Merlin, Questions de Droit, tit. Contrefaçon, § iv.

work, containing the description of his discovery, would be purely and eminently novel. The republication of this part of the book would be a taking of that which constituted its chief value, and yet the proportion which it bore to the rest of the work might, in respect to quantity, be very inconsiderable.

Quantity, therefore, is of itself no test, by which to determine whether a quotation amounts to a piracy; and it has accordingly been disregarded in some cases. Thus, where it was suggested by counsel, that the quantity taken by the defendant from the plaintiff's book would be an unfair quantity, even if the source had been acknowledged, Lord Cottenham, C. said, "When it comes to a question of quantity, it must be very vague. One writer might take all the vital part of another's book, though it might be a small proportion of the book in quantity. It is not only quantity, but value that is always looked to."[1]

This doctrine is not to be considered as affected by those decisions, in which courts of equity have declined to interfere, on account of the minuteness of the injury occasioned by a short extract. Applications for injunctions have been refused, where the value of the extract and the amount of injury have been so minute and trifling, as to induce the court not to interfere, and so to restrain the practice of occupying its time by applications in which it would

[1] Bramhall *v.* Halcombe, 3 Mylne & Cr. 737, 738.

be difficult to take an account of the alleged injury.[1] But even in such cases, the infringement might be apparent, and the remedy at the hands of a jury remains.[2] There is, therefore, no material qualification of the general doctrine, that mere quantity does not determine the question of infringement. Be the quantity large or small, if the extract furnishes a substitute for the book from which it is taken, so as to work an appreciable injury, it is so far an actionable violation of the copyright.

The license of what is called fair quotation cannot, I apprehend, be said to furnish any different standard of determination, in cases of quotations or extracts. This license it is very difficult to define.[3] On the one hand, there is a class of publications,

[1] Bell *v.* Whitehead, 17 Law Journ. 142. Whittingham *v.* Wooler, 2 Swanst. 428. Tonson *v.* Walker, 3 Swanst. 672.

[2] Ibid.

[3] In Wilkins *v.* Aikin, 17 Ves. 422, 424, Lord Eldon said, "There is no doubt that a man cannot, under the pretence of quotation, publish the whole or a part of another's book, though he may use, what in all cases it is very difficult to define, fair quotation." This case suggests the *quære*, whether the copying of a map, as an illustration, in a fair history of all the maps of a county, would be restrained. Lord Eldon said, "Suppose a publication, professing to be an account of the improvement of maps of the county of Middlesex; compiling the history of all the maps of it ever published; pointing out the peculiarities belonging to them, and giving copies of them all; as well those the copyright of which have expired, as those of which it was subsisting; it is not easy to say with certainty what would be the decision upon such a case. If it was a fair history of the maps of the county, which had been published, and the publication of the individual work was merely an illustration of that history, that is one way of stating it; *but if a jury could perceive the object to make a profit by publishing the map of another man*, that would require a different consideration" Perhaps this is only another form of stating that the question would be, whether the owner of the map is injured by the use made of it. But if his lordship intended to say, that the question would depend on the intention of the party to do an injury, it seems to me that other authorities do not uphold his doctrine, and that it is not consistent with principle.

the object of which is to give extracts from other works, for the purposes of criticism; and the notion, that the insertion of such extracts tends to increase the sale of the works from which they are taken, if fairly made, has been judicially recognized, and is admitted to be practically true.[1] Any amount of extracts, which the purpose of illustrating fair criticism requires, may be made in such works, with this limitation, that the review or critical notice shall not furnish a substitute for the book; or, in other terms, shall not communicate the same knowledge with the original work. This was the distinction adopted by Lord Ellenborough, when he had occasion to use an illustration drawn from the practice of reviewing.[2]

[1] Bell *v.* Whitehead, 17 Law Journ. 142.

[2] Roworth *v.* Wilkes, 1 Campb. 94, 98. In this case the quantity taken from the plaintiff's book and inserted in an encyclopedia, amounted to seventy-five pages out of one hundred and eighteen. Lord Ellenborough said, in instructing the jury, "The question is, whether the defendant's publication would serve as a substitute for the plaintiff's? A review will not in general serve as a substitute for the book reviewed; and even there, if so much is extracted that it communicates the same knowledge with the original work, it is an actionable violation of literary property. The intention to pirate is not necessary in an action of this sort; it is enough that the publication complained of is in substance a copy, whereby a work vested in another is prejudiced." By substitute is not to be understood a substitute for the whole book, but a substitute *quoad hoc*. See the remarks of Sir L. Shadwell, V. C. in Sweet *v.* Shaw, Jurist, vol. i. p. 212. See also Macklin *v.* Richardson, Ambl. 694. Whittingham *v.* Wooler, 2 Swanst. 428. The case of Dodsley *v.* Kinnersley, Ambl. 403, which seems to look the same way, is a very defective report, and the decision, as stated, seems to me quite wrong, upon this point. The defendant printed, in a magazine, part of the narrative of Dr. Johnson's Rasselas, leaving out the reflections. Upon filing the bill, the Lord Keeper Henley refused an injunction, "doubting whether it was such a book as the stat. 2 Anne intended to protect?" The ground of this learned doubt is not stated. When the cause came on to be heard before Sir Thomas Clarke, M. R., two booksellers deposed that the sale of the book was prejudiced by its being printed in the magazine. This was answered

On the other hand, instances occur, in which extracts from other books are used with or without acknowledgment, not for purposes of criticism; and other instances, in books which are not established journals of criticism, but in which criticism is made the ostensible purpose for which extracts are made.

With regard to the first of these classes, the acknowledgment or concealment of the fact of quotation can have no other bearing than to determine whether it was or was not made with a fraudulent intention. The presence or the absence of such intention will not conclusively determine whether an injury has been done. The legitimate influence of the proof of intention is merely to assist the court, among other circumstances, in determining whether the party has transcended the limits of fair quotation. But if he has, with the fairest intentions, published extracts of such a character as to injure the work from which they are taken, his intentions are wholly immaterial to the issue.

One of the most marked cases of this class occurred in relation to the writings of Washington. The plaintiffs were the proprietors of a large work, containing the letters and other writings of Washington, with a life. The defendants published a smaller

by evidence of a usage of printing extracts of new books in magazines, without asking leave of the authors, and that the plaintiffs had themselves printed extracts in the Annual Register and in a newspaper. An injunction was thereupon refused; but that it would be granted at the present day, under the like circumstances, there can be little doubt.

work, containing a new and original life; but with copious extracts from the letters and papers contained in the plaintiffs' work. Mr. Justice Story granted an injunction as to these extracts, admitting at the same time, that the defendants might have acted under a mistake as to the plaintiffs' rights.[1]

[1] Folsom *v.* Marsh, 2 Story's R. 100, 115. In this case the learned judge said, "The question, then, is, whether this is a justifiable use of the original materials, such as the law recognizes as no infringement of the copyright of the plaintiffs. It is said, that the defendant has selected only such materials as suited his own limited purpose as a biographer. That is, doubtless, true; and he has produced an exceedingly valuable book. But that is no answer to the difficulty. It is certainly not necessary, to constitute an invasion of copyright, that the whole of a work should be copied, or even a large portion of it, in form or in substance. If so much is taken, that the value of the original is sensibly diminished, or the labors of the original author are substantially to an injurious extent appropriated by another, that is sufficient, in point of law, to constitute a piracy *pro tanto*. The entirety of the copyright is the property of the author; and it is no defence, that another person has appropriated a part, and not the whole, of any property. Neither does it necessarily depend upon the quantity taken, whether it is an infringement of the copyright, or not. It is often affected by other considerations, the value of the materials taken, and the importance of it to the sale of the original work. Lord Cottenham, in the recent cases of Bramhall *v.* Halcombe, (3 Myine & Craig, 737, 738,) and Saunders *v.* Smith, (3 Mylne & Craig, 711, 736, 737,) adverting to this point, said: 'When it comes to a question of quantity, it must be very vague. One writer might take all the vital part of another's book, though it might be but a small proportion of the book in quantity. It is not only quantity, but value, that is always looked to. It is useless to refer to any particular cases, as to quantity.' In short, we must often, in deciding questions of this sort, look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects of the original work. Many mixed ingredients enter into the discussion of such questions. In some cases, a considerable portion of the materials of the original work may be fused, if I may use such an expression, into another work, so as to be undistinguishable in the mass of the latter, which has other professed and obvious objects, and cannot fairly be treated as a piracy; or they may be inserted as a sort of distinct and mosaic work, into the general texture of the second work, and constitute the peculiar excellence thereof, and then it may be a clear piracy. If a person should, under color of publishing 'Elegant Extracts' of poetry, include all the best pieces at large of a favorite poet, whose volume was secured by

In the case of Lewis *v.* Fullerton, an attempt was made to justify the taking of portio .s of the plaintiff's work, under a fair use of a former publication; but an injunction was granted, the court being satisfied that the defendant, in the compilation of his book, had habitually made use of all that suited his purpose in the plaintiff's work [1]

a copyright, it would be difficult to say, why it was not an invasion of that right, since it might constitute the entire value of the volume.

"In the present case, I have no doubt whatever, that there is an invasion of the plaintiffs' copyright; I do not say designedly, or from bad intentions; on the contrary, I entertain no doubt, that it was deemed a perfectly lawful and justifiable use of the plaintiffs' work. But if the defendants may take three hundred and nineteen letters, included in the plaintiffs' copyright, and exclusively belonging to them, there is no reason why another bookseller may not take other five hundred letters, and a third, one thousand letters, and so on, and thereby the plaintiffs copyright be totally destroyed. Besides; every one must see, that the work of the defendants is mainly founded upon these letters, constituting more than one third of their work, and imparting to it its greatest, nay, its essential value. Without those letters, in its present form, the work must fall to the ground. It is not a case, where abbreviated or select passages are taken from particular letters; but the entire letters are taken, and those of most interest and value to the public, as illustrating the life, the acts, and the character of Washington. It seems to me, therefore, that it is a clear invasion of the right of property of the plaintiffs, if the copying of parts of a work, not constituting a major part, can ever be a violation thereof; as upon principle and authority, I have no doubt it may be. If it had been the case of a fair and *bona fide* abridgment of the work of the plaintiffs, it might have admitted of a very different consideration." See also Mawman *v.* Tegg, 2 Russ. 383. Sweet *v.* Shaw, Am. Jurist, vol. i. p. 212.

[1] Lewis *v.* Fullerton, 2 Beavan's R. 6, 8. In this case, Lord Langdale, M. R. said, "Any man is entitled to write and publish a topographical dictionary, and to avail himself of the labors of all former writers whose works are not subject to copyright, and of all public sources of information; but whilst all are entitled to resort to common sources of information, none are entitled to save themselves trouble and expense by availing themselves, for their own profit, of other men's works still subject to copyright and entitled to protection; and the question is, whether Mr. Bell did or did not, for the compilation of the work in which he was engaged, avail himself of the plaintiff's work unlawfully, and in violation of the plaintiff's copyright. For the purpose of ascertaining this, I have read a very considerable number of articles in both works; the trouble of comparing them has been greatly dimin-

The question has also arisen, whether it is lawful to publish verbatim cases from the Law Reports, upon certain subjects, or a selection of such cases, with annotations. Lord Cottenham, upon the book entitled "Smith's Leading Cases," assuming, but not deciding, the legal question of an infringement, was obliged to refuse an injunction, upon the ground of acquiescence on the part of the plaintiff.[1] But in

ished by the exhibits which have been prepared on both sides; and the result of the examination appears to me to show that Mr. Bell, in the compilation of his gazetteer, has extensively, and as far as my examination has gone, it would not be too much to say, habitually, made use of all that suited his purpose in the plaintiff's work; it is evident, that in a large proportion of the defendant's work, no other labor has been applied than in copying the plaintiff's work, and arranging the matter in the form which best suited the purpose of the compiler. Mr. Bell has evidently thought himself under no restraint, and probably did not think that the plaintiffs were entitled to any copyright; and if that which he did could be considered as lawful, it is plain no protection whatever could be given to any work in the nature of a gazetteer, dictionary, road-book, calendar, map or any other work, the subject-matter of which is open to common observation and inquiry; and that every man who had bestowed any amount of labor or expense in collecting and arranging the information requisite for the production of such a work, might immediately on its publication, be deprived of the fruit of his industry and ability. Having gone carefully through all the articles commented upon in the argument, and several others, I am of opinion that the defendant's work is, to a very considerable extent, a piracy of the plaintiff's copyright."

[1] Saunders v. Smith, 3 M. & Cr. 711. 728. In regard to the legal right, his lordship said, "In this case, I find the publication complained of to be of a character which, whether it be or be not an infringement of the copyright of the plaintiffs, is a course of proceeding which has been pretty largely admitted, and pretty generally adopted. Several cases occurred to me, and several were mentioned to me at the bar, in which a gentleman at the bar, desirous of publishing a work upon a particular subject, has collected the cases upon that subject, and has taken those cases, generally speaking, verbatim, from reports which are covered by copyright. No instance has been represented to me in which those entitled to the copyright have interfered; no judgment, therefore, has been pronounced upon that subject. I am not stating whether the owner of the copyright is entitled to interfere in such a case, or whether that use of published reports is or is not to be permitted. That is a question of legal right, upon which I find, at present, no reason for coming to an adjudication." Mr. Justice Story, referring to this case, said, "Much

a similar case, Sir L. Shadwell, V. C. granted an injunction upon the ground of injury to the plaintiff, where eleven cases only had been copied *verbatim*; but a considerable number of what were called abridged cases were, in truth, copies of the plaintiff's volumes, with slight alterations.[1]

The same principle is to be applied to books, which, under the ostensible purpose of criticism or illustration, give extracts from other publications; although it is to be admitted that fair criticism may be illustrated by fair quotation. Thus, where the defendant published a book, giving specimens of Modern English Poetry, with criticisms and biographical notices, and inserted therein entire poems and extracts from poems written by Mr. Campbell, which were under the protection of copyright, an injunction was granted in his favor against the publication.[2] In this case the *animus furandi* was held to be implied by law, from the taking.[3]

must in such cases depend upon the nature of the work, the value and extent of the copies, and the degree in which the original authors may be injured thereby." Foisom *v.* Marsh, 2 Story's R. 118.

[1] Sweet *v.* Shaw, The Jurist, vol. i. p. 212; S. C. 17 Law J. 216. This subject came under consideration in the case of Wheaton *v.* Peters, 8 Peters S. C. R. 591, in relation to the Reports of Cases in the supreme court of the United States; but the court held that there could be no copyright in the opinions of the judges of that court, which are published under an act of congress. But it was not doubted, it seems, that the reporter had copyright in his marginal notes and in the arguments of counsel, as prepared and arranged in his work. See Gray *v.* Russell, 1 Story's R. 11, 21.

[2] Campbell *v.* Scott, 11 Simons, 31.

[3] Ibid. I must here express my dissent from the doctrines laid down by Mr. Godson on the subject of quotations. In his work on Patents and Copyrights, p. 477, Mr. Godson says, "In judging of a quotation, whether it is fair and candid, or whether the person who quotes it has been swayed by the *animus furandi*; the quantity taken, and the manner in which it is adopted, of course

Upon the whole, the doctrine of the law with regard to quotations may be thus stated. To forbid to subsequent writers the citation of passages from the works of their predecessors, under all circumstances, would be a great obstacle to the progress of science and knowledge. If the extract is acknowledged, the acknowledgment shows that the party did not intend to pass as his own what belongs to another, and thus a presumption arises that he did not make use of the passage for the purpose of turning it to his own pecuniary account. Still, there must be a limit even to the citation of passages which are accompanied by an acknowledgment of the source from which they are taken; and there is no more definite and consistent limit than the point where an injury may be perceived, which varies of course in each

must be considered. If the work complained of is in substance a copy, then it is not necessary to show the intention to pirate; for the greater part of the matter of the book having been purloined, the intention is apparent, and other proof is superfluous. A piracy has undoubtedly been commited. But if only a small portion of the work be quoted, then it becomes necessary to prove that it was done *animo furandi;* with the intention of depriving the author of his just reward, by giving his work to the public in a cheaper form. And then the mode of doing it becomes a subject for inquiry. For it is not sufficient to constitute a piracy, that part of one author's book is found in that of another, unless it be nearly the whole, or so much as will show (being a question of fact for the jury) that it was done with a bad intent, and that the matter which accompanies it has been colorably introduced." It is certainly necessary, in determining whether the *animus furandi* exists, to look at the quantity taken and the manner in which it was taken. But the more recent authorities, as well as sound principle, do not look at the intention, whether the quantity be large or small. If an injury is caused, there is no occasion to prove the intention directly, or to establish it by inference from the circumstances. If part of one author's book is found in that of another, the question will be, what effect is it to have? not whether it was taken with a bad intent.

case, and is not by our law supposed to be capable of a distinct announcement by a positive rule.[1]

3. Piracy by imitation, or by reproducing with colorable alterations and disguises assuming the appearance of a new work.

This is, by far, the most frequent form in which the copyright of authors is infringed. Copying is not confined to literal repetition, but includes also the various modes in which the matter of any publication may be adopted, imitated, or transferred, with more or less colorable alterations to disguise the piracy. The main question in all such cases is, whether the author of the work, alleged to be a piracy, has resorted to the original sources, alike open to him and to all writers, or whether he has adopted and used the matter or plan of the work with the infringement of which he is charged, without resorting to the other sources from which he had a right to borrow. We have seen, in a former chapter, what is the just extent of an author's right in his own work. It is there laid down, that no writer

[1] In some countries, however, an arbitrary limit has been fixed by legislation. In Russia, quotations are permitted, provided the quantity taken does not exceed one-third of the book from which they are taken; and provided that the writer's own text is twice as large as the passages taken by him from another work. Renouard, tom. 1, p. 207. The Prussian code excepts from the penalties of piracy "the literal citation of *isolated passages* of a work already printed, and the reproduction of isolated articles, poems, &c. in works of literary history, or in collections for the use of schools." Upon this text, M. Renouard observes that we may conclude from the exceptions introduced into the law, that more important extracts would be deemed piratical. (Tom. 2, p. 17-18.)

can acquire an exclusive title to a subject, but that the results and products of his own intellectual labor, however common the subject, and however numerous and public the sources from which he has taken his materials, exclusively belong to him. In some cases, these results and products will appear in the new forms and combinations given to old materials, and in other cases they will consist merely in the collection and arrangement of information open to any one to collect, but collected perhaps by the particular writer for the first time. In all cases, the inquiry must start with assuming the general principle, that every writer is at liberty to treat of any subject whatever, whether it has been previously written upon by others or not; and then it resolves itself into the question, whether he has made any, and if any, whether he has made a lawful use of the particular work which he is alleged to have infringed.[1]

Comparison of the two works is, of course, the test to which the question should be brought. Among the proofs of piracy, upon which the courts have been much in the habit of relying, is the occurrence of the same inaccuracies in the two books; and when the question is, whether the defendant, in preparing his book, had before him and copied or imitated the book

[1] Longman *v.* Winchester, 16 Ves. 269. Mathewson *v.* Stockdale, 12 Ves. 270. Cary *v.* Faden, 5 Ves. 24. Tonson v. Walker, 3 Swanst. 672. Carnan *v.* Bowles, 2 Bro. Ch. R. 80. Mawman *v.* Tegg, 2 Russ. 385, 393. Roworth *v.* Wilkes, 1 Campb. 94. Sayre *v.* Moore, 1 East, 361, 362. Trusler *v.* Murray, 162, n. Cary *v.* Longman, 1 East, 360, Wilkins *v.* Aikin, 16 Ves. 422. Hogg *v.* Kirby, 8 Ves. 215. Cary *v.* Kearsley, 4 Esp. 169. 170. Gray *v.* Russell, 1 Story, 11. Emerson *v.* Davies, 3 Story, 768.

of the plaintiff, it is manifest that this kind of evidence is the strongest proof, short of direct evidence, of which the fact is capable. Thus, where the question was, whether, in a vast proportion of the work of the defendants, any other labor had been applied than copying the plaintiffs' work, Lord Eldon said, that from the identity of the inaccuracies, it was impossible to deny that the one was copied from the other *verbatim et literatim*.[1] So too, where the question was, how much of the plaintiff's book had been copied by the defendant, his lordship carried the force of the evidence from identity of inaccuracies so far, as to lay down the principle, that when a considerable number of passages are proved to have been copied by the copying of the blunders in them, other passages, which are the same with passages in the original book, must be presumed, *prima facie*, to be likewise copied, though no blunders occur in them.[2] But this kind of proof is often wanting; and where it is not found, it is necessary to determine by other results of the comparison, whether an unlawful use has been made of the plaintiffs' book. In many cases, the occurrence of passages identically the same, or but slightly varied, but not having the ear-mark of inaccuracies, has been held conclusive proof of piracy, even in that class of works in which, from the nature of the subject, there must be strong

[1] Longman *v.* Winchester, 16 Ves. 269.

[2] Mawman *v.* Tegg, 2 Russ. 385, 393. See also Cary *v.* Kearsly, 4 Esp. 169, 170.

resemblances between any two books in which it is treated, such as dictionaries, encyclopedias, calendars, road-books, and the like.[1] But where the resemblance does not amount to identity of parallel passages, the question becomes, in substance, this — whether there be such similitude and conformity between the two books, that the person who wrote the one must have used the other, as a model, and must have copied or imitated it?[2] In these cases, the piracy is to be detected, through what have been called colorable alteration and servile imitation. The doctrines which have been laid down, with reference to this class of cases, require here a careful examination.

What degree of resemblance will authorize the inference that one book is a copy of another, notwithstanding the diversities that may be found in them, is a question of great nicety, which must depend on the circumstances of each case. In a case where the defendant had compiled into one large map four charts belonging to the plaintiff, and the

[1] Mathewson *v.* Stockdale, 12 Ves. 270. Carnan *v.* Bowles, 2 Bro. Ch. R. 80. Cary *v.* Longman, 1 East, 360. Mawman *v.* Tegg, 2 Russ. 385, 393. Gray *v.* Russell, 1 Story, 11.

[2] In a case concerning prints, Lord Ellenborough said to the jury, "It is still to be considered, whether there be such a similitude and conformity between the prints, that the person who executed the one set must have used the others as a model. In that case, he is a copyist of the main design. But if the similitude can be supposed to have arisen from accident, or necessarily from the nature of the subject, or from the artist having sketched designs merely from reading the letter-press of the plaintiff's work, the defendant is not answerable. It is remarkable, however, that he has given no evidence to explain the similitude, or to repel the presumption which that necessarily causes." Roworth *v.* Wilkes, 1 Campb. 94.

fact of his having so done was to be ascertained, Lord Mansfield said, "The act that secures copyright to authors, guards against the piracy of the words and sentiments; but it does not prohibit writing on the same subject. As in the case of histories and dictionaries: In the first, a man may give a relation of the same facts, and in the same order of time; in the latter, an interpretation is given of the identical same words. In all these cases, the question of fact to come before a jury is, whether the alteration be colorable or not? There must be such a similitude as to make it probable and reasonable to suppose that one is a transcript of the other, and nothing more than a transcript. So, in the case of prints, no doubt different men may take engravings from the same picture. The same principle holds with regard to charts, whoever has it in his intention to publish a chart, may take advantage of all prior publications. There is no monopoly of the subject here, any more than in the other instances; but upon any question of this nature, the jury will decide whether it be a servile imitation or not."[1]

So, also, Lord Kenyon, in an action for pirating a book of chronology, said, "The main question here is, whether in substance the work is a copy and imitation of the other; for undoubtedly in a chronological work the same facts must be related."[2]

[1] Sayre *v.* Moore, 1 East, 361, 362, n.

[2] Trusler *v.* Murray, 1 East, 363, n. See also, for applications

Mr. Justice Story, in a case where the same question arose, held that the resemblances in the parts and pages which correspond, must be so close, full, uniform and striking, as fairly to lead to the conclu-
[illegible]n that the one book is a substantial copy of the
[illegible]er, or mainly borrowed from it: in short, that there is a substantial identity between them.[1] The

of the same doctrine. Cary *v.* Longman, 1 East, 358. Mathewson *v.* Stockdale, 12 Ves 270. Longman *v.* Winchester, 16 Ves. 269. Wilkins *v.* Aiken, 17 Ves. 422.

[1] Emerson *v.* Davies, 3 Story's R. 768. In this case the court said, "The case, therefore, comes back at last to the naked consideration, whether the book of Davies, in the parts complained of, has been copied substantially from that of Emerson, or not. It is not sufficient to show, that it may have been suggested by Emerson's, or that some parts and pages of it have resemblances, in method and details and illustrations, to Emerson's. It must be further shown, that the resemblances in those parts and pages are so close, so full, so uniform, so striking, as fairly to lead to the conclusion that the one is a substantial copy of the other, or mainly borrowed from it. In short, that there is substantial identity between them. A copy is one thing, an imitation or resemblance another. There are many imitations of Homer in the Æneid; but no one would say that the one was a copy from the other. There may be a strong likeness without an identity; and as was aptly said by the learned counsel for the plaintiff in the close of his argument, *Facies non omnibus una, nec diversa tamen, sed qualem debet esse sororum.* The question is, therefore, in many cases, a very nice one, what degree of imitation constitutes an infringement of the copyright in a particular work. It is very clear that any use of materials, whether they are figures or drawings, or other things which are well-known and in common use, is not the subject of a copyright, unless there be some new arrangement thereof. Still, even here, it may not always follow, that any person has a right to copy the figures, drawings, or other things, made by another, availing himself solely of his skill and industry, without any resort to such common source." And after commenting on the cases of Barfield *v.* Nicholson, (2 Sim. & Stu. 1,) and the other authorities cited in the last preceding note, the learned judge said, "So that, I think, it may be laid down as the clear result of the authorities in cases of this nature, that the true test of piracy or not is to ascertain whether the defendant has, in fact, used the plan, arrangements, and illustrations of the plaintiff, as the model of his own book, with colorable alterations and variations only to disguise the use thereof; or whether his work is the result of his own labor, skill, and use of common materials and common sources of knowledge, open to all

question therefore, comes to this, in almost all such cases, whether the defendant has, in substance copied from the plaintiff's work, with merely colorable alterations and devices, to disguise the copying, or whether the resemblances are merely accidental, and naturally or necessarily grew out of the subject, without any use of the plaintiff's work. If the court can see proof that the defendant had the work of the plaintiff before him, and used it as a model for his own, in copying and imitating it, without drawing from common sources or common materials, it will hold the resemblances to be not accidental, and not necessary, notwithstanding the alterations and disguises which may have been introduced.[1]

Many persons seem to labor under the mistake of supposing that books of the character of compilations may be used with impunity; and that, generally, where the materials made use of by an author can be traced to other sources, his copyright cannot prevent the use of those materials by others. The whole distinction, in such cases, which is entirely overlooked by those who set up this kind of defence, is this; that every subsequent writer has a right to resort to the common sources for the same learning,

men, and the resemblances are either accidental or arising from the nature of the subject. In other words, whether the defendant's book is *quoad hoc*, a servile or evasive imitation of the plaintiff's work, or a *bona fide* original compilation from other common or independent sources."

[1] Ibid. It is not necessary, to amount to piracy, that the one work should be a copy of the other, and not an imitation. There may be a close imitation, so close as to be a mere evasion of the copyright, without being an exact and literal copy. *Ibid.*

and to make use of it at his pleasure; but if he takes it from one whose book is protected by copyright, who has collected and arranged it in a form and method peculiar to himself, and gives it out to the world in that form, without resorting to the original sources, he is guilty of piracy.[1] Thus, if a person prepares notes to an old work, the materials of which are selected from various authors who have written at different periods, but are collected and embodied by him for the first time, it is piracy to

[1] "There is no foundation in law," says Mr. Justice Story, "for the argument, that because the same sources of information are open to all persons, and by the exercise of their own industry and talents and skill, they could, from all these sources, have produced a similar work, one party may at second hand, without any exercise of industry, talents, or skill, borrow from another all the materials, which have been accumulated and combined together by him. Take the case of a map of a county, or of a state, or an empire; it is plain, that in proportion to the accuracy of every such map, must be its similarity to, or even its identity with, every other. Now, suppose a person has bestowed his time and skill and attention, and made a large series of topographical surveys in order to perfect such a map, and has thereby produced one far excelling every existing map of the same sort. It is clear, that notwithstanding this production, he cannot supersede the right of any other person to use the same means by similar surveys and labors to accomplish the same end. But it is just as clear, that he has no right, without any such surveys and labors, to sit down and copy the whole of the map already produced by the skill and labors of the first party, and thus to rob him of all the fruit of his industry, skill, and expenditures. It would be a downright piracy."

"Neither is it of any consequence in what form the works of another author are used; whether it be by a simple reprint or by incorporating the whole or a large portion thereof in some larger work. Thus, for example, if in one of the large Encyclopædias of the present day, the whole or a large portion of a scientific treatise of another author, as, for example, one of Dr. Lardner's or Sir John Herschel's, or Mrs. Somerville's treatises, should be incorporated, it would be just as much a piracy upon the copyright, as if it were published in a single volume." Gray *v.* Russell, 1 Story's R. 11, 18. See also, Emerson *v.* Davies, 3 Story's R. 768. Barfield *v.* Nicholson, 2 Sim. & Stu. 6. Wyatt *v.* Barnard, 3 V. & B. 77. Matthewson *v.* Stockdale, 2 Ves. 270. Wilkins *v.* Aiken, 17 Ves. 422. Merlin, Rep. de Jurisp. tit. Contrefaçon, vol. 3, p. 701, *et seq.*

transcribe them, and it is no defence to show that any other person might have made a similar selection and compilation.[1] In such cases, if the same matter is found expressed in the same phraseology, or the same materials are found arranged in the same form and method, in two books, a violent presumption arises that the author of the later copied from the earlier book, and did not resort to the common sources. This presumption will approach more or less near to being conclusive, according to the identity of the two works.[2]

Another and more difficult question may arise, where an author has directly made use of the work of a previous writer, with the *bona fide* intention of adding to and improving the information which the wants of the public may require, upon the particular subject. This question occurs most frequently in relation to all that class of works devoted to statistical or other information. There are *dicta* of English judges, which seem to recognize the right of using previous publications of this kind, with real improvements and additions;[3] and there is one case, at Nisi Prius, where a verdict is reported to have been found upon this principle, under the direction of Lord Mansfield. It was a case of charts; and his lordship instructed the jury, that if they found the defendant,

[1] Gray *v.* Russell, 1 Story's R. 11.

[2] Ibid. Emerson *v.* Davies, 3 Story's R. See also, ante, Chap. II.

[3] The most important of these *dicta* have been examined, ante, in connection with the subject of quotation.

although he used the plaintiff's chart, had been correcting errors, and not servilely copying, they should find a verdict for the defendant; but that if it was a mere servile imitation, they should find for the plaintiff.[1]

[1] Sayre *v.* Moore, at Guildhall, 1785. Reported 1 East, 361, n. *b*. It is manifest that the verdict was carried upon the strong testimony of the witnesses for the defendant, and, as I conceive, against principle. The following is the report, but the source from which it was derived is not stated. "The charts which had been copied were four in number, which Moore had made into one large map. It appeared in evidence that the defendant had taken the body of his publication from the work of the plaintiffs, but that he had made many alterations and improvements thereupon. It was also proved that the plaintiffs had originally been at a great expense in procuring materials for these maps. Delarochett, an eminent geographer and engraver, had been employed by the plaintiffs in the engraving of them. He said that the present charts of the plaintiffs were such an improvement on those before in use, as made an original work. Besides their having been laid down from all the charts and maps extant, they were improved by many manuscript journals and printed books and manuscript relations of travellers: he had no doubt the materials must have cost the plaintiffs between 3000*l*. and 4000*l*., and that the defendant's chart was taken from these of the plaintiffs, with a few alterations. In answer to a question from the court, whether the defendant had pirated from the drawings and papers, or from the engravings, he answered, from the engravings. — Winterfelt, an engraver, said he was actually employed by the defendant to take a draft of the Gulf Passage (in the West Indies) from the plaintiffs' map.

"Many witnesses were called on behalf of the defendant, amongst others a Mr. Stephenson and Admiral Campbell. Mr. Stephenson said he had carefully examined the two publications; that there were very important differences between them, much in favor of the defendant's. That the plaintiffs' maps were founded upon no principle; neither upon the principle of the Mercator, nor the plain chart, but upon a corruption of both. That near the equator the plain chart would do very well, but that as you go further from the equator, there you must have recourse to the Mercator. That there were very material errors in the plaintiffs' maps. That they were in many places defective in pointing out the latitude and longitude, which is extremely essential in navigating. That most of these, as well as errors in the soundings, were corrected by the defendant. Admiral Campbell observed, that there were only two kinds of charts, one called a plain chart, which was now very little used; the other, which is the best, called the Mercator, and which is very accurate in the degrees of latitude and longitude. That this distinction was very necessary in the higher latitudes, but in places near the equator it made little or no difference. That the plaintiffs' maps were upon no principle recognized

The doctrine which this case, if correctly reported, explicitly sanctions, is, that where a work, though protected by statute, is erroneous, any person may make a direct use of it, copying the whole, provided he corrects the errors, without resorting to the original sources of information, or without making a new survey, in the case of maps or charts. This doctrine may be very convenient in some of its aspects; but it admits of great doubt, whether it is consistent with the rights of original authors. The question is not, whether the author of the improvements, nor the progress of the arts be retarded. The act that secures copyright to authors guards against the piracy of the words and sentiments; but it does not prohibit writing on the same subject. As in the case of histories and dictionaries. In the first, a man may give a relation of the same facts, and in the same order of time; in the latter an interpretation is given of the identical same words. In all these cases the question of fact to come before a jury is, whether the alteration be colorable or not? there must be such a similitude as to make it

among seamen, and no rules of navigation could be applied to them; and they were therefore entirely useless.

"Lord Mansfield, C. J. The rule of decision in this case is a matter of great consequence to the country. In deciding it, we must take care to guard against two extremes, equally prejudicial; the one, that men of ability, who have employed their time for the service of the community, may not be deprived of their just merits, and the reward of their ingenuity and labor; the other, that the world may not be deprived of improvements, nor the progress of the arts be retarded. The act that secures copyright to authors guards against the piracy of the words and sentiments; but it does not prohibit writing on the same subject. As in the case of histories and dictionaries. In the first, a man may give a relation of the same facts, and in the same order of time; in the latter an interpretation is given of the identical same words. In all these cases the question of fact to come before a jury is, whether the alteration be colorable or not? there must be such a similitude as to make it probable and reasonable to suppose that one is a transcript of the other, and nothing more than a transcript. So in the case of prints, no doubt different men may take engravings from the same picture. The same principle holds with regard to charts. Whoever has it in his intention to publish a chart, may take advantage of all prior publications. There is no monopoly of the subject here, any more than in the other instances, but upon any question of this nature the jury will decide whether it be a servile imitation or not. If an erroneous chart be made, God forbid it should not be corrected even in a small degree, if it thereby become more serviceable and useful for the purposes to which it is applied. But here you are told, that there are various and very material alterations. This chart of the plaintiffs' is upon a wrong principle, inapplicable to navigation. The defendant therefore has been correcting errors, and not servilely copying. If you think so, you will find for the defendant; if you think it is a mere servile imitation, and pirated from the other, you will find for the plaintiffs."—Verdict for defendant.

ment and additions to an old work has a copyright in the additions and improvements. Of this, there can be no doubt.[1] But the question is, whether a work, at the time being under the protection of the statute, can be taken as the *subject* of an improvement.[2]

It is quite clear, that every part of the original work is under the protection of the law. Where the defendant takes a part of the original work, without altering it, he takes what requires no improvement, by directly copying it. Why should the addition of valuable original matter of his own give him a right to do that which he cannot do, where his alterations and additions are merely colorable? In the one case, he seeks to disguise the fact of having copied from the plaintiff; in the other, he does not conceal the copying, but says he has added valuable original matter of his own. In both cases, the question must recur, whether he has taken and used what belonged to another? The general doctrine of the law is, that "none are entitled to save themselves trouble and expense, by availing themselves, for their own profit, of other men's works, still entitled to the protection of copyright;"[3] and the modern course, in courts of

[1] Cary *v.* Longman, 1 East, 358. Mason *v.* Murray, cited S. C.

[2] In the analogous case of patent rights, the subject of an existing and valid patent cannot be taken as the superstructure of an improvement. If the improvement cannot be used without the subject of an existing grant, the inventor of the improvement must wait until that grant has expired. But he may take out a patent for the improvement by itself, and sell it. Godson on Patents, p. 62, 2d edit.

[3] Per Lord Langdale, M. R. in Lewis *v.* Fullerton, 2 Beav. 6.

equity, is, to grant an injunction as to parts of a work pirated, although it contains much that is original.[1]

4. Piracy, by reproducing the whole or a part of a book, under an abridged form.

We have now to consider under what circumstances an ABRIDGMENT will constitute a violation of copyright. It has already been intimated, that the general doctrine of the English law on the subject of Abridgments needs revision. I propose here to examine the authorities, and to suggest some reasons why the doctrine which they seem to sanction cannot be carried out, consistently with the established rights of literary property.

The earliest case, in which there is a distinct recognition of abridgments, is Gyles *v.* Wilcox, in which the book charged to have been infringed was Sir Matthew Hale's Pleas of the Crown. In this case a distinction was taken between abridgments "fairly made," and works "colorably shortened." The doctrine was recognized, that a real and fair abridgment may with propriety be called a new book, because the invention, learning and judgment of the maker are shown in it. But the book in question was held not to be a fair abridgment, but merely "colorably shortened," by leaving out cer-

[1] Ibid. Mawman *v.* Tegg, 2 Russ. 385. Folsom *v.* Marsh, 2 Story, 100.

tain passages and translating Latin and French quotations.[1]

The next was a case relating to no less a book than Dr. Johnson's Rasselas. The defendant printed part of the narrative in a magazine, leaving out the reflections; and justified upon the ground of a fair abridgment, among other points of defence. Sir Thomas Clarke, M. R. said, that, "no certain line can be drawn, to distinguish a fair abridgment; but every case must depend on its own circumstances." It appeared that a small quantity only had been abstracted, and the plaintiffs had themselves printed a part of the work in a magazine; a circumstance upon which the court chiefly relied, as showing that they could not be prejudiced by what the defendants had done. The learned judge, however, seems to have recognized the doctrine of fair abridgments, inasmuch as he said that if he were to hold this to be elusory, he must hold every abridgment to be so; and he seems to have considered, that when a fair

[1] Gyles *v.* Wilcox, 2 Atkyns, 141, 143. Lord Hardwicke said, "Where books are colorably shortened only, they are undoubtedly within the meaning of the act of parliament, and are a mere evasion of the statute, and cannot be called an abridgment. But this must not be carried so far as to restrain persons from making a real and fair abridgment, for abridgments may with great propriety be called a new book, because not only the paper and print, but the invention, learning and judgment of the author is shown in them, and in many cases are extremely useful. Though in some instances prejudicial, by mistaking and curtailing the sense of the author. If I should extend the rule so far as to restrain all abridgments, it would be of mischievous consequence, for the books of the learned, *les Journels des Scavans*, and several others that might be mentioned, would be brought within the meaning of the act of parliament." See also the case of Read *v.* Hodges, referred to in Tonson *v.* Walker, 3 Swanston, 672, 679.

abridgment is made, the question of injury to the original author cannot be considered.[1]

In the next case, we find for the first time an effort to define a true and proper abridgment. The book in question was an abridgment of Hawksworth's Voyages. The rule was laid down by Lord Chancellor Apsley, assisted by Sir William Blackstone; and it seems to have been adjudged, that where the understanding is employed in retrenching unnecessary and uninteresting circumstances, which rather deaden the narration, it is not an act of plagiarism upon the original work, nor against any property of the author in it, but an allowable and meritorious work.[2]

A few years afterwards, Sir Thomas Sewell, M. R. in a case of an abridgment of a biography, said that if it was a fair *bona fide* abridgment of the larger work, several cases in the court of chancery had decided an abridgment in the nature of a new and a meritorious work.

[1] Dodsley *v.* Kinnersley, Ambl. 403. The report is very imperfect.

[2] Anon. Lofft's R. 775. "On a bill praying an injunction against an edition by Mr. Newbery of an abridgment of Dr. Hawkesworth's Voyages, the Lord Chancellor was of opinion that this abridgment of the work was not any violation of the author's property whereon to ground an injunction. That to constitute a true and proper abridgment of a work, the whole must be preserved in its sense: and then the act of abridgment is an act of understanding, employed in carrying a large work into a smaller compass, and rendering it less expensive and more convenient both to the time and use of the reader. Which made

"That this had been done by Mr. Newbery, whose edition might be read in the fourth part of the time, and all the substance preserved, and conveyed in language as good or better than in the original, and in a more agreeable and useful manner. That he had consulted Mr. Justice Blackstone, whose knowledge and skill in his profession was universally known, and who as an author himself had done honor to his country. That they had spent some hours together, and were agreed that an abridgment, where the understanding is employed in retrenching unnecessary and uninteresting circumstances, which rather deaden

cided that an injunction should not be granted; and he referred to the case of Hawkesworth's Voyages. But it being shown that passages were taken *verbatim* from the original work, he granted an injunction, until answer and further order.[1]

In a subsequent case, an attempt was made to justify a selection of cases from the Term Reports, upon the ground of a fair abridgment; but it appeared that the cases had been arranged under heads and titles, instead of chronologically, and in this way had been copied *verbatim*. An injunction was accordingly granted.[2]

The foregoing are all the English authorities on this subject, and they show that for a considerable length of time the notion has prevailed, that what is called a *bona fide* abridgment may be made, without violating the right of property of the original author.[3]

the narrative, is not an act of plagiarism upon the original work, nor against any property of the author in it, but an allowable and meritorious work. And that this abridgment of Mr. Newbery's falls within these reasons and descriptions. Therefore the bill praying an injunction ought to be dismissed."

[1] Bell *v.* Walker, 1 Bro. Ch. R. 451.

[2] Butterworth *v.* Robinson, 5 Ves. 709.

[3] Among text-writers, Mr. Godson has laid down a doctrine too broad to be subscribed to, if we are to continue any protection to literature.

"Nearly upon the same principles, by which it is shown that there cannot be a monopoly of a general subject, it appears that *books themselves* for certain purposes, besides the mere act of reading them, may be used by the public. They are, in fact, general subjects — data — which may afford opportunites for other persons besides the authors to exercise their ingenuity. They may be taken as the groundwork of other literary labors. Thus a copyright may exist in *abridgments* or *translations* of works. Also in the *notes and additions* printed in a new edition of a book, over which the right of the author has expired. For one man may compose a work, for instance in the Latin language, another abridge it, a third translate it, and a fourth write annotations

In America, the subject has been only incidentally discussed. The authorities referred to in the note below, will fully justify an examination of the question *de novo*.[1]

upon it; and every one of them will acquire a copyright in the product of his own ingenuity and labor.

"Many valuable works are so voluminous that abridgments of them are extremely useful. To make them, some judgment must be exercised, and some labor employed; and therefore the authors of them ought certainly to be encouraged. In general, an abridgment tends to the advantage of the author, if the composition be good; and may serve the end of an advertisement. The inquiry, whether the work is prejudiced by the manner of making the abridgment, cannot be entertained." Godson, page 344.

[1] Mr. Justice Story, in Gray *v.* Russell, 1 Story's R. 19, 21, said, "In some cases, indeed, it may be a very nice question, what amounts to a piracy of a work, or not. Thus if large extracts are made therefrom in a review, it might be a question, whether those extracts were designed *bona fide* for the mere purpose of criticism, or were designed to supersede the original work under the pretence of a review, by giving its substance in a fugitive form. The same difficulty may arise in relation to an abridgment of an original work. The question, in such a case, must be compounded of various considerations; whether it be a *bona fide* abridgment, or only an evasion by the omission of some unimportant parts; whether it will, in its present form, prejudice or supersede the original work; whether it will be adapted to the same class of readers; and many other considerations of the same sort, which may enter as elements, in ascertaining whether there had been a piracy or not. Although the doctrine is often laid down in the books, that an abridgment is not a piracy of the original copyright; yet this proposition must be received with many qualifications. In many cases, the question may naturally turn upon the point, not so much of the quantity as of the value of the selected materials. As was significantly said on another occasion, *Non numerantur, ponderantur.* The quintessence of a work may be piratically extracted, so as to leave a mere *caput mortuum*, by the selection of all the important passages in a comparatively moderate space. In the recent case of Bramwell *v.* Halcomb, (3 Mylne & Craig, 737,) it was held, that the question, whether one author has made a piratical use of another's work, does not necessarily depend upon the quantity of that work, which he has quoted or introduced into his own book. On that occasion, Lord Cottenham said, 'When it comes to a question of quantity, it must be very vague. One writer might take all the vital part of another's book, though it might be but a small proportion of the book in quantity. It is not only quantity, but value, which is looked to. It is useless to look to any particular cases about quantity.' The same subject was a good deal considered by the same learned judge in Saunders *v.* Smith, (3 Mylne & Craig R. 711, 728, 729,) with reference to copyright in Reports; and how far another person was at

The definition of an abridgment given in the case decided by Lord Chancellor Apsley, has certainly come down to us with some weight of authority, from the circumstance that he was assisted by Sir

liberty to extract the substance of such reports, or to publish select cases therefrom, even with notes appended. In the case of Wheaton *v.* Peters, (8 Peters's R. 591,) the same subject was considered very much at large. It was not doubted by the court, that Mr. Peters's Condensed Reports would have been an infringement of Mr. Wheaton's copyright, (supposing that copyright properly secured under the act,) if the opinions of the court had been, or could be, the proper subject of the private copyright by Mr. Wheaton. But it was held that the opinions of the court, being published under the authority of congress, were not the proper subject of private copyright. But it was as little doubted by the court, that Mr. Wheaton had a copyright in his own marginal notes, and in the arguments of counsel as prepared and arranged in his work. The cause went back to the circuit court for the purpose of further inquiries as to the fact, whether the requisites of the act of congress had been complied with or not by Mr. Wheaton. This would have been wholly useless and nugatory, unless Mr. Wheaton's marginal notes and abstracts of arguments could have been the subject of a copyright (for that was all the work which could be the subject of copyright;) so that if Mr. Peters had violated that right, Mr. Wheaton was entitled to redress."

In 2 Story's Eq. Jurisp. § 939, the learned author says, "But what constitutes a *bona fide* case of extracts, or a *bona fide* abridgment, or a *bona fide* use of common materials, is often a matter of most embarrassing inquiry. The true question, in all cases of this sort, is, (it has been said,) whether there has been a legitimate use of the copyright publication, in the fair exercise of a mental operation, deserving the character of a new work. If there has been, although it may be prejudicial to the original author, it is not an invasion of his legal rights. If there has not been, then it is treated as a mere colorable curtailment of the original work, and a fraudulent evasion of the copyright. But this is another mode of stating the difficulty, rather than a test, affording a clear criterion to discriminate between the cases."

Mr. Chancellor Kent, referring to the case of Dodsley *v.* Kinnersley, says, "This latitudinary right of abridgment is liable to abuse, and to trench upon the copyright of the author. The question as to a *bona fide* abridgment may turn not so much upon the quantity as the value of the selected materials." 2 Kent's Com. 382, note.

Lord Campbell, in his Life of Lord Hardwicke, referring to the case of Gyles *v.* Wilcox, says; "I must own that I much question another rule he laid down with respect to literary property, although it has not yet been upset. . . I confess I do not understand why an abridgment tending to injure the reputation and lessen the profits of the author, should not be considered an invasion of his property." Campbell's Lives of the Chancellors, v. 56.

William Blackstone, brief as the report of the case is. It is also to be admitted, that the result to which those learned persons came, is in accordance with the doctrine which had been previously recognized by Lord Hardwicke, and which seems, so far as the reported cases show have been tacitly received into the English law.[1]

There can be no doubt that the definition of an abridgment, given in the anonymous case in Lofft, is correct, in a critical sense. That the understanding must be employed in the act of "carrying a larger work into a smaller compass, and rendering it less expensive, and more convenient both to the time and use of the reader," and that when this is done, the person who does it exhibits, according to Lord Hardwicke, his own "invention, learning, and judgment," is obvious. But whether this can be done with any work really original and actually under the protection of copyright — whether the property of the original author can be taken, and the taking be justified, by any amount of learning, judgment, or invention, shown in the act by him who thus appropriates the property of another — is the great question which seems to be assumed, and not satisfactorily solved by these authorities. There are many modes in which the wrongful taker of another's property may exhibit vast talent and ingenuity, and even genius, both in the act of taking, and in the use

[1] There has been no instance in which the doctrine has been directly resisted and examined with reference to principle.

which he makes of it; so that he may really be said to have incorporated with it both his own labor and his own intellectual energy. But the question of original title is still apt inconveniently to recur in such cases. In like manner, invention, learning, and judgment are often shown in the appropriation of the literary labors of others; but the courts have not hesitated, on this account, to ascertain what part of a book, laboring under suspicion, was taken from the complainant; and if the title of the latter is made out, to grant redress, even to the destruction of all that the piratical author can call his own.[1] In the case of a colorable curtailment of the original work, there may be the exercise of a mental operation, as well as in a professed abridgment; and if the original author is injured by the latter, as well as by the former, it seems to be a very unsatisfactory answer in either case, to say, that his book has been made, by a mental operation, to wear the appearance of a new work. In both cases, the true inquiry is — Has anything been taken which belongs to another? In either case, the form under which the original matter reappears should be treated as a disguise; and the extent of the transformation shows only the extent to which the disguise has been carried, as long as anything remains which the original author can show to be justly and exclusively his own.

[1] See the cases of Gray *v.* Russell, 1 Story's R. 11. Emerson *v.* Davies, 3 Story's R. 768. Bramwell *v.* Halcomb, 3 M. & Cr. 737. Lewis *v.* Fullerton, 2 Beavan's R. 6. Mawman *v.* Tegg, 2 Russ. 385, 390.

It is necessary, therefore, in this inquiry, to look, not to the origin of the right of literary property, for the right is to be assumed, but to what that right includes. When the author of a book, of whatever kind, possessing the legal attributes of originality, has secured his copyright according to the prevailing law of his country, he has secured the exclusive right to print and publish his own book.[1] In the jurisprudence with which we are concerned, this right includes the whole book and every part of it; for we have seen, that there may be a piratical taking of extracts and passages, and that the quantity thus taken may be immaterial.[2] It includes also, or may include, the style, or language, and expression; the learning, the facts, or the narrative; the sentiment and ideas, as far as their identity can be traced; and the form, arrangement and combination which the author has given to his materials. These are, or may be, all distinct objects of the right of property; and in every work of originality, likely to be abridged, or capable of being abridged, they are all important objects of that right. However imperfectly the subject may have been regarded in former times, it is now, I think, to be regarded as settled, that whatever is metaphysically part or parcel of the intellectual contents of a book, if in a just sense original, is protected and included under the right of property vested by law in the author;

[1] As to the legal standard of originality, see ante Ch. V.

[2] Ante.

and it is very material to observe, that the arrange ment, the method, the plan, the course of reasoning, or course of narrative, the exhibition of the subject, or the learning of the book, may be, according to its character, as much objects of the right of property, as the language and the ideas.[1]

What then does the maker of an abridgment print, publish and sell, after he has made it? He has been employed, according to the definition above quoted, "in retrenching unnecessary and uninteresting circumstances, which rather deaden the narration;" that is to say, he has rejected what *in his judgment* are redundancies. Does this make him the author or proprietor of what remains? If the work be a history, did he, the person abridging it, compile the materials into their present shape, and describe the course of events, and embody the whole of what constitutes the intellectual contents of the book, or are these things the product of another's labor, research and faculty of writing? If it be a fictitious narrative, whose genius created the characters, and animated them with the sentiments which they utter, and invented the pleasing incidents of their mock existences, and wove the whole into the novel or

[1] Of course I do not mean to give any encouragement to the idea that a man may appropriate to himself learning that is open to every one, or that any exclusive property can be acquired in a subject. The position of the text is that of the authorities, that no subsequent writer can avail himself even of the learning and information collected by the original author, by copying from him without resorting to the common sources. See the cases of Gray *v.* Russell, 1 Story, 11; Emerson *v.* Davies, 3 Story, 768.

the poem; which exists as an intellectual whole, after as well as before the process by which "the unnecessary and uninteresting circumstances" are "retrenched?" Or if it be a work of science, or a treatise in any branch of knowledge, whose are the ideas, the course of reasoning and illustration, the plan and analysis of the subject, and the collection and arrangement of materials which constitute the identity of the book?[1] These questions can have but one answer; and if the abridgment, in any given case, consists solely in the reduction of the bulk of the volume, by the rejection of redundancies, it is a mere republication of a connected series of extracts, in a different juxtaposition from the original author's, to which the party had no title whatever. On the other hand, if the abridgment not only rejects redundancies, but also clothes the sentiments and ideas which may be left, in different phraseology, then it falls under the predicament of a colorable alteration, which cannot escape the censure of justice.

When we consider the incorporeal nature of lite-

[1] Take the very case of Dr. Johnson's Rasselas, and endeavor to apply to it Lord Apsley's rule, bearing in mind that the author and his assigns, during the existence of the copyright, had the sole right to reap the profits of the publication of the whole and every part of it. The moral reflections are left out, the narrative goes into the Gentleman's Magazine. Whose genius produced that stately and immortal fiction? Who described and created the characters of Imlac, and the Princess, and the Prince of Abyssinia, and placed them in the Happy Valley, and sent them forth in a series of gentle trials and pleasing and sad perplexities, in the world beyond its walls? Who wrote that narrative? Not, certainly, the Grub street hack, who was employed to "leave out the reflections." What he took and his employers published, was the literary property of another, the profits of which the law had not vested in them.

ra' y property, it will be apparent that no writer can make and publish an abridgment, without taking to himself profits of literary matter which belong to another. It has been stated, in a fo mer chapter, that literary property is an exclusive right to print a written composition, and to take the profits thereof after publication. The mere definition of an abridgment shows that the writer makes use of a composition of which he is not the author; for whatever he may have rejected as redundant, he does actually print, publish and sell, in an abbreviated form — and in a form abbreviated by the rejection of parts — a certain amount of literary matter, the profits of which exclusively belong to another. Moreover, the very form in which this matter is reproduced, of necessity tends to the injury of the true proprietor. The real object of most abridgments is to undersell the original work. Cases are often met with, it is true, for which the apology is urged, that they are not designed to supersede the originals, and are not likely in fact to do so. But they are made to be sold; and if sold, it is at least as consistent with principle and analogy, to presume that the sale is injurious to the original author, as to presume that it is not.

The argument that a purchaser would not have purchased the original, if the abridgment had not been thrown in his way, rests merely upon conjecture in most cases. The fact is not capable of proof by evidence, but can only be arrived at through the opinions of third persons. In the analogous cases of

piracy by colorable alterations and disguises, the law does not stop to inquire whether the purchaser of the piratical publication would have bought the genuine work. It presumes damage, to just the extent of the number of copies sold, and decrees the whole profits to the true proprietor. It also stops the piratical publication; thereby declaring that the true proprietor shall not be exposed to the probability and hazard of injury. In no case, after proof of piracy, has it been permitted to the defendant to show by evidence that his publication is not likely to injure the plaintiff, and therefore that he ought to be allowed to go on.[1]

[1] In the cases of extracts and quotations, where the amount taken is small, the question of injury may be an element in determining whether the court will treat the extract as a piracy; but even there, as we have seen, if the extract may serve *quoad hoc* as a substitute for the original book, it is to be treated as a piracy; and in a case of this kind, Lord Cottenham said, that the plaintiff was the person best able to judge of the question of injury himself, and that if the court clearly saw that anything had been done which tends to an injury, it being done against a legal right, the court would stop the defendant's publication. (Campbell *v.* Scott, 11 Simons, 31.) But in cases of piracy by copying, imitation and colorable alteration, the defence is wholly unavailable, that the piratical publication is designed for a class of readers who would not have purchased the genuine work, and it is rarely made. (See Folsom *v.* Marsh, 2 Story's R. 100; Mawman *v.* Tegg, 2 Russ. R. 385; Campbell *v.* Scott, *ut supra.*) The jurisdiction of courts of equity, in cases of this kind, is founded upon the fact that the actual damages cannot be traced, and therefore in order to make the legal right effectual, the publication which violates it is prohibited altogether. (Wilkins *v.* Aiken, 17 Ves. 424.) In France, under the law of July 19th, 1793, the publisher of a piratical book is condemned to pay to the true proprietor a sum equivalent to the price of 3000 copies of the original edition. In other countries, there is a similar fixed standard of damages. In Belgium, the number of copies is 300. Merlin Rep. de Jurisp. Tit. Contrefaçon, tom. 3, p. 717, 718. In Prussia, the court is required to fix the indemnity, according to the circumstances, at a sum equal to the sales of from 50 to 1000 copies of the lawful edition, where the proprietor cannot prove that he has suffered greater damages. Renouard, Droits D'Auteurs, tom. 1, p. 271. In all these countries, these

It is also to be considered, that the publication of an abridgment not only tends to injure the sale of the copies which the true proprietor has already published, but it also interferes with his use of his copyright, and with his power of disposing of it. His property in the original work includes the right to publish it in any form which he may see fit to adopt. He may choose to publish an abridgment himself; and his right to do so is perfect, since he is absolutely the proprietor of the matter embraced in his original work. His copyright must be held to have secured to him the right to avail himself of the profits to be reaped from all classes of readers, both those who would purchase his production in a cheap and condensed form, and those who would purchase it in its more extended and costly shape. To construe his right upon any narrower terms, would confine him to the paper and print which he may have selected for the first issue of his work, and would deprive him of the profits on a cheaper form of publication. If, therefore, he sees fit to publish his own work in a condensed form, as well as in its original and more elaborate shape, his right is clearly broad enough to give him the power to do so, and to take the profits of both forms of publication.[1]

penalties are in addition to the penalty of confiscation; and they proceed upon the presumption of damage, in all cases.

[1] "Un examen détaillé des droits divers dont l'ensemble constitue le domaine privé conferé par les priveléges d'auteur, concluira à recounaitre que tous ces droits peuvent etre ramenés à un droit unique, celui d'exploiter seul les produits vénaux que l'ouvrage est susceptible de procurer." Renouard, tom. 2, p. 10.

There are very few works, capable of being usefully abridged, of which the right to publish an abridgment is not a valuable part of the copyright. If, during the existence of the copyright, the work is abridged by a stranger, the copyright is shorn of an incident, the loss of which may greatly affect its value as property. In this sense, therefore, an abridgment, without leave of the proprietor, seems to be a direct usurpation of his rights. The law can never presume that the author or proprietor will not avail himself of his right to publish his own abridgment. The correct presumption is, that the owner of any property reserves to himself every right inherent in it, which he has not waived or ceded in some of the forms known to the law; and in regard to literary property, publication alone is not a dedication to the public of any right attached or incident to the property itself.

These considerations are not a little fortified by the argument arising from the fitness of leaving the reputation of an author under his own care, or under the care of those to whom he sees fit to entrust it. An unlimited right to make abridgments deprives the author, while living, and his representatives after his decease, of their just control over his reputation, and consigns his works to reproduction in forms to which his assent is not asked and cannot be presumed, for no other purpose than the accommodation of the avarice of individuals and a fancied advantage to the public. Lord Mansfield did not disdain to resort to

the argument of fitness, with regard to the reputation of an author, in support of his right over his own productions. He held it to be one of the foundations of literary property.[1]

In short, the publication of a mere and professed abridgment, is an invasion of the rights of an author, in several ways. It pledges and compromises his reputation and responsibility, to the same extent as the republication of the original work. It makes use of his work to raise a competition which must always be dangerous, by bringing it in a contracted form within the reach of a larger number of purchasers; and it creates a direct obstacle to the exercise of his right of giving the work to the public himself, under the form of an abridgment.[2]

I cannot but think, therefore, that the result to which English and American jurisprudence ought to come, upon this question, is, that an abridgment, in which the text, the plan, the ideas, arguments, narrative and discussion of an original author are reproduced, in a condensed form, is a violation of his right of property.[3]

This position seems to be sustained by the doctrine of a recent decision in England; although some of the remarks which fell from the court apparently recognize the right of making an abridgment of some

[1] Millar *v.* Taylor, 4 Burr. ——. See his observations, cited ante p. 84.

[2] See Renouard, Droits D'Auteurs, tom. 2, p. 30 et seq.

[3] Such an abridgment falls under the class of piracies which the French jurists call "partially identical"—*Contrefaçon partielle identique.*" Renouard, tom. 2, p. 30.

kind, in the case of a *book*, as distinguishable from an abridgment or adaptation of *music*. When examined, however, the reasoning of Lord Lyndhurst on this point, taken in connection with the point decided in the cause, will be found to give a different view of the general doctrine of abridgments, from that which has loosely prevailed in England for above a century.

The defendant in this case had published portions of an opera, (which was under the protection of a copyright,) consisting of entire airs, and other portions consisting of whole bars, united with other bars of his own composition, the whole being arranged and adapted for dancing, in the forms of quadrilles and waltzes, and being described on the title-page as having been taken from the opera in question.[1] The defence involved most of the doctrines usually advanced in defence of abridgments. It was contended that the object of the defendant's publication

[1] "In support of the plaintiff's case, the affidavit of Mr. Rodwell, an experienced musician, was read. With reference to the 57th set of quadrilles published by the defendant, he deposed that the second quadrille was so completely similar to an air of the opera called 'Gentille Muscovite,' that it was nearly note for note the same, even to the accompaniments; that the melody of the fourth quadrille was like another air of the opera, with some variations in certain bars, which he specified; and that the melody of the fifth quadrille was contained in certain bars of the overture, which he specified. With reference to the 58th set, he said that the first quadrille was founded on, though much varied from, an air of the opera called 'Le pauvre Ivan.' He mentioned the several bars in which alterations had been made, and stated that in one instance there had been a change of key. He made similar statements with respect to the other quadrilles and the waltzes; observing, however, that in one of the waltzes there were sixteen bars which were not in the original air. He concluded his affidavit by saying, that although in several instances the music of the quadrilles in question was slightly varied from the airs of the opera, yet such variation was not more than is always found to be necessary when the music of an opera is arranged in the form of quadrilles." 1 Younge & Coll. 290.

was different from that of the plaintiff's; that the defendant had adapted and arranged the music which he had taken from the plaintiff's opera, for dancing, to which it was not adapted in the original work; that such arrangement and adaptation involved much labor, musical knowledge, and skill; that the defendant had only taken certain airs and melodies, whereas the plaintiff's copyright embraced the entire opera, which consists not merely of certain airs and melodies, but of the whole score.[1]

The court applied to this case the principle which I have endeavored to keep in view in the preceding observations. The air, or melody, in music, is the invention of the author; it may be the subject of piracy, because in taking it, the taker appropriates what another, and not he, has invented; and a piracy is committed if so much is taken as constitutes the meritorious part of the invention, whether it be the whole invention or the whole of a distinct part of the invention. Upon the ground that the defendant had taken consecutive bars, forming the entire air or melody, an injunction was granted.[2]

[1] In music, the form called the score is when the work contains the whole of the music to be used by all the performers collectively with their several instruments.

[2] D'Almaine *v.* Boosey, 1 Y. & Coll. 288, 300, in the Exchequer, in Equity. Lord Lyndhurst, L. C. B. said, "It is admitted that the defendant has published portions of the opera containing the melodious parts of it; that he has also published entire airs; and that in one of his waltzes he has introduced seventeen bars in succession, containing the whole of the original air, although he adds fifteen other bars which are not to be found in it. Now it is said that this is not a piracy, first, because the whole of each air has not been taken; and, secondly, because what the plaintiff purchased was the entire opera; and the opera consists, not merely of certain airs

Lord Lyndhurst, in his judgment on this occasion, did not refer to any particular works, or class of

and melodies, but of the whole score. But, in the first place, piracy may be of part of an air as well as of the whole; and, in the second place, admitting that the opera consists of the whole score, yet if the plaintiffs were entitled to the whole, *a fortiori* they were entitled to publish the melodies which form a part. Again, it is said, that the present publication is adapted for dancing only, and that some degree of art is needed for the purpose of so adapting it; and that but a small part of the merit belongs to the original composer. That is a nice question. It is a nice question, what shall be deemed such a modification of an original work as shall absorb the merit of the original in the new composition. No doubt such a modification may be allowed in some cases; as in that of an abridgment or a digest. Such publications are in their nature original. Their compiler intends to make of them a new use; not that which the author proposed to make. Digests are of great use to practical men, though not so, comparatively speaking, to students. The same may be said of an abridgment of any study; but it must be a *bona fide* abridgment, because if it contains many chapters of the original work, or such as made that work salable, the maker of the abridgment commits a piracy. Now it will be said that one author may treat the same subject very differently from another who wrote before him. That observation is true in many cases. A man may write upon morals in a manner quite distinct from that of others who preceded him; but the subject of music is to be regarded upon very different principles. It is the air or melody which is the invention of the author, and which may in such case be the subject of piracy; and you commit a piracy if, by taking not a single bar, but several, you incorporate in the new work that in which the whole meritorious part of the invention consists. I remember in a case of copyright, at *nisi prius*, a question arising as to how many bars were necessary for the constitution of a subject or phrase. Sir George Smart, who was a witness in the case, said, that a mere bar did not constitute a phrase, though three or four bars might do so. Now it appears to me that if you take from the composition of an author all those bars consecutively which form the entire air or melody, without any material alteration, it is a piracy; though, on the other hand, you might take them in a different order or broken by the intersection of others, like words, in such a manner as should not be a piracy. It must depend on whether the air taken is substantially the same with the original. Now the most unlettered in music can distinguish one song from another, and the mere adaptation of the air, either by changing it to a dance or by transferring it from one instrument to another, does not, even to common apprehensions, alter the original subject. The ear tells you that it is the same. The original air requires the aid of genius for its construction, but a mere mechanic in music can make the adaptation or accompaniment. Substantially, the piracy is, where the appropriated music, though adapted to a different purpose from that of the original, may still be recognized by the ear. The adding variations makes no difference in the principle."

works, presenting instances of what he would consider *bona fide* and allowable abridgments. Whether he had reference, as would seem, to such works as are called abridgments in the law,[1] or to a more numerous class, in which some one existing work is reproduced under a merely condensed form, it is clear, that the principle upon which he decided the cause before him brings the doctrine in relation to abridgments, within far more restricted limits than had previously been assigned to it. The broad doctrine of the case of Gyles *v.* Wilcox, and the still broader doctrine in the anonymous case in Lofft's Reports, would have justified the use which the defendant made of the plaintiff's music, but for the single qualification which Lord Lyndhurst has introduced. He admits the general right to use, in the way of abridgment or digest, what a previous writer has created; but if a considerable portion of that which constitutes *per se* the invention of the author, is taken, although it be adapted to a different purpose, a piracy is committed. The distinction which he makes between music and a literary composition seems to be merely that an air or melody in music is the pure

[1] During the argument, upon the case of Gyles *v.* Wilcox being cited by the defendant's counsel, in support of the doctrine that an adaptation of an original work to new purposes is not a piracy, his lordship made the following remarks: "I think that if the original air is published, though with adaptations and harmonies, or for different instruments, it is a piracy, and an action will lie. This is not like the case of an abridgment of a book. The purpose of abridgments is very distinct from that of the works from which they are taken. No one can doubt that Viner's Abridgment and Comyn's Digest are original works." Ibid. p. 296.

invention of the author, and there is no ground of a common subject for a subsequent composer to fall back upon; whereas, in literature, although the particular composition is original, and exclusively the fruit of the author's mind, the subject is common to all men, and may admit of distinctions between the modes of treating it, which music will not admit of. In literature, therefore, some weight is to be given to the circumstance that the purpose to which a subsequent writer adapts the materials which he finds in an original author, is of itself new. But, according to his lordship, even in literature, if material parts of what constitutes the subject of an author's property be taken, although with a new adaptation, a piracy is committed.

If this be so, then it is highly important to inquire how far the supposed right to make what is called a *bona fide* abridgment is affected by the doctrine laid down by Mr. Justice Story, that an original author may have copyright in the plan of his book.

In the case in which this doctrine was laid down, the plaintiff was the author of an arithmetic constructed upon a peculiar plan. He claimed, as his own invention, the plan of the lessons, which consisted in the peculiar arrangement of a set of tables, with a gradation of examples placed in a particular manner, to teach and illustrate the combinations of numbers; and this plan and arrangement he alleged had been borrowed and imitated by the defendant. The defence consisted in showing, that the materials

and some of the modes of illustration used by the plaintiff could be found in other books; but the court held, that this was entirely immaterial, if the materials and modes of illustration had never been before united in one combination, in the manner in which the plaintiff had united and connected them; and declared, that no person had a right to borrow the same plan and arrangement and illustrations, and servilely to copy them into another work.[1] What-

[1] Emerson *v.* Davies, 3 Story's R. 768, 783. This subject of copyright in the plan or method of a book is so evanescent and metaphysical, that it is nearly impossible to state with precision the abstract doctrine of the law in regard to it, if indeed the law upon this point may yet be considered as developed or settled. Before the case of Emerson *v.* Davies was in print, a master's report was made, in the same court, in another case, by Charles Sumner, Esq. containing the following able discussion upon the question, whether there can be copyright in a mere plan, independent of materials: "And the first question that arises is the general question, whether the plan, combination, or arrangement of a book, independent of the materials and language, is susceptible of copyright. Important as this question may seem to be, it does not appear to be illustrated by the light of decided cases. The case of Hogg *v.* Kirby, 8 Ves. 215, has been thought to exclude the conclusion that the plan of a book was the subject of copyright; but the injunction granted in this case seems not to have been founded on copyright, but on the power of the court to restrain a party from carrying on a trade, or from publishing a work, under a fraudulent representation that such trade or work was that of the plaintiff. (See Ibid. note, Sumner's edition.) The case of Cary v. Faden, 5 Ves. 23, recognizes a copyright in a road-book; but it was in the plan in combination with the materials. The case of Gray *v.* Russell, 1 Story, says that a work may be the subject of copyright, although the materials which compose it may be found in the works of other authors antecedently printed, provided the plan, the arrangement, and the combination of those materials be original; but even this case does not decide the distinct question whether a plan, independent of the materials to which it is applied, and on which it is wrought, is a subject of copyright.

"In the absence of any governing authority, the question must be regarded in the light of principle. It cannot be disguised that the plan of a book is often a peculiar part of its merits. Some authors receive high commendation merely for the arrangement of their subject, descending even to such particulars as the division into chapters and sections; and again even into the further division of paragraphs. This is applicable to historical compositions as well as to scientific and philo-

ever may be the case, where a subsequent writer, taking only the plan or method of a previous author, uses different materials and illustrations, and adapts them to some plan, it is obvious that a real abridgment of a scientific treatise, for example, must borrow both the plan and method, and the literary matter, in the same combination and arrangement, from the original work; otherwise it is not an abridgment, and is to be judged upon different rules. It

sophic productions. It would be difficult, however, if not impossible, to hold a subsequent writer amenable to any other tribunal than that of criticism, who should write another work on the same subject in language of his own, but cast in the same chapters and sections. Indeed, the law in such a case as I am now supposing, seems to be clearly settled in the matter of abridgments. An honest abridgment is admitted to be no violation of the copyright of the work abridged; but the very idea of an abridgment implies the preservation of the original plan, arrangement and combination, abridged, or reduced to a smaller scale. Indeed, it will cease to be an abridgment exclusively, if it does not preserve these features; as a miniature would fail to be a portrait, if the original proportions and traits of the countenance are not represented. In making an abridgment of Mr. Irving's Life of Columbus, or Mr. Bancroft's History of the United States, the natural and inevitable course would be to follow their plan, to walk by their light, to keep firm hold of the thread which they have provided in their narratives; to adopt their mode of developing the subject; to rely upon their divisions; to lean upon all the landmarks which they have set up; in short, to abridge their works, by preserving, as far as possible, the original peculiarities in a smaller compass. Perhaps no class of works are subjected to abridgments more than dictionaries, nor has any person questioned the lawfulness of such abridgments; but they cannot fail to preserve the plan, arrangement, and combination of the original dictionary. Take, for instance, the recent extensive and most important dictionary of the English language, by Richardson, which is on a plan entirely new, I believe, as applied to the English language. Can it be doubted that an abridgment of this work might be made, reducing its two quartos to a single octavo, in which its peculiar plan should be preserved? Nor does it seem to me that it can be doubted that another dictionary, of another language, or even of the English language, may be made on Richardson's plan, which shall not be an abridgment, but shall be founded on fresh labor and fresh materials." See Law Reporter, (Boston) vol. x. pp. 155–156, note. Webb and Gray *v.* Powers and Bagley, S. C. 1 Woodbury's R.

seems to me, that when an author takes a scientific subject, however common it may be to all other writers, and upon a peculiar plan and with a distinct classification, produces a treatise novel in its method of teaching and exhibiting the subject, he has a right of property in what may be called, (by a not happy illustration,) the skeleton of his book, which is necessarily invaded by a condensed reproduction of the same treatise. This is what takes place in the making of a real abridgment.

To these views should be added the support derived from the laws of several of the continental nations.

In France, the question seems to be one of construction ; but there can be little doubt that the text of the law of 1793, which secures to authors the exclusive right of selling their works, and of ceding the proprietorship, in whole or in part, will authorize the conclusion that an abridgment is an injury to the proprietorship.[1] This opinion is maintained by M. Renouard, whose work on the Rights of Authors I have so often cited.[2]

In Belgium, abridgments are expressly included, by the text of the law, among the rights of authors, which are forbidden to be violated.[3]

[1] "Les autours en tout genre, les compositeurs de musique, les peintres et dessinateurs qui feront graver des tableaux ou dessins, jouiront durant leur vie entiere du droit exclusif de vendre, fair vendre, distribuer leurs ouvrages dans le territrire de la république et d'en céder la propriété en tout et en partie." Decret du 19 Juillet, 1793, art. 1.

[2] Tom. ii. p. 29-34.

[3] "Le droit de copie ou le droit de copier au moyen de l'impression est, pour ce qui concerne les ouvrages originaux, soit productions littéraires ou productions des arts,

The Prussian law, (the most elaborate code on the subject of literary property in the world,) besides declaring that the exclusive rights of an author include the right of multiplying his work, already published, "in whole or in part," enumerates what shall not be considered infringements of this right, and does not place abridgments among the exceptions.[1] It seems to be highly probable, therefore, that in Prussia, the license of abridging another man's work is wholly unknown.

In Russia there are similar enactments to those of the Prussian code, and among the enumerated offences, it is declared that an edition of a dictionary in which the greater part of the definitions, explanations and examples is actually copied from a work of

soumis au droit exclusivement reservé à leurs auteurs et à leurs ayant-cause, de rendre publics par la voie de l'impression, de vendre, ou de faire vendre ces ouvrages, en tout ou en partie, par abrégé ou sur une échelle reduite, en une ou plusieurs langues, ornés ou non ornés de gravures et autres accessoires de l'art." Law of the 25th Jan. 1817, cited Renouard, tom. i. p. 249.

[1] "§ 1. Le droit de faire imprimer de nouveau ou de faire multiplier par un procédé mécanique quelconque tout ou partie d'un écrit déjà publié, appartient exclusivement à son auteur, ou à ceux qui tirent leurs droits de lui. § 2 Toute multiplication nouvelle, si elle a lieu sans l'approbation de l'ayant-droit exclusif, se nomme contrefaçon et est défendue. § 3. Est réputée contrefaçon, et est, par conséquent, également défendue l'impression faite sans l'approbation de l'auteur ou de ses ayant-droit: *a*. De manuscrits de tout genre; *b*. De sermons prononcés ou de cours professés oralement, et écrits par un des auditeurs, soit que la publication ait eu lieu sous le véritable nom de l'auteur, soit qu'elle ait été faite sans son nom. Cette approbation est même nécessaire au possesseur legal d'un manuscrit ou de sa copie (*lettre a*) ou de sermons ou cours écrits (*lettre b*). § 4. Ne sont point considérées comme contrefaçons: 1. La citation littérale de passages isolés d'un ouvrage déjà imprimé; 2. La reproduction d'articles isolés, de poésies, etc., dans les ouvrages ayant pour objet la critique ou l'histoire littéraire, ou dans des recueils à l'usage des écoles; 3. La publication de traductions d'ouvrages déjà imprimés." Law of the 11th June, 1837. Renouard, tom. i. p. 269.

the same kind, enjoying the protection of copyright, shall be deemed a piracy.[1]

A translation from a work not under the protection of copyright in the country where the translation is made, of course infringes no one's rights; but it is a very interesting and important question, whether a translation be not an infringement, where the orignal is protected.

[1] "Est également réputé contrefacteur: 1° quiconque, sous le titre de seconde ou troisième, etc. édition, imprime un ouvrage déjà publié, sans observer les conditions ci-dessus indiquées; 2° quiconque, ayant réimprimé à l'étranger un ouvrage publié en Russie, ou avec la permission de la censure russe, même en y ajoutant une traduction, vendrait en Russie des exemplaires de cette réimpression sans le consentement par écrit de l'éditeur légitime; 3° quiconque, sans le consentement de l'auteur, imprime un discours ou toute autre composition prononcée ou lue en public; 4° le journaliste qui, à titre d'analyse, ou sous tout autre prétexte, réimprime constamment et en entier de petits articles pris dans d'autres publications, lors même que ces articles ne formeraient pas une feuille d'impression; mais une réimpression accidentelle d'un article détaché ayant moins d'une feuille d'impression, comme aussi la réimpression de nouvelles politiques, de littérature, de sciences ou d'arts, avec indication des sources, n'est pas interdite. L'insertion, dans les chrestomaties et autres livres scolaires, d'articles ou extraits quelconques d'autres auteurs, n'est pas réputée contrefaçon, encore que ces emprunts, répartis dans les diverses parties du livre, formassent un contenu de plus d'une feuille d'impression. Les citations ne sont pas réputées contrefaçon, pourvu: 1° qu'elles ne dépassent pas le tiers du livre dont elles sont tirées, si se livre est de plus d'une feuille d'impression; 2° que le propre texte de l'auteur dépasse deux fois les citations prises par lui dans un autre ouvrage. La traduction d'un ouvrage déjà traduit n'est envisagée comme contrefaçon que lorsqu'on y a copié mot à mot et de suite deux tiers d'une traduction jouissant encore du droit de propriété exclusive. Est aussi réputée contrefaçon l'edition d'un dictionnaire dans lequel la majeure partie des définitions, explications et exemples, est textuellement copiée d'un autre ouvrage du même genre, jouissant encore du droit de propriété exclusive. Il en est de même de la publication des cartes géographiques, des tableaux historiques; des tables de logarithmes, des indicateurs et autres ouvrages de ce genre, consistant en chiffres ou noms propres, lorsqu'ils ont été copiés mot à mot, ou avec des changemens insignifians, sur d'autres ouvrages." 1 Renouard, p. 287, 288.

The principles upon which translations have been held to be original works, entitled to the protection of the law, have been referred to in a previous part of this treatise.[1] But the admitted right to make use of the work of a foreign author, who is not in a situation to claim the benefit of the law of copyright, has no tendency to establish such a right in cases where the original work is actually under protection, as would be the case where the original and the translation are both first published in the same country. The cases which have treated translations, made from foreign works, as original, and therefore fit subjects of copyright, have but little bearing upon the question now under consideration; they merely tend to show that the act of translation, by giving a new dress to the work, incorporates with it the pains and labor and learning of the translator.[2] This being conceded, it still remains a question, admitting of much doubt, whether a work, under the protection of the statute, if printed in a foreign or a dead language, can be thus taken as the subject of a translator's labor, so that by merely incorporating with the matter of the book the fruit of his own industry, he can entirely absorb the rights of the original author.

Upon principle, I can have no doubt that this cannot be done. The arguments derived from the fact that a translation brings the work within the reach

[1] Ante, p. 186, et seq.

[2] Burnett *v.* Chetwood, 2 Meriv. 443, n. Wyatt *v.* Barnard, 3 V. & B. 77.

of a greater number of readers, and from the incorporation of new labor with old material, or the clothing of the old sentiments and ideas in a new dress, are the principal suggestions that can be made in favor of such a license. Both of them, however, imply that the party is dealing with a book that has become *publici juris*, or as the French jurists express it, has entered into the *public domain*. If the book be under the private dominion of the author, or his assigns, the fact that a republication brings it within the reach of a greater number of readers, does not palliate an infringement of the copyright. If a republication could have this effect in any case, the argument would be as good, in the case of every piratical and literal republication on a cheaper paper than that of the original, as it is in the case of a reproduction under the new dress of a vernacular tongue. The law does not look to see what class of readers, or what numbers of readers are addressed by a piratical publication. It inquires whether the complaining author was exclusively entitled to take the profits of the book which he has published, and if it finds that such a right was well vested in him, it protects him under every form in which that literary composition can be reproduced.

Does then the mere act of giving to a literary composition the new dress of another language, add to the case an element, which ought to take it out of the rule by which reproduction in other forms is prohibited? The property of the original author em-

braces something more than the words in which his sentiments are conveyed. It includes the ideas and sentiments themselves, the plan of the work, and the mode of treating and exhibiting the subject. In such cases, his right may be invaded, in whatever form his own property may be reproduced. The new language in which his composition is clothed by translation affords only a different medium of communicating that in which he has an exclusive property; and to attribute to such a new medium the effect of entire originality, is to declare that a change of dress alone annihilates the most important subject of his right of property. It reduces his right to the narrow limits of an exclusive privilege of publishing in that idiom alone in which he first publishes. But we do not find that his privilege is thus circumscribed; because a mere change of phraseology is not held to justify the adoption of matter that is under the protection of the law.[1]

Literary property may also be invaded by the publication of a work purporting, in its title or other-

[1] In France, this is an open question, as I conceive it to be both in England and America. M. Pardessus denies the right of translation of works published in France. *Cours de Droit Commercial, 2d Partie, titre* 1, Nos. 164, 167. M. Renouard supports it, tom. ii. pp. 36–41. In England the question has not been directly adjudged, although Mr. Godson (page 347) cites the case of Burnett *v.* Chetwood, 2 Meriv. 441, n. in support of the position, that a translation of a book, written in the Latin language by a British subject, is a work to be protected. I have shown (ante, p. 189, n.) that this case was disposed of on other grounds. The British international copyright act provides that foreign books which may by treaty become privileged in England, shall still be subject to being translated. In Prussia a translation cannot be made of a native work, which the author has published in a dead language. Law of 1837. Renouard, tom. i. p. 269.

wise, to be what it is not. If a party puts forth a work in fact represented to the public to be the work of another, which is actually under the protection of copyright, so as to intercept the profits which would otherwise accrue to the proprietor of the latter, such a proprietor may obtain the aid of a court of equity to prevent the injury thus occasioned or threatened.[1] This offence has not been treated strictly as a piracy, where no part of the body of the genuine work has been copied or imitated. But he who carries his work into the world as that of another person, may do the same injury as if he actually published that of another person; and if the consequences are or are likely to be the same, the remedy ought to be coextensive with the injury.[2]

But, in England, the jurisdiction exercised by courts of equity, to prevent the use of the title of an established work, is exerted in the same manner and upon the same principles as in the cases of the good-will of trades.[3] The doctrine that the title of a book or periodical is part of the work, capable of being infringed like the body of the publication, and that the infringement is to be redressed as a piracy, has not been expressly affirmed.[4] The result that is

[1] Hogg *v.* Kirby, 8 Ves. 215.

[2] Ibid.

[3] The ground of the decision, in Hogg *v.* Kirby, was, that the defendant represented his publication to be a continuation of that of the plaintiff. See Crutwell *v.* Lye, 17 Ves. 335, 342, where Lord Eldon refers to and comments on the case of Hogg *v.* Kirby. See also Keene *v.* Harris, cited in Crutwell *v.* Lye, where the trustee of a newspaper published another newspaper under the same title, and it was held a breach of trust. See also ante, p. 166, and the authorities there cited.

[4] Spottiswood *v.* Clarke, 2 Phillips's Ch. R. 154, presents a case

reached through the branch of equity jurisdiction relating to the good-will of a trade or employment, is perhaps, in most cases, as beneficial to the interests of literature as any other form of redress. But there may be cases in which this branch of the jurisdiction would not give an adequate remedy. Perhaps it would be necessary, in order to make a case for interference on the ground of a violated trade, to show that the work brought in periodical returns; or that the conduct of the defendant interfered with an established course of profits, regularly flowing from the publication of the plaintiff.[1] But in the case of a newly published work, the profits are not ascertained, and no regularity or established course of profits can be proved; at the same time it is perfectly clear that the proprietor of the work is by law exclusively entitled to the profits, whatever they are likely to be, and on this ground a distinct branch of equity jurisdiction makes his legal right effectual. It is therefore necessary to inquire, whether the title of a book should not, as part of the work, be deemed to be under the protection of the copyright, so as to make the copying or imitating it a piracy, to be redressed as such.

The solution of this question will probably be found to depend upon the rules and principles which determine the question of infringement, in cases

of colorable imitation of the title of an Almanac. The injunction was sought for on the ground that defendant represented his almanac to be the same as that printed and sold by the plaintiff.

[1] See 2 Story's Eq. Jurisp. § 951.

where any distinct portion of a work under the protection of a copyright is improperly used. It must depend on the existence of an exclusive property in the part thus taken, and on the fact of injury to the exclusive right of the party complaining. Thus, if the titles of two books are identically the same, and the books are dissimilar in all other respects, the question will arise, whether the title of the earlier publication is descriptive of its individuality, and is of a character appropriate to the setting forth that book to the public. If it be such a title, and if the effect of its adoption be to mislead the public in their purchases, then both the elements of a piracy concur, and there seems to be no reason why it should not be regarded as an infringement of the copyright. But if the title be merely a generic description of the subject, or a description consecrated by usage to works of the particular class to which the book belongs, and there is nothing to cause a confusion between the two works, there is no reason for judicial interference, either on the ground of copyright or of good-will in trade.[1]

[1] Instances of the second class would be, "A Dictionary of the English Language;" "A History of England;" "A Treatise on the Law of Patents;" "Biographie Universelle," &c. &c. But such titles as "The Dictionary of the French Academy," — "Dictionnaire de l'Académie Francaise;" "History of the Conquest of Mexico, with a preliminary view of the Ancient Mexican Civilization, and the Life of the Conqueror Hernando Cortes," are each descriptive of the particular work, peculiar and appropriate to its individuality; and if by adopting such a title an injury is caused to the work to which it belongs, the proprietor of that work should be entitled to redress, under the principles of a consistent and effectual jurisprudence. See Spottiswood *v.* Clarke, 2 Phillips Ch. R. 154.

There may, indeed, be a third class of cases, where the title is not descriptive of an individual publication, and is *ab ante* open to any one to adopt, but by long use and possession has come to be the received designation of a particular work. In such cases, the title has become appropriated to the party who has thus used it, and whose profits may be intercepted by its adoption by another. These cases, however, can rarely arise in any other than the class of periodical publications; and in the actual state of our jurisprudence, perhaps redress for such injuries must be sought in that jurisdiction which protects trades, by bringing the case within the principles regulating that branch of the law.[1]

If a periodical work, that has long worn a particular title, changes it for another, the adoption of the old title by a new periodical, after the lapse of a reasonable time, would ordinarily not be such an interference as the courts of justice should notice.[2]

This subject of titles has been much discussed in France, where an ample protection vindicates the just rights of literary property. The remedy is sometimes administered in damages for an unlawful interception of profits, as in cases of trade; and

[1] To cases of this description belong that of "The Bath Chronicle," (cited under the name of Keene *v.* Harris, 8 Ves. 215.) "Le Constitutionnel," which came before the Tribunal of Commerce at Paris, in 1832: (Renouard, tom. 2, p. 125,) and Hogg *v.* Kirby, 8 Ves. 215, the case of a magazine.

[2] *The Cour Royale* at Paris in 1834 sanctioned the publication of a journal under the title of *Gazette de Sante*, which another journal had formerly worn, but which it had for seven months abandoned for the title *Gazette Medicale de Paris*. Renouard, tom. 2, p. 128.

sometimes under the law of copyright, as for a piratical infringement, according to the circumstances.[1] The rules established by the adjudged cases are the following. 1. That a title intended to mark the individuality of a work, and to set it forth to the public, cannot be used, even for a work of entirely different contents; and that it is a usurpation, when such a title is taken, though it may be used with slight modifications, if there is any chance of confusion, so that the one work is likely to be mistaken for the other. 2. That a title which does not mark the individuality of the work, and the use of which by another book is not likely to do injury to the work which had first adopted it, does not give a right of exclusive possession, 3. That the title of a journal belongs to it, as long as it is worn, through the whole period of its existence; and the longer this period

[1] In a case concerning the Dictionary of the French Academy — *Dictionnaire de l'Academie Francaise* — M. Merlin argued before the Court of Cassation, that the title of the Dictionary of the French Academy is an essential part of the dictionary itself; that to usurp it is to usurp a part of the work; that the law treats the usurpation of part of a literary work as an infringement (*contre façon*,) and punishes it in a peculiar manner: — that if, under the title of *Theatre de Racine*, a printer were to publish the plays of Bradon, and if Racine were living, and in the enjoyment of all his rights of property, it would be impossible to say that the printer had not committed a piracy, (*vol litteraire*) and ought not to be visited with the penalties enacted for that offence. The court adopted this reasoning, and held that the object of the law of 1793 (the copyright law) was to secure to authors, their heirs and assigns, the exclusive right to print, sell and distribute their own works, and consequently to prohibit the printing and distribution of every work, which, by an invasion, more or less extensive, could interfere with this exclusive right; and that the adoption of such a title as that in question was an offence against the law of 1793, inasmuch as it tended directly to injure the proprietors of the genuine work. Merlin, Questions de Droit, *Propriete Litteraire*, § 1.

has existed, the more importance is acquired to the title, and the more it becomes a distinguishing part of the property.[1]

The use of the name alone of another person is a wrong that will be prevented by the interference of a court of equity, but not as an infringement of copyright. Lord Eldon granted an injunction to restrain the publication of certain poems under the name of Lord Byron, who was abroad, upon an affidavit of his agent making it highly probable that it was not a genuine work, and on the refusal of the defendant to swear that in his belief Lord Byron was the author.[2]

The usurpation of an author's name is morally a more reprehensible proceeding than the usurpation of a title. But if it is not accompanied by the reproduction of anything which the imputed author has actually written, it cannot be treated as a piracy.[3] But if the adoption of matter really written by an author accompanies the fraudulent use of his name, the whole publication ought to be restrained at once as a piracy, aggravated by the fraud attempted upon the title-page.[4] It has previously been stated, that a

[1] Renouard, tom 2, p. 118–128. Merlin, Questions de Droit, *Propriété Litteraire*, § 1. Repertoire de Jurisprudence, v. *Livre*.

[2] Lord Byron *v.* Johnson, 2 Meriv. 29.

[3] This species of fraud has frequently been checked in France, but as a fraud of a special nature, and not as the offence denominated *contrefaçon*, unless there has also been a copying of genuine matter. Renouard, tom. ii. pp. 128–130.

[4] A bookseller in Paris, in 1828, published a spurious edition of the works of Cardinal Maury, in which he had copied the notes of his nephew, (who had edited the genuine edition,) under the following title: *Nouvelle édition publiée sur les manuscrits autographes de l'auteur, par* Louis Siffrein Maury *son neveu.* The fraud of holding out the name of M. Maury, as the editor of this edition, was justly considered as an element in the infringement of co-

work which thus usurps the name of a person who is not the author, cannot enjoy the protection of a copyright.[1]

As to what constitutes infringement, in the case of dramatic and musical compositions, it has been well settled that representation of a published play is not a violation of the copyright in the book itself.[2] But it seems that where a play is unpublished, and the copyright has been assigned by the author to a particular theatre, an injunction will be granted against its performance at any other theatre.[3] This implies that there is a common law right of performance, in the case of an unpublished play, capable of being assigned by the author, and existing previously to the statute of 3 Wm. IV. c. 15; and such a right is recognized in the first section of that act, which confirms the right of representation, where the author had consented to or authorized it previously to the passing of the act, to the person to whom he had given such consent or authority.

The second section of this act inflicts a penalty upon the unauthorized representation of any dramatic or musical composition, *or any part thereof*. What

pyright, which consisted in the reproduction of the genuine notes. Renouard, tom. ii. pp. 109, 130.

[1] Ante, p. 166.

[2] Coleman *v.* Walthen, 5 T. R. 245; Murray *v.* Elliston, 5 B. & Ald. 657. So, too, the representation of an unpublished play, under the sanction of the author, is not a publication by him, and an injunction will be granted to prevent the acting or publishing such a play, by persons who have taken it down from the mouths of the authorized performers. Macklin *v.* Richardson, Ambl. 694.

[3] Morris *v.* Kelley, 1 Jac. & W. 481. It does not distinctly appear, that the play in question had not been published, but the case implies that it had not been.

amounts to a representation of a part of a dramatic or musical composition has been held to be a question of fact for the jury, and not a question of law, in an action founded on this statute; and where the jury found the unauthorized singing of three songs of an opera to be such a representation, the court of common pleas refused to disturb the verdict, being of opinion that the statute intended to prohibit the performance altogether.[1]

The extent to which music may be used, by adaptation for a different kind of performance than that for which it was originally composed and published, came under consideration in a recent case, already referred to in the discussion on literary abridgments.[2] The doctrine was laid down, that a piracy is committed, where the appropriated music, though adapted to a different purpose from that of the original, may still be recognized by the ear; and that the adding variations makes no difference in the principle.[3]

The rules which determine when the copyright of a print or engraving is infringed, are entirely analogous to those applied to literary compositions. There may be an exact reproduction, or an imitation of the main design, with alterations merely colorable. When the design is the original production of the artist—the fruit of his own imagination—no other

[1] Planché *v.* Braham, 16 Law Jour. 25.

[2] Ante, pp. 280, 281.

[3] D'Almaine *v.* Boosey, 1 Y. & Coll. Excheq. R. 288, 302.

person can publish it, because there is no common source to resort to; and where there is a common source, as where the subject of the engraving is an object in nature or a work of art, that common source, and not the original print, may be resorted to.[1] The question therefore will be in both cases, whether the defendant has copied or unlawfully imitated the plaintiff's print. A copy has been said to be that which comes so near to the original, as to give every person the idea created by the original.[2] So, too, if there be such a similitude and conformity between the two prints, that the person who executed the one must have used the other as a model, he will be deemed a copyist of the main design.[3]

But when the original design of an artist is taken from a print and appropriated and used in another form and by another vehicle than by a reprint, and without a sale, a very nice question arises, whether the statutes have given any remedy. The 17 Geo. III. c. 57, enacted, that "if any engraver, etcher, printseller, or *other person* shall, within the time, &c. engrave, etch, work, or cause or procure to be engraved, etched, or worked in *mezzotinto or chiaro oscuro*, or *otherwise or in any other manner copy* in the whole or in part, by varying, adding to or diminishing from

[1] Blackwall *v.* Harper, 2 Atk. 92. Wilkins *v.* Aiken, 17 Ves. 422. De Berenger *v.* Wheble, 2 Starkie N. P. C. 548.

[2] West *v.* Francis, 5 B. & Ald. 737, per Bayley J. Under the 17 Geo. III. c. 57, § 1, a person who sells a piratical print is liable to an action, whether he knew it to be pirated or not. *Ibid.*

[3] Roworth *v.* Wilkes, 1 Campb. 94.

the main design, or shall print, reprint or import for sale, or cause or procure to be printed, reprinted or imported for sale, or shall publish, sell or otherwise dispose of any copy or copies of any historical print or prints of any portrait, conversation, landscape or architecture, map, chart or plan, or any other print or prints whatsoever, which hath or have been or shall be engraved, etched, drawn or designed in any part of Great Britain, without the consent of the proprietor, &c., such proprietor shall and may, by a special action upon the case to be brought, &c., recover such damages as a jury on the trial of such action or on the execution of a writ of inquiry thereon, shall give or assess, together with double costs of suit."[1]

Mr. Martin, a celebrated artist, painted from sketches, which he had designed, a picture called *Belshazzar's Feast*, which he subsequently sold. A few years afterwards, he engraved and published, from the sketches, a print of the same name, having previously done all necessary acts for securing to himself the copyright of the print. The defendant, having purchased one of the prints, had it copied on canvass, in colors, on a very large scale, and with dioramic effect; and he publicly exhibited the dioramic copy, for money, and described it, in advertisements as "Mr. Martin's Grand Picture of Belshazzar's Feast, painted with dioramic effect." The

[1] See Appendix, p. 24.

sale of the plaintiff's print having been injured, as he alleged, by the exhibition, a bill was filed, praying that the defendant might be restrained from further exhibiting the dioramic copy, and from representing to the public that it was the production of the plaintiff; and that the defendant might account for and pay to the plaintiff the profits he had made by the exhibition.

Sir L. Shadwell, V. C. refused to grant the injunction, until the right had been established at law, thinking that the statute, 17 Geo. III. c. 57, was not intended to apply to a case where there was no intention to print, publish or sell, but only to exhibit in a certain manner; that exhibiting for profit is in no way analogous to selling a copy of a print; and that the copy exhibited being in oils and of different dimensions from the plaintiff's print, and being exhibited in a fixed place and in a given manner, made a case which the statute did not contemplate.[1]

[1] Martin *v.* Wright, 6 Simons R. 297. His Honor observed, that if Mr. Martin had exhibited his picture as a diorama, he might have been entitled to an injunction. With great deference, I venture to suggest, that the act of 17 Geo. III. c. 57, is much more broad in its terms than the 8 Geo. II. c. 13. The words of the latter are, "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," &c. This provision is clearly directed against the offence of copying *and* selling. But the words of the more recent act are, "otherwise or in any other manner copy in the whole or in part by varying adding to or diminishing from the main design," seem to stand disjunctively in the contest, and to create a separate offence from that of selling, which is prohibited in the clause immediately following. If so, then the mere copying of a print, in *mezzotinto*, *chiaro oscuro*, or otherwise or in any other manner," gives the proprietor a right of action, without any sale, and he may show his damages to have accrued from exhibi-

In the United States, the statute of 1831 provides, that if any person shall engrave, etch, or work, sell, or copy, or cause to be engraved, etched, worked or sold, or copied, either on the whole, or by varying, adding to, or diminishing the main design of a print, cut or engraving, map, chart, or musical composition, with intent to evade the law, or shall print or import for sale, or cause to be printed or imported for sale, any such map, chart, &c. without the consent of the proprietor of the copyright, first obtained in writing, signed in the presence of two credible witnesses, or knowing the same to be so printed or imported without such consent, shall publish, sell, or expose to sale, or in any manner dispose of any such map, chart, &c. without such consent, then such offender shall forfeit, &c.

tion, or injury to his reputation, or interception of profits. The preamble of the act 17 Geo. III. c. 57, declares, that the motive for further provisions is that "the former acts have not effectually answered the purposes for which they were intended," and that "it is necessary for the encouragement of artists and for securing to them the property of and in their works, and for the advancement and improvement of the aforesaid arts that such further provisions should be made as are hereinafter mentioned and contained. If copying alone is not made a new substantive ground of action; the statute has added nothing but an action on the case, in the place of penalties. Yet it has manifestly described the causes of action in different terms from the former acts. See the remarks of Bailey J. in West *v.* Francis, 5 B. & Ald. 741. S. C. 1 Dowl. & R. 400.

CHAPTER X.

OF THE REMEDY FOR AN INFRINGEMENT OF COPYRIGHT.

LITERARY property is protected by several remedies, which differ widely from each other in point of efficiency, as well as in form.

1. Common Law and Statute Remedies.

The question whether there is any common law remedy for the protection of this species of property — which, since the year 1774, has been held, as to printed books, to depend entirely upon statute — was decided by Lord Kenyon in the affirmative. He held that the statute having vested the right in the author, for a given period, the common law remedy attaches to the right, notwithstanding the statute gave an action for penalties to any common informer. The penalties were not provided as a remedy to the party aggrieved; and consequently the common law remedy attaches, no other being specifically provided.[1]

[1] Beckford *v.* Hood, 7 T. R. 620. In this case it was also held, that an entry at Stationers' Hall was not necessary to enable the party to sue at common law for damages, but only to bring his action for the penalty. See ante, p. 194, as to the law in the United States.

This decision was upon the statute 8 Anne, c. 19. Subsequently, the act 54 Geo. III. c. 156, gave a special action on the case to the proprietor of a book, against any person for printing, reprinting, importing or publishing or exposing it to sale, by which he may recover such damages as the jury may see fit to assess.

The act 5 & 6 Vict. c. 45, § 15, provides, that if any person, in any part of the British dominions, shall print, or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall import for sale or hire any such book so having been unlawfully printed from parts beyond the sea, or, knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose to sale or hire, or cause to be sold published or exposed to sale or hire, or shall have in his possession for sale or hire, any such book so unlawfully printed or imported, without such consent as aforesaid, such offender shall be liable to a special action on the case at the suit of the proprietor of the copyright.

The 17th section of the same statute enacts, "that after the passing of this act, it shall not be lawful for any person, not the proprietor of the copyright or some one authorized by him, to import into the united kingdom, or other parts of the British dominions for sale or hire, any printed book, first composed or written, or printed and published, in the

united kingdom, wherein there is copyright, and reprinted in any country or place out of the British dominions; and if any person, not the proprietor or party authorized by him, shall import or bring, or cause to be imported or brought, for sale or hire, any such printed book into the British dominions, contrary to this act; or shall knowingly sell, publish, or expose to sale, or let to hire, or have in his possession for sale or hire, any such book; then, every such book shall be forfeited, and be seized and destroyed by any officer of the customs or excise; and every person so offending shall, on due conviction before two magistrates of the county or place where such book is found, forfeit the sum of ten pounds, and double the value of every such book so unlawfully imported, sold, published, or exposed to sale, or let to hire, or had in possession for sale or hire; five pounds of this penalty are to go to the officer of customs or excise making the seizure, and the remainder to the proprietor of the copyright."[1]

Pursuant to the 23d section of the same act, "all copies of any book having copyright, and entered in the registry book, which have been unlawfully printed or imported, without the previous written consent of the registered proprietor of the copyright, shall

[1] 5 & 6 Vict. c. 45, § 17. A subsequent act, 5 & 6 Vict. c. 47, § 23, a statute relating to the customs, absolutely prohibits the importation of foreign reprints of works having copyright, where the proprietor of the copyright or his agent has given notice in writing to the commissioners of the customs, that such copyright subsists, and when it will expire.

be deemed the property of such registered proprietor; and after demand in writing he will be entitled to sue for and recover such printed copies, or damages for their detention, in an action of detinue, from any party detaining them, or to sue for and recover damages for their conversion in an action of trover."[1]

The 16th section of the 5 & 6 Vict. c. 45, enacts, that after the passing of that act, in any action brought within the British dominions against a person for printing a pirated book for sale, hire, or exportation, or for importing, selling, publishing, or exposing it to sale or hire, or causing it to be imported, sold, published, or exposed to sale or hire, the defendant, on pleading to the action, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of the action. If the nature of the defence be, that the plaintiff in the action is not the author or first publisher of the book in which by the action he claims copyright, or that he is not the proprietor of the copyright, or that some other person than the plaintiff is the author or first publisher or proprietor of the copyright, then the defendant must specify in his notice the name of the person he alleges to have been the author, first publisher, or proprietor of the copyright, together with the title of the book, and the time and place of its first publication; otherwise the defendant at the trial will not be

[1] 5 & 6 Vict. c. 45, § 23. See post, p. 76.

allowed to give any evidence that the plaintiff is not the author, first publisher, or proprietor of the copyright. At the trial also no other objection will be allowed to be made on behalf of the defendant than the objections stated in his notice, nor can it then be urged that any other person is the author, first publisher, or proprietor, of the copyright, than the person specified in the defendant's notice; nor can any other book be given in evidence in support of the defence than the one substantially corresponding in title, time, and place of publication with the title, time, and place specified in the notice.

The 26th section enacts, that if any action or suit be commenced or brought against any person for doing or causing to be done anything in pursuance of this act, the defendant may plead the general issue, and give the special matter in evidence; and if upon such action a verdict be given for the defendant, or the plaintiff become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant has by law in any case.

The 26th section of the same statute enacts, that all actions, suits, bills, indictments, or informations for any offence committed against this act shall be commenced within twelve calendar months after the committing of the offence, or the same shall be void and of none effect; provided, that such limitation shall not extend to any actions, suits, or proceed-

ings commenced under this act in respect of copies of books required to be delivered to the British Museum and the four other libraries.

The 21st section of the 5 & 6 Vict. c. 45, gives to the proprietors of the right of dramatic or musical representation or performance during the term of their interest, all the remedies provided by the 3 W. IV. c. 15. By the 3 W. IV. c. 15, § 2, it is enacted, that if any person, during the continuance of the exclusive right of representing a dramatic piece, cause to be represented, without the author's or proprietor's previous written consent, such production at any place of dramatic entertainment within the British dominions, every such offender shall, for each representation, be liable to the payment of not less than 40*s*., or of the full amount of the advantage arising from the representation, or of the loss sustained by the plaintiff, whichever shall be the greater damage. These penalties are recoverable by the author or proprietor, together with double costs of suit in any court having jurisdiction in such cases, in that part of the British dominions where the offence is committed. Pursuant to the 24th section of the 5 & 6 Vict. c. 45, the right to recover these penalties is not prejudiced by an omission to register on the part of the proprietor of the sole liberty of representing a dramatic piece.

The 3d section of the 3 W. IV. c. 15, provides that all actions or proceedings for any offence or injury against that act shall be commenced within twelve

calendar months from the committing of the offence, or else the same shall be void and of no effect.

By the 8 Geo. II. c. 13, any person pirating a print or engraving is made liable to forfeit the plate on which such print shall be copied, and every sheet whereon such print shall be copied or printed to the proprietor of the original, who is forthwith to destroy the same; and the offender is further to forfeit five shillings for every print found in his custody, one moiety to the king, and the other to any person who shall sue for the same. And by the 17 Geo. III. c. 57, extended to Ireland by the 6 & 7 W. IV. c. 59, persons pirating such prints are made liable to an action on the case for damages at the suit of the proprietor, together with double costs.

The 3d section of the 54 Geo. III. c. 56, enacts that if any person, within the term of copyright, make or import, or cause to be made, imported, exposed to sale, or otherwise disposed of, a pirated copy or pirated cast of any original sculpture or other matter abovementioned, whether such pirated copy or cast be produced by moulding, copying, or other means of imitation, to the detriment, damage, or loss of the proprietor, then such proprietor or his assignee may, by special action on the case, recover against a person so offending such damages as a jury may assess at the time, together with double costs of suit.

Pursuant to the fifth section of the same act, all actions for piracy of sculpture must be brought

within six calendar months after the discovery of the offence.

In the United States, the statute of 1831 provides penalties to be recovered by action of debt, one moiety to the use of the proprietor of the copyright, and the other moiety to the use of the United States.[1] No action on the case for damages is provided by statute; but there can be no doubt that here, as well as in England, such an action lies at common law.

The statute also inflicts a forfeiture of the pirated copies of the book, in addition to the other penalties;[2] and for a false representation that a book has been entered for copyright according to the requirements of the statute, it inflicts a forfeiture of one hundred dollars, to be recovered by action of debt, one moiety to the use of the person who shall sue for the same, and one moiety to the use of the United States.[3]

The 10th section provides, that if any person or persons shall be sued or prosecuted, for any matter, act, or thing done under or by virtue of this act, he or they may plead the general issue, and give the special matter in evidence.[4]

The 13th section limits the right of action to two years after the cause of action shall have arisen.[5]

The penalties for violating the copyright of maps,

[1] The penalties are fifty cents for every sheet in the party's possession, printed or printing, published, imported or exposed to sale. Act of Cong. 3d February, 1831, § 6. See Appendix, p. 95.

[2] Ibid.

[3] Ibid. § 11.

[4] Ibid. § 10.

[5] Ibid. § 13.

charts, musical compositions, engravings, cuts or prints, are, the forfeiture of the plate or plates, and of one dollar for every sheet found in the possession of the party, printed or published, or exposed to sale, the one moiety to the true proprietor, and the other moiety to the use of the United States.[1]

The printing or publishing any manuscript whatever, without the consent of the author or legal proprietor first obtained, (if such author or proprietor be a citizen of the United States or resident therein,) renders the party liable to suffer and pay to the author or proprietor all damages occasioned by such injury, to be recovered by a special action on the case founded upon the statute, in any court having cognizance thereof; and the several courts of the United States empowered to grant injunctions to prevent the violation of the rights of authors and inventors, are empowered to grant injunctions in like manner, according to the principles of equity, to restrain such publications of manuscripts.[2]

2. Remedies in Equity.

The jurisdiction of courts of equity, in cases of copyright, is exercised by injunction, and extends, incidentally, to the taking an account of the damages occasioned by the piratical publication.

The ground upon which a court of equity exercises its jurisdiction, is, that damages do not give adequate

[1] § 7.

[2] § 9. See post, pp. 329, 330, et seq.

relief; and that the sale of copies by the defendant is in each instance not only taking away the profit upon the individual work, which the plaintiff probably would have sold, but that it may injure him to an incalculable extent, which no inquiry for the purpose of damages can ascertain. A court of equity therefore acts with a view to make the legal right effectual, by preventing the publication altogether.[1]

In general, when proceedings are instituted to obtain the interference of a court of equity, it is necessary for the plaintiff to show a *prima facie* legal title. If the author of the book is himself the plaintiff, he alleges in his bill, or in an affidavit accompanying it, his title by authorship; and, in the United States, it is necessary to offer proof that he has complied with the statute directions for securing his right, though in England it is not necessary to relief in equity that the book should have been entered at stationers' hall.[2] It is not, however, indispensable to relief, that the party should have a strictly legal title. It is sufficient that he has a clear equitable title. Formerly, courts of equity would not interfere, by way of injunction, to protect copyrights or patents, until the title had been established at law. But the present course is to exercise jurisdiction, in all cases where there is a clear color of title, founded on long possession, and assertion of right.[3]

[1] Hogg *v.* Kirby, 8 Ves. 215, 225. Wilkins *v.* Aiken, 17 Ves. 422, 424. Lawrence *v.* Smith, Jacobs R. 471. 2 Story's Eq. Jurisp. § 930, 933.

[2] Rundell *v.* Murray, Jacobs R. 314.

[3] 2 Story's Eq. Jurisp. § 935. Mawman *v.* Tegg, 2 Russ. 385.

But if the plaintiff claims as assignee of the author's title, he must, by affidavit or otherwise, show that his title came by written assignment.[1] He must make a particular title; it is not enough to say that he has acquired the copyright, but he must trace his title to the author or his assignee, who alone have title under the statute.[2] But if the plaintiff claims as assignee of an assignee, it seems that he will not be put to prove the original assignment to his assignor, but the proof of want of title will be thrown on the defendant;[3] and the court will interfere at the suit of plaintiffs who have a good equitable title, even though it should not be quite clear that their legal title is complete.[4]

Where a fair doubt appears as to the plaintiff's legal right, the court directs it to be tried at law, making in the interim the best provision it can, for the benefit of both parties.[5] An injunction should be granted and maintained, in the interim, if the defendant's publication is prejudicial to the plaintiff, although the plaintiff's right admits of a fair doubt; and an action should be brought forthwith to try it.[6] But in cases of works, the whole value of which arises from a temporary demand, the court acts upon the opposite principle, and if there is a doubt as to

[1] Morris *v.* Kelley, 1 Jac. & W. 481.

[2] Gilliver *v.* Snaggs, 2 Eq. Abr. 522. 4 Viner's Abr. 278, A. 4.

[3] Morris *v.* Kelley, 1 Jac. & W. 481.

[4] Mawman *v.* Tegg, 2 Russ. 385.

[5] Wilkins *v.* Aiken, 17 Ves. 422. Bramhall *v.* Holcomb, 3 M. & Cr. 737.

[6] Ibid. Universities of Oxford and Cambridge *v.* Richardson, 6 Ves. 689, 707.

the legal right, does not grant the injunction before a trial at law, where it would work an irremediable injury to the defendant.[1]

[1] Spottiswoode *v.* Clarke, 2 Phillips's Ch. R. 154. In this case the lord chancellor laid down the principles which ought to govern the discretion of the court, as follows: "I have often expressed my opinion that unless a case of this kind, depending upon a legal right, is very clear, it is the duty of the court to take care that the right be ascertained before it exercises its jurisdiction by injunction. The first question to be determined is as to the legal right, and if the court doubts about that, it may commit great injustice by interfering until that question has been decided.

"One objection to that course is, that it compels future litigation, for it orders the plaintiff to bring an action; whereas, by adopting the alternative course — suspending the injunction, with liberty to the plaintiff to bring an action — it enables him to pause a little, and consider whether it is worth his while to embark in such a course of litigation as will be necessary to establish the right on which he insists. A second objection is, that the court, in granting the injunction, is expressing a strong opinion upon the legal question, before that question is discussed in the proper tribunal. It is much better, if the legal right is to be litigated, that this court should abstain from expressing any opinion upon it in the mean time.

"But the greatest of all objections is, that the court runs the risk of doing the greatest injustice in case its opinion upon the legal right should turn out to be erroneous. Here is a publication, which, if not issued this month, will lose a great part of its sale for the ensuing year. If you restrain the party from selling immediately, you probably make it impossible for him to sell at all. You take property out of his pocket and give it to nobody. In such a case, if the plaintiff is right, the court has some means, at least, of indemnifying him, by making the defendant keep an account; whereas, if the defendant be right, and he be restrained, it is utterly impossible to give him compensation for the loss he will have sustained. And the effect of the order in that event will be to commit a great and irremediable injury. Unless, therefore, the court is quite clear as to what are the legal rights of the parties, it is much the safest course to abstain from exercising its jurisdiction till the legal right has been determined.

"In the course of the argument cases of trade-marks were referred to; but trade-marks have nothing to do with this case. Take a piece of steel: the mark of the manufacturer from which it comes is the only indication to the eye of the customer of the quality of the article; so it is of blacking, or any other article of manufacture, the particular quality of which is not discernible by the eye. But these cases are quite different from the present case, in which, if you are deceived at all, it is not by the eye. The size, the color, the engravings are all different in the two works, so that no one who sees the two could mistake the one for the other. At the same time I must say, that there is in the descriptions given of the two works a very remarkable coincidence of ideas in the plaintiff and defendant, if the

It seems to have been Lord Eldon's practice, not to grant an injunction before trial, where the doubt as to the plaintiff's legal right arose from the character of the work. In one case, having, from inspection of the book, a doubt whether it would be held entitled to protection at law, because it impugned the doctrine of the immortality of the soul, he refused to assist such a doubtful right by injunction.[1] So, also, in Mr. Southey's case, he acted upon the same doctrine, without considering it necessary to determine positively whether the work was innocent or not, although the author had never published it, and wished to restrain its publication altogether, having changed his opinions.[2]

Even in cases where the plaintiff can only have an injunction, and from any cause it should be impossible to take an account, the plaintiff is entitled to the injunction.[3] So, too, where the injury is only threatened, the party has a right to the injunction, to prevent that mischief, if the circumstances warrant it, though no account is required to be taken.[4]

two wrappers be supposed to have been designed independently of each other. It is difficult to believe that that was pure accident; though if any fraud was intended, it certainly was a very clumsy one.

"I am not, however, so satisfied that this is a case in which the plaintiff has a legal right against the defendant as to justify me in restraining the latter from the sale of his work, until that right has been established in the proper tribunal. Therefore the injunction must be dissolved, the defendant keeping an account, and the plaintiff to be at liberty to bring an action."

[1] Lawrence *v.* Smith, Jacobs R. 471.

[2] Southey *v.* Sherwood, 2 Meriv. 435.

[3] Universities of Oxford and Cambridge *v.* Richardson, 6 Ves. 689, 707.

[4] Ibid.

But wherever an injunction is granted, the plaintiff is entitled to go on and take the account, as incidental relief, in addition to the relief by injunction.[1]

It has also been suggested, by Lord Eldon, that in some cases it may be proper to direct an issue of *quantum damnificatus*, where the plaintiff can show that the profits handed over to him by the defendant are not a satisfaction for the injury done to him.[2]

The court will not interfere by injunction in the first instance, where the plaintiff has for a long time acquiesced in the violation of his rights, but will leave him to an action at law ;[3] and where the con-

[1] Grierson *v.* Eyre, 9 Ves. 341. Universities of Oxford and Cambridge *v.* Richardson, 6 Ves. 705, 706. Baily *v.* Taylor, 1 Russ. & M. 73. Sheriff *v.* Coates, 1 Russ. & M. 159. 2 Story's Eq. Jurisp. § 933. Eden on Injunctions, ch. xii. p. 261, ch. xiii. p. 364.

[2] Mawman *v.* Tegg, 2 Russ. 385, 400. The following are his lordship's observations : "Another way of ascertaining the facts of the case is to send it to a jury ; and, in either of those ways of disposing of it, the court will order the defendant to keep an account of the profits in the mean time. But one difficulty in all these cases is, that though keeping an account of the profits may prevent the defendant from deriving any profit, as he may ultimately be obliged to account to the plaintiff for all his gains, yet if the work which the defendant is publishing in the meantime, really affects the sale of the work which the plaintiff seeks to protect, the consequence is, that the rendering the profits of the former work to the complaining party may not be a satisfaction to him for what he might have been enabled to have made of his own work, if it had been the only one published ; for he would argue, that the profits of the defendant, as compared with the profits which he, the plaintiff, has been improperly prevented from making, could only be in the proportion of eight shillings, the price of a copy of the one book, to one guinea, the price of a copy of the other. If the principle, upon which the court acts, is, that satisfaction is to be made to the plaintiff, I cannot see, though I never knew it done, why, if a party succeeds at law in proving the piracy, the court should not give him leave to go on to ascertain, if he can, his damages at law ; or if, after applying the profits which are handed over to him by the defendants, he can show that they were not a satisfaction for the injury done to him, I cannot see why the court might not in such a case direct an issue to try what further damnification the plaintiff had sustained."

[3] Platt *v.* Button, 19 Ves. 447. Rundell *v.* Murray, Jacobs R. 314.

duct of the plaintiff has been such as to induce the defendant to believe that the publication of the latter would not be objected to, the court will not interfere by injunction, until after a trial at law.[1]

Where there is a dispute as to the construction of an agreement between the parties, the court will not grant an injunction, until the effect of the agreement has been established at law.[2]

Where the plaintiff states circumstances which are not denied, showing that he is entitled to an equitable copyright in a work, the court, in directing an action to be brought by him, to determine the question of piracy, will direct the defendant, for the purposes of the action, to admit a legal copyright in the plaintiff.[3]

In exercising its jurisdiction, the court has first to decide whether there ought to be an injunction; and if there is to be an injunction, it has next to determine, whether the injunction shall be against the whole work, or only against a part of it. The extent to which the injunction ought to go, must in each case depend on the particular circumstances of that case.[4]

The manner in which the injunction is to issue, and the extent to which it is to be applied to the

But if the delay in making application to the court can be accounted for, the plaintiff will lose none of his rights. Mawman *v.* Tegg, 2 Russ. 393.

[1] Saunders *v.* Smith, 3 M. & Cr. 711.

[2] Walcott *v.* Walker, 7 Ves. 1. Lowndes *v.* Duncombe, 1 Law Jour. 51.

[3] Sweet *v.* Shaw, 17 Law Journ. 216.

[4] Mawman *v.* Tegg, 2 Russ. 393.

work of the defendant, may cause some embarrassment, where a part only of the defendant's book has been borrowed from that of the plaintiff. The general principle upon which the court proceeds in the exercise of its jurisdiction, is, that in order to amount to an infringement, so that an injunction ought to be granted, it is not necessary that there should be a complete copy or imitation throughout; but only that there should be an important and valuable portion, which operates injuriously to the copyright of the plaintiff.[1] Wherever it appears by sufficient evidence that a copyright exists, and that piracy has been committed to an extent which is likely to be seriously prejudicial to the plaintiff, an injunction ought to be granted, the extent of which must depend on the amount of the piracy proved, and the nature of the work.[2]

[1] Emerson *v.* Davies, 3 Story's R. 768, 795; Wilkins *v.* Aiken, 17 Ves. 422; Bramhall *v.* Holcomb, 3 M. & Cr. 737; Campbell *v.* Scott, 11 Simons, 31; Mawman *v.* Tegg, 2 Russ. 385, 397, 400. In Campbell *v* Scott, Lord Cottenham said, "If the court clearly sees that there has been anything done which tends to an injury, I cannot but think that the safest rule is to follow the legal right and grant the injunction." Sir J. Leach, V. C., directed an injunction, to "restrain the publication of any works or work in which the matter of the plaintiff's publication, or any part thereof, was verbally or substantially introduced." See Pinnock *v.* Rose, cited 2 Bro. Ch. R. 85, n.

[2] Lewis *v.* Fullerton, 2 Beavan, 6. Lord Langdale, M. R., in this case, said, "I conceive that when it has been ascertained that the defendant has in any degree violated the right of the plaintiff, the nature and extent of the order to be made must depend on the circumstances of the cases, and the amount and extent of the evidence adduced. The piracy proved may be so inconsiderable, and so little likely to injure the plaintiff, that the court may decline to interfere at all, and may leave the plaintiff to his remedy at law; or the piracy proved may be extensive in a greater or less degree, such as to leave it extremely doubtful whether the parts not examined are in any degree piratical, or such as to make it more or less probable that they have been composed in the same manner, collected from the like sources as the parts which have been examined, and are in an equal degree liable to the charge of piracy.

Notwithstanding the effect of an injunction against parts of a book may be to destroy it altogether, if

"The hardship of restraining, or doing that which is equivalent to restraining the whole of a work, when part of it consists of original matter, has always been urged in cases of this nature, and the answer which is given by Lord Eldon, in the case to which I have already referred, seems conclusive: 'If the parts which have been copied cannot be separated from those which are original without destroying the use and value of the original matter, he who has made an improper use of that which did not belong to him must suffer the consequences of so doing; if a man mixes what belongs to him with what belongs to me, and the mixture be forbidden by the law, he must again separate them, and he must bear all the mischief and loss which the separation may occasion. If an individual chooses in any work to mix my literary matter with his own, he must be restrained from publishing the literary matter which belongs to me; and if the other parts of the work cannot be separated, and if by that means the injunction which restrained the publication of my literary matter prevents also the publication of his own literary matter, he has only himself to blame.'

"In cases of this nature, it must be observed, that nothing but an injunction can sufficiently protect the injured party. In the same case Lord Eldon has observed that, 'though keeping an account of the profits may prevent the defendant from deriving any profit, as he may ultimately be obliged to account to the plaintiff for all his gains, yet if the work which the defendant is publishing in the meantime really affects the sale of the work which the plaintiff seeks to protect, the consequence is, that the rendering the profits of the former work to the complaining party, may not be a satisfaction to him, for what he might have been enabled to have made of his own work, if it had been the only one published; for he would argue, that the profits of the defendant, as compared with the profits which he, the plaintiff, has been improperly prevented from making, could only be in the proportion of the price of a copy of the one book to the price of a copy of the other.' On the whole, for the reasons thus stated, it appears to me, that an injunction ought to be granted, whenever it appears, by sufficient evidence, that a copyright exists, and that piracy has been committed to an extent which is likely to be seriously prejudicial to the plaintiff; and that the extent of the injunction must depend on the amount of proof and the nature of the work. The plaintiffs in the present case ask for an injunction, to restrain the defendant from publishing the whole or any part of the defendant's gazetteer. As it appears from the evidence that there are parts of the defendant's gazetteer which are not borrowed from the plaintiff's work, I cannot grant an injunction in those terms; and it becomes a question, whether an injunction should be granted in general terms against such parts as have been pirated, or whether means should be taken to ascertain what particular parts have been pirated, in order that the publication of those particular parts may be restrained. Now it appears to me, not, it must be admitted, by absolute proof and demonstration, for the two works have not been examined in every part, but upon proof and demonstra-

the piracy is proved, these consequences will not avert the injunction, even if the other parts of the book be wholly original.[1]

tion as to part, and as to the rest by strong inference and presumption, arising from the proof given as to those parts to which the proof applies, and from the nature of the work and the circumstances under which it is proved to have been composed, that if the parts pirated were taken away, though some articles would remain in their entirety, yet the greater number would be left in a state so imperfect and incomplete, that the defendant's work would lose its distinctive and useful character as a gazetteer.

"If the defendant were desirous to avail himself, as he has an undoubted right to do, of any original matter of his own, or of any matter which he has fairly taken from other sources, he would, I think, be under the necessity of recomposing his work, for the purpose of separating that which appears to me to have been improperly taken from the plaintiff's work. Lord Eldon says, (2 Russ. 399,) 'In the cases which have come before me, my language has been, that there must be an injunction against such part as has been pirated, but in those cases the part of the work which was affected with the character of piracy was so very considerable, that if it were taken away, there would have been nothing left to publish except a few broken sentences;' and it was because the evidence before him did not enable him to approach sufficiently to that result, that he made the particular order which he did in that case.

"But in this case, having availed myself of the evidence which has been so industriously collected during the long time that this motion was pending, and having read with great care all the affidavits laid before me, and more particularly the affidavits of Mr. Holliday and Mr. Cunningham, I think that I have reasons on which I ought judicially to act, for considering, that the parts of the works which have been examined and compared, afford fair indications of the nature and character of those parts of the works which have not yet been examined and compared; and it appearing to me, under these circumstances, that if the parts affected with the character of piracy were taken away, there would be left, I cannot say nothing but a few broken sentences, but there would be left an imperfect work, which could not, to any useful extent, serve the purposes of a gazetteer, I think that I ought to grant an injunction, to restrain the publication of the parts which are pirated, without waiting till all the parts which have been pirated can be distinctly specified; and therefore the order which I shall make will be: Let the defendant, his agents, servants and workmen be restrained from further printing, publishing, selling or otherwise disposing of any copy or copies of a book called 'A New and Comprehensive Gazetteer,' &c., containing any articles or article, passages or passage, copied, taken or colorably altered from a book called 'The Topographical Dictionary of England,' published by the plaintiffs."

[1] In Mawman *v.* Tegg, 2 Russ. 390, Lord Eldon said, "As to the hard consequences which would follow from granting an injunction,

The court, however, seldom grants an injunction against the whole of a work, without having first ascertained, either by inspection or by reference to a master, the quantity of matter pirated. Where the extracts are trifling, the court will not interfere.[1] But in order to ascertain how the injunction is to be applied, the quantity of matter pirated by the defendant ought to be ascertained.[2] Where, however, a considerable portion of the defendant's publication has thus proved to be pirated, the court will grant an injunction to restrain the publication of the parts which are pirated, without waiting till all the parts pirated can be ascertained.[3]

In a later case, the alleged piracy consisted in taking from a periodical work devoted to reports of cases in the courts of law. It was objected that the plaintiff did not specifically point out what were the articles in which he claimed copyright, but the court held that was not necessary, as in voluminous works

when a very large proportion of the work is unquestionably original, I can only say, that, if the parts, which have been copied, cannot be separated from those which are original, without destroying the use and value of the original matter, he who has made an improper use of that which did not belong to him must suffer the consequences of so doing. If a man mixes what belongs to him with what belongs to me, and the mixture be forbidden by the law, he must again separate them, and he must bear all the mischief and loss which the separation may occasion. If an individual chooses in any work to mix my literary matter with his own, he must be restrained from publishing the literary matter which belongs to me; and if the parts of the work cannot be separated, and if by that means the injunction, which restrained the publication of my literary matter, prevents also the publication of his own literary matter, he has only himself to blame." See also Emerson *v.* Davies, 3 Story's R. 768, 795, 796; Folsom *v.* Marsh, 2 Story's R. 100, 119.

[1] Bell *v.* Whitehead, 17 Law J. 141.

[2] Mawman *v.* Tegg, 2 Russ. 398.

[3] Lewis *v.* Fullerton, 17 Law J. 291; S. C. 2 Beavan, 6.

the practice is to point out some specific acts of piracy, as evidence of infringement, and then, if the injunction is granted at all, it is granted generally.[1]

In general, if the court sees strong ground for supposing that the defendant's work is a violation of the plaintiff's copyright, the course is, to grant an injunction *ex parte*, until answer or further order. Then, in order to ascertain the fact of piracy or no piracy, it is referred to a master to examine into the originality of the new book,[2] or the court takes upon itself the inspection of both works.[3] Where the works are long and of a complex character, containing original matter mixed with much that is common property, they will be referred to a master;[4] but where they are of a class affording facility for the detection of piracy by immediate inspection, the court will examine them.[5]

This is the practice in the courts of the United States, as well as in England.[6]

When the master reports that the two books are in parts different and in parts the same, an injunction will be granted against those parts of the defendant's book, which are similar to parts of the

[1] Sweet *v.* Mangham, 9 Law J. 323; 4 Jurist, 479.

[2] Carnan *v.* Bowles, 2 Bro. C. R. 80; 1 Cox, 283; Bell *v.* Walker, 1 Br. C. R. 451; —— *v.* Leadbetter, 4 Ves. 681.

[3] Butterworth *v.* Robinson, 5 Ves. 709.

[4] —— *v.* Leadbetter, 4 Ves. 681.

[5] Butterworth *v.* Robinson, 5 Ves. 709; Whittingham *v.* Wooler, 2 Swanst. 431.

[6] Gray *v.* Russell, 1 Story's R. 11; Folsom *v.* Marsh, 2 Story's R. 100; Emerson *v.* Davies, 3 Story's R. 768.

plaintiff's.[1] But where the master reported that the books were not the same, but that one was a description of roads by letter press, and the other a description as to the greater part by maps, and as to the remainder by letter press, but that the roads were in substance the same, the court referred it back to the master, to inquire whether the defendant's was a *new and original* work.[2]

Courts of equity do not redress, by the summary process of injunction, injuries of a very trifling character, but leave the party to his remedy at law. Thus, where the defendant had, in two numbers of a periodical work of theatrical criticism, inserted detached extracts, to the extent of six or seven pages, from a farce, the property of the plaintiff's, containing forty pages, interspersed with criticisms, a bill for a perpetual injunction and an account of the profits of the numbers, which amounted to not £3, was dismissed with costs.[3] So too, where the defendant had copied from the plaintiff's work, certain tables of calculations, and it was in evidence that the tables might be calculated anew in a very short time and at an expense of about £7 10s., which would have given him a complete title to publish them, an injunction was refused.[4]

[1] Carnan *v.* Bowles, 2 Bro. Ch. R. 80.

[2] Ibid.

[3] Whittingham *v.* Wooler, 2 Swanst. 428. There was also, in this case, the additional circumstance, that the defendant had probably not transcended the limits of fair quotation for the purposes of criticism. See also Webb *v.* Powers, 10 Law Rep. 152; S. C. 1 Woodbury's R.

[4] Baily *v.* Taylor, 1 Russ. & M. 73. In this case the bill was filed

But where an injunction was granted on filing the bill, and afterwards the cause was brought to a hearing, and it was contended that on account of the trifling character of the injury, the defendant ought not to pay costs, it was held, that the defendant ought to have tendered the costs after the injunction was granted, and having refused to do so, he must pay the costs of the suit.[1]

In most cases, the bill seeks an account of the books printed, and of the profits thereof, from the person who has pirated from the plaintiff's work, as well as an injunction. If the cause is brought to a hearing, and a perpetual injunction is decreed, the plaintiff will have a right to have the account decreed as incidental, in addition to the other relief by injunction, unless the amount would be very trifling.[2]

But in order to obtain an account, it is necessary that the plaintiff should entitle himself to an injunction, since the account is a relief strictly incidental to the injunction.[3] The account is in practice gen-

after the defendant's work had been published ten years.

[1] Fradella *v.* Weller, 2 Russ. & M. 247. In this case, it was held not to be necessary, though usual, to produce the pirated prints, or any of them, where the fact of the prints being a piracy was proved, and not denied by the answer. As to the recovery of costs, where the plaintiff has been compelled to bring the cause to a hearing, notwithstanding the defendant's submission, see Kelly *v.* Hooper, 1 Y. & Col. Ch. R. 197.

[2] Hogg *v* Kirby, 8 Ves. 323–325. Universities of Oxford and Cambridge *v.* Richardson, 6 Ves. 705, 706. Bailey *v.* Taylor, 1 Russ & M. 73. Sheriff *v.* Coates, 1 Russ. & M. 159. Kelly *v.* Hooper, 1 Y. & Col. Ch. R. 197. 2 Story's Eq. Jurisp. § 933. Mitford's Eq. Pl. by Jeremy, 138. Eden on Injunctions, ch. 12, p. 261; ch. 13, p. 364.

[3] Baily *v.* Taylor, 1 Russ. & M. 73.

erally waived; but where it is not, the court grants it, upon principles which have been thus stated by Sir J. Wigram, V. C. "It is true, that the court does not, by an account, accurately measure the damage sustained by the proprietor of an expensive work from the invasion of his copyright by the publication of a cheaper book. It is impossible to know how many copies of the dearer book are excluded from sale by the interposition of the cheaper one. The court, by the account, as the nearest approximation which it can make to justice, takes from the wrong-doer all the profits he has made by his piracy, and gives them to the party who has been wronged. In doing this the court may often give the injured party more, in fact, than he is entitled to, for *non constat* that a single additional copy of the more expensive book would have been sold, if the injury by the sale of the cheaper book had not been committed. The court of equity, however, does not give anything beyond the account."[1]

The delivery up of copies of the unlawful publication is supposed to depend entirely upon statute. However it might have been regarded in England, if the common law right of authors had not been abrogated by the decision in Donaldson *v.* Beckett, it has been held, that there is now no common law right in the author or proprietor of a book which is pirated, to the delivery up of the copies of the illegal work;

[1] Colburn *v.* Simms, 2 Hare, 560.

and therefore if such relief is given in equity, it must be under the provisions of some statute.[1]

The act 54 Geo. III. c. 156, § 4, does not authorize the delivery up of the copies of a pirated book, unless the genuine work had been duly registered as well as composed at the time the act is done to which the penalty and forfeiture would attach.[2] The same requisite is contained in the 5 & 6 Vict. c. 45, § 23.[3]

The jurisdiction of the courts of the United States, in cases of copyright depends upon a statute passed February 15, 1819, by which it is enacted, "That

[1] Colburn *v.* Simms, 2 Hare, 554. In this case, Sir J. Wigram, V. C. said, "There would be great difficulty in applying to this subject the principles of the common law, which in certain cases give to the owner of an original material the right of seizing it, in whatever shape it may be found, if he can prove it it to be his own; or which relate to what is termed confusion of goods, by which, if one man voluntarily mixes his property with that of another, so that the two becomes inseparable, the entirety is held to belong to him whose property has been invaded. It may be true, that, if one writes or prints upon the paper of another, the writing or printing becomes his to whom the paper belongs, but it does not necessarily follow that the converse of that proposition would be true, — that one who writes or prints upon his own paper the composition of another, has thereby so mixed his property with the property of the author whose work he has copied, that he has lost his original title to the material which he has so employed. There might indeed have been some countenance for such a principle before the judgment of the house of lords, in the case of Donaldson *v.* Beckett, had confined the exclusive right of authors within the limits prescribed by the statute, and thereby negatived the existence of that absolute common law right in their works which had been previously supposed to exist, and which the decision of the court of king's bench, in the case of Millar *v.* Taylor, had tended to affirm. I think, therefore, the case for the plaintiff on this point must be placed on another ground, and that his right to a decree of this court for the delivery up of the copies, if that right exists, must be found within the provisions of the statutes, and not upon any common law right independent of them."

[2] Ibid.

[3] See Appendix, p. 76.

the circuit courts of the United States shall have original cognizance, as well in equity as at law, of all actions, suits, controversies and cases, arising under any law of the United States, granting or confirming to authors or inventors, the exclusive right to their respective writings, inventions, and discoveries; and upon any bill in equity, filed by any party aggrieved in any such cases, shall have authority to grant injunctions, according to the course and principles of courts of equity, to prevent the violation of the rights of any authors or inventors, secured to them by any laws of the United States, on such terms and conditions as the said courts may deem fit and reasonable: Provided, however, That from all judgments and decrees of any circuit courts, rendered in the premises, a writ of error or appeal, as the case may require, shall lie to the supreme court of the United States, in the same manner and under the same circumstances, as is now provided by law in other judgments and decrees of such circuit courts."[1]

The jurisdiction conferred by this act is ample. It embraces all cases, both at law and in equity, arising under the laws which protect patents and copyrights, without regard to the citizenship of the parties, or the amount in controversy. The act of 1831, which gives a special action on the case for damages, for the unlawful printing or publishing of any manuscript, makes such damages recoverable in any court

[1] Act of Congress, February 15, 1819, ch. xix. 3 U. S. Statutes at large, p. 481.

having cognizance thereof; and also empowers the courts of the United States, which are authorized to grant injunctions to prevent the violation of the rights of authors and inventors, to grant injunctions in like manner, according to the principles of equity, to restrain such publication of manuscripts.[1]

The circuit courts of the United States, therefore, may entertain actions at law, to recover damages for the unlawful publication of any printed book, under the protection of copyright, or of any manuscript whatever; and may also entertain bills in equity for injunctions to restrain and prevent such publications; although both the parties are citizens of the same state, and although the value in controversy may not exceed five hundred dollars.

[1] Act of Congress, February 3, 1831, § 9.

APPENDIX.

BRITISH STATUTES.

8 Anne, c. 19.—An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies, during the Times therein mentioned.

8 Anne, c. 19.

See the case of Miller v. Taylor, in 4 Bur. 2303 to 2418.

"WHEREAS printers booksellers and other persons have of late frequently taken the liberty of printing reprinting and publishing or causing to be printed reprinted and published books and other writings without the consent of the authors or proprietors of such books and writings to their very great detriment and too often to the ruin of them and their families:" For preventing therefore such practices for the future and for the encouragement of learned men to compose and write useful books; May it please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled, and by the authority of the same, That from and after the tenth day of *April* one thousand seven hundred and ten the author of any book or books already printed who hath not transferred to any other the copy or copies of such book or books share or shares thereof, or the bookseller or booksellers printer or printers or other person or persons who hath or have purchased or acquired the copy or copies of any book or books in order to print or reprint the same shall have the sole right

After 10 April 1710, the authors of books already printed, who have not transferred their rights, and the booksellers, &c. who have purchased

8 Anne, c. 19. copies, shall have the sole right of printing them for the term of 21 years. And the authors of books not printed to have the sole right of printing for fourteen years.

and liberty of printing such book and books for the term of one-and-twenty years to commence from the said tenth day of *April* and no longer; and that the author of any book or books already composed and not printed and published or that shall hereafter be composed and his assignee or assigns shall have the sole liberty of printing and reprinting such book and books for the term of fourteen years to commence from the day of the first publishing the same and no longer; and that if any other bookseller printer or other person whatsoever from and after the tenth day of *April* one thousand seven hundred and ten, within the times granted and limited by this Act as aforesaid, shall print reprint or import or cause to be printed reprinted or imported any such book or books without the consent of the proprietor or proprietors thereof first had and obtained in writing signed in the presence of two or more credible witnesses; or knowing the same to be so printed or reprinted without the consent of the proprietors, shall sell publish or expose to sale or cause to be sold published or exposed to sale any such book or books without such consent first had and obtained as aforesaid: 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 proprietor or proprietors of the copy thereof 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 Queen's most excellent Majesty her 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 her 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.

Punishment of bookseller, &c. printing without consent of the proprietor.

II. "And whereas many persons may through ignorance offend against this Act, unless some provision be

made whereby the property in every such book as is intended by this Act to be secured to the proprietor or proprietors thereof may be ascertained, as likewise the consent of such proprietor or proprietors for the printing or reprinting of such book or books may from time to time be known;" Be it therefore further enacted by the authority aforesaid, That nothing in this Act contained shall be construed to extend to subject any bookseller printer or other person whatsoever to the forfeitures or penalties therein mentioned for or by reason of the printing or reprinting of any book or books without such consent as aforesaid, unless the title to the copy of such book or books hereafter published shall, before such publication, be entered in the register book of the Company of Stationers in such manner as hath been usual, which register book shall at all times be kept at the hall of the said company, and unless such consent of the proprietor or proprietors be in like manner entered as aforesaid, for every of which several entries six pence shall be paid and no more; which said register-book may at all seasonable and convenient times be resorted to and inspected by any bookseller printer or other person for the purposes before mentioned without any fee or reward; and the clerk of the said Company of Stationers shall when and as often as thereunto required give a certificate under his hand of such entry or entries and for every such certificate may take a fee not exceeding six pence.

8 Anne, c. 19.

Copies of books to be entered before publication in the register book of the Company of Stationers; which may be inspected at any time without fee.

III. Provided nevertheless, That if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries or to give such certificate, being thereunto required by the author or proprietor of such copy or copies in the presence of two or more credible witnesses, that then such person and persons so refusing, notice being first duly given of such refusal by an advertisement in the *Gazette*, shall have the like benefit as if such entry or entries certificate or certificates had been duly made and given; and that the clerks so refusing shall for any such offence forfeit to the proprietor of such copy or copies the

Penalty of the clerk refusing so to do.

8 Anne, c. 19.

sum of twenty pounds, to be recovered in any of her 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.

After 25 March, the Archbishop of Canterbury, &c. to settle the prices of books, upon complaint made that they are unreasonable.

IV. Provided nevertheless and it is hereby further enacted by the authority aforesaid, That if any bookseller or booksellers printer or printers shall after the said five-and-twentieth day of *March* one thousand seven hundred and ten set a price upon or sell or expose to sale any book or books at such a price or rate as shall be conceived by any person or persons to be too high and unreasonable; it shall and may be lawful for any person or persons to make complaint thereof to the Lord Archbishop of *Canterbury* for the time being the Lord Chancellor or Lord Keeper of the great seal of *Great Britain* for the time being the Lord Bishop of *London* for the time being the Lord Chief Justice of the court of *Queen's Bench* the Lord Chief Justice of the court of *Common Pleas* the Lord Chief Baron of the court of *Exchequer* for the time being the Vice-Chancellors of the two universities for the time being in that part of *Great Britain* called *England* the Lord President of the sessions for the time being the Lord Justice General for the time being the Lord Chief Baron of the *Exchequer* for the time being the Rector of the college of *Edinburgh* for the time being in that part of *Great Britain* called *Scotland*; who or any one of them shall and have hereby full power and authority from time to time to send for summon or call before him or them such bookseller or booksellers printer or printers and to examine and inquire of the reason of the dearness and enhancement of the price or value of such book or books by him or them so sold or exposed to sale; and if upon such inquiry and examination it shall be found that the price of such book or books is enhanced or any wise too high or unreasonable, then and in such case the said Archbishop of *Canterbury* Lord Chancellor or Lord Keeper Bishop of *London* two Chief Justices Chief Baron Vice-Chancellors of the universities in that part of *Great*

Britain called *England* and the said Lord President of the sessions Lord Justice General Lord Chief Baron and Rector of the College of *Edinburgh* in that part of *Great Britain* called *Scotland*, or any one or more of them so inquiring and examining have hereby full power and authority to reform and redress the same and to limit and settle the price of every such printed book and books from time to time according to the best of their judgments and as to them shall seem just and reasonable; and in case of alteration of the rate or price from what was set or demanded by such bookseller or booksellers printer or printers to award and order such bookseller and booksellers printer and printers to pay all the costs and charges that the person or persons so complaining shall be put unto by reason of such complaint and of the causing such rate or price to be so limited and settled; all which shall be done by the said Archbishop of *Canterbury* Lord Chanceller or Lord Keeper Bishop of *London* two Chief Justices Chief Baron Vice-Chancellors of the two universities in that part of *Great Britain* called *England* and the said Lord President of the sessions Lord Justice General Lord Chief Baron and Rector of the college of *Edinburgh* in that part of *Great Britain* called *Scotland* or any one of them by writing under their hands and seals, and thereof public notice shall be forthwith given by the said bookseller or booksellers printer or printers by an advertisement in the *Gazette*; and if any bookseller or booksellers printer or printers shall after such settlement made of the said rate and price sell or expose to sale any book or books at a higher or greater price than what shall have been so limited and settled as aforesaid, then and in every such case such bookseller and booksellers printer and printers shall forfeit the sum of five pounds for every such book so by him her or them sold or exposed to sale; one moiety thereof to the Queen's most excellent Majesty her heirs and successors, and the other moiety to any person or persons that shall sue for the same, to be recovered with costs of suit in any of her Majesty's courts of record

8 Anne, c. 19.

and if altered from the price the bookseller set, may order him to pay costs to the party complaining.

Penalty on booksellers selling at higher rates.

This clause repealed by 15 Geo. II. c. 36.

8 Anne, c. 19.

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.

After 10 April, nine copies of each book shall be delivered to the warehouse keeper of the company of Stationers, for the use of the university libraries, &c.

V. Provided always and it is hereby enacted, That nine copies of each book or books upon the best paper that from and after the said tenth day of *April* one thousand seven hundred and ten shall be printed and published as aforesaid or reprinted and published with additions shall by the printer and printers thereof be delivered to the warehouse-keeper of the said Company of Stationers for the time being at the hall of the said company before such publication made, for the use of the royal library the libraries of the universities of *Oxford* and *Cambridge* the libraries of the four universities in *Scotland* the library of *Sion College* in *London* and the library commonly called the library belonging to the Faculty of Advocates at *Edinburgh* respectively; which said warehouse-keeper is hereby required within ten days after demand by the keepers of the respective libraries or any person or persons by them or any of them authorized to demand the said copy to deliver the same for the use of the aforesaid libraries; and if any proprietor bookseller or printer or the warehouse-keeper of the said Company of Stationers shall not observe the direction of this Act therein, that then he and they so making default in not delivering the said printed copies as aforesaid shall forfeit, besides the value of the said printed copies, the sum of five pounds for every copy not so delivered as also the value of the said printed copy not so delivered; the same to be recovered by the Queen's Majesty her heirs and successors and by the chancellor masters and scholars of any of the said universities and by the president and fellows of *Sion College* and the said Faculty of Advocates at *Edinburgh*, with their full costs respectively.

Warehouse keeper to deliver the books ten days after demand.

Penalty of proprietor, &c. not observing the directions of this act.

Penalties in Scotland, how recoverable.

VI. Provided always and be it further enacted, That if any person or persons incur the penalties contained in this Act in that part of *Great Britain* called *Scotland* they shall be recoverable by any action before the court of session there.

VII. Provided, That nothing in this Act contained do extend or shall be construed to extend to prohibit the importation vending or selling of any books in *Greek Latin* or any other foreign language printed beyond the seas; anything in this Act contained to the contrary notwithstanding. 8 Anne, c. 19.

This act not to hinder the importation, &c. of books in Greek, &c. printed beyond sea, &c.

VIII. 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 watsoever for doing or causing to be done any thing in pursuance of this Act, the defendants in such action may plead the general issue and give the special matter in evidence; and if upon such action a verdict be given for the defendant or the plaintiff become nonsuited or discontinue his action, then the defendant shall have and recover his full costs for which he shall have the same remedy as a defendant in any case by law hath.

General issue.

IX. Provided, That nothing in this Act contained shall extend or be construed to extend either to prejudice or confirm any right that the said universities or any of them or any person or persons have or claim to have to the printing or reprinting any book or copy already printed or hereafter to be printed.

This act not to prejudice the right of the universities.

X. Provided nevertheless, That all actions suits bills indictments or informations for any offence that shall be committed against this Act shall be brought sued and commenced within three months next after such offence committed or else the same shall be void and of none effect.

Actions for offences against this act to be brought in three months.

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

After the fourteen years, the right of printing, &c. to return to the author for other fourteen years.

8 George II. c. 13. — An Act for the Encouragement of the Arts of Designing, Engraving and Etching Historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers, during the time therein mentioned.

8 Geo. II. c. 13.

Preamble. See 3 Wills. 60.

"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 labors: 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 this 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 oscuro*, or from his own works and inventions shall cause to be designed and engraved etched or worked in *mezzotinto* or *chiaro oscuro* any historical or other print or prints shall have the sole right and liberty of printing and reprinting the same for the term of fourteen years to commence from the day of the first publishing thereof, which shall be truly engraved with the name of the proprietor on each plate, and printed on every such print or prints; and that if any printseller or other person whatsoever, from and after the said twenty-fourth day of *June* one thousand seven hundred and thirty-five within the

Property of prints vested in the inventor for fourteen years.

Proprietor's name to be affixed to each print.

time limited by this Act shall engrave etch or work as aforesaid or in any other manner copy and sell or cause to be engraved etched or copied and sold in the whole or in part by varying adding to or diminishing from the main design, or shall print reprint or import for sale or cause to be printed reprinted or imported for sale any such print or prints or any parts thereof without the consent of the proprietor or proprietors thereof first had and obtained in writing signed by him or them respectively in the presence of two or more credible witnesses, or knowing the same to be so printed or reprinted without the consent of the proprietor or proprietors shall publish sell or expose to sale or otherwise or in any other manner dispose of or cause to be published sold or exposed to sale or otherwise or in any other manner disposed of any such print or prints without such consent first had and obtained as aforesaid, then such offender or offenders shall forfeit the plate or plates on which such print or prints are or shall be copied, and all and every sheet or sheets (being part of or whereon such print or prints are or shall be so copied or printed) to the proprietor or proprietors of such original print or prints, who shall forthwith destroy and damask the same; and further that every such offender or offenders shall forfeit five shillings for every print which shall be found in his her or their custody either printed or published and exposed to sale or otherwise disposed of contrary to the true intent and meaning of this Act; the one moiety thereof to the King's most excellent Majesty his heirs and successors and the other moiety thereof to any person or persons that shall sue for the same, to be recovered in any of his Majesty's courts of record at *Westminster* by action of debt bill plaint or information, in which no wager of law essoign privilege or protection or more than one imparlance shall be allowed. 8 Geo. II. c. 13.

Penalty on print sellers or others pirating the same.

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

Not to extend to purchasers of plates from the original proprietors.

8 Geo. II. c. 13.

plates without incurring any of the penalties in this Act mentioned.

Limitation of actions.

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 any thing in pursuance of this Act, the same shall be brought within the space of three months after so doing; and the defendant or defendants in such action or suit shall or may plead the general issue and give the special matter in evidence; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become nonsuited or discontinue his her or their action or actions, then the defendant or defendants shall have and recover full costs, 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; any thing in this Act contained to the contrary notwithstanding.

Clause relating to J. Pine.

V. "And whereas *John Pine* of *London* engraver doth propose to engrave and publish a set of prints copied from several pieces of tapestry in the House of Lords and his Majesty's wardrobe and other drawings relating to the *Spanish* invasion in the year of our Lord one thousand five hundred and eighty-eight;" Be it further enacted by the authority aforesaid, That the said *John Pine* shall be entitled to the benefit of this Act to all intents and purposes whatsoever in the same manner as if the said *John Pine* had been the inventor and designer of the said prints.

Public act.

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.

12 Geo. II. c. 36. — An Act for prohibiting the Importation of Books reprinted abroad, and first composed or written 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.

12 G. II. c. 36. Preamble.

"WHEREAS the duties payable upon paper imported into this kingdom to be made use of in printing greatly exceed the duties payable upon the importation of printed books whereby foreigners and others are encouraged to bring in great numbers of books originally printed and published in this kingdom and reprinted abroad, to the diminution of his Majesty's revenue and the discouragement of the trade and manufacture of this kingdom;" For the preventing thereof for the future, May it please your most excellent 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 this present Parliament assembled, and by the authority of the same, that from and after the twenty-ninth day of *September* one thousand seven hundred and thirty-nine it shall not be lawful for any person or persons whatsoever to import or bring into this kingdom for sale any book or books first composed or written and printed and published in this kingdom and reprinted in any other place or country whatsoever; and if any person or persons shall import or bring into this kingdom for sale any printed book or books so first composed or written and printed in this kingdom and reprinted in any other place or country as aforesaid; or knowing the same to be so reprinted or imported contrary to the true intent and meaning of this Act shall sell publish or expose to sale any such book or books; then every such person or persons so doing or offending shall forfeit the said book or books and all and every sheet or sheets thereof; and the same shall be forthwith damasked and made waste paper; and further that every such offender or offenders

12 G. II. c. 36.

shall forfeit the sum of five pounds and double the value of every book which he or they shall so import or bring into this kingdom or shall knowingly sell publish or expose to sale or cause to be sold 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 to any person or persons that shall sue for the same; to be recovered with costs of suit 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 or protection or more than one imparlance shall be allowed; and if the offence be committed in *Scotland* to be recovered before the Court of Session there by summary action: Provided that this Act shall not extend to any book that has not been printed or reprinted in this kingdom within twenty years before the same shall be imported.

II. Provided always, That nothing in this Act contained shall extend to prevent or hinder the importation of any book first composed or written and printed in this kingdom which shall or may be reprinted abroad and inserted among other books or tracts to be sold therewith in any collection where the greatest part of such collection shall have been first composed or written and printed abroad; any thing in this Act contained to the contrary notwithstanding.

Clause in 8 Anne, c. 19, repealed.

III. And be it further enacted by the authority aforesaid, That so much of an Act made in the eighth year of the reign of her late Majesty Queen *Anne*, intituled *An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the times therein mentioned*, whereby it is provided and enacted, That if any bookseller or booksellers printer or printers shall after the said five and twentieth day of *March* one thousand seven hundred and ten set a price upon or sell or expose to sale any book or books at such a price or rate as shall be conceived by any person or persons to be high and unreasonable; it shall and may be lawful for any person or persons to make

complaint thereof to the Lord Archbishop of *Canterbury* for the time being the Lord Chancellor or Lord Keeper of the great seal of *Great Britain* for the time being the Lord Bishop of *London* for the time being the Lord Chief Justice of the Court of *Queen's Bench* the Lord Chief Justice of the Court of *Common Pleas* the Lord Chief Baron of the Court of *Exchequer* for the time being the Vice-Chancellors of the two Universities for the time being in that part of *Great Britain* called *England* the Lord President of the Sessions for the time being the Lord Justice General for the time being the Lord Chief Baron of the *Exchequer* for the time being the Rector of the college of *Edinburgh* for the time being in that part of *Great Britain* called *Scotland*, who or any one of them shall and have hereby full power and authority from time to time to send for summon or call before him or them such bookseller or booksellers printer or printers and to examine and inquire of the reason of the dearness and enhancement of the price of value of such book or books by him or them so sold or exposed to sale; and if upon such inquiry and examination it shall be found that the price of such book or books is enhanced or anyways too high or unreasonable, then and in such case the said Archbishop of *Canterbury* Lord Chancellor or Lord Keeper Bishop of *London* two Chief Justices Chief Baron Vice-Chancellors of the Universities in that part of *Great Britain* called *England* and the said Lord President of the Sessions Lord Justice General Lord Chief Baron and Rector of the College of *Edinburgh* in that part of *Great Britain* called *Scotland*, or any one or more of them so inquiring and examining, have hereby full power and authority to reform and redress the same and to limit and settle the price of every such printed book and books from time to time according to the best of their judgments and as to them shall seem just and reasonable; and in case of alteration of the rate or price from what was set or demanded by such bookseller or booksellers printer or printers to award and order such bookseller and booksellers printer and printers to pay all the costs

12 G. II. c. 36.

12 G. II. c. 36.

and charges that the person or persons so complaining shall be put unto by reason of such complaint and of the causing such rate or price to be so limited and settled; all which shall be done by the said Archbishop of *Canterbury* Lord Chancellor or Lord Keeper Bishop of *London* two Chief Justices Chief Baron Vice Chancellors of the two Universities in that part of *Great Britain* called *England* and the said Lord President of the Sessions Lord Justice General Lord Chief Baron and Rector of the college of *Edinburgh* in that part of *Great Britain* called *Scotland*, or any one of them, by writing under their hands and seals, and thereof public notice shall be forthwith given by the said bookseller or booksellers printer or printers by an advertisement in the *Gazette*; and if any bookseller or booksellers printer or printers shall after such settlement made of the said rate and price sell or expose to sale any book or books at a higher or greater price than what shall have been so limited and settled as aforesaid, then and in every such case such bookseller or booksellers printer or printers shall forfeit the sum of five pounds for every such book so by him her or them sold or exposed to sale, one moiety thereof to the Queen's most excellent Majesty her heirs and successors, and the other moiety to any person or persons that shall sue for the same, to be recovered with costs of suit in any of her 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; and every part of the said clause shall be and the same is hereby repealed.

Further continued by 27 G. II. c. 18, and 33 G. II. c. 16.

IV. And be it further enacted, That this Act (except so much thereof as repeals the before-mentioned clause in the said Act of the eighth year of the reign of the late Queen *Anne* relating to the prices of books) shall continue and be in force from the said twenty-ninth day of *September* one thousand seven hundred and thirty-nine for and during the space of seven years, and from thence to the end of the then next session of Parliament and no longer.

7 Geo. III. c. 38. — An Act to amend and render more effectual an Act made in the Eighth Year of the Reign of King *George* the Second, for Encouragement of the Arts of Designing, Engraving and Etching Historical and other Prints; and for vesting in and securing to *Jane Hogarth*, Widow, the Property in certain Prints.

7 G. III. c. 38.

8 Geo. II. c. 13.

"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 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 architectural 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.

Original inventors, &c. of prints, &c. intitled to the benefit of recited and present act, &c.

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 caused to be engraved etched or worked any print taken from any picture drawing model or sculpture either ancient or modern, shall

7 G. III. c. 38.

have and are hereby declared to have the benefit and protection of the said Act and this Act for the time 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.

" The sole right of printing and reprinting the late *W. Hogarth's* prints vested in his widow and executrix for twenty years. Penalty of copying, &c. any of them before expiration of the term; such copies excepted as were made and exposed to sale after the term of fourteen years for which the said works were first licensed, &c."

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.

VI. Provided also, That the party prosecuting shall commence his prosecution within the space of six calendar months after the offence committed.

The right intended vested in the proprietors for 28 years.

VII. 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.

VIII. 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 any thing in pursuance of this Act, the same shall be brought within the space of six calendar months after the fact committed; and the defendant or defendants in any of 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.

7 G. III. c. 38.

Limitation of actions.

General issue.

Full costs.

15 George III. c. 53. — An Act for enabling the two Universities in *England*, the four Universities in *Scotland*, and the several Colleges of *Eton*, *Westminster*, and *Winchester*, to hold in perpetuity their Copyright in Books, given or bequeathed to the said Universities and Colleges for the Advancement of useful Learning and other purposes of Education: and for amending so much of an Act of the Eighth Year of the Reign of Queen *Anne*, as relates to the Delivery of Books to the Warehouse-keeper of the Stationers' Company, for the Use of the several Libraries therein mentioned.

15 G. III. c. 53.

"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 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 pre-

sent 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 hereafter 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 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 any wise notwithstanding.

15 G. III. c. 53.

Universities, &c. to have for ever the sole right of printing, &c.

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 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; 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

Persons printing or selling such books shall forfeit the same, and also 1*d.* for every sheet;

one moiety to his Majesty and the other to the prosecutor.

15 G. III. c. 53.

record at *Westminster* or in the Court of Sessions in *Scotland* 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.

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 copy rights 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*.

No person subject to penalties unless entered before, &c.

IV. "And whereas many persons may through ignorance offend 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 universities colleges and houses of learning within the same and to the said universities in *Scotland* and to the respective colleges of *Eton Westminster* and *Winchester* may be ascertained and known;" Be it therefore enacted by the authority aforesaid, That nothing in this Act contained shall be construed to extend to subject any bookseller printer or other person whatsoever to the forfeitures or penalties herein mentioned for or by reason of the printing or reprinting importing or exposing to sale any book or books unless the title to the copy of such book or books which has or have been already bequeathed or given to any of the said universities or colleges aforesaid be entered in the register book of the Company of Stationers kept

for that purpose in such manner as hath been usual on or before the twenty-fourth day of *June* one thousand seven hundred and seventy-five; and of all and every such book or books as may or shall hereafter be bequeathed or given as aforesaid be entered in such register within the space of two months after any such bequest or gift shall have come to the knowledge of the vice-chancellors of the said universities or heads of houses and colleges of learning or of the principal of any of the said four universities respectively; for every of which entries so to be made as aforesaid the sum of six pence shall be paid and no more; which said register book shall and may at all seasonable and convenient times be referred to and inspected by any bookseller printer or other person without any fee or reward; and the clerk of the said Company of Stationers shall when and as often as thereunto required give a certificate under his hand of such entry or entries, and for every such certificate may take a fee not exceeding six pence.

15 G. III. c. 53.

Books must be entered within two months after bequest.

V. And be it further enacted, That if the clerk of the said Company of Stationers for the time being shall [illegible] or neglect to register or make such entry or entries or to give such certificate, being thereunto required by the agent of either of the said universities or colleges aforesaid lawfully authorized for that purpose, then either of the said universities or colleges aforesaid, being the proprietor of such copyright or copyrights as aforesaid (notice being first given of such refusal by advertisement in the *Gazette*) shall have the like benefit as if such entry or entries certificate or certificates had been duly made and given; and the clerk so refusing shall for every such offence forfeit twenty pounds to the proprietor or proprietors of every such copyright; 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 essoign privilege protection or more than one imparlance shall be allowed.

If clerk neglect to make entry, &c. proprietor to have like benefit, &c.

15 G. III. c. 53.

8 Anne, c. 19.

VI. "And whereas in and by an Act of Parliament made in the eighth year of the reign of her late Majesty Queen *Anne*, intituled *An Act for the Encouragement of Learning by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the times therein mentioned*, it is enacted, That nine copies of each book or books upon the best paper that from and after the tenth day of *April* one thousand seven hundred and ten should be printed and published as therein mentioned, or reprinted and published with additions, shall by the printer or printers thereof be delivered to the warehouse-keeper of the said Company of Stationers for the time being at the hall of the said Company before such publication made, for the use of the royal library the libraries of the universities of *Oxford* and *Cambridge* the libraries of the four universities in *Scotland* the library of *Sion College* in *London* and the library commonly called *The Library belonging to the Faculty of Advocates in* Edinburgh respectively; which such warehouse-keeper was thereby required within ten days after demand by the keepers of the respective libraries, or any person or persons by them or any of them authorized to demand the said copy, to deliver the same for the use of the aforesaid libraries; and if any proprietor bookseller or printer or the said warehouse-keeper of the said Company of Stationers should not observe the direction of the said Act therein, that then he and they so making default in not delivering the said printed copies as aforesaid should forfeit as therein mentioned: And whereas the said provision has not proved effectual but the same hath been eluded by the entry only of the title to a single volume or of some part of such book or books so printed and published or reprinted and republished as aforesaid;" Be it enacted by the authority aforesaid, That no person or persons whatsoever shall be subject to the penalties in the said Act mentioned for or by reason of the printing or reprinting importing or exposing to sale any book or books without the consent mentioned in the said Act, unless the title to the copy of the whole of such book and

No person subject to penalties in the said act unless the title to the copy of the whole be entered, &c.

every volume thereof be entered in manner directed by the said Act in the register book of the Company of Stationers, and unless nine such copies of the whole of such book or books and every volume thereof printed and published or reprinted or republished as therein mentioned shall be actually delivered to the warehouse-keeper of the said Company as therein directed for the several uses of the several libraries in the said Act mentioned. 15 G. III. c. 53.

Limitation of actions.

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 any thing in pursuance of this Act, the defendants in such action may plead the general issue and give the special matter in evidence; and if upon such action a verdict, or if the same shall be brought in the Court of Session in *Scotland* a judgment be given for the defendant, or the plaintiff become nonsuited and discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath.

General issue.

Public act.

VIII. And be it further enacted by the authority aforesaid, That this Act shall be adjudged deemed and taken to be a public Act; and shall be judicially taken notice of as such by all judges justices and other persons whatsoever without specially pleading the same.

17 George III. c. 57.—An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases.

17 G. III. c. 57.

8 Geo. II. 7 Geo. III.

"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:* And whereas by an Act of Parliament passed in the seventh year of the reign of his present Majesty, *for amending and rendering more effectual* the aforesaid Act, and for other purposes therein mentioned, it was (among other things) enacted, That from and after the first day of *January* one thousand seven hundred and sixty-seven all and every person or persons who should engrave etch or work in *mezzotinto* or *chiaro oscuro*, or cause to be engraved etched or worked any print taken from any picture drawing model or sculpture either ancient or modern, should have and were thereby declared to have the benefit and protection of the said former Act and that Act for the term therein-after mentioned, in like manner as if such print had been graved or drawn from the original design of such graver etcher or draughtsman: And whereas the said acts have not effectually answered the purposes for which they were intended, and it is necessary for the encouragement of artists and for securing to them the property of and in their works and for the advancement and improvement of the aforesaid arts that such further provisions should be made as are herein-after mentioned and contained;" May it therefore 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 this present Parliament assembled, and by the authority of the

If any engraver, &c. shall engrave, &c. any print without the consent of the proprietor, he shall be liable to damages and double costs.

same, That from and after the twenty-fourth day of *June* one thousand seven hundred and seventy-seven if any engraver etcher printseller or other person shall within the time limited by the aforesaid Acts, or either of them, engrave etch or work or cause or procure to be engraved etched or worked in *mezzotinto* or *chiaro oscuro*, or otherwise or in any other manner copy in the whole or in part by varying adding to or diminishing from the main design, or shall print reprint or import for sale or cause or procure to be printed reprinted or imported for sale, or shall publish sell or otherwise dispose of or cause or procure to be published sold or otherwise disposed of any copy or copies of any historical print or prints or any print or prints of any portrait conversation landscape or architecture map chart or plan, or any other print or prints whatsoever which hath or have been or shall be engraved etched drawn or designed in any part of *Great Britain* without the express consent of the proprietor or proprietors thereof first had and obtained in writing signed by him or her or them respectively with his her or their own hand or hands in the presence of and attested by two or more credible witnesses, then every such proprietor or proprietors shall and may, by and in a special action upon the case to be brought against the person or persons so offending recover such damages as a jury on the trial of such action or on the execution of a writ of inquiry thereon shall give or assess together with double costs of suit. 17 G. III. c. 57.

38 George III. c. 71. — An Act for encouraging the Art of making new Models and Casts of Busts, and other things therein mentioned. — [21*st June* 1798.]

38 G. III. c. 71.

"WHEREAS divers persons have by their own genius industry pains and expence improved and brought the art of making new models and casts of busts and of statues of human figures and of animals to great perfection, in hopes to have reaped the sole benefit of their labours; but divers persons have (without the consent of the proprietors thereof) copied and made moulds from the said models and casts and sold base copies and casts of such new models and casts to the great prejudice and detriment of the original proprietors and to the discouragement of the art of making such new models and casts as aforesaid:" For remedy whereof 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 this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act every person who shall make or cause to be made any new model or copy or cast made from such new model of any bust or any part of the human figure or any statue of the human figure or the head of any animal or any part of any animal or the statue of any animal; or shall make or cause to be made any new model copy or cast from such new model in alto or basso relievo or any work in which the representation of any human figure or figures or the representation of any animal or animals shall be introduced, or shall make or cause to be made any new cast from nature of any part or parts of the human figure or of any part or parts of any animal, shall have the sole right and property in every such new model copy or cast, and also in every such new model copy or cast in alto or basso relievo or any work as aforesaid, and also in every such

The sole right and property of making models or casts shall be vested in the original proprietor for 14 years.

new cast from nature as aforesaid, for and during the term of fourteen years from the time of first publishing the same: Provided always, That every person who shall make or cause to be made any such new model copy or cast or any such new model copy or cast in alto or basso relievo or any work as aforesaid, or any new cast from nature as aforesaid, shall cause his or her name to be put thereon with the date of the publication before the same shall be published and exposed to sale. 38 G. III. c. 71.

II. And be it further enacted, That if any person shall within the said term of fourteen years make or cause to be made any copy or cast of any such new model copy or cast or any such model copy or cast in alto or basso relievo or any such work as aforesaid, or any such new cast from nature as aforesaid, either by adding to or diminishing from any such new model copy or cast or adding to or diminishing from any such new model copy or cast in alto or basso relievo or any such work as aforesaid, or adding to or diminishing from any such new cast from nature or shall cause or procure the same to be done, or shall import any copy or cast of such new model copy or cast, or copy or cast of such new model copy or cast in alto or basso relievo or any such work as aforesaid, or any copy or cast of any such new cast from nature as aforesaid for sale, or shall sell or otherwise dispose of or cause or procure to be sold or exposed to sale or otherwise disposed of any copy or cast of any such new model copy or cast, or any copy or cast of such new model copy or cast in alto or basso relievo or any such work as aforesaid, or any copy or cast of any such new cast from nature as aforesaid without the express consent of the proprietor or proprietors thereof first had and obtained in writing signed by him her or them respectively with his her or their hand or hands in the presence of and attested by two or more credible witnesses, then and in all or any of the cases aforesaid every proprietor or proprietors of any such original model copy or cast and every proprietor or proprietors of any such original model or copy or cast in alto or basso relievo or any such work as aforesaid,

Person making copies of any model or cast without the written consent of the proprietor, may be prosecuted for damages, by a special action on the case.

38 G. III. c. 71.

or the proprietor or proprietors of any such new cast from nature as aforesaid respectively, shall and may by and in a special action upon the case to be brought against the person or persons so offending recover such damages as a jury on the trial of such action or on the execution of a writ of enquiry thereon shall give or assess together with full cost of suit.

Except such persons who shall purchase the same of the original proprietor.

III. Provided nevertheless, That no person who shall hereafter purchase the right either in any such model copy or cast or in any such model copy or cast in alto or basso relievo or any such work as aforesaid or any such new cast from nature of the original proprietor or proprietors thereof shall be subject to any action for vending or selling any cast or copy from the same; any thing contained in this Act to the contrary hereof notwithstanding.

Limitation of actions.

IV. Provided also, That all actions to be brought as aforesaid against any person or persons for any offence committed against this Act shall be commenced within six callendar months next after the discovery of every such offence and not afterwards.

41 George III. c. 107. — An Act for the further Encouragement of Learning, in the United Kingdom of *Great Britain* and *Ireland*, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns for the Time herein mentioned. — [*2d July* 1801.]

41 G. III. c. 107.

"WHEREAS it is expedient that further protection should be afforded to the authors of books and the purchasers of the copies and copyright of the same in the United Kingdom of *Great Britain* and *Ireland*;" May it therefore 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 this present Parliament assembled, and by the authority of the same, That the author of any book or books already composed and not printed or published and the author of any book or books which shall hereafter be composed and the assignee or assigns of such authors respectively shall have the sole liberty of printing and reprinting of such book and books for the term of fourteen years, to commence from the day of first publishing the same and no longer; and that if any other bookseller printer or other person whosoever in any part of the said United Kingdom or in part of the *British* dominions in *Europe* shall from and after the passing of this Act print reprint or import or shall cause to be printed reprinted or imported any such book or books without the consent of the proprietor or proprietors of the copyright of and in such book or books first had and obtained in writing, signed in the presence of two or more credible witnesses, or knowing the same to be so printed reprinted or imported without such consent of such proprietor or proprietors shall sell publish or expose to sale or cause to be sold published or exposed

Authors of books already composed, and not printed or published, and of books to be hereafter composed, and their assigns shall have the sole right of printing them for fourteen years:

Booksellers, &c. in any part of the United Kingdom, or British European dominions, who shall print, reprint, or import, &c.

any such book without consent of the proprietor, shall be liable to an action for damages, and shall also forfeit the books to the proprietor, and 3*d*. per sheet. Half to the King, and half to the informer.

41 G. III. c. 107.

to sale, or shall have in his her or their possession for sale any such book or books without such consent first had and obtained as aforesaid, then such offender or offenders shall be liable to a special action on the case at the suit of the proprietor or proprietors of the copyright of such book or books so unlawfully printed reprinted or imported or published or exposed to sale, or being in the possession of such offender or offenders for sale as aforesaid contrary to the true intent and meaning of this Act; and every such proprietor and proprietors shall and may by and in such special action upon the case to be so brought against such offender or offenders in any court of record in that part of the said United Kingdom or of the *British* dominions in *Europe* in which the offence shall be committed, recover such damages as the jury on the trial of such action or on the execution of a writ of enquiry thereon shall give or assess together with double costs of suit; in which action no wager of law essoign privilege or protection nor more than one imparlance shall be allowed; and all and every such offender or offenders shall also forfeit such book or books and all and every sheet and sheets being part of such book or books, and shall deliver the same to the proprietor or proprietors of the copyright of such book or books upon order of any court of record in which any action or suit in law or equity shall be commenced or prosecuted by such proprietor or proprietors, to be made on motion or petition to the said court; and the said proprietor or proprietors shall forthwith damask or make waste paper of the said book or books and sheet or sheets respectively; and all and every such offender or offenders shall also forfeit the sum of three pence for every sheet which shall be found in his or their custody, either printed or printing or 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 in any such court of record by action of debt bill plaint or information, in which no wager of

law essoign privilege or protection nor more than one imparlance shall be allowed: Provided always, That after the expiration of the said term of fourteen years the right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years. 41 G. III. c. 107. Authors have a second 14 years' term, if living.

II. Provided also and be it further enacted, That nothing in this Act contained shall extend or be construed to extend to any book or books heretofore composed and printed or published in any part of the said United Kingdom, nor to exempt or indemnify any person or persons whomsoever from or against any penalties or actions to which he she or they shall or may have become or shall or may be hereafter liable for or on account of the unlawful printing reprinting or importing such book or books, or the selling, publishing or exposing the same to sale or the having the same in his or their possession for sale contrary to the laws and statutes in force respecting the same at the time of the passing an Act in the session of Parliament of the thirty-ninth and fortieth years of the reign of his present Majesty, intituled *An Act for the Union of* Great Britain *and* Ireland. Act shall not extend to books already published, nor indemnify against penalties under former acts in force at the union of Great Britain and Ireland. 39 & 40 G. III. 67.

III. "And whereas authors have heretofore bequeathed given or assigned and may hereafter bequeath give or assign the copies or copyrights of and in books composed by them to or in trust for the college of the Holy Trinity of *Dublin*; and in and by their several wills or other instruments have directed or may direct that the profits arising from the printing or reprinting such books shall be applied or appropriated as a fund for the advancement of learning and other beneficial purposes of education within the college aforesaid: And whereas such useful purposes will frequently be frustrated unless the sole right of printing and reprinting of such books, the copies of which shall have been or shall be so bequeathed given or assigned as aforesaid, be preserved and secured to the said college in perpetuity:" Be it therefore further enacted, That the said college shall at their own printing press within the said college have for ever the sole liberty Trinity College, Dublin, shall for ever have the sole right of printing books given or bequeathed to them, unless they are given, &c. for a limited time only.

41 G. III. c. 107.

of printing and reprinting all such books as shall at any time hereafter have been or (not having been heretofore published or assigned) shall at any time hereafter be bequeathed or otherwise given or assigned by the author or authors of the same respectively, or the representatives of such author or authors to or in trust for the said college for the purposes aforesaid, unless the same shall have been bequeathed given or assigned or shall hereafter be bequeathed given or assigned for any term of years or any other limited term; any law or usage to the contrary thereof in any wise notwithstanding; and that if any printer bookseller or other person whosoever shall from and after the passing of this Act unlawfully print reprint or import or cause to be printed reprinted or imported, or knowing the same to be so unlawfully printed reprinted or imported, shall sell publish or expose to sale or cause to be sold published or exposed to sale, or have in his or their possession for sale any such last-mentioned book or books, such offender or offenders shall be subject and liable to the like actions penalties and forfeitures as are herein-before mentioned and contained with respect to offenders against the copyrights of authors and their assigns: Provided nevertheless, That nothing in this Act shall extend to grant any exclusive right to the said college of the Holy Trinity of *Dublin* otherwise than so long as the books or copies belonging to the said college are and shall be printed only at the printing press of the said college within the said college and for the sole benefit and advantage of the said college; and that if the said college shall delegate grant lease or sell the 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 coporate to print or reprint the same, then the privilege hereby granted shall become void and of no effect in the same manner as if this Act had not been made; but the said college shall nevertheless have a right to sell such copies so bequeathed or given as aforesaid in like manner as any author or authors can or may lawfully do under

Penalty on persons printing such books the same as under § 1.

To extend only to books printed at the college press.

But the college may sell their copyrights.

the provisions of this Act or any other Act now in force. 41 G. III. c. 107.

IV. Prövided also and be it further enacted. That no bookseller printer or other person whosoever shall be liable to the said penalty of three pence *per* sheet for or by reason of the printing reprinting importing or selling of any such book or books or the having the same in his or their custody for sale without the consent of the proprietor or proprietors of the copyright thereof as aforesaid, unless before the time of the publication of such book or books by the proprietor or proprietors thereof (other than the said college) the right and title of such proprietor or proprietors shall be duly entered in the register book of the Company of Stationers in *London* in such manner as hath been usually heretofore done by the proprietors of copies and copyrights in *Great Britain*; nor if the consent of such proprietor or proprietors for the printing reprinting importing or selling such book or books shall be in like manner entered; nor unless the right and title of the said college to the copyright of such book or books as has or have been already bequeathed given or assigned to the said college be entered in the said register book before the twenty-ninth day of *September* one thousand eight hundred and one, and of all and every such book or books as may or shall hereafter be bequeathed given or assigned as aforesaid be entered in the said register book within the space of two months after any such bequest gift or assignment shall have come to the knowledge of the provost of the said college; for every of which several entries six pence shall be paid and no more; which said register book shall at all times be kept at the hall of the said Company and shall and may at all seasonable and convenient times be resorted to and inspected by any bookseller printer or other person for the purposes before mentioned without any fee or reward; and the clerk of the said Company of Stationers shall when and as often as thereto required give a certificate

Booksellers, &c. shall not be liable to the penalty of 3*d.* per sheet,

unless the title to the copyright be entered by the proprietor, &c. at Stationers' Hall, London; nor of the consent of the proprietor be so entered.

Clerk of the company shall give certificates of entries, and make a half-yearly list of the books so entered for the use of Trinity College.

41 G. III. c. 107.

under his hand of such entry or entries and for every such certificate may take a fee not exceeding sixpence; and the said clerk shall also without fee or reward within fifteen days next after the thirty-first day of *December* and the thirtieth day of *June* in each and every year make or cause to be made for the use of the said college a list of the titles of all such books, the copyright to which shall have been so entered in the course of the half year immediately preceding the said thirty-first day of *December* and the thirtieth day of *June* respectively, and shall upon demand deliver the said lists or cause the same to be delivered to any person or persons duly authorized to receive the same for and on behalf of the said college.

If the clerk refuses to make entries, &c.

V. Provided also and be it further enacted, That if the clerk of the said Company of Stationers for the time being shall refuse or neglect to register or make such entry or entries or to give such certificate or certificates being thereupon respectively required by the author or authors proprietor or proprietors of such copies or copyrights, or by the person or persons to whom such consent shall be given or by some person on his or their behalf in the presence of two or more credible witnesses, then such party or parties so refused, notice being first duly given by advertisement in the *London Gazette*, shall have the like benefit as if such entry or entries certificate or certificates had been duly made and given; and the clerk so refusing shall for any such offence forfeit to the author or proprietor of such copy or copies or to the person or persons to whom such consent shall be given the sum of twenty pounds; or if the said clerk shall refuse or neglect to make the list aforesaid or to deliver the same to any person duly authorized to demand the same on behalf of the said college the said clerk shall also forfeit to the said college the like sum of twenty pounds; which said respective penalties shall and may be recovered in any of his Majesty's courts of record in the said United Kingdom by action of debt bill plaint or information, in which no wager of law essoign

Parties may give notice in the London Gazette, and the clerk shall forfeit 20*l.*

or protection nor more than one imparlance shall be allowed.

Two additional copies of books entered at Stationers' Hall, shall be delivered there for the use of the libraries of Trinity College, and the King's Inns, Dublin.

VI. Provided also and be it further enacted, That from and after the passing of this Act, in addition to the nine copies now required by law to be delivered to the warehouse-keeper of the said Company of Stationers of each and every book and books which shall be entered in the register book of the said Company, one other copy shall be in like manner delivered for the use of the library of the said college of the Holy Trinity of *Dublin*, and also one other copy for the use of the library of the society of the King's Inns *Dublin*, by the printer or printers of all and every such book and books as shall hereafter be printed and published and the title to the copyright whereof shall be entered in the said register book of the said Company; and that the said college and the said society shall have the like remedies for enforcing the delivery of the said copies; and that all proprietors booksellers and printers and the warehouse-keeper of the said Company shall be liable to the like penalties for making default in delivering the said copies for the use of the said college and the said society as are now in force with respect to the delivering or making default in delivering the nine copies now required by law to be delivered in manner aforesaid.

No person shall import into any part of the United Kingdom for sale any book first composed, &c. within the United Kingdom, and reprinted elsewhere.

VII. And be it further enacted, That from and after the passing of this Act it shall not be lawful for any person or person whomsoever to import or bring into any part of the United Kingdom of *Great Britain* and *Ireland* for sale any printed book or books first composed written or printed and published in any part of the said United Kingdom and reprinted in any other country or place whatsoever; and if any person or persons shall import or bring or cause to be imported or brought for sale any such printed book or books into any part of the said United Kingdom contrary to the true intent and meaning of this Act, or shall knowingly sell publish or expose to sale or have in his or their possession for sale any such book or books, then every such book or books shall be

41 G. III. c. 107.

forfeited and shall and may be seized by any officer or officers of Customs or Excise and the same shall be forthwith made waste paper; and all and every person and persons so offending, being duly convicted thereof, shall also for every such offence forfeit the sum of ten pounds and double the value of each and every copy of such book or books which he she or they shall so import or bring or cause to be imported or brought into any part of the said United Kingdom, or shall knowingly sell publish or expose to sale or shall cause to be sold published or exposed to sale, or shall have in his or their possession for sale contrary to the true intent and meaning of this Act; and the commissioners of Customs in *England Scotland* and *Ireland* respectively (in case the same shall be seized by any officer or officers of Customs), and the commissioners of Excise in *England Scotland* and *Ireland* respectively (in case the same shall be seized by any officer or officers of Excise) shall also reward the officer or officers who shall seize any books which shall be so made waste paper of with such sum or sums of money as they the said respective commissioners shall think fit, not exceeding the value of such books; such reward respectively to be paid by the said respective commissioners out of any money in their hands respectively arising from the duties of Customs and Excise:

Penalty on importing, selling, or keeping for sale any such books, forfeiture thereof, and also 10*l.* and double the value.

Books may be seized by officers of customs or excise, who shall be rewarded.

Exceptions as to books not having been printed in the United Kingdom for 20 years, &c.

Provided, that no person or persons shall be liable to any of the last-mentioned penalties or forfeitures for or by reason or means of the importation of any book or books which has not been printed or reprinted in some part of the said United Kingdom within twenty years next before the same shall be imported, or of any book or books reprinted abroad and inserted among other books or tracts to be sold therewith in any collection where the greatest part of such collection shall have been first composed or written abroad.

General issue.

VIII. And be it further enacted, That if any action or suit shall be commenced or brought against any person or persons whomsoever for doing or causing to be done any thing in pursuance of this Act, the defendants in

such action may plead the general issue and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff become non-suited or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath; and that all actions suits bills indictments or informations for any offence that shall be committed against this Act shall be brought sued and commenced within six months next after such offence committed, or else the same shall be void and of none effect. 41 G. III. c. 107.

Limitation of actions under this act six months.

54 Geo. III. c. 56. — An Act to amend and render more effectual an Act of his present Majesty, for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned; and for giving further Encouragement to such Arts. — [18*th May* 1814.]

54 G. III. c. 56.

38 Geo. III. c. 1, § 1.

"WHEREAS by an Act passed in the thirty-eighth year of the reign of his present Majesty, intituled, *An Act for encouraging the Art of making new Models and Casts of Busts, and other Things therein mentioned*; the sole right and property thereof were vested in the original proprietors for a time therein specified: And whereas the provisions of the said Act having been found ineffectual for the purposes thereby intended, it is expedient to amend the same and to make other provisions and regulations for the encouragement of artists and to secure to them the profits of and in their works and for the advancement of the said arts:" May it therefore 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 this present Parliament assembled, and by the authority of the same, That from and after the passing of this Act every person or persons who shall make or cause to be made any new and original sculpture or model or copy or cast of the human figure or human figures or of any bust or busts, or of any part or parts of the human figure clothed in drapery or otherwise, or of any animal or animals or of any part or parts of any animal combined with the human figure or otherwise, or of any subject being matter of invention in sculpture or of any alto or basso-relievo representing any of the matters or things herein-before mentioned, or any cast from nature of the human figure or of any part or parts of the human figure, or of any cast from nature of any animal or of any part or parts of any animal, or of any such subject containing or representing any of the matters and things herein-before men-

Sole right and property of all new and original sculpture, models, copies and casts, vested in proprietors for 14 years.

tioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture model copy and cast of the human figure and human figures and of all and in every such bust or busts and of all and in every such part or parts of the human figure clothed in drapery or otherwise, and of all and in every such new and original sculpture model copy and cast representing any animal or animals, and of all and in every such work representing any part or parts of any animal combined with the human figure or otherwise, and of all and in every such new and original sculpture model copy and cast of any subject being matter of invention in sculpture, and of all and in every such new and original sculpture model copy and cast in alto or basso-relievo representing any of the matters or things herein-before mentioned and of every such cast from nature, for the term of fourteen years from first putting forth or publishing the same; provided, in all and every case, the proprietor or proprietors do cause his her or their name or names with the date to be put on all and every such new and original sculpture model copy or cast and on every such cast from nature before the same shall be put forth or published.* 54 G. III. c. 56.

* Name and date affixed.

II. And be it further enacted, That the sole right and property of all works which have been put forth or published under the protection of the said recited Act shall be extended continued to and vested in the respective proprietors thereof for the term of fourteen years to commence from the date when such last-mentioned works respectively were put forth or published.

Works published under Act, vested in proprietors for 14 years.

III. And be it further enacted, That if any person or persons shall within such term of fourteen years make or import or cause to be made or imported or exposed to sale or otherwise disposed of any pirated copy or pirated cast of any such new and original sculpture or model or copy or cast of the human figure or human figures or of any such bust or busts, or of any such part or parts of the human human figure clothed in drapery or otherwise, or of any such work of any animal or animals or of any

Putting forth pirated copies or pirated casts prosecuted.

54 G. III. c. 56.

such part or parts of any animal or animals combined with the human figure or otherwise, or of any such subject being matter of invention in sculpture, or of any such alto or basso-relievo representing any of the matters or things herein-before mentioned, or of any such cast from nature as aforesaid, whether such pirated copy or pirated cast be produced by moulding or copying from or imitating in any way any of the matters or things put forth or published under the protection of this Act, or of any works which have been put forth or published under the protection of the said recited Act, the right and property whereof is and are secured extended and protected by this Act in any of the cases as aforesaid, to the detriment damage or loss of the original or respective proprietor or proprietors of any such works so pirated; then and in all such cases the said proprietor or proprietors or their assignee or assignees shall and may, by and in a special action upon the case to be brought against the person or persons so offending, receive such damages as a jury on a trial of such action shall give or assess together with double costs of suit.

Damages. Double costs.

Purchasers of copyright secured in the same.

IV. Provided nevertheless, That no person or persons who shall or may hereafter purchase the right or property of any new and original sculpture or model or copy or cast, or of any cast from nature or of any of the matters and things published under or protected by virtue of this Act, of the proprietor or proprietors expressed in a deed in writing signed by him her or them respectively with his her or their own hand or hands in the presence of and attested by two or more credible witnesses, shall be subject to any action for copying or casting or vending the same; any thing contained in this Act to the contrary notwithstanding.

Limitation of actions.

V. Provided always and be it further enacted, That all actions to be brought as aforesaid against any person or persons for any offence committed against this Act shall be commenced within six calendar months next after the discovery of every such offence and not afterwards.

VI. Provided always and be it further enacted, That from and immediately after the expiration of the said term of fourteen years the sole right of making and disposing of such new and original sculpture or model or copy or cast of any of the matters or things herein-before mentioned shall return to the person or persons who originally made or caused to be made the same, if he or they shall be then living, for the further term of fourteen years, excepting in the case or cases where such person or persons shall by sale or otherwise have divested himself herself or themselves of such right of making or disposing of any new and original sculpture or model or copy or cast of any of the matters or things herein-before mentioned previous to the passing of this Act.

54 G. III. c. 56.

Additional term of 14 years, in case maker of original sculpture, &c. shall be living.

54 George III. c. 156.—An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns.—[29*th July* 1814.]

54 G. III. c. 156.

8 Anne, c. 19, § 5.

"WHEREAS by an Act made in the eighth year of the reign of her late Majesty Queen *Anne*, intituled *An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the times therein mentioned*, it was among other things provided and enacted, That nine copies of each book or books upon the best paper that from and after the said tenth day of *April* one thousand seven hundred and ten should be printed and published as in the said Act mentioned, or reprinted and published with additions, should by the printer and printers thereof be delivered to the warehouse-keeper of the Company of Stationers for the time being at the hall of the said Company before such publication made for the use of the royal library, the libraries of the universities of *Oxford* and *Cambridge*, the libraries of the four universities in *Scotland* the library of *Sion College* in *London*, and library of the Faculty of Advocates at *Edinburgh*; which said warehouse-keeper is by the said Act required to deliver such copies for the use of the said libraries; and that if any proprietor bookseller or printer or the said warehouse-keeper should not observe the directions of the said Act therein, that then he or they so making default in not delivering the said printed copies should forfeit besides the value of the said printed copies the sum of five pounds for every copy not so delivered: And whereas by an Act made in the forty-first year of the reign of his present Majesty, intituled *An Act for the further Encouragement of Learning in the United Kingdom of* Great Britain *and* Ireland, *by securing the Copies and Copyright of printed Books to the Authors of such Books or their assigns for the time herein mentioned*, it is amongst other

41 G. III. (U. K.) c. 107, § 6.

things provided and enacted, That in addition to the nine copies required by law to be delivered to the warehouse-keeper of the said Company of Stationers of each and every book and books which shall be entered in the register books of the said company two other copies shall in like manner be delivered for the use of the library of the college of the *Holy Trinity* and the library of the society of the *King's Inns* in *Dublin* by the printer and printers of all and every such book and books as should thereafter be printed and published and the title of the copyright whereof should be entered in the said register book of the said Company: And whereas it is expedient that copies of books hereafter printed or published should be delivered to the libraries herein-after mentioned with the modifications that shall be provided by this Act;" May it therefore 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 this present Parliament assembled, and by the authority of the same, That so much of the said several recited Acts of the eighth year of Queen *Anne* and of the forty-first year of his present Majesty as requires that any copy or copies of any book or books which shall be printed or published, or reprinted and published with additions, shall be delivered by the printer or printers thereof to the warehouse-keeper of the said Company of Stationers for the use of any of the libraries in the said Act mentioned and as requires the delivery of the said copies by the said warehouse-keeper for the use of the said libraries, and as imposes any penalty on such printer or warehouse-keeper for not delivering the said copies shall be and the same is hereby repealed. 54 G. III. c. 156. repealed.

II. And be it further enacted, That eleven printed copies of the whole of every book and of every volume thereof upon the paper upon which the largest number or impression of such book shall be printed for sale, together with all maps and prints belonging thereto, which from and after the passing of this Act shall be printed and Eleven printed copies delivered on demand within 12 months after publication, for use of public libraries.

54 G. III. c. 156.

published on demand thereof being made in writing to or left at the place of abode of the publisher or publishers thereof at any time within twelve months next after the publication thereof under the hand of the warehouse-keeper of the Company of Stationers or the librarian or other person thereto authorized by the persons or body politic and corporate proprietors or managers of the libraries following, *videlicet* the *British Museum Sion College* the *Bodleian Library* at *Oxford* the *Public Library* at *Cambridge* the library of the *Faculty of Advocates* at *Edinburgh*, the libraries of the four universities of *Scotland Trinity College Library* and the *King's Inns Library* at *Dublin*, or so many of such eleven copies as shall be respectively demanded on behalf of such libraries respectively, shall be delivered by the publisher or publishers thereof respectively within one month after demand made thereof in writing as aforesaid to the warehouse-keeper of the said Company of Stationers for the time being; which copies the said warehouse-keeper shall and he is hereby required to receive at the hall of the said Company for the use of the library for which such demand shall be made within such twelve months as aforesaid; and the said warehouse-keeper is hereby required within one month after any such book or volume shall be so delivered to him as aforesaid to deliver the same for the use of such library: and if any publisher or the warehouse-keeper of the said Company of Stationers shall not observe the directions of this Act therein, that then he and they so making default in not delivering or receiving the said eleven printed copies as aforesaid shall forfeit besides the value of the said printed copies the sum of five pounds for each copy not so delivered or received together with the full costs of suit; the same to be recovered by the person or persons or body politic or corporate proprietors or managers of the library for the use whereof such copy or copies ought to have been delivered or received; for which penalties and value such person or persons body politic or corporate is or are now hereby authorized to sue by action of debt or other

Publishers, &c. neglecting.

Penalty.

proper action in any court of record in the United King- 54 G. III. c. 156.
dom.

III. Provided always and be it further enacted, That no such printed copy or copies shall be demanded by or delivered to or for the use of any of the libraries herein- before mentioned of the second edition or of any subse- quent edition of any book or books so demanded and delivered as aforesaid, unless the same shall contain addi- tions or alterations: and in case any edition after the first of any book so demanded and delivered as aforesaid shall contain any addition or alteration no printed copy or copies thereof shall be demanded or delivered as afore- said, if a printed copy of such additions or alterations only printed in an uniform manner with the former edi- tion of such book be delivered to each of the libraries aforesaid, for whose use a copy of the former edition shall have been demanded and delivered as aforesaid: Provi- ded also, that the copy of every book that shall be de- manded by the *British Museum* shall be delivered of the best paper on which such work shall be printed.

No copies of second, &c. edition, without addition or alteration, demanded.

Additions printed and delivered separate.

Proviso for British Museum.

IV. "And whereas by the said recited Acts of the eighth year of Queen *Anne* and the forty-first year of his present Majesty's reign it is enacted that the author of any book or books and the assignee or assigns of such author respectively, should have the sole liberty of print- ing and reprinting such book or books for the term of fourteen years, to commence from the day of first pub- lishing the same and no longer; and it was provided, that after the expiration of the said term of fourteen years, the right of printing or disposing of copies should return to the authors thereof, if they were then living, for another term of fourteen years: And whereas it will afford further encouragement to literature if the duration of such copy- right were extended in manner herein-after mentioned;" Be it further enacted, That from and after the passing of this Act the author of any book or books composed and not printed and published, or which shall hereafter be composed and be printed and published and his assignee or assigns shall have the sole liberty of printing and

8 Anne, c. 19, § 1. 41 G. III. (U. K.) c. 107, § 1.

Instead of copyright for 14 years and contin- gently for 14 more, authors, &c. shall have 28 years' copyright in works, and for resi- due of life.

54 G. III. c. 156.

reprinting such book or books for the full term of twenty-eight years to commence from the day of first publishing the same, and also if the author shall be living at the end of that period for the residue of his natural life; and that if any bookseller or printer or other person whatsoever in any part of the United Kingdom of *Great Britain* and *Ireland* in the Isles of *Man Jersey* or *Guernsey* or in any other part of the *British* dominions shall from and after the passing of this Act, within the terms and times granted and limited by this Act as aforesaid, print reprint or import or shall cause to be printed reprinted or imported any such book or books without the consent of the author or authors or other proprietor or proprietors of the copyright of and in such book and books first had and obtained in writing; or knowing the same to be so printed reprinted or imported without such consent of such author or authors or other proprietor or proprietors, shall sell, publish or expose to sale or cause to be sold published or exposed to sale or shall have in his or their possession for sale any such book or books without such consent first had and obtained as aforesaid, then such offender or offenders shall be liable to a special action on the case at the suit of the author or authors or other proprietor or proprietors of the copyright of such book or books so unlawfully printed reprinted or imported or published or exposed to sale or being in the possession of such offender or offenders for sale as aforesaid contrary to the true intent and meaning of this Act: and every such author or authors or other proprietor or proprietors shall and may by and in such special action upon the case to be so brought against such offender or offenders in any court of record in that part of the said United Kingdom or of the *British* dominions in which the offence shall be committed, recover such damages as the jury on the trial of such action or on the execution of a writ of enquiry thereon, shall give give or assess together with double costs of suit; in which action no wager of law essoign privilege or protection nor more than one imparlance shall be allowed; and all and every such offender and

Booksellers, &c. in any part of United Kingdom, or British dominions, who shall print, &c. any book, without consent of proprietor, liable to action for damages.

Penalty.

offenders shall also forfeit such book or books and all and every sheet being part of such book or books, and shall deliver the same to the author or authors or other proprietor or proprietors of the copyright of such book or books upon order of any court of record in which any action or suit in law or equity shall be commenced or prosecuted by such author or authors or other proprietor or proprietors to be made on motion or petition to the said court; and the said author or authors or other proprietor or proprietors shall forthwith damask or make waste paper of the said book or books and sheet or sheets; and all and every such offender or offenders shall also forfeit the sum of three pence for every sheet thereof either printed or printing or 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, in any such court of record by action of debt bill plaint or information, in which no wager of law essoign privilege or protection nor more than one imparlance shall be allowed: Provided always, that in *Scotland* such offender or offenders shall be liable to an action of damages in the court of session in *Scotland*, which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there; and in any such action where damages shall be awarded double costs of suit or expenses of process shall be allowed.

54 G. III. c. 156.

Penalty.

Offenders in Scotland.

V. And in order to ascertain what books shall be from time to time published, Be it enacted, That the publisher or publishers of any and every book demandable under this Act, which shall be published at any time after the passing of this Act, shall within one calendar month after the day on which any such book or books respectively shall be first sold published advertised or offered for sale within the bills of mortality, or within three calendar months if the said book shall be sold published or advertised in any other part of the United Kingdom enter the

Within what time title of books entered at Stationers' Hall.

54 G. III. c. 156.

title to the copy of every such book and the name or names and place of abode of the publisher or publishers thereof in the register book of the Company of Stationers in *London*, in such manner as hath been usual with respect to books the title whereof hath heretofore been entered in such register book, and deliver one copy on the best paper as aforesaid for the use of the *British Museum*; which register book shall at all times be kept at the hall of the said Company; for every of which several entries the sum of two shillings shall be paid and no more; which said register book may at all seasonable and convenient times be resorted to and inspected by any person; for which inspection the sum of one shilling shall be paid to the warehouse-keeper of the said Company of Staticners, and such warehouse-keeper shall when and as often as thereto required, give a certificate under his hand of every or any such entry, and for every such certificate the sum of one shilling shall be paid; and in case such entry of the title of any such book or books shall not be duly made by the publisher or publishers of any such book or books within the said calendar month or three months as the case may be, then the publisher or publishers of such book or books shall forfeit the sum of five pounds together with eleven times the price at which such book shall be sold or advertised, to be recovered together with full cost of suit by the person or persons body politic or corporate authorized to sue and who shall first sue for the same in any court of record in the United Kingdom by action of debt bill plaint or information, in which no wager of law essoign privilege or protection nor more than one imparlance shall be allowed: Provided always, That in the case of magazines reviews or other periodical publications, it shall be sufficient to make such entry in the register book of the said Company within one month next after the publication of the first number or volume of such magazine review or other periodical publication: Provided always, That no failure in making any such entry shall in any manner affect any copyright, but shall only subject the person making default to the penalty aforesaid under this Act.

Copy for British Museum.

Inspection of register-book.

Certificate.

Title of book not entered.

Penalty.

Proviso for Magazines, &c.

Proviso.

VI. And be it further enacted, That the said warehouse-keeper of the Company of Stationers shall from time to time and at all times, without any greater interval than three months, transmit to the librarian or other person authorized on behalf of the libraries before mentioned correct lists of all books entered in the books of the said Company and not contained in former lists; and that on being required so to do by the said librarians or other authorized person or either of them, he shall call on the publisher or publishers of such books for as many of the said copies as may have been demanded of them.

54 G. III. c. 156.

Warehouse keeper of Stationers' Hall to transmit to librarians lists of books entered; and call on publisher for copies.

VII. Provided always and be it further enacted, That if any publisher shall be desirous of delivering the copy of such book or volume as aforesaid as shall be demanded on behalf of any of the said libraries at such library, it shall and may be lawful for him to deliver the same at such library to the librarian or other person authorized to receive the same (who is hereby required to receive and to give a receipt in writing for the same): and such delivery shall to all intents and purposes of this Act be as equivalent to a delivery to the said warehouse-keeper.

Publishers to deliver books at library.

What deemed delivery.

VIII. And whereas it is reasonable that authors of books already published and who are now living should also have the benefit of the extension of copyright; Be it further enacted, That if the author of any book or books which shall not have been published fourteen years at the time of passing this Act shall be living at the said time, and if such author shall afterwards die before the expiration of the said fourteen years, then the personal representative of the said author and the assignees or assigns of such personal representative shall have the sole right of printing and publishing the said book or books for the further term of fourteen years after the expiration of the first fourteen years: Provided that nothing in this Act contained shall affect the right of the assignee or assigns of such author to sell any copies of the said book or books which shall have been printed by such assignee or assigns within the first fourteen years or the terms of any contract between such author and such assignee or assigns.

Authors of books published, now living, to have benefit of extension of copyright.

Proviso.

54 G. III. c. 156. Authors living at end of 28 years sole right of publication for life.

IX. And be it also further enacted, That if the author of any book or books which have been already published shall be living at the end of twenty-eight years after the first publication of the said book or books, he or she shall for the remainder of his or her life have the sole right of printing and publishing the same: Provided that this shall not affect the right of the assignee or assigns of such author to sell any copies of the said book or books which shall have been printed by such assignee or assigns within the said twenty-eight years or the terms of any contract between such author and such assignee or assigns.

Limitation of actions.

X. Provided nevertheless and be it further enacted, That all actions suits bills indictments or informations for any offence that shall be committed against this Act shall be brought sued and commenced within twelve months next after such offence committed, or else the same shall be void and of no effect.

3 Will. IV. c. 15.—An Act to amend the Laws relating to Dramatic and Literary Property.—

[10*th June* 1833.]

3 W. IV. c. 15.

54 Geo. III. c. 156.

WHEREAS by an Act passed in the fifty-fourth year of the reign of his late Majesty King George the Third, intituled "An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of Printed Books to the Authors of such Books, or their Assigns," it was amongst other things provided and enacted, that from and after the passing of the said act the author of any book or books composed, and not printed or published, or which should thereafter be composed and printed and published, and his assignee or assigns, should have the sole liberty of printing and reprinting such book or books for the full term of twenty-eight years, to commence from the day of first publishing the same, and also, if the author should be living at the end of that period, for the residue of his natural life: and whereas it is expedient to extend the provisions of the said act; be it therefore 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 the passing of this act the author of any tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment, composed, and not printed and published by the author thereof or his assignee, or which hereafter shall be composed, and not printed or published by the author thereof or his assignee, or the assignee of such author, shall have as his own property the sole liberty of representing, or causing to be represented, at any place or places of dramatic entertainment whatsoever, in any part of the United Kingdom of Great Britain and Ireland, in the isles of Man, Jersey, and Guernsey, or in any part of the British dominions, any such production as aforesaid, not printed and published by the author thereof or his assignee, and shall be deemed and taken to be the

The author of any dramatic piece shall have as his property the sole liberty of representing it, or causing it to be represented, at any place of dramatic entertainment.

3 W. IV. c. 15.

proprietor thereof; and that the author of any such production, printed and published within ten years before the passing of this act by the author thereof or his assignee, or which shall hereafter be so printed and published, or the assignee of such author, shall, from the time of passing this act, or from the time of such publication respectively, until the end of twenty-eight years from the day of such first publication of the same, and also, if the author or authors, or the survivor of the authors, shall be living at the end of that period, during the residue of his natural life, have as his own property the sole liberty of representing, or causing to be represented, the same at any such place of dramatic entertainment as aforesaid, and shall be deemed and taken to be the proprietor thereof: provided nevertheless, that nothing in this act contained shall prejudice, alter, or affect the right or authority of any person to represent or cause to be represented, at any place or places of dramatic entertainment whatsoever, any such production as aforesaid, in all cases in which the author thereof or his assignee shall, previously to the passing of this act, have given his consent to or authorized such representation, but that such sole liberty of the author or his assignee shall be subject to such right or authority.

Proviso as to cases where, previous to the passing of this act, a consent has been given.

Penalty on persons performing pieces contrary to this act.

II. And be it further enacted, That if any person shall, during the continuance of such sole liberty as aforesaid, contrary to the intent of this act, or right of the author or his assignee, represent, or cause to be represented, without the consent in writing of the author or other proprietor first had and obtained, at any place of dramatic entertainment within the limits aforesaid, any such production as aforesaid, or any part thereof, every such offender shall be liable for each and every such representation to the payment of an amount not less than forty shillings, or to the full amount of the benefit or advantage arising from such representation, or the injury or loss sustained by the plaintiff therefrom, whichever shall be the greater damages, to the author or other proprietor of such production so represented contrary to the true intent and

meaning of this act, to be recovered, together with double costs of suit, by such author or other proprietors, in any court having jurisdiction in such cases in that part of the said United Kingdom or of the British dominions in which the offence shall be committed; and in every such proceeding where the sole liberty of such author or his assignee as aforesaid shall be subject to such right or authority as aforesaid, it shall be sufficient for the plaintiff to state that he has such sole liberty, without stating the same to be subject to such right or authority, or otherwise mentioning the same. 3 W. IV. c. 15.

Limitation of actions.

III. Provided nevertheless, and be it further enacted, That all actions or proceedings for any offence or injury that shall be committed against this act shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of no effect.

Explanation of words.

IV. And be it further enacted, That whenever authors, persons, offenders, or others are spoken of in this act in the singular number or in the masculine gender, the same shall extend to any number of persons and to either sex.

5 & 6 W. IV. — An Act for preventing the Publication of Lectures without Consent. — [*9th September* 1835.]

5 & 6 Will. IV.

WHEREAS printers, publishers, and other persons have frequently taken the liberty of printing and publishing lectures delivered upon divers subjects, without the consent of the authors of such lectures, or the persons delivering the same in public, to the great detriment of such authors and lecturers: Be it enacted, &c., That from and after the first day of September one thousand eight hundred and thirty-five the author of any lecture or lectures, or the person to whom he hath sold or otherwise conveyed the copy thereof, in order to deliver the same in any school, seminary, institution, or other place, or for any other purpose, shall have the sole right and liberty of printing and publishing such lecture or lectures; and that if any person shall, by taking down the same in short hand or otherwise in writing, or in any other way, obtain or make a copy of such lecture or lectures, and shall print or lithograph or otherwise copy and publish the same, or cause the same to be printed, lithographed, or otherwise copied and published, without leave of the author thereof, or of the person to whom the author thereof hath sold or otherwise conveyed the same, and every person who, knowing the same to have been printed or copied and published without such consent, shall sell, publish or expose to sale, or cause to be sold, published, or exposed to sale any such lecture or lectures, shall forfeit such printed or otherwise copied lecture or lectures, or parts thereof, together with one penny for every sheet thereof which shall be found in his custody, either printed, lithographed, or copied, or printing, lithographing or copying, published or exposed to sale, contrary to the true intent and meaning of this act, the one moiety thereof to his Majesty, his heirs or successors, and the other moiety thereof to any person who shall sue for the same, to be recovered in any of his Majesty's courts of record in

Authors of lectures, or their assigns, to have the sole right of publishthem.

Penalty on other persons publishing, &c. lectures without leave.

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. 5 & 6 Will. IV.

II. That any printer or publisher of any newspaper who shall, without such leave as aforesaid, print and publish in such newspaper any lecture or lectures, shall be deemed and taken to be a person printing and publishing without leave within the provisions of this act, and liable to the aforesaid forfeitures and penalties in respect of such printing and publishing. Penalty on printers or publishers of newspapers, publishing lectures without leave.

III. That no person allowed for certain fee and reward, or otherwise, to attend and be present at any lecture delivered in any place, shall be deemed and taken to be licensed or to have leave to print, copy, and publish such lectures only because of having leave to attend such lecture or lectures. Persons having leave to attend lectures not on that account licensed to publish them.

IV. Provided always, That nothing in this act shall extend to prohibit any person from printing, copying, and publishing any lecture or lectures which have or shall have been printed and published with leave of the authors thereof or their assignees, and whereof the time hath or shall have expired within which the sole right to print and publish the same is given by an act passed in the eighth year of the reign of queen Anne, intituled *An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or Purchasers of such Copies during the Times therein mentioned*, and by another passed in the fifty-fourth year of the reign of king George the third, intituled *An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns*, or to any lectures which have been printed or published before the passing of this act. Act not to prohibit the publishing of lectures after the expiration of the copyright 8 Anne, c. 19. 54 G. III. c. 156.

V. Provided further, That nothing in this act shall extend to any lecture or lectures, or the printing, copying, or publishing any lecture or lectures, or parts thereof, of the delivering of which notice in writing shall not have been given to two justices living within five miles from Act not to extend to lectures delivered in unlicensed places, &c.

5 & 6 Will. IV.

the place where such lecture or lectures shall be delivered two days at the least before delivering the same, or to any lecture or lectures delivered in any university or public school or college, or on any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation; and that the law relating thereto shall remain the same as if this act had not been passed.

1 & 2 Vict. c. 59. — An Act for securing to Authors, in certain Cases, the Benefit of International Copyright. — [31*st July* 1838.]

1 & 2 Vict. c. 59.

Her Majesty, by order in council, may direct that authors of books first published in foreign countries, and their assigns, shall have a copyright in such books within her Majesty's dominions.

WHEREAS it is desirable to afford protection within her Majesty's dominions to the authors of books first published in foreign countries, and their assigns, in cases where protection shall be afforded in such foreign countries to the authors of books first published in her Majesty's dominions, and their assigns; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That it shall be lawful for her Majesty, by any order of her Majesty in council, to direct that the authors of books which shall, after a future time to be specified in such order in council, be published in any foreign country to be specified in such order in council, and their executors, administrators, and assigns, shall have the sole liberty of printing and reprinting such books within the United Kingdom of Great Britain and Ireland, and every other part of the British dominions, for such term as her Majesty shall by such order in council direct, not exceeding the term which authors being British subjects are now by law entitled to in respect of books first published within the United Kingdom; provided that no such author or his assigns shall be entitled to the benefit of this act unless, within a time to be in that behalf prescribed by such order in council, the title to the copy of every such book, and the name and place of abode of the author thereof, and the time and place of the first publication thereof in such foreign country, shall be entered in the register book of the Company of Stationers in London; and unless, within a time to be also prescribed by such order in council, one printed copy of the whole of such book and of every volume thereof, upon the best paper upon which the largest number or impressions of such book shall have been printed for sale, together with

Title of book to be entered at Stationers' Hall, and one copy delivered to the warehouse keeper.

1 & 2 Vict. c. 59.

all maps and prints relating thereto, shall be delivered to the warehouse-keeper of the Company of Stationers at the hall of the said company.

In case of books published anonymously, the name of the publisher to be sufficient.

II. Provided always, and be it enacted, That if a book be published anonymously it shall be sufficient to insert in the entry thereof in such register book the name and place of abode of the first publisher thereof, instead of the name and place of abode of the author thereof, together with a declaration that such entry is made either on behalf of the author or on behalf of such first publisher, as the case may require.

Wrongful first publication may be amended by court of chancery.

III. And be it enacted, That every such entry shall be *prima facie* proof of a rightful first publication; but if there be a wrongful first publication, and any party have availed himself thereof to obtain an entry of a spurious work, the author or his first publisher may apply by petition or on motion to the Court of Chancery to order such entry to be amended; but no such order shall be made unless it be proved to the satisfaction of the said court, first with respect to a wrongful publication in a country to which the author or first publisher does not belong, and in regard to which there does not subsist with this country any treaty of international copyright, that the party making the application was the author or first publisher, as the case requires; second, with respect to a wrongful first publication either in the country where a rightful first publication has taken place, or in regard to which there subsists with this country a treaty of international copyright, that a court of competent jurisdiction in any such country where such wrongful first publication has taken place has given judgment in favor of the right of the party claiming to be the author or first publisher.

Register book to be kept at Stationers' Hall, and to be open to inspection.

IV. And be it enacted, That such register book shall at all times be kept at the hall of the said company, and for every such entry the sum of two shillings, and no more, shall be paid, and the same register book may at all seasonable and convenient times be inspected by any person on payment of the sum of one shilling, and no more, to the warehouse keeper of the said Company of

Stationers; and such warehouse keeper shall, when and as often as thereto required, give a certificate under his hand of every or any such entry and delivery, and of the time of making the same respectively, and for every such certificate the sum of one shilling shall be paid; and such certificate, upon proof of the handwriting of the person signing the same, and that such person was in fact the warehouse keeper of the said company, shall without further proof be admitted in all courts as evidence of such entry and delivery, and of the time of making the same respectively.

Certificate by warehouse keeper.

V. And be it enacted, That the said warehouse keeper shall receive at the hall of the said company every book or volume so to be delivered as aforesaid, and within one calendar month after receiving such book or volume shall deposit the same in the library of the British Museum.

Warehouse keeper to deposit books in the British Museum.

VI. Provided always, and be it enacted, that it shall not be requisite to deliver to the warehouse keeper of the said Stationers' Company any printed copy of the second or of any subsequent edition of any book or books so delivered as aforesaid, unless the same shall contain additions or alterations; and in case any edition after the first of any book so delivered as aforesaid shall contain any addition or alteration, it shall not be requisite to deliver any printed copies thereof, if one printed copy of such additions or alterations only, printed in an uniform manner with the former edition of such book, be, within a time in that behalf to be prescribed by any such order in council as aforesaid, delivered to the warehouse keeper of the said Company of Stationers.

Second or subsequent editions.

VII. And be it enacted, That the respective terms to be specified by such orders in council respectively for the continuance of the privilege to be granted to the authors of books to be first published in foreign countries, and their respective assigns, may be different for books first published in different foreign countries, and that the times to be prescribed for the entry of the titles to the copies of such books, and the delivery to the said warehouse keeper of the aforesaid copy, may be different for

Orders in council may specify different periods for different foreign countries, &c.

1 & 2 Vict. c. 59.

different foreign countries and for different classes of books.

Booksellers, &c. who shall print, &c. any book to which order in council may extend, without consent of proprietor, liable to penalties.

VIII. And be it enacted, That if any bookseller or printer, or other person whatsoever, in any part of the United Kingdom of Great Britain and Ireland, or in any other part of the British dominions, shall, within the term to be limited by any such order in council, print, reprint, or import for sale, or cause to be printed, reprinted, or imported for sale, any book to which such order in council shall extend, without the consent of the author or other proprietor of the copyright of and in such book first had and obtained in writing, or, knowing the same to be so printed, reprinted, or imported for sale without such consent of such author or other proprietor, shall sell, publish, or expose to sale, or cause to be sold, published, or exposed to sale, or have in his possession for sale, any such book without such consent first had and obtained as aforesaid, then every such offender shall be liable to a special action on the case, at the suit of the author or other proprietor of the copyright of and in such book so unlawfully printed, reprinted, imported, or published or exposed to sale, or being in the possession of such offender for sale as aforesaid, contrary to the true intent and meaning of this act; and every such author or other proprietor shall and may, by and in such special action on the case to be so brought against such offender in any court of record in that part of the said United Kingdom or of the British dominions in which the offence shall be committed, recover such damages as the jury on the trial of such action or on the execution of a writ of inquiry thereon shall give or assess, together with double costs of suit, in which action no privilege or protection shall be allowed; and every such offender shall also forfeit such book, and every sheet being part of such book, and shall upon order of any court of record in which any action at law or suit in equity shall be commenced or prosecuted by such author or other proprietor, to be made on motion or petition to the said court, deliver the same to the author or other proprietor of the copyright of such book, or to his

attorney or agent to be thereto lawfully authorized, and he shall forthwith damask or make waste paper of the same; and every such offender shall also forfeit the sum of threepence for every sheet thereof, either printed or printing, or published or exposed to sale contrary to the true intent and meaning of this act; the one moiety thereof to her Majesty, and the other moiety thereof to any person who shall sue for the same in any such court of record by action of debt, bill, plaint, or information, in which no privilege or protection shall be allowed: provided always, that in Scotland such offender shall be liable to an action of damages in the court of Session in Scotland, which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there, and in any such action where damages shall be awarded double costs of suit or expenses of process shall be allowed. 1 & 2 Vict. c. 59.

IX. Provided always, and be it enacted, That no such order in council shall have any effect unless it shall be therein stated, as the ground for issuing the same, that due protection for the benefit of the authors of printed books first published in the dominions of her Majesty, and their assigns, has been secured by the foreign power in whose dominions the books to which such order in council shall relate shall be first published. No order in council to have any effect unless it states that reciprocal protection is secured.

X. And be it enacted, That it shall be lawful for her Majesty, by an order in council, from time to time to revoke or alter any order in council previously made under the authority of this act, but nevertheless without prejudice to any rights acquired previously to such revocation or alteration. Orders in council may be revoked.

XI. And be it enacted, That every order in council to be made under the authority of this act shall, as soon as may be after the making thereof by her Majesty in council, be published in the London Gazette, and from the time of such publication shall have the same effect as if every part thereof were included in this act. Orders in council to be published in Gazette, and to have same effect as this act.

XII. And be it enacted, That a copy of every order of her Majesty in council made under this act shall be laid Orders in council to be laid before parliament.

1 & 2 Vict. c. 59.

before both houses of parliament within six weeks after issuing the same if parliament be then sitting, and if not, then within six weeks after the commencement of the then next session of parliament.

Translations of books first published abroad.

XIII. Provided always, and be it enacted, that nothing in this act contained shall be construed to prevent the printing, publication, or sale of any translation of any book, the author whereof and his assigns may be entitled to the benefit of this act.

Foreign authors not entitled to copyright except under this act.

XIV. And be it enacted, That the author of any book to be after the passing of this act first published out of her Majesty's dominions, or his assigns, shall have no copyright therein within her Majesty's dominions otherwise than such (if any) as he may become entitled to under this act.

Limitation of actions.

XV. Provided nevertheless, and be it enacted, that all actions, suits, bills, indictments, or informations for any offence that shall be committed against this act shall be brought, sued, and commenced within twelve months next after such offence committed, and not afterwards.

Interpretation clause.

XVI. And be it enacted, That in the construction of this act the word "book" shall be construed to include "volume," "pamphlet," "sheet of letter-press," "sheet of music," "map," "chart," or "plan"; and the words "printing" and "reprinting" shall include engraving and any other method of multiplying copies; and the expression "her Majesty" shall include the heirs and successors of her Majesty; and the expressions "order of her Majesty in council" and "order in council" shall respectively mean order of her Majesty, acting by and with the advice of her Majesty's most honourable privy council; and in describing any persons or things any word importing the plural number shall mean also one person or thing, and any word importing the singular number shall include several persons or things, and any word importing the masculine shall include also the feminine gender; unless in any of such cases there shall be something in the subject or context repugnant to such construction.

XVII. And be it enacted, That this act may be amended or repealed by any act to be passed in this present session of parliament.

1 & 2 Vict. c. 59. Act may be amended.

5 & 6 Vict. c. 45.—An Act to amend the Law of Copyright.—[1*st July*, 1842.]

5 & 6 Vict. c. 45.

WHEREAS it is expedient to amend the law relating to copyright, and to afford greater encouragement to the production of literary works of lasting benefit to the world; be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same,

Repeal of former acts;

That from the passing of this act, an act passed in the eighth year of the reign of her Majesty Queen Anne, intituled "An Act for the Encouragement of Learning, by vesting the copies of printed books in the authors or purchasers of such copies during the times therein mentioned;" and also an Act passed in the forty-first year of the reign of his Majesty King George the Third, intituled "An Act for the further Encouragement of Learning in the United Kingdom of Great Britain and Ireland, by securing the copies and copyright of printed books to the authors of such books, or their assigns, for the time therein mentioned;" and also an act passed in the fifty-fourth year of the reign of his Majesty King George the Third, intituled "An Act to amend the several Acts for the Encouragement of Learning, by securing the copies and copyright of printed books to the authors of such books, or their assigns," be and the same are hereby repealed, except so far as the continuance of either of them may be necessary for carrying on or giving effect to any proceedings at law or in equity pending at the time of passing this act, or for enforcing any cause of action or suit, or any right or contract, then subsisting.

8 Anne, c. 19.

41 G. III. c. 107.

54 Geo. III. c. 156.

Interpretation of act.

II. And be it enacted, That in the construction of this act, the word "book" shall be construed to mean and include every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published; that the words "dramatic piece" shall be construed to mean and include every

tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment; that the word "copyright" shall be construed to mean the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied; that the words "personal representative" shall be construed to mean and include every executor, administrator, and next of kin entitled to administration; that the word "assigns" shall be construed to mean and include every person in whom the interest of an author in copyright shall be vested, whether derived from such author before or after the publication of any book, and whether acquired by sale, gift, bequest, or by operation of law, or otherwise; that the words "British dominions" shall be construed to mean and include all parts of the United Kingdom of Great Britain and Ireland, the islands of Jersey and Guernsey, all parts of the East and West Indies, and all the colonies, settlements, and possessions of the Crown which now are or hereafter may be acquired; and that whenever in this act, in describing any person, matter, or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and to be applied to several persons as well as one person, and females as well as males, and several matters or things as well as one matter or thing, respectively, unless there shall be something in the subject or context repugnant to such construction.

5 & 6 Vict. c. 45.

Endurance of term of copyright in any book hereafter to be published in the lifetime of the author;

if published after the author's death.

III. And be it enacted, That the copyright in every book which shall after the passing of this act be published in the lifetime of its author shall endure for the natural life of such author, and for the further term of seven years, commencing at the time of his death, and shall be the property of such author and his assigns: provided always, that if the said term of seven years shall expire before the end of forty-two years from the first publication of such book, the copyright shall, in that case, endure for such period of forty-two years; and that the copyright in every book which shall be published after the death of its author shall endure for the term of forty-two years from

5 & 6 Vict. c. 45.

the first publication thereof, and shall be the property of the proprietor of the author's manuscript from which such book shall be first published, and his assigns.

In cases of subsisting copyright, the term to be extended, except when it shall belong to an assignee for other consideration than natural love and affection; in which case it shall cease at the expiration of the present term, unless its extension be agreed to between the proprietor and the author.

IV. And whereas it is just to extend the benefits of this act to authors of books published before the passing thereof, and in which copyright still subsists; be it enacted, That the copyright which at the time of the passing of this act shall subsist in any book theretofore published (except as hereinafter mentioned) shall be extended and endure for the full term provided by this act in cases of books thereafter published, and shall be the property of the person who at the time of passing of this act shall be the proprietor of such copyright: provided always, that in all cases in which such copyright shall belong in whole or in part to a publisher or other person who shall have acquired it for other consideration than that of natural love and affection, such copyright shall not be extended by this act, but shall endure for the term which shall subsist therein at the time of passing of this act, and no longer, unless the author of such book, if he shall be living, or the personal representative of such author, if he shall be dead, and the proprietor of such copyright, shall, before the expiration of such term, consent and agree to accept the benefits of this act in respect of such book, and shall cause a minute of such consent, in the form in that behalf given in the schedule to this act annexed, to be entered in the book of registry hereinafter directed to be kept, in which case such copyright shall endure for the full term by this act provided in cases of books to be published after the passing of this act, and shall be the property of such person or persons as in such minute shall be expressed.

Judicial committee of the privy council may license the republication of books which the proprietor refuses to republish after death of the author.

V. And whereas it is expedient to provide against the suppression of books of importance to the public; be it enacted, That it shall be lawful for the Judicial Committee of her Majesty's Privy Council, on complaint made to them that the proprietor of the copyright in any book after the death of its author has refused to republish or

to allow the republication of the same, and that by reason of such refusal such book may be withheld from the public, to grant a licence to such complainant to publish such book, in such manner and subject to such conditions as they may think fit, and that it shall be lawful for such complainant to publish such book according to such licence. 5 & 6 Vict. c. 45.

Copies of books published after the passing of this act, and of all subsequent editions, to be delivered within certain times at the British Museum.

VI. And be it enacted, That a printed copy of the whole of every book which shall be published after the passing of this act, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same shall be published, and also of any second or subsequent edition which shall be so published with any additions or alterations, whether the same shall be in letter-press, or in the maps, prints, or other engravings belonging thereto, and whether the first edition of such book shall have been published before or after the passing of this act, and also of any second or subsequent edition of every book of which the first or some preceding edition shall not have been delivered for the use of the British Museum, bound, sewed, or stitched together, and upon the best paper on which the same shall be printed, shall, within one calendar month after the day on which any such book shall first be sold, published, or offered for sale within the bills of mortality, or within three calandar months if the same shall first be sold, published or offered for sale in any other part of the United Kingdom, or within twelve calendar months after the same shall first be sold, published, or offered for sale in any other part of the British dominions, be delivered, on behalf of the publisher thereof, at the British Museum.

Mode of delivering at the British Museum.

VII. And be it enacted, That every copy of any book which under the provisions of this act ought to be delivered as aforesaid shall be delivered at the British Museum between the hours of ten in the forenoon and four in the afternoon on any day except Sunday, Ash Wednesday, Good Friday, and Christmas Day, to one of the officers of the said Museum, or to some person authorized by the

5 & 6 Vict. c. 45.

trustees of the said Museum to receive the same; and such officer or other person receiving such copy is hereby required to give a receipt in writing for the same, and such delivery shall to all intents and purposes be deemed to be good and sufficient delivery under the provisions of this act.

A copy of every book to be delivered within a month after demand to the officer of the Stationers' Company, for the following libraries: the Bodleian at Oxford, the Public Library at Cambridge, the Faculty of Advocates at Edinburgh, and that of Trinity College, Dublin.

VIII. And be it enacted, That a copy of the whole of every book, and of any second or subsequent edition of every book containing additions and alterations, together with all maps and prints belonging thereto, which after the passing of this act shall be published, shall, on demand thereof in writing, left at the place of abode of the publisher thereof at any time within twelve months next after the publication thereof, under the hand of the officer of the Company of Stationers, who shall from time to time be appointed by the said company for the purposes of this act, or under the hand of any other person thereto authorized by the persons or bodies politic and corporate, proprietors and managers of the libraries following, (*videlicet,*) the Bodleian Library at Oxford, the Public Library at Cambridge, the library of the Faculty of Advocates at Edinburgh, the library of the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, be delivered upon the paper of which the largest number of copies of such book or edition shall be printed for sale, in the like condition as the copies prepared for sale by the publisher thereof respectively, within one month after demand made thereof in writing as aforesaid, to the said officer of the said Company of Stationers for the time being, which copies the said officer shall and he is hereby required to receive at the hall of the said company, for the use of the library for which such demand shall be made within such twelve months as aforesaid; and the said officer is hereby required to give a receipt in writing for the same, and within one month after any such book shall be so delivered to him as aforesaid to deliver the same for the use of such library.

IX. Provided also, and be it enacted, That if any publisher shall be desirous of delivering the copy of such

book as shall be demanded on behalf of any of the said libraries at such library, it shall be lawful for him to deliver the same at such library, free of expence, to such librarian or other person authorized to receive the same (who is hereby required in such case to receive and give a receipt in writing for the same,) and such delivery shall to all intents and purposes of this act be held as equivalent to a delivery to the said officer of the Stationers' Company.

5 & 6 Vict. c. 45.

Publishers may deliver the copies to the libraries, instead of at the Stationers' Company.

X. And be it enacted, That if any publisher of any such book, or of any second or subsequent edition of any such book, shall neglect to deliver the same, pursuant to this act, he shall for every such default forfeit, besides the value of such copy of such book or edition which he ought to have delivered, a sum not exceeding five pounds, to be recovered by the librarian or other officer (properly authorized) of the library for the use whereof such copy should have been delivered, in a summary way, on conviction before two justices of the peace for the county or place where the publisher making default shall reside, or by action of debt or other proceeding of the like nature, at the suit of such librarian or other officer, in any court of record in the United Kingdom; in which action, if the plaintiff shall obtain a verdict, he shall recover his costs reasonably incurred, to be taxed as between attorney and client.

Penalty for default in delivering copies for the use of the libraries.

XI. And be it enacted, That a book of registry, wherein may be registered, as hereinafter enacted, the proprietorship in the copyright of books, and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licences affecting such copyright, shall be kept at the hall of the Stationers' Company by the officer appointed by the said company for the purposes of this act, and shall at all convenient times be open to the inspection of any person, on payment of one shilling for every entry which shall be searched for or inspected in the said book; and that such officer shall, whenever thereunto reasonably required, give a copy of any entry in such book, certified under his hand, and impressed with the

Book of registry to be kept at Stationers' Hall.

5 & 6 Vict. c. 45.

stamp of the said company, to be provided by them for that purpose, and which they are hereby required to provide, to any person requiring the same, on payment to him of the sum of five shillings; and such copies so certified and impressed shall be received in evidence in all courts, and in all summary proceedings, and shall be *prima facie* proof of the proprietorship or assignment of copyright or licence as therein expressed, but subject to be rebutted by other evidence, and in the case of dramatic or musical pieces shall be *prima facie* proof of the right of representation or performance, subject to be rebutted as aforesaid.

Making a false entry in the book of registry a misdemeanor.

XII. And be it enacted, That if any person shall wilfully make or cause to be made any false entry in the registry book of the Stationers' Company, or shall wilfully produce or cause to be tendered in evidence any paper falsely purporting to be a copy of any entry in the said book, he shall be guilty of an indictable misdemeanor, and shall be punished accordingly.

Entries of copyright may be made in the book of registry.

XIII. And be it enacted, That after the passing of this act it shall be lawful for the proprietor of copyright in any book heretofore published, or in any book hereafter to be published, to make entry in the registry book of the Stationers' Company of the title of such book, the time of the first publication thereof, the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright, in the form in that behalf given in the schedule to this act annexed, upon payment of the sum of five shillings to the officer of the said company; and that it shall be lawful for every such registered proprietor to assign his interest, or any portion of his interest therein, by making entry in the said book of registry of such assignment, and of the name and place of abode of the assignee thereof, in the form given in that behalf in the said schedule, on payment of the like sum; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, without being subject to any stamp or duty, and shall be of the same

force and effect as if such assignment had been made by deed.

5 & 6 Vict. c. 45.

XIV. And be it enacted, That if any person shall deem himself aggrieved by any entry made under color of this act in the said book of registry, it shall be lawful for such person to apply by motion to the Court of Queen's Bench, Court of Common Pleas, or Court of Exchequer, in term time, or to apply by summons to any judge of either of such courts in vacation, for an order that such entry may be expunged or varied; and that upon any such application by motion or summons to either of the said courts, or to a judge as aforesaid, such court or judge shall make such order for expunging, varying, or confirming such entry, either with or without costs, as to such court or judge shall seem just; and the officer appointed by the Stationers' Company for the purposes of this act shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same according to the requisitions of such order.

Persons aggrieved by any entry in the book of registry may apply to a court of law in term, or judge in vacation, who may order such entry to be varied or expunged.

XV. And be it enacted, That if any person shall, in any part of the British dominions, after the passing of this act, print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall import for sale or hire any such book so having been unlawfully printed from parts beyond the sea, or, knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose to sale or hire, or cause to be sold, published, or exposed to sale or hire, or shall have in his possession, for sale or hire, any such book so unlawfully printed or imported, without such consent as aforesaid, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright, to be brought in any court of record in that part of the British dominions in which the offence shall be committed: provided always, that in Scotland such offender shall be liable to an action in the Court of Session in Scotland, which shall and may be brought and prosecuted in the same manner in which any other action

Remedy for the piracy of books by action on the case.

5 & 6 Vict. c. 45.

of damages to the like amount may be brought and prosecuted there.

In actions for piracy the defendant to give notice of the objections to the plaintiff's title on which he means to rely.

XVI. And be it enacted, That after the passing of this act, in any action brought within the British dominions against any person for printing any such book for sale, hire, or exportation, or for importing, selling, publishing, or exposing to sale or hire, or causing to be imported, sold, published, or exposed to sale or hire, any such book, the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action; and if the nature of his defence be, that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person who he alleges to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when and the place where such book was first published, otherwise the defendant in such action shall not at the trial or hearing of such action be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright therein; and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objections stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the copyright therein, than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication with the title, time, and place specified in such notice.

No person except the proprie-

XVII. And be it enacted, That after the passing of this act it shall not be lawful for any person, not being

the proprietor of the copyright, or some person authorized by him, to import into any part of the United Kingdom, or into any other part of the British dominions, for sale or hire, any printed book first composed or written or printed and published in any part of the said United Kingdom, wherein there shall be copyright, and reprinted in any country or place whatsoever out of the British dominions; and if any person, not being such proprietor or person authorized as aforesaid, shall import or bring, or cause to be imported or brought, for sale or hire, any such printed book, into any part of the British dominions, contrary to the true intent and meaning of this act, or shall knowingly sell, publish, or expose to sale or let to hire, or have in his possession for sale or hire, any such book, then every such book shall be forfeited, and shall be seized by any officer of customs or excise, and the same shall be destroyed by such officer; and every person so offending, being duly convicted thereof before two justices of the peace for the county or place in which such book shall be found, shall also for every such offence forfeit the sum of ten pounds, and double the value of every copy of such book which he shall so import or cause to be imported into any part of the British dominions, or shall knowingly sell, publish, or expose to sale or let to hire, or shall cause to be sold, published, or exposed to sale or let to hire, or shall have in his possession for sale or hire, contrary to the true intent and meaning of this act, five pounds to the use of such officer of customs or excise, and the remainder of the penalty to the use of the proprietor of the copyright in such book.

5 & 6 Vict. c. 45.

tor, &c. shall import into the British dominions for sale or hire any book first composed, &c. within the United Kingdom, and reprinted elsewhere, under penalty of forfeiture thereof, and also of 10*l.* and double the value.

Books may be seized by officers of customs or excise.

XVIII. And be it enacted, That when any publisher or other person shall, before or at the time of the passing of this act, have projected, conducted, and carried on, or shall hereafter project, conduct and carry on, or be the proprietor of any encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any volumes, parts, essays, articles, or portions thereof, for

As to the copyright in encyclopædias, periodicals, and works published in a series, reviews, or magazines.

5 & 6 Vict. c. 45.

publication in or as part of the same, and such work, volumes, parts, essays, articles, or portions shall have been or shall hereafter be composed under such employment, on the terms that the copyright therein shall belong to such proprietor, projector, publisher, or conductor, and paid for by such proprietor, projector, publisher, or conductor, the copyright in every such encyclopædia, review, magazine, periodical work, and work published in a series of books or parts, and in every volume, part, essay, article, and portion so composed and paid for, shall be the property of such proprietor, projector, publisher, or other conductor, who shall enjoy the same rights as if he were the actual author thereof, and shall have such term of copyright therein as is given to the authors of books by this act; except only that in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature, after the term of twenty-eight years from the first publication thereof respectively the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this act: provided always, that during the term of twenty-eight years the said proprietor, projector, publisher, or conductor shall not publish any such essay, article, or portion separately or singly without the consent previously obtained of the author thereof, or his assigns: provided also, that nothing herein contained shall alter or affect the right of any person who shall have been or who shall be so employed as aforesaid to publish any such his composition in a separate form, who by any contract, express or implied, may have reserved or may hereafter reserve to himself such right; but every author reserving, retaining, or having such right shall be entitled to the copyright in such composition when published in a separate form, according to this act, without prejudice to the right of such proprietor, projector, publisher, or conductor as aforesaid.

Proviso for authors who have reserved the right of publishing their articles in a separate form.

Proprietors of encyclopædias, periodicals,

XIX. And be it enacted, That the proprietor of the copyright in any encyclopædia, review, magazine, periodical work, or other work published in a series of books

or parts, shall be entitled to all the benefits of the registration a Stationers' Hall under this act, on entering in the said book of registry the title of such encyclopædia, review, periodical work, or other work published in a series of books or parts, the time of the first publication of the first volume, number, or part thereof, or of the first number or volume first published after the passing of this act in any such work which shall have been published heretofore, and the name and place of abode of the proprietor thereof, and of the publisher thereof, when such publisher shall not also be the proprietor thereof.

5 & 6 Vict. c. 45. and works published in series, may enter at once at Stationers' Hall, and thereon have the benefit of the registration of the whole.

XX. And whereas an act was passed in the third year of the reign of his late Majesty, to amend the law relating to dramatic literary property, and it is expedient to extend the term of the sole liberty of representing dramatic pieces given by that act to the full time by this act provided for the continuance of copyright: and whereas it is expedient to extend to musical compositions the benefits of that act, and also of this act; be it therefore enacted, That the provisions of the said act of his late Majesty, and of this act, shall apply to musical compositions, and that the sole liberty of representing or performing, or causing or permitting to be represented or performed, any dramatic piece or musical composition, shall endure and be the property of the author thereof, and his assigns, for the term in this act provided for the duration of copyright in books; and the provisions hereinbefore enacted in respect of the property of such copyright, and of registering the same, shall apply to the liberty of representing or performing any dramatic piece or musical composition, as if the same were herein expressly enacted and applied thereto, save and except that the first public representation or performance of any dramatic piece or musical composition shall be deemed equivalent, in the construction of this act, to the first publication of any book: provided always, that in case of any dramatic piece or musical composition in manuscript, it shall be sufficient for the person having the sole liberty of representing or performing, or causing to be represented or performed the

The provisions of 3 & 4 W. IV. c. 15, extended to musical compositions, and the term of copyright, as provided by this act, applied to the liberty of representing dramatic pieces and musical compositions.

5 & 6 Vict. c. 45.

same, to register only the title thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor thereof, and the time and place of its first representation or performance.

Proprietors of right of dramatic representations shall have all the remedies given by 3 & 4 W. IV. c. 15.

XXI. And be it enacted, That the person who shall at any time have the sole liberty of representing such dramatic piece or musical composition shall have and enjoy the remedies given and provided in the said act of the third and fourth years of the reign of his late Majesty King William the Fourth, passed to amend the laws relating to dramatic literary property, during the whole of his interest therein, as fully as if the same were re-enacted in this act.

Assignment of copyright of a dramatic piece not to convey the right of representation.

XXII. And be it enacted, That no assignment of the copyright of any book consisting of or containing a dramatic piece or musical composition shall be holden to convey to the assignee the right of representing or performing such dramatic piece or musical composition, unless an entry in the said registry book shall be made of such assignment, wherein shall be expressed the intention of the parties that such right should pass by such assignment.

Books pirated shall become the property of the proprietor of the copyright, and may be recovered by action.

XXIII. And be it enacted, That all copies of any book wherein there shall be copyright, and of which entry shall have been made in the said registry book, and which shall have been unlawfully printed or imported without the consent of the registered proprietor of such copyright, in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright, and who shall be registered as such, and such registered proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same, or damages for the detention thereof, in an action of detinue, from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of trover.

No proprietor of copyright commencing after this act shall sue or proceed for any infringement before making entry in the book of registry.

XXIV. And be it enacted, That no proprietor of copyright in any book which shall be first published after the

passing of this act shall maintain any action or suit, at law or in equity, or any summary proceeding, in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made, in the book of registry of the Stationers' Company, of such book, pursuant to this act: provided always, that the omission to make such entry shall not affect the copyright in any book, but only the right to sue or proceed in respect of the infringement thereof as aforesaid: provided also, that nothing herein contained shall prejudice the remedies which the proprietor of the sole liberty of representing any dramatic piece shall have by virtue of the act passed in the third year of the reign of his late Majesty King William the Fourth, to amend the laws relating to dramatic literary property, or of this act, although no entry shall be made in the book of registry aforesaid.

5 & 6 Vict. c. 45.

Proviso for dramatic pieces.

XXV. And be it enacted, That all copyright shall be deemed personal property, and shall be transmissible by bequest, or, in case of intestacy, shall be subject to the same law of distribution as other personal property, and in Scotland shall be deemed to be personal and moveable estate.

Copyright shall be personal property.

XXVI. And be it enacted, That if any action or suit shall be commenced or brought against any person or persons whomsoever for doing or causing to be done any thing in pursuance of this act, the defendant or defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff shall become nonsuited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath; and that all actions, suits, bills, indictments, or informations for any offence that shall be committed against this act shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of none effect: provided that such limitation of time shall

General issue.

Limitation of actions;

5 & 6 Vict. c. 45.

not to extend to actions, &c. in respect of the delivery of books.

not extend or be construed to extend to any actions, suits, or other proceedings which under the authority of this act shall or may be brought, sued, or commenced for or in respect of any copies of books to be delivered for the use of the British Museum, or of any one of the four libraries hereinbefore mentioned.

Saving the rights of the Universities, and the colleges of Eton, Westminster, and Winchester.

XXVII. Provided always, and be it enacted, That nothing in this act contained shall affect or alter the rights of the two universities of Oxford and Cambridge, the colleges or houses of learning within the same, the four universities in Scotland, the college of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, and the several colleges of Eton, Westminster, and Winchester, in any copyrights heretofore and now vested or hereafter to be vested in such universities and colleges respectively, any thing to the contrary herein contained notwithstanding.

Saving all subsisting rights, contracts, and engagements.

XXVIII. Provided also, and be it enacted, That nothing in this act contained shall affect, alter, or vary any right subsisting at the time of passing of this act, except as herein expressly enacted; and all contracts, agreements, and obligations made and entered into before the passing of this act, and all remedies relating thereto, shall remain in full force, any thing herein contained to the contrary notwithstanding.

Extent of the act.

XXIX. And be it enacted, that this act shall extend to the United Kingdom of Great Britain and Ireland, and to every part of the British dominions.

Act may be amended this session.

XXX. And be it enacted, That this act may be amended or repealed by any act to be passed in the present session of parliament.

SCHEDULE *to which the preceding act refers.*

No. 1.

FORM OF MINUTE OF CONSENT TO BE ENTERED AT STATIONERS' HALL.

WE, the undersigned, A. B. of , the author of a certain book, intituled Y. Z. [or the personal representative of the author, *as the case may be*], and C. D. of , do hereby certify, that we have consented and agreed to accept the benefits of the act passed in the fifth year of the reign of her Majesty Queen Victoria, cap. , for the extension of the term of copyright therein provided by the said act, and hereby declare that such extended term of copyright therein is the property of the said A. B. or C. D.

Dated this day of , 18 .
Witness (Signed) A. B.
C. D.

To the Registering Officer appointed by the Stationers' Company.

No. 2.

FORM OF REQUIRING ENTRY OF PROPRIETORSHIP.

I, A. B., of , do hereby certify, that I am the proprietor of the copyright of a book, intituled Y. Z., and I hereby require you to make entry in the register book of the Stationers' Company of my proprietorship of such copyright, according to the particulars underwritten.

Title of Book.	Name of Publisher and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
Y. Z.		A. B.	

Dated this day of , 18 .
Witness, C. D. (Signed) A. B.

No. 3.

ORIGINAL ENTRY OF PROPRIETORSHIP OF COPYRIGHT OF A BOOK.

Time of making the Entry.	Title of Book.	Name of the Publisher, and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
	Y. Z.	A. B.	C. D.	

No. 4.

FORM OF CONCURRENCE OF THE PARTY ASSIGNING IN ANY BOOK PREVIOUSLY REGISTERED.

I, A. B., of being the assigner of the copyright of the book hereunder described, do hereby require you to make entry of the assignment of the copyright therein.

Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
Y. Z.	A. B.	C. D.

Dated this day of , 18 .

(Signed) A. B.

No. 5.

FORM OF ENTRY OF ASSIGNMENT OF COPYRIGHT IN ANY BOOK PREVIOUSLY REGISTERED.

Date of Entry.	Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
	[*Set out the title of the book, and refer to the page of the registry book in which the original entry of the copyright thereof is made.*]	A. B.	C. D.

6 & 7 Wm. IV. c. 59. — An Act to extend the Protection of Copyright in Prints and Engravings in Ireland.

6 & 7 Will. IV. c. 59.

17 G. III. c. 57.

"WHEREAS an act was passed in the seventeenth year of the reign of his late Majesty King *George* the third, intituled *An Act for more effectually securing the Property of Prints to Inventors and Engravers, by enabling them to sue for and recover Penalties in certain Cases*: and whereas it is desirable to extend the provisions of the said act to *Ireland*; be it therefore 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 the passing of this act all the provisions contained in the said recited act of the seventeenth year of the reign of his late Majesty King *George* the third, and of all the other acts therein recited, shall be and the same are hereby extended to the united kingdom of *Great Britain* and *Ireland*.

Provisions of recited act extended to Ireland.

Penalty on engraving or publishing any print without consent of proprietor.

II. And be it further enacted, that from and after the passing of this act, if any engraver, etcher printseller, or other person shall, within the time limited by the aforesaid recited acts, engrave, etch, or publish, or cause to be engraved, etched, or published any engraving or print of any description whatever, either in whole or in part, which may have been or which shall hereafter be published in any part of *Great Britain* or *Ireland*, without the express consent of the proprietor or proprietors thereof first had and obtained in writing, signed by him, her, or them respectively, with his, her or their own hand or hands, in the presence of and attested by two or more credible witnesses, then every such proprietor shall and may, by and in a separate action upon the case, to be brought against the person offending in any Court of Law in *Great Britain* or *Ireland*, recover such damages as a jury on the trial of such action or on the execution of a writ of inquiry thereon shall give or assess, together with double costs of suit.

6 & 7 Wm. IV. c. 110. — An Act to repeal so much of an Act of the Fifty-fourth Year of King George the Third, respecting Copyrights, as requires the delivery of a copy of every published Book to the Library of Sion College, the Four Universities of Scotland, and of the King's Inns in Dublin.

6 & 7 Will. IV. c. 110.

54 G. III. c. 146.

WHEREAS by an act passed in the fifty-fourth year of the reign of his late Majesty King *George* the third, intituled *An Act to amend the several Acts for the encouragement of Learning by securing the Copies and Copyright of printed Books to the Authors of such Books or their Assigns*, it is amongst other things enacted, that eleven copies of every published book shall be gratuitously delivered to eleven public libraries named in the said act; and whereas the provisions of the said act have in certain respects operated to the injury of authors and publishers, and have in some cases checked or prevented the publication of works of great utility and importance, and it is therefore expedient that the said act should be amended: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lord's Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that so much of the said recited act as requires that a copy of every book which shall be printed and published shall be delivered in manner therein mentioned to the warehouse-keeper of the Company of Stationers for the use of the library of *Sion College*, the libraries of the four universities of *Scotland*, and the *King's Inns Library* at *Dublin*, shall be and the same is hereby repealed.

So much of recited act as requires the delivery of copies of books for the libraries herein mentioned repealed.

II. And be it further enacted, that it shall be lawful for the Lord High Treasurer or for the Commissioners of his Majesty's Treasury, or any three or more of them, from time to time to issue and pay out of the consolidated fund of the united kingdom of *Great Britain* and *Ireland*, to the person or persons or body politic or corporate, proprietors or managers of each of the aforesaid libra-

Compensation to be made to the said libraries out of consolidated fund.

6 & 7 Will. IV. c. 110.

ries, such an annual sum as may be equal in value to and a compensation for the loss which any such library may sustain by reason of the said act being repealed, so far as relates to such library; such annual compensation to be ascertained and determined according to the value of the books which may have been actually received by each such library, in such manner as the commissioners of his Majesty's treasury or any three or more of them shall direct, upon an average of the three years ending the thirtieth day of *June* one thousand eight hundred and thirty-six.

Application of the compensation.

III. And be it further enacted, that the person or persons or body politic or corporate, proprietors or managers of the library for the use whereof any such book would have been delivered, shall and they are hereby required to apply the annual compensation hereby authorized to be made in the purchase of books of literature, science, and the arts, for the use of and to be kept and preserved in such library; provided always, that it shall not be lawful for the said lord high treasurer or commissioners of his Majesty's treasury to direct the issue of any sum of money for such annual compensation until sufficient proof shall have been adduced before him or them of the application of the money last issued to the purpose aforesaid.

I. An Act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned.

Stat. May 31, 1790.

Repealed. Act of April 29, 1802, c. 36. Act of Feb. 15, 1819, c. 19. Act of Feb. 3, 1831, c. 16. June 30, 1834, c. 157.

Authors of maps, charts and books: and purchasers from them, to have the sole right of publication, &c. for 14 years;

recording the title, &c.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That from and after the passing of this act, the author and authors of any map, chart, book or books already printed within these United States, being a citizen or citizens thereof, or resident within the same, his or their executors, administrators or assigns, who hath or have not transferred to any other person the copyright of such map, chart, book or books, share or shares thereof; and any other person or persons, being a citizen or citizens of these United States, or residents therein, his or their executors, administrators or assigns, who hath or have purchased or legally acquired the copyright of any such map, chart, book or books, in order to print, reprint, publish or vend the same, shall have the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books, for the term of fourteen years from the recording the title thereof in the clerk's office, as is herein after directed: And that the author and authors of any map, chart, book or books already made and composed, and not printed or published, or that shall hereafter be made and composed, being a citizen or citizens of these United States, or resident therein, and his or their executors, administrators or assigns, shall have the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books,

Stat. May 31, 1790.

for the like term of fourteen years from the time of recording the title thereof in the clerk's office as aforesaid. And if, at the expiration of the said term, the author or authors, or any of them, be living, and a citizen or citizens of these United States, or resident therein, the same exclusive right shall be continued to him or them, his or their executors, administrators or assigns, for the further term of fourteen years: *Provided*, he or they shall cause the title thereof to be a second time recorded and published in the same manner as is herein after directed, and that within six months before the expiration of the first term of fourteen years aforesaid.

Also, if living at the end of that term, to have the further term of 14 years; recording the title, &c.

Other persons printing, &c. without consent of the author, how to be proceeded against and punished.

Sec. 2. *And be it further enacted*, That if any other person or persons, from and after the recording the title of any map, chart, book or books, and publishing the same as aforesaid, and within the times limited and granted by this act, shall print, reprint, publish, or import, or cause to be printed, reprinted, published, or imported from any foreign kingdom or state, any copy or copies of such map, chart, book or books, without the consent of the author or proprietor thereof, first had and obtained in writing, signed in the presence of two or more credible witnesses; or knowing the same to be so printed, reprinted, or imported, shall publish, sell, or expose to sale, or cause to be published, sold, or exposed to sale, any copy of such map, chart, book or books, without such consent first had and obtained in writing as aforesaid, then such offender or offenders shall forfeit all and every copy and copies of such map, chart, book or books, and all and every sheet and sheets, being part of the same, or either of them, to the author or proprietor of such map, chart, book or books, who shall forthwith destroy the same: And every such offender and offenders shall also forfeit and pay the sum of fifty cents for every sheet which shall be found in his or their possession, either printed or printing, published, imported or exposed to sale, contrary to the true intent and meaning of this act, the one moiety thereof to the author or proprietor of such map, chart, book or books who shall sue for the same,

and the other moiety thereof to and for the use of the United States, to be recovered by action of debt in any court of record in the United States, wherein the same is cognizable. *Provided always*, That such action be commenced within one year after the cause of action shall arise, and not afterwards. Stat. May 31, 1790. 1802, c. 36, sec. 3.

Conditions on which the benefit of this act shall be obtained.

SEC. 3. *And be it further enacted*, That no person shall be entitled to the benefit of this act, in cases where any map, chart, book or books, hath or have been already printed and published, unless he shall first deposit, and in all other cases, unless he shall before publication deposit a printed copy of the title of such map, chart, book or books, in the clerk's office of the district court where the author or proprietor shall reside: And the clerk of such court is hereby directed and required to record the same forthwith, in a book to be kept by him for that purpose, in the words following, (giving a copy thereof to the said author or proprietor, under the seal of the court, if he shall require the same.) "District of to wit: *Be it remembered*, That on the day of in the year of the independence of the United States of America, A. B. of the said district, hath deposited in this office the title of a map, chart, book or books, (as the case may be) the right whereof he claims as author or proprietor, (as the case may be) in the words following, to wit: [here insert the title] in conformity to the act of the Congress of the United States, intituled 'An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned.' C. D. clerk of the district of ." For which the said clerk shall be entitled to receive sixty cents from the said author or proprietor, and sixty cents for every copy under seal actually given to such author or proprietor as aforesaid. And such author or proprietor shall, within two months from the date thereof, cause a copy of the said record to be published in one or more of the newspapers printed in the United States, for the space of four weeks. 1802, c. 36, sec. 1. 2.

Stat. May 31, 1790.

Authors to deliver a copy of their work to the Secretary of State.

SEC. 4. *And be it further enacted*, That the author or proprietor of any such map, chart, book or books, shall, within six months after the publishing thereof, deliver, or cause to be delivered to the Secretary of State a copy of the same, to be preserved in his office.

No prohibition against importing, reprinting, &c. of foreign writings or publications.

SEC. 5. *And be it further enacted*, That nothing in this act shall be construed to extend to prohibit the importation or vending, reprinting or publishing within the United States, of any map, chart, book or books, written, printed, or published by any person not a citizen of the United States, in foreign parts or places without the jurisdiction of the United States.

Penalty for publishing manuscripts without consent of the authors.

SEC. 6. *And be it further enacted*, That any person or persons who shall print or publish any manuscript, without the consent and approbation of the author or proprietor thereof, first had and obtained as aforesaid, (if such author or proprietor be a citizen of or resident in these United States) shall be liable to suffer and pay to the said author or proprietor all damages occasioned by such injury, to be recovered by a special action on the case founded upon this act, in any court having cognizance thereof.

Persons sued for any thing done under this act may give special matter in evidence.

SEC. 7. *And be it further enacted*, That if any person or persons shall be sued or prosecuted for any matter, act or thing done under or by virtue of this act, he or they may plead the general issue, and give the special matter in evidence.

Approved, May 31, 1790.

II. An Act supplementary to an act, intituled "An act for the encouragement of learning, by securing the copies of maps, charts, and books to the authors and proprietors of such copies during the time therein mentioned," and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints.

Stat. April 29, 1802.

[Repealed.] Additional requisites prescribed for persons claiming to be authors or proprietors of maps, charts, or books. 1790, c. 15.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person who shall, from and after the first day of January next, claim to be the author or proprietor of any maps, charts, book or books, and shall thereafter seek to obtain a copyright of the same agreeable to the rules prescribed by law, before he shall be entitled to the benefit of the act, entituled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned," he shall, in addition to the requisites enjoined in the third and fourth sections of said act, if a book or books, give information by causing the copy of the record, which, by said act he is required to publish in one or more of the newspapers, to be inserted at full length in the title-page or in the page immediately following the title of every such book or books; and if a map or chart, shall cause the following words to be impressed on the face thereof, viz: "*Entered according to act of Congress, the day of* 18 [here insert the date when the same was deposited in the office] *by A. B. of the state of* [here insert the author's or proprietor's name and the state in which he resides.]

Same rules prescribed with respect to persons who shall invent, and design, engrave, etch, or work historical or other prints.

SEC. 2. *And be it further enacted*, That from and after the first day of January next, every person being a citizen of the United States, or resident within the same, who shall invent and design, engrave, etch or work, or

Stat. April 29, 1802.

from his own works and inventions, shall cause to be designed and engraved, etched or worked, any historical or other print or prints, shall have the sole right and liberty of printing, re-printing, publishing and vending such print or prints, for the term of fourteen years from the recording the title thereof in the clerk's office, as prescribed by law for maps, charts, book or books: *Provided*, he shall perform all the requisites in relation to such print or prints, as are directed in relation to maps, charts, book or books, in the third and fourth sections of the act to which this is a supplement, and shall moreover cause the same entry to be duly engraved on such plate, with the name of the proprietor, and printed on every such print or prints as is herein before required to be made on maps or charts.

Penalties for engraving, etching or working, or copying and selling a print or prints, without the consent of the owner or owners, in writing. 4 Wash. C. C. R. 48.

Sec. 3. *And be it further enacted*, That if any printseller or other person whatsoever, from and after the said first day of January next, within the time limited by this act, shall engrave, etch or work, as aforesaid, or in any other manner copy or sell, or cause to be engraved, etched, copied or sold, in the whole or in part, by varying, adding to, or diminishing from the main design, or shall print, re-print, 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 eredible witnesses; or knowing the same to be so printed or re-printed, without the consent of the proprietor or proprietors, shall publish, sell, or expose to sale or otherwise, or in any other manner dispose 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 copied or printed) to the proprietor or proprietors of such original print or prints, who shall forthwith destroy the same; and further, that every such

offender or offenders shall forfeit one dollar for every print which shall be found in his, her, or their custody; either printed, published, or exposed to sale, or otherwise disposed of, contrary to the true intent and meaning of this act, the one moiety thereof to any person who shall sue for the same, and the other moiety thereof to and for the use of the United States, to be recovered in any court having competent jurisdiction thereof.

Stat. April 29, 1802.

A moiety of the forfeiture to any one who shall sue for the same.

Penalties for publishing maps, charts, books or prints, but in the way prescribed by law.

Sec. 4. *And be it further enacted*, That if any person or persons from and after the passing of this act, shall print or publish any map, chart, book or books, print or prints, who have not legally acquired the copyright of such map, chart, book or books, print or prints, and shall, contrary to the true intent and meaning of this act, insert therein or impress thereon that the same has been entered according to act of Congress, or words purporting the same, or purporting that the copyright thereof has been acquired; every person so offending shall forfeit and pay the sum of one hundred dollars, one moiety thereof to the person who shall sue for the same, and the other moiety thereof to and for the use of the United States, to be recovered by action of debt in any court of record in the United States, having cognizance thereof. *Provided always*, that in every case for forfeitures herein before given, the action be commenced within two years from the time the cause of action may have arisen.

Limitation of action in cases of forfeiture.

Approved, April 29, 1802.

III. An Act to extend the jurisdiction of the circuit courts of the United States to cases arising under the law relating to patents.

Stat. Feb. 15, 1819.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the circuit courts of the United States shall have original cognizance, as well in equity as at law, of all actions, suits, controversies, and cases arising under any law of the United States, granting or confirming to authors or inventors the exclusive right to their respective writings, inventions, and discoveries: and upon any bill in equity, filed by any party aggrieved in any such cases, shall have authority to grant injunctions, according to the course and principles of courts of equity, to prevent the violation of the rights of any authors or inventors, secured to them by any laws of the United States, on such terms and conditions as the said courts may deem fit and reasonable: *Provided, however*, That from all judgments and decrees of any circuit courts, rendered in the premises, a writ of error or appeal, as the case may require, shall lie to the Supreme Court of the United States, in the same manner, and under the same circumstances, as is now provided by law in other judgments and decrees of such circuit courts.

The circuit courts to have original cognizance, in equity and at law, in controversies respecting the right to inventions and writings.

Act of Feb. 21, 1793, c. 11.

Act of May 31, 1790, c. 15.

Proviso.

Approved, February 15, 1819.

An Act to amend the several acts respecting copy-rights.

Stat. Feb. 3, 1831.

Authors of books, &c. and their executors, &c. to have sole right for twenty-eight years.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That from and after the passing of this act, any person or persons, being a citizen or citizens of the United States, or resident therein, who shall be the author or authors of any book or books, map, chart, or musical composition, which may be now made or composed, and not printed and published, or shall hereafter be made or composed, or who shall invent, design, etch, engrave, work, or cause to be engraved, etched, or worked from his own design, any print or engraving, and the executors, administrators, or legal assigns of such person or persons, shall have the sole right and liberty of printing, reprinting, publishing, and vending such book or books, map, chart, musical composition, print, cut, or engraving, in whole or in part, for the term of twenty-eight years from the time of recording the title thereof, in the manner hereinafter directed.

Renewal of privilege for fourteen years.

Conditions.

Sec. 2. *And be it further enacted*, That if, at the expiration of the aforesaid term of years, such author, inventor, designer, engraver, or any of them, where the work had been originally composed and made by more than one person, be still living, and a citizen or citizens of the United States, or resident therein, or being dead, shall have left a widow, or child, or children, either or all then living, the same exclusive right shall be continued to such author, designer, or engraver, or, if dead, then to such widow and child, or children, for the further term of fourteen years: *Provided*, That the title of the work so secured shall be a second time recorded, and all such other regulations as are herein required in regard to original copyrights, be complied with in respect to such renewed copyright, and that within six months before the expiration of the first term.

Stat. Feb. 3, 1831.

Publication of renewal.

SEC. 3. *And be it further enacted*, That in all cases of renewal of copyright under this act, such author or proprietor shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more of the newspapers printed in the United States, for the space of four weeks.

Copy of title to be deposited.

SEC. 4. *And be it further enacted*, That no person shall be entitled to the benefit of this act, unless he shall, before publication, deposit a printed copy of the title of such book, or books, map, chart, musical composition, print, cut, or engraving, in the clerk's office of the district court of the district wherein the author or proprietor shall reside, and the clerk of such court is hereby

To be recorded.

directed and required to record the same thereof forthwith, in a book to be kept for that purpose, in the words following (giving a copy of the title, under the seal of the court, to the said author or proprietor, whenever he

Form of record.

shall require the same:) "District of to wit: Be it remembered, that on the day of anno domini,

A. B., of the said district, hath deposited in this office the title of a book, (map, chart, or otherwise, as the case may be,) the title of which is in the words following, to wit: (here insert the title;) the right whereof he claims as author (or proprietor as the case may be;) in conformity with an act of Congress, entitled 'An act to amend the several acts respecting copyrights.' C. D. clerk

Fee.

of the district." For which record, the clerk shall be entitled to receive, from the person claiming such right as aforesaid, fifty cents; and the like sum for every copy, under seal, actually given to such person or his assigns.

Copy of work to be deposited.

And the author or proprietor of any such book, map, chart, musical composition, print, cut, or engraving, shall, within three months from the publication of said book, map, chart, musical composition, print, cut, or engraving, de-

List of works and copies to be transmitted to the Secretary of State.

liver or cause to be delivered a copy of the same to the clerk of said district. And it shall be the duty of the clerk of each district court, at least once in every year, to transmit a certified list of all such records of copyright, including the titles so recorded, and the dates of

record, and also all the several copies of books or other works deposited in his office according to this act, to the Secretary of State, to be preserved in his office. Stat. Feb. 3, 1831.

SEC. 5. *And be it further enacted*, That no person shall be entitled to the benefit of this act, unless he shall give information of copyright being secured, by causing to be inserted in the several copies of each and every edition published during the term secured on the title-page, or the page immediately following, if it be a book, or, if a map, chart, musical composition, print, cut, or engraving, by causing to be impressed on the face thereof, or if a volume of maps, charts, music, or engravings, upon the title or frontispiece thereof, the following words, viz: "Entered according to act of Congress, in the year , by A. B., in the clerk's office of the district court of ," (as the case may be.) Notice of copyright to be printed, &c.

SEC. 6. *And be it further enacted*, That if any other person or persons, from and after the recording the title of any book or books, according to this act, shall, within the term or terms herein limited, print, publish, or import, or cause to be printed, published, or imported, any copy of such book, or books, without the consent of the person legally entitled to the copyright thereof, first had and obtained in writing, signed in presence of two or more credible witnesses, or shall, knowing the same to be so printed or imported, publish, sell, or expose to sale, or cause to be published, sold, or exposed to sale, any copy of such book without such consent in writing; then such offender shall forfeit every copy of such book to the person legally, at the time, entitled to the copyright thereof; and shall also forfeit and pay fifty cents for every such sheet which may be found in his possession, either printed, or printing, published, imported, or exposed to sale, contrary to the intent of this act, the one moiety thereof to such legal owner of the copyright as aforesaid, and the other to the use of the United States, to be recovered by action of debt in any court having competent jurisdiction thereof. Infringement of copyright to books. Penalty.

SEC. 7. *And be it further enacted*, That, if any person

Stat. Feb. 3, 1831.

or persons, after the recording the title of any print, cut, or engraving, map, chart, or musical composition, according to the provisions of this act, shall, within the term or terms limited by this act, engrave, etch, or work, sell, or copy, or cause to be engraved, etched, worked, or sold, or copied, either on the whole, or by varying, adding to, or diminishing the main design with intent to evade the law; or shall print or import for sale, or cause to be printed, or imported for sale, any such map, chart, musical composition, print, cut or engraving, or any parts thereof, without the consent of the proprietor or proprietors of the copyright thereof, first obtained in writing, signed in the presence of two credible witnesses; or, knowing the same to be so printed or imported without such consent, shall publish, sell, or expose to sale, or in any manner dispose of any such map, chart, musical composition, engraving, cut, or print, without such consent, as aforesaid; then such offender or offenders shall forfeit the plate or plates on which such map, chart, musical composition, engraving, cut, or print, shall be copied, and also all and every sheet thereof so copied or printed as aforesaid, to the proprietor or proprietors of the copyright thereof; and shall further forfeit one dollar for every sheet of such map, chart, musical composition, print, cut, or engraving, which may be found in his or their possession, printed or published, or exposed to sale, contrary to the true intent and meaning of this act; the one moiety thereof to the proprietor or proprietors, and the other moiety to the use of the United States, to be recovered in any court having competent jurisdiction thereof.

Infringement of copyright to prints, maps, &c.

Penalty.

Privilege restricted to citizens or residents.

SEC. 8. *And be it further enacted*, That nothing in this act shall be construed to extend to prohibit the importation or vending, printing, or publishing, of any map, chart, book, musical composition, print or engraving, written, composed, or made, by any person not being a citizen of the United States, nor resident within the jurisdiction thereof.

SEC. 9. *And be it further enacted*, That any person or

persons who shall print or publish any manuscript whatever without the consent of the author or legal proprietor first obtained as aforesaid, (if such author or proprietor be a citizen of the United States, or resident therein,) shall be liable to suffer and pay to the author or proprietor, all damages occasioned by such injury, to be recovered by a special action on the case founded upon this act, in any court having cognizance thereof; and the several courts of the United States empowered to grant injunctions to prevent the violation of the rights of authors and inventors, are hereby empowered to grant injunctions, in like manner, according to the principles of equity, to restrain such publication of any manuscript as aforesaid.

Stat. II. Feb. 3, 1831.

Publication of manuscripts without consent, &c.

Remedy.

Injunction to prevent.

SEC. 10. *And be it further enacted*, That, if any person or persons shall be sued or prosecuted, for any matter, act, or thing done under or by virtue of this act, he or they may plead the general issue and give the special matter in evidence.

General issue, &c.

SEC. 11. *And be it further enacted*, That, if any person or persons, from and after the passing of this act, shall print or publish any book, map, chart, musical composition, print, cut, or engraving, not having legally acquired the copyright thereof, and shall insert or impress that the same hath been entered according to act of Congress, or words purporting the same, every person so offending shall forfeit and pay one hundred dollars: one moiety thereof to the person who shall sue for the same, and the other to the use of the United States, to be recovered by action of debt, in any court of record having cognizance thereof.

False entry of copyright.

Penalty.

SEC. 12. *And be it further enacted*, That, in all recoveries under this act, either for damages, forfeitures, or penalties, full costs shall be allowed thereon, any thing in any former act to the contrary notwithstanding.

Costs.

SEC. 13. *And be it further enacted*, That no action or prosecution shall be maintained, in any case of forfeiture or penalty under this act, unless the same shall have been

Limitation of action.

Stat. II. Feb. 3, 1831.

commenced within two years after the cause of action shall have arisen.

Repeal of act of May 31, 1790, c. 15. Act of April 29, 1802, c. 36.

SEC. 14. *And be it further enacted*, That the "Act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies during the times therein mentioned," passed May thirty-first, one thousand seven hundred and ninety, and the act supplementary thereto, passed April twenty-ninth, one thousand eight hundred and two, shall be, and the same are hereby, repealed: saving, always, such rights as may have been obtained in conformity to their provisions.

Provisions of this act for security of copyrights, &c. to extend to existing copyrights.

SEC. 15. *And be it further enacted*, That all and several the provisions of this act, intended for the protection and security of copyrights, and providing remedies, penalties, and forfeitures, in case of violation thereof, shall be held and construed to extend to the benefit of the legal proprietor or proprietors of each and every copyright heretofore obtained, according to law, during the term thereof, in the same manner as if such copyright had been entered and secured according to the directions of this act.

Extension of existing copyrights,

SEC. 16. *And be it further enacted*, That, whenever a copyright has been heretofore obtained by an author or authors, inventor, designer, or engraver, of any book, map, chart, print, cut, or engraving, or by a proprietor of the same: if such author or authors, or either of them, such inventor, designer, or engraver, be living at the passage of this act, then such author or authors, or the survivor of them, such inventor, engraver, or designer, shall continue to have the same exclusive right to his book, chart, map, print, cut, or engraving, with the benefit of each and all the provisions of this act, for the security thereof, for such additional period of time as will, together with the time which shall have elapsed from the first entry of such copyright, make up the term of twenty-eight years, with the same right to his widow, child, or children, to renew the copyright, at the expiration thereof, as is above provided in relation to copyrights originally

secured under this act. And if such author or authors, inventor, designer, or engraver, shall not be living at the passage of this act, then, his or their heirs, executors and administrators, shall be entitled to the like exclusive enjoyment of said copyright, with the benefit of each and all the provisions of this act for the security thereof, for the period of twenty-eight years from the first entry of said copyright, with the like privilege of renewal to the widow, child, or children, of author or authors, designer, inventor, or engraver, as is provided in relation to copyrights originally secured under this act: *Provided*, That this act shall not extend to any copyright heretofore secured, the term of which has already expired. Stat. II. Feb. 3, 1831. Proviso.

Approved, February 3, 1831.

An Act supplementary to the act to amend the several acts respecting copyrights.

Stat. 1. June 30, 1834.

Deeds of transfer to be recorded, &c.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all deeds or instruments in writing for the transfer or assignment of copyrights, being proved or acknowledged in such manner as deeds for the conveyance of land are required by law to be proved or acknowledged in the same state or district, shall and may be recorded in the office where the original copyright is deposited and recorded; and every such deed or instrument that shall in any time hereafter be made and executed, and which shall not be proved or acknowledged and recorded as aforesaid, within sixty days after its execution, shall be judged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration without notice.

Fees of clerk of district court.

SEC. 2. *And be it further enacted*, That the clerk of the district court shall be entitled to such fees for performing the services herein authorized and required, as he is entitled to for performing like services under existing laws of the United States.

Approved, June 30, 1834.

An Act in addition to an act to promote the progress of the useful arts, and to repeal all acts and parts of acts heretofore made for that purpose.

Stat. II. Aug. 29, 1842.

Citizens, &c. may obtain a patent, how.

SEC. 3. *Be it further enacted*, That any citizen or citizens, or alien or aliens, having resided one year in the United States and taken the oath of his or their intention to become a citizen or citizens, who by his, her, or their own industry, genius, efforts, and expense, may have invented or produced any new and original design for a manufacture, whether of metal or other material or materials, or any new and original design for the printing of woollen, silk, cotton, or other fabrics, or any new and original design for a bust, statue, or bas relief or composition in alto or basso relievo, or any new and original impression or ornament, or to be placed on any article of manufacture, the same being formed in marble or other material, or any new and useful pattern, or print, or picture, to be either worked into or worked on, or printed or painted or cast or otherwise fixed on, any article of manufacture, or any new and original shape or configuration of any article of manufacture not known or used by others, before his, her or their invention or production thereof, and prior to the time of his, her, or their application for a patent therefor, and who shall desire to obtain an exclusive property or right therein to make, and use, and sell and vend the same, or copies of the same, to others, by them to be made, used, and sold, may make application in writing to the commissioner of patents, expressing such desire, and the commissioner, on due proceedings had, may grant a patent therefor, as in the case now of application for a patent. *Provided*, That the fee in such cases which by the now existing laws would be required of the particular applicant shall be one half the sum, and that the duration of said patent shall be seven years, and that all the regulations and provisions which

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now apply to the obtaining or protection of patents not inconsistent with the provisions of this act, shall apply to applications under this section.

Oath may be taken before U. S. ministers, &c.

SEC. 4. *And be it further enacted*, That the oath required for applicants for patents may be taken, when the applicant is not, for the time being, residing in the United States, before any minister, plenipotentiary, chargé d'affaires, consul, or commercial agent holding commission under the government of the United States, or before any notary public of the foreign country in which such applicant may be.

Penalty for infringing the rights of a patentee, &c. by marking.

SEC. 5. *And be it further enacted*, That if any person or persons shall paint or print, or mould, cast, carve, or engrave, or stamp, upon anything made, used, or sold, by him, for the sole making or selling which he hath not or shall not have obtained letters patent, the name or any imitation of the name of any other person who hath or shall have obtained letters patent for the sole making and vending of such thing, without consent of such patentee, or his assigns or legal representatives; or if any person, upon any such thing not having been purchased, from the patentee, or some person who purchased it from or under such patentee, or not having the license or consent of such patentee, or his assigns or legal representatives, shall write, paint, print, mould, cast, carve, engrave, stamp, or otherwise make or affix the word "patent," or the words "letters patent," or the word "patentee," or any word or words of like kind, meaning, or import, with the view or intent of imitating or counterfeiting the stamp, mark, or other device of the patentee, or shall affix the same or any word, stamp, or device, of like import, on any unpatented article, for the purpose of deceiving the public, he, she, or they, so offending, shall be liable for such offence, to a penalty of not less than one hundred dollars, with costs, to be recovered by action in any of the circuit courts of the United States, or in any of the district courts of the United States, having the powers and jurisdiction of a circuit court; one half of which

How recoverable, &c.

penalty, as recovered, shall be paid to the patent fund, and the other half to any person or persons who shall sue for the same.

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Patentees, &c. required to mark articles offered for sale.

SEC. 6. *And be it further enacted*, That all patentees and assignees of patents hereafter granted, are hereby required to stamp, engrave, or cause to be stamped or engraved, on each article vended, or offered for sale, the date of the patent; and if any person or persons, patentees or assignees, shall neglect to do so, he, she, or they, shall be liable to the same penalty, to be recovered and disposed of in the manner specified in the foregoing fifth section of this act.

Penalty for neglect.

Approved, August 29, 1842.

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