

a manuscript would protect only the two acts which have not been published.<sup>1</sup> So, the registration of the unpublished orchestral parts covers those parts, but not any other arrangement which may be published in print without being registered. Hence, to secure and preserve his rights in an opera which is registered as an unpublished work, the owner must either not publish any part or any arrangement of it, or he must secure protection for that part or arrangement by complying with the requisites prescribed in the case of printed compositions.

In the case under consideration, the opera itself, which had not been published in print, was registered as an unpublished work; the time and place of its first representation being given. The registration was valid only as to what was then unpublished, viz., the original score; and it secured the right of representing this alone. No one without authority might use this score or a copy of it without violating the right secured. But, at the time this was registered, two arrangements for the piano-forte had been published in print, and afterward four orchestral parts were so published, and none of these publications was registered. The court admitted that no right in these had been secured, and that they had become common property. It was not claimed that any person was barred from publishing them in print. They were not less common property with respect to the right of representation. If any person might print them, any person might represent them. But the Court of Appeal, following the reasoning used in *Reade v. Conquest*,<sup>2</sup> held that, while the piano-forte arrangement was entitled to no protection, its use was an indirect appropriation of the original opera, and hence a violation of the right therein secured. In considering the judgment in *Reade v. Conquest*, I tried to show that this doctrine is in conflict with a fundamental principle of the theory of copyright, which prevents unlawful copying only from the work protected, and not from any source which is open to all.<sup>3</sup> In *Boosey v. Fairlie*, the plaintiff was bound to

<sup>1</sup> The same principle was recognized in *Low v. Ward*, Law Rep. 6 Eq. 415, where copyright was held to vest in that part of a book which had been first published in England, but

not in that part which had been previously published in the United States.

<sup>2</sup> 11 C. B. N. S. 479.

<sup>3</sup> See *ante*, p 458.

show that the work protected had been copied. He was not entitled to prevent any person from using substantially the same production if got from a common source. The piano-forte arrangement of which the defendant made use was common property, and hence there was nothing to bar him from using it in any manner.

It was judicially conceded, in *Boosey v. Fairlie*, that if, at the time of registration, there had been a complete publication in print of the original opera, that is, of all the orchestral parts, the right of representation could have been secured only by registering the work as a printed composition. Both copyright and playright would then have vested in it. But suppose that the right of representation had been secured by registering the unpublished opera, could this right have been defeated by a subsequent publication in print, of which no registration was made? This question was raised in *Boosey v. Fairlie*. It was contended for the defendant that whatever rights had been secured by the registration of the manuscript score were lost by the subsequent publication and non-registration of the four orchestral parts. The court, without deciding what effect a complete publication of the entire work would have on the right secured, held that this was not such a publication.<sup>1</sup>

The opinion has already been expressed in this work that playright, once secured in a manuscript composition, may be lost by a subsequent complete publication in print, which works an abandonment of the copyright; and that, when the publication is not complete, the right secured may be defeated to the extent of the publication. If this principle is sound, the

<sup>1</sup> "Assuming the original registration of proprietorship to be valid, it has been urged on behalf of the defendant: first, that, under the convention of 1851, the protection given by the registration became subsequently inoperative in consequence of the plaintiffs' not having delivered to the officer of the Stationers' Company a copy of the four instrumental parts published on the 9th of August, 1869. . . . Upon the first point, it is unnecessary to decide whether, supposing a dramatic piece or musical composition in manuscript to have been registered so as to

give protection to the right of representing it, or performing it, the subsequent printing and publication of such piece or composition, if not followed by a deposit of a copy at Stationers' Hall, can be held to take away that right; for in the present case it appears to us that the publication of the four instrumental parts does not constitute a publication of Offenbach's opera within the meaning either of the convention or of the statute under which that convention was made." *Thesiger, L. J., Boosey v. Fairlie*, 7 Ch. D. 316.



publication without registration of the four orchestral parts of Offenbach's opera made those parts common property, and to that extent defeated the right of representation.

#### UNITED STATES.

**Playright Given only in Case of Copyrighted Composition.**— The first American statute on the subject under consideration was that of 1856, which gave to dramatists the exclusive right of publicly performing their plays. But the provisions of this act were limited to those compositions in which copyright had vested, or should thereafter be acquired, under the statute of 1831.<sup>1</sup> Playright is now governed by the Revised Statutes, which enact that the author or owner of any book, dramatic or musical composition, &c., shall have the sole liberty of publishing it in print; “and, in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others.”<sup>2</sup> The statute further prohibits the unlicensed representation of any dramatic composition “for which copyright has been obtained.”<sup>3</sup>

Playright is thus expressly limited to dramatic compositions for which a copyright has been secured. The former right is embraced within, and cannot exist independently of, the latter. A dramatist has no claim, under the statute, to the exclusive right of representing any play which is not protected by copyright.

**No Statutory Playright in Unpublished Dramas.**— It is settled that copyright cannot exist in a work until it is published, and that the public performance of a play is not a publication within the meaning of the statute.<sup>4</sup> Hence, it follows that there can be no statutory playright in a manuscript drama. This vital principle has been strangely overlooked or disregarded in not fewer than five cases decided by the Circuit Court of the United States.

In *Boucicault v. Wood*, the plaintiff claimed, under the

<sup>1</sup> *Roberts v. Myers*, 13 Monthly Law Reporter, 396; *Keene v. Wheatley*, 9 Am. Law Reg. 33, 45; *Boucicault v. Fox*, 5 Blatchf. 96-98; *Boucicault v. Wood*, 2 Biss. 36-38.

<sup>2</sup> s. 4952.

<sup>3</sup> s. 4966.

<sup>4</sup> See *ante*, pp. 284, 285.

statute of 1856, the exclusive right of representing the Octoroon and the Colleen Bawn, two manuscript dramas of which he was the author. The title-page of the former had been deposited in conformity with the law on Dec. 12, 1859, and of the latter on March 23, 1860. Both plays had been repeatedly represented in public, with the consent of the author; but neither had been published in print, and there had been no compliance with the provisions of the statute requiring the delivery of copies, and the printing of the copyright notice. The performances complained of had taken place in 1864, 1865, and 1866; from four to six years after the recording of the title-pages. The principle is well established, and was affirmed in this case, that the exclusive right of representing a dramatic composition was given by the statute of 1856 only in cases wherein copyright had been secured under the act of 1831. The vital question, therefore, was whether valid copyright had vested in the compositions in question. The court held that, under the act of 1831, "an action, with in equity, but *at law*, could be maintained before the publication of the work, for the benefit of any party aggrieved;" and that, under this act, and that of 1856, the plaintiff was entitled to maintain an action for the unlicensed performance of his plays, notwithstanding there had been no publication, and no compliance with two of the three statutory requisites relating to copyright.<sup>1</sup>

The law had been construed to the same effect in *Roberts v. Myers*,<sup>2</sup> decided in 1860, and in *Boucicault v. Fox*,<sup>3</sup> in 1862, in each of which the validity of the copyright in the Octoroon, one of the dramas above mentioned, was upheld.

The same principle appears to have been applied in two cases brought by Shook against Rankin in 1875, in which the statutory copyright in the play of the Two Orphans was held to be valid.<sup>4</sup> The plaintiffs had bought a copy of the unpublished

<sup>1</sup> 2 Biss. 34.

<sup>2</sup> 13 Monthly Law Reporter, 306.

<sup>3</sup> 5 Blatchf. 87. In *Keene v. Wheatley*, 9 Am. Law Reg. 44, the court appears to have taken the same view of the law. In *Roberts v. Myers*, the objections were raised and overruled that the play had not been published,

and that no copy had been deposited as required by law. These vital questions are not referred to in the opinion in *Boucicault v. Fox*, though the controlling facts and principles were the same in both cases.

<sup>4</sup> 3 Cent. Law Jour. 210; 6 Biss. 477.



French drama, *Les Deux Orphelines*, with the exclusive right of representation in the United States, and had caused a translation to be made. They alleged that they had copyrighted this translation, but it does not appear that they had complied with any other requirement of the statute than filing a copy of the title. The vital question whether the play, that is the translation, had been published in print as a step to secure the copyright, or whether it was then unpublished, cannot positively be determined from the report of either case, or both reports together. But it may fairly be assumed that the play had not been published.<sup>1</sup> In both cases protection was claimed under the copyright statute, and, as neither party was a citizen of the State in which the suit was brought, the court had no jurisdiction except under that statute. Hence, in granting the injunctions, the court upheld the validity of the statutory copyright, and if the play had not been published, as has been here assumed, affirmed the principle that a manuscript drama is within the protection of the statute. Nor was either of the decisions based on the ground that an unreasonable time for publication had not passed after the filing of the title. The fact that the play had not been published appears not to have been referred to in either case. Moreover, it appeared from the pleadings that the title had been filed more than seven months before one and more than eight months before the other suit was brought;<sup>2</sup> whereas, in *Boucicault v. Hart*, about four months was held to be an unreasonable time to pass without publication after the recording of the title.<sup>3</sup>

The law, as applied by the court in the five cases above reviewed, is wholly indefensible, and is against the entire cur-

<sup>1</sup> The remark made by Drummond, J., in his opinion, "has the defendant infringed his [plaintiff's] rights by performing this unpublished drama?" implies that there had been no publication in print. 6 Biss. 480. The entire opinion of Judge Nelson appears to proceed on the assumption that the play was an unpublished one. 3 Cent. Law Jour. 210.

<sup>2</sup> The plaintiff alleged that the title had been filed Feb. 1, 1875. 6 Biss. 478. One suit was brought in

September, and the other in October following.

<sup>3</sup> 18 Blatchf. 47. In July, 1876, Lowell, J., held in the United States court in Boston, that the copyright in *The Two Orphans* was not valid, on the ground that the copyright notice in the printed copy of the play was not in the precise form prescribed by the statute. *Tompkins v. Rankin*, 3 Cent. Law Jour. 448. No satisfactory report of this case has been published.

rent of authorities, which affirm the principle that there can be no copyright without a compliance with the requisites prescribed by the statute.<sup>1</sup> The true doctrine was affirmed by the Circuit Court of the United States in the recent case of *Boucicault v. Hart*, though it is noticeable that the court in its opinion, though citing and in effect overruling *Roberts v. Myers*, *Boucicault v. Fox*, and *Boucicault v. Wood*, did not comment on these authorities.<sup>2</sup> *Boucicault v. Hart*, as well as the two cases of *Shook v. Rankin*, was governed by the statute now in force; but its provisions on the point under consideration are substantially the same as those of the acts of 1856 and 1831, under which the three other cases were decided. The controlling facts and principles were essentially the same in all of the cases. In *Boucicault v. Hart*, the plaintiff claimed to be entitled under the statute to the exclusive right of representing the *Shaughraun*, of which he was the author. The title-page of this play had been duly recorded on Oct. 26, 1874, after which the piece was publicly represented by the author. It was, how-

<sup>1</sup> The opinion of the court, in *Boucicault v. Wood*, seems to have been based chiefly on the construction of section 6 of the act of 1831, which imposes penalties on any person who "from and after the recording the title of any book" shall publish such book without due authority. But this section did not enable a person to maintain an action at law for the violation of copyright until that right had been completely secured. See *ante*, p. 267.

In *Roberts v. Myers*, Sprague, J., said: "The third objection is that no copy of this book was ever deposited in the clerk's office. The statute requires that such copy shall be deposited within three months after publication. That time has not arrived. There has been no publication." 13 Monthly Law Reporter, 396. In answer to the objection that the drama had not been printed, the court, having quoted the language of the first section of the act of 1831, which provides that a copyright may be secured for any book "which may now be made or com-

posed, and not printed or published, or shall hereafter be made or composed," said: "Here it is clearly expressed that a book may exist without printing; and such book, when made or composed, is to be entitled to copyright. The objection, therefore, cannot prevail." *Ibid.* 399.

It is plain that the court failed to comprehend the true meaning of the language quoted from the statute. It was not that a book might be protected by copyright while in manuscript; but that copyright might be obtained only for such books as had not been published, excluding all those which were published before being copyrighted. The object of the statute was to provide protection for unpublished works, but it contemplated their publication as a condition precedent to copyright. The language above quoted is not used in the act now in force.

<sup>2</sup> *Boucicault v. Hart* appears not to have been reported when the two later cases of *Shook v. Rankin* were decided.



ever, kept in manuscript, and the bill, verified in February, 1875, did not allege any publication of the composition, or any delivery or copies as required by the statute. The law was rightly interpreted by Mr. Justice Hunt of the United States Supreme Court, to the effect that there could be no exclusive right under the statute of representing a dramatic composition, unless it was protected by copyright; and that valid copyright could not be secured without publication of the piece in print, and a compliance with the requisites prescribed by the statute. "I hold," he said, "that to secure copyright of a book, or a dramatic composition, the work must be published within a reasonable time after the filing of the title-page, and two copies be delivered to the librarian. These two acts are by the statute made necessary to be performed, and we can no more take it upon ourselves to say that the latter is not an indispensable requisite to a copyright, than we can say it of the former."<sup>1</sup> As the plaintiff had not complied with these conditions, his title was held to be invalid.

**How Playright is Secured.**—To acquire under the statute the exclusive right to perform a play in public, the owner

<sup>1</sup> 18 Blatchf. 47, 54. "Any person," said Mr. Justice Hunt, "shall be entitled to a copyright, who, before publication, first, shall deliver to the librarian a printed copy of the title of the book, and second, shall, within ten days after the publication thereof, deliver to the librarian two copies of the same. The book may not be printed or published when the title-page is filed, and some right (inchoate perhaps) seems intended to be secured as of that date, although an actual printing or publication is not then made. But the expression 'before publication' is based upon the idea that a printing or publishing will soon occur. This is put into clear meaning by the next clause of the section, that the author shall not be entitled to copyright, unless, 'within ten days from the publication' he shall deliver two copies to the librarian. It is not a fair interpretation of this section to hold, that the filing of the title entitles to a

copyright fully and absolutely, and that this may be defeated by a publication and failure to deliver two copies, but, as long as there is no publication, although it continue indefinitely, there is no lapse of the right. This construction is not permitted either by the idea which secures benefits to the author or inventor, upon the theory that the public is to be benefited, as well as himself, by his works, or by the principle pervading all this branch of the laws of patents, trade-marks, and copyrights, that an author or inventor must put his claim into the form of a well-defined specification, work or composition, and so place it upon record that he cannot alter it to suit circumstances, and so that other authors may know precisely what it is that has been written or invented." *Ibid.* 54.

This authority was followed in *Carillo v. Shook*, 22 Int. Rev. Rec. 152. See also *Benn v. Le Clercq*, 18 Id. 94.

must first publish and copyright it as a literary composition. Playright can be secured in no other way. Copyright in a dramatic composition carries with it playright. No special conditions or requirements are prescribed for securing playright. If the production be a "dramatic composition," copyright and playright attach simultaneously in the same manner and on the same conditions. Both rights begin with publication in print, and continue for the same term. Neither is affected by public performances of the play before its publication in print.<sup>1</sup> If the copyright be valid, the playright is valid. The owner of the copyright has the sole liberty both of publishing the composition and of representing it in public. If the copyright fails, the playright fails with it.

#### TRANSFER OF PLAYRIGHT. — GREAT BRITAIN.

**Held, that Assignment must be in Writing.** — The mode of transmitting the right to print a dramatic or musical composition, that is the copyright, is not different from that to be observed in the case of a book. But a conveyance of the right to publish a dramatic or musical composition does not necessarily carry the right to represent or perform it. The mode of transferring playright is, however, regulated by the same general principles that govern in the case of copyright. Hence, in England, the construction given to the 8 Anne, c. 19, and the 54 Geo. III. c. 156, has been applied to the 3 & 4 Will. IV. c. 15; and accordingly it has been held that an assignment of the right to represent or perform a dramatic or musical composition must, under the last-named statute, be in writing,<sup>2</sup> though it need not be attested<sup>3</sup> nor sealed.<sup>4</sup> This is the law as it has been judicially interpreted. But it is open to the same criticisms that have been made on the law relating to the assignment of copyright.<sup>5</sup>

<sup>1</sup> *Roberts v. Myers*, 18 Monthly Law Reporter, 306; *Boucicault v. Fox*, 5 Blatchf. 87; *Boucicault v. Wood*, 2 Biss. 84; *Boucicault v. Hart*, 18 Blatchf. 47.

<sup>2</sup> *Shepherd v. Conquest*, 17 C. B. 427.

<sup>3</sup> *Cumberland v. Copeland*, 1 Hurl. & C. 194.

<sup>4</sup> *Marsh v. Conquest*, 17 C. B. n. s. 418.

<sup>5</sup> See *ante*, p. 304, *et seq.*



Is Law Settled that Assignment must be in Writing?—The law regulating the transfer of playright cannot rightly be determined without considering what effect, if any, the 5 & 6 Vict. c. 45, has on this question. Can this statute be construed to govern the mode of transferring the right of representing a dramatic composition, so that, if copyright may be passed by parol, playright may be assigned in the same manner? This important question does not appear to have been judicially considered. It has been shown in another part of this work that the question whether copyright may be assigned by parol, under the statute of Victoria, cannot be regarded as judicially settled; but the opinion has been expressed that the weight of authority is in favor of the construction that an assignment is not required to be in writing.<sup>1</sup>

In *Cumberland v. Copeland*, the Exchequer Chamber, overruling the judgment of the Court of Exchequer,<sup>2</sup> held that an unattested writing was *sufficient*, under the statute of William;<sup>3</sup> but the question whether a writing was necessary was not before the court. Moreover, the assignment in controversy had been made before the statute of Victoria was passed. And so, in *Marsh v. Conquest*, the court simply decided that the assignment need not be by deed.<sup>4</sup> *Shepherd v. Conquest* is the only case yet reported in which it has been directly held that an assignment of playright must be in writing.<sup>5</sup> This judgment was based on the construction of 3 & 4 Will. IV. c. 15, and it does not appear that the court considered the bearing of 5 & 6 Vict. c. 45, on the question. The doctrine affirmed in this case was questioned in *Lacy v. Toole*, where a letter was held to be a valid assignment of the property in a play.<sup>6</sup> These decisions cannot rightly be regarded as settling what form of transfer is admissible under the statute of Victoria.

Section 20 of this act, after securing to the author and his assigns the sole liberty of representing or performing a dramatic or musical composition, for the same term as that provided for copyright in books, declares that "the provisions herein-

<sup>1</sup> See *ante*, pp. 311-316.

<sup>2</sup> 7 Hurl. & N. 118.

<sup>3</sup> 1 Hurl. & C. 194.

<sup>4</sup> 17 C. B. N. s. 418.

<sup>5</sup> 17 C. B. 427.

<sup>6</sup> 15 L. T. N. s. 512. See language of Byles, J., *ante*, p. 311, note 1.

before 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," except as otherwise provided. The object and effect of this section, considered in connection with the general scope of the entire statute, appear to be to put playright on the same footing as copyright, as far as the vesting and the ownership of the rights are concerned. Moreover, the definition of assigns contained in section 2 doubtless gives the meaning of that word wherever used in the statute, and hence is as applicable to an assignee of playright as to one of copyright. It would seem, therefore, that any mode of transferring copyright recognized by the statute would be equally available in the case of playright; that, if the former may be assigned by parol, so may the latter; and that a writing, if required in one case, is essential in the other.

**Transfer before Playright Secured.**—It has been maintained elsewhere that, whatever may be the proper form of assignment after the copyright has been secured, the statute cannot rightly be construed to regulate transfers made before the statutory right has vested.<sup>1</sup> The statutory right of representation in the case of a manuscript dramatic composition attaches when the play is first publicly performed. Assuming the principle just expressed to be sound, the rights in a manuscript drama which has not been publicly performed may be passed by a verbal agreement; for in such case the form of transfer is governed by the common law.

But it should be borne in mind that the questions here raised have not been determined by the courts; hence the law remains for judicial interpretation.

**Registration.**—Nor has it been decided whether section 13 of 5 & 6 Vict. c. 45, which provides for the transfer of copyright by registration, but does not mention playright, and section 25, relating to the transmission of copyright by bequest and in case of intestacy, are applicable to the right of representation. But, for the reasons given above, it would seem that they are. This view in the case of transfer by registration appears to be confirmed by section 22 of the statute of Victoria.

<sup>1</sup> See *ante*, pp. 306, 307.



By this section, it is 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." It has been said<sup>1</sup> that this section was enacted to correct the law as expounded in *Cumberland v. Planché*,<sup>2</sup> where it was held that an assignment of the copyright in a farce carried the right of representation; and that Parliament intended to declare that a general assignment of copyright should not be construed to have that effect, unless the assignment should be registered, and the intention to transfer the right of representation clearly expressed. The provision applies, however, only to cases where the copyright in a dramatic or musical composition is assigned without any mention of the playright, and where, consequently, it may be doubtful whether the latter right was intended to be passed. When the playright alone is assigned, or when in the instrument that conveys the copyright it is expressly declared that the right of representation is also passed, registration is not required.<sup>3</sup> Thus, it was not necessary to register an assignment of "the whole copyright and acting right without reservation," since the intention to pass both rights was here plain.<sup>4</sup>

There is no reason why the same rule should not apply to cases wherein the assignment of the copyright shows unmistakably the intent of the assignor to convey also the playright, although the latter right is not expressly named in the instrument. Thus, an absolute conveyance in general terms of all the author's "right, title, and interest" in a dramatic composition can only mean, in the absence of words or circumstances to the contrary, that the parties agreed that the entire property, playright as well as copyright, should pass.<sup>5</sup>

<sup>1</sup> See *Lacy v. Rhys*, 4 Best & S. 888.

<sup>2</sup> 1 Ad. & El. 580.

<sup>3</sup> *Lacy v. Rhys*, *infra*; *Marsh v. Conquest*, 17 C. B. N. s. 418.

<sup>4</sup> *Lacy v. Rhys*, 4 Best & S. 878.

<sup>5</sup> It is not clear whether the above provision of the statute was intended to apply to all assignments of the copyright in dramatical and musical compositions, by whatever mode effected, or only to those made by registration.

## TRANSFER OF PLAYRIGHT. — UNITED STATES.

In the United States, the statutory right of exclusive representation can exist only in a dramatic composition which has been copyrighted as a book. To this extent, playwright is dependent on copyright. But there appears to be no reason why the two rights in the same composition may not be held separately by different persons, or why one right may not be transmitted with or without the other.

**Mode of Transfer.** — In considering the question whether copyright may be assigned by parol, or whether a writing is necessary, it has been shown<sup>1</sup> that the only provisions in the Revised Statutes which can be cited in favor of the latter view are sections 4955, which enacts that "copyrights shall be assignable in law, by any instrument of writing;" and section 4964, which imposes a penalty on any person who shall republish a book without the written consent of the owner of the copyright, signed by two witnesses. The latter section clearly does not apply to the performance of a play. Unlicensed representation is prohibited by section 4966, which declares that any person who publicly performs a dramatic composition without the consent of the owner shall be liable to damages; but it does not require such consent to be in writing. There is nothing in the statute which can rightly be construed as regulating the mode of assigning playwright, excepting section 4955. This mentions assignments of "copyright" alone. As the statute does not expressly prescribe any form of transferring the right of representing a dramatic composition, it might be claimed that the question is governed by the common law, and hence that a parol transfer is good. But it is more probable that the courts will hold that, as playwright is embraced within the grant of copyright, any regulations prescribed concerning the transfer of the latter right are by implication equally applicable to the former. If this view shall be adopted, and section 4955

This question has not been judicially considered. It may be urged with much reason that, in making the provision, Parliament had in view only those assignments made by entry in the register at Stationers' Hall, since this is

the only mode of assigning copyright expressly prescribed by the statute; and that the effect of a transfer otherwise made should be left to judicial construction.

<sup>1</sup> See *ante*, pp. 812-821.



be construed to require an assignment of copyright to be in writing, it will follow that the same form must be observed in assigning playright.

**Transfer before Playright Secured.** — When a play is sold in manuscript, and the buyer afterward secures the statutory copyright and playright in his own name, there is nothing in the statute requiring the assignment, thus made before the statutory right attaches, to be in writing.<sup>1</sup>

**Does Assignment of Copyright Carry Playright?** — The question may arise, whether a general assignment of the author's rights in a copyrighted dramatic composition will carry both the right of publication and that of representation; and whether an assignment of the "copyright" without mention of the playright will impliedly embrace the latter. This would doubtless depend on the agreement, and the intention of the parties to be determined by the words of the contract, and such facts and circumstances as would be admissible to show its meaning. An absolute conveyance of all the author's "right, title, and interest" in a play would, in the absence of controlling circumstances to the contrary, be naturally understood to pass the entire property, including the rights both of publication and of representation.<sup>2</sup> And so an assignment in which the copyright, but not the playright, is mentioned may be shown to have the same effect; or its meaning may be properly restricted to the former right. It is a question of construction depending on the agreement and the circumstances in each case. But a clear intention to transfer both rights should be shown in order to give the agreement that effect.

**Limited Assignment of Playright.** — It has been shown that copyright cannot be regarded as divisible with respect to locality on account of the impracticability of such division.<sup>3</sup> But this difficulty does not exist in the case of playright. The impracticability of there being several exclusive publishers of a book in the same country, and of each restricting the circulation and sale of his publication to a prescribed area, is obvious. It is equally plain that no serious inconvenience will necessarily

<sup>1</sup> See *ante*, p. 819.

<sup>2</sup> As in *Cumberland v. Planché*, 1 Ad. & El. 580.

<sup>3</sup> See *ante*, p. 385.

result from one person exercising the exclusive right to represent a play in one State or city and another person in another State or city. There is, then, no reason why the owner of a drama, whether it be in manuscript, or printed and copyrighted, may not make an absolute assignment of the right to represent it in any named part of the country, in any State or States, or in any city or cities. The ownership of the playright may thus be divided among many owners, each having the exclusive right of representation within certain boundaries. In *Keene v. Wheatley*, the court seems to have entertained the contrary opinion.<sup>1</sup> But in the following case of *Roberts v. Myers*, the law was more correctly expounded to the effect that playright may be transferred independently of the copyright in the same composition, and that the former may be assigned for any part of the country.<sup>2</sup>

<sup>1</sup> "The author's proprietary rights for England and Scotland," said Mr. Justice Cadwalader, "had never been transferred to her [the complainant]. The statutes of the United States for the protection of authors do not, like those for the benefit of inventors, expressly sanction transfers of limited local proprietorships of exclusive privileges. A writing, which is in form a transfer by an author of his exclusive right for a designated portion of the United States, would therefore, *at law*, even under the statutes of copyright, operate as a *mere license*, and would be ineffectual as an assignment." 9 Am. Law Reg. 46.

This is true of copyright, but not of playright. Miss Keene had bought from an English dramatist the exclusive right of representing the play in the United States. It was held that as the play had not been published, she was entitled to maintain a suit in equity for the protection of her common-law rights; but that the transfer to her "cannot be regarded otherwise than as only a partial assignment upon which a suit could not be maintained at law in her own name." *Ibid.* The doctrine expressed in the language quoted is clearly erroneous. The very essence even of a limited assignment is that the

ownership and the legal title for the time or territory embraced within the assignment must pass to the assignee; otherwise the agreement is but a license. A good assignment for the United States had been made to Miss Keene. She thereby became vested with the legal title and the absolute ownership in this country, and hence was fully entitled to maintain an action at law as well as a suit in equity.

<sup>2</sup> 13 Monthly Law Reporter, 896. In this case it appeared that an assignment had been made to the plaintiff of the exclusive right of representing a play for one year, in all parts of the United States excepting certain cities. The defendant contended that such agreement was not an assignment, but a license, and therefore that the suit could not be maintained in the name of the plaintiff. Mr. Justice Sprague said: "Whatever force this objection might have at law, it cannot prevail in equity. The statute of 1834 sanctions assignments of copyright, by prescribing the instrument by which they are to be made and a mode of recording them. It does not say what interest may be assigned. But there is no sufficient reason for preventing the author from conveying a distinct portion of his right. Divisibility as well as



In this case, the court also expressed the opinion that play-right might be assigned for any time less than the full term. But the question whether a transfer of the exclusive right of representation for a limited time will amount in law to an assignment which will vest the assignee with the legal title during that term is attended with the same doubt and difficulties which were pointed out in treating of the limited assignment of copyright.<sup>1</sup>

**Joint Authorship — Authors Employed.** — The questions as to who is the owner of a play claimed to have been written by two persons jointly, and of a dramatic or musical composition which has been produced by one person in the employment of another, have already been considered.<sup>2</sup>

assignability enhances the value of his property, for he may find a purchaser able and willing to pay for a part, but not for the whole, of his copyright. The exclusive right of acting and representing is distinct from that of printing and publishing, created indeed by a new statute, which superadds it to those pre-existing rights; and there is no good reason why it should not be assignable, and that too for a limited

time." Ibid. 401. See also *Martinetti v. Maguire*, 1 Dedy, 216.

<sup>1</sup> See *ante*, p. 337.

<sup>2</sup> See as to joint-authorship, *Levi v. Rutley*, *ante*, p. 287; *French v. Maguire*, 55 How. Pr. (N. Y.) 471. As to rights of employer and person employed, see *Hatton v. Kean*, *ante*, p. 249; *Wallenstein v. Herbert*, *ante*, p. 251; *Boucicault v. Fox*, *ante*, p. 257; *Shepherd v. Conquest*, 17 C. B. 427.

## CHAPTER XVI.

## INFRINGEMENT OF PLAYRIGHT.

THE remedies for the unlawful performance of a dramatic composition are of two kinds: those in equity and those at law. The unlicensed representation of a play may be prevented or restrained by injunction; and an action at law lies for the damages sustained by such performance. The remedies in equity, including the injunction, account of profits and discovery, are governed by the same general principles which have been considered in the case of copyright.<sup>1</sup>

**Statutory Remedies for Violation of Playright different from those for Invasion of Copyright.**—The remedies in law prescribed by the statute for the violation of playright are different from those provided for the infringement of copyright. The modes of violating the two rights are entirely distinct. Statutory copyright is infringed by publication, but not by any oral use of the composition. Playright is invaded by performing the play, but not by printing it or selling printed copies. The 3 & 4 Will. IV. c. 15, secures no other right and prohibits no other act than that of representation. The right secured by this statute is reaffirmed, its duration enlarged, and its application extended to musical compositions, by section 20 of 5 & 6 Vict. c. 45. But the remedies prescribed by the latter statute for the unlawful publication of a book do not apply, and are not extended, to the unlicensed representation of a play. For the latter wrong, the penalties given by the statute of William are re-enacted by section 21 of 5 & 6 Vict. c. 45. The only remedies then provided by any English statute for the protection of playright are those prescribed by 3 & 4 Will. IV. c. 15, and these do not apply to the unlawful printing of a play. Of course, a dramatic composition may be copyrighted as a book

<sup>1</sup> See Chap. XI.



under the statute of Victoria; and, in that case, unlawful printing is a violation of the copyright. But copyright vests only in printed books, while playright is secured in both published and manuscript productions. Hence, in England, a dramatist has no statutory remedy for the unlicensed printing of an unpublished play.

In the United States, playright, as well as copyright, is secured by the statute only in published works. When a dramatic composition is printed without authority, the wrong must be treated as an infringement of copyright. When the complaint is of unlicensed performance, the only remedies are those prescribed for the invasion of playright. Section 4967 of the statute, which prohibits the unauthorized publication of a manuscript, applies to the printing, but not the public performance, of an unpublished play.<sup>1</sup>

**Remedies Prescribed by English Statute.** — In England, the statutory remedies for the violation of playright are provided by section 2 of 3 & 4 Will. IV. c. 15, which declares that if any person shall “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,” any dramatic piece entitled to protection, 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.”

**Remedies Prescribed by American Statute.** — The statute of the United States provides that “any person publicly performing or representing any dramatic composition for which a copyright has been obtained, without the consent of the proprietor thereof, or his heirs or assigns, shall be liable to damages therefor, such damages in all cases to be assessed at such sum, not less than one hundred dollars for the first, and fifty dollars for every subsequent performance, as to the court shall appear to be just.”<sup>2</sup>

<sup>1</sup> *Boucicault v. Hart*, 18 Blatchf. 47; *Keene v. Wheatley*, 9 Am. Law Reg. 33; *Boucicault v. Fox*, 5 Blatchf. 97.

<sup>2</sup> U. S. Rev. St. s. 4966.

## WHAT IS AN UNLAWFUL PERFORMANCE.

**Public and Private Performances Distinguished.** — The statute of the United States prohibits only unlicensed public performances. The word public or its equivalent is not used in the English act. But there can be no reasonable doubt that a strictly private performance is not within the prohibition of either statute. Cases may arise in which it will not be easy to determine whether the representation is a public or a private one. That it is called private does not make it so. Without regard to what it is called, or where it may be given, that may generally be regarded as a public performance which is open to the public without discrimination. But it would seem that a representation may also be regarded as a public one, although the privilege of admission is denied to the general public, and is extended only to certain persons. "Private theatricals" are sometimes given by amateur performers in a place of public amusement, to which a charge is made for admission. Only invited persons, or members of a certain society or class, are privileged to buy tickets of admission. There appears to be no reason why such entertainments should not be treated as public performances within the meaning of the law, notwithstanding the public indiscriminately are not admitted.

In a case of doubt as to whether an entertainment is a public or a private one, the fact that no charge is made for admission may aid in removing the doubt. But when it is found that a performance is public, the pena'ty of piracy cannot be escaped by the fact that the audience were admitted without charge. The purpose of the law is to protect the lawful owner of a dramatic composition from injury. Ordinarily, no injury will arise from the strictly private representation of a play. But a performance, nominally private, but in reality public, with a charge imposed on those admitted, or public performances to which persons are admitted free of charge, may be harmful to the owner of the drama represented, who thereby becomes entitled to the protection of the law.

**Scenery, Costumes, &c., not Essential.** — Neither scenery, appropriate costumes, nor any of the usual resources of a theatre,



are essential to a dramatic performance within the meaning of the statute. "We should take away a part of the protection conferred on authors," said Chief Justice Denman, "if we held that there could be no public representation without these accompaniments."<sup>1</sup>

**Place of Performance.** — Nor is it necessary that the representation shall be given in a theatre. The English statute prohibits unlicensed performances "at any place of dramatic entertainment." According to the judicial interpretation given to this language, any place where a public dramatic representation is given is a "place of dramatic entertainment" within the meaning of the law. "As a regular theatre may be a lecture-room, dining-hall, ball-room, and concert-room, on successive days, so a room, used ordinarily for either of those purposes, would become, for the time being, a theatre, if used for the representation of a regular stage play."<sup>2</sup>

**Plurality of Actors not Essential.** — A plurality of actors is not essential to a dramatic representation. In the meaning of the law, the performance is complete when the dialogue or monologue of the drama is repeated with appropriate expression and action before a public audience.<sup>3</sup> It cannot be material whether the various characters in the play are assumed by as many different actors, or are represented by one person appearing in ordinary dress in any place of public entertainment. The whole or a material part of a drama is frequently given as a "dramatic reading" by one person, on a lecture platform, and without special costume or other stage resource. The dialogue is thus recited with appropriate expression and action by a

<sup>1</sup> *Russell v. Smith*, 12 Q. B. 236.

<sup>2</sup> Denman, C. J., *Ibid.* 237. In the same case, Patteson, J., remarked that "the street where Punch is performed is for the time being a place of dramatic entertainment." *Ibid.* 232. In *Russell v. Briant*, 8 C. B. 836, the court did not doubt that a room in the Horns Tavern was a place of dramatic entertainment. See also *Russell v. Smith* (in equity), 15 Sim. 181.

<sup>3</sup> "When a dramatic composition is represented, in dialogue and action, by persons who represent it as real, by performing or going through with the

various parts or characters assigned to them generally, the composition is acted, performed, or represented, and, if the representation is in public, it is a public representation. To act, in the sense of the statute, is to represent as real, by countenance, voice, or gesture, that which is not real. A character in a play who goes through with a series of events on the stage without speaking, if such be his part in the play, is none the less an actor in it than one who, in addition to motions and gestures, uses his voice." Blatchford, J., *Daly v. Palmer*, 6 Blatchf. 264.

single person, who represents the various characters as speaking and acting. Such a reading must be regarded as a dramatic performance within the meaning of the statute. In England, it has been held that the singing in public of a dramatic song, by one person sitting at a piano, is a dramatic representation.<sup>1</sup>

**Public Reading may Amount to Performance.**—There is no reason why the public reading or recital of any dramatic composition may not amount to a performance within the meaning of the law. The object of the statute may rightly be taken to be to secure to the owner the profits arising from all public uses of a dramatic composition. It is manifest that the property in the play may be injured, and the owner be deprived of profits to which he is entitled, if he is powerless to prevent the unlicensed use of his production for public readings.

But this right does not vest in a literary production which is not a dramatic composition. For in this case only the exclusive right of printing and selling is given by the statute, and only the unlawful printing or circulation of copies is prohibited. Hence, the author has no remedy against any person who publicly reads or recites such production. Of course, this rule applies only to published works. The unauthorized public reading of any unpublished production, whether a dramatic composition or not, is a violation of the owner's common-law rights therein.

#### WHO ARE LIABLE.

Under the English statute, any person is made liable to the penalties who shall unlawfully represent, or "cause to be represented," a dramatic piece.<sup>2</sup> The words above quoted are not used in the American act, which prohibits "any person publicly performing or representing any dramatic composition,"<sup>3</sup> in violation of the provisions of the statute. This variation in language does not affect the uniformity of the intent and object of the two statutes. In this respect, they are to be construed alike.

<sup>1</sup> Russell v. Smith, 12 Q. B. 217.  
See also Russell v. Briant, 8 C. B. 836;  
Clark v. Bishop, 25 L. T. N. s. 908.

<sup>2</sup> 8 & 4 Will. IV. c. 15, s. 2.

<sup>3</sup> U. S. Rev. St. s. 4966.



Whether the part taken by a person in the representation of a play is such as will render him liable to an action for the penalties or damages, is a question sometimes attended with difficulties. Where the defendant had let a room or hall in his tavern, and had furnished the platform, benches, and lights for a public performance, and had allowed bills to be put up in the tavern, and tickets to be sold at the bar, it was held that these facts "afforded no evidence that the defendant represented, or caused to be represented, the musical composition in question within the meaning of the statute;" and that a person is not liable, "unless, by himself or his agent, he actually takes part in a representation which is a violation of copyright. And if it were to be held that all those who supply some of the means of representation to him who actually represents are to be regarded as thereby constituting him their agent, and thus causing the representation, within the meaning of the act, such a doctrine would, we think, embrace a class of persons not at all intended by the legislature."<sup>1</sup>

In *Lyon v. Knowles*, it appeared that the defendant had let his theatre to Dillon for certain dramatic performances, paid for the printing and advertising, and furnished the lights, door-keepers, scene-shifters, supernumeraries, and musicians. Dillon engaged and paid the company, selected the plays, and had the entire management of the performance, and exclusive control of all persons employed in the theatre. The money paid for admission was taken at the doors by servants of the defendant, who retained one half of the gross receipts as his remuneration for the use of the theatre, &c., and gave the other half to Dillon. On these facts, it was held that the defendant had transferred to Dillon, for the time, the entire control and management of the theatre; that the arrangement between them did not amount to a partnership; and hence that the latter, and not the former, was the person who had caused the representation.<sup>2</sup> This judgment was affirmed on appeal.<sup>3</sup>

<sup>1</sup> *Russell v. Briant*, 8 C. B. 836, 848.

<sup>2</sup> 3 Best & S. 556.

<sup>3</sup> 5 Id. 751. "If Dillon," said Chief Justice Cockburn in the lower court, "and his company could be in any sense regarded as the company of the

defendant, he might be considered as representing, or causing to be represented, the piece in question. But the facts are quite otherwise. As I understand the evidence, the defendant made over to Dillon the use of this theatre,

The facts in *Marsh v. Conquest* showed that the defendant was the owner and manager of the Grecian Theatre in London; and that, for £30, he had let for one night to his son, who was stage-manager, the use of the theatre, company, and all persons employed. The son selected and brought out a play, for whose representation the court held the defendant liable.<sup>1</sup> This judgment was based on the fact, whether assumed or proved does not appear from the report, that the defendant had the control and management of the theatre and the company during that performance. If such was the fact, the law was doubtless interpreted correctly. But it may be doubted whether the circumstances and the relations of the parties warranted that assumption. The natural inference would be that, by the letting of the theatre and the company for one night, the entire control and management for that time passed to the lessee; and,

to perform therein with his company such pieces as he should be minded to represent there. All that the defendant did was to stipulate that his servants should receive the proceeds, in order that the remuneration which he contracted for should be secured to him. But the theatre with its accessories, lights, band, &c., was under the direction and control of Dillon, and the defendant had divested himself both of the right to interfere in the choice of the piece to be represented, and of any veto to be exercised by him as to providing, acting, or representing any particular piece. The defendant is nothing more than the proprietor of the theatre, who has transferred for the time the exercise of all his rights in it as such to Dillon.

"It therefore appears to me that Dillon is the person who represented any pieces represented there while he had the sole possession. If it had been made out that there was a joint action or control over the performances by the defendant and Dillon, so that they could be considered partners, that might have been a very different matter. But here there was nothing in common between them except that the gross proceeds were shared. Does that make them partners? In order to

constitute a partnership between two persons, there must be a participation of profits between them as such, whereas here the stipulation was that the defendant should have half of the gross profits of the theatre in lieu of being paid any sum as rent for the use of it." 3 Best & S. 562.

<sup>1</sup> 17 C. B. n. s. 418. "I think," said Erle, C. J., "the defendant is responsible for that representation. He was the proprietor of the theatre, and had entire control over the establishment and all belonging to it; and what was done by his son was done by his permission. The case of *Lyon v. Knowles* seems to me to recognize that distinction. There the defendant merely let his theatre with the scenery, scene-shifters, band, lights, &c., to Dillon, who brought his own company to represent pieces of his own selection, the plaintiff having no control whatever over any person employed in the representation. Here, however, the piece is performed by the defendant's own *corps dramatique*, his son being one of them; and the performance takes place for the defendant's profit to the extent of 80*l*. I think, therefore, it is impossible to say that the defendant did not cause the piece to be represented." Ibid. 481.



in that case, the defendant was no more liable for the representation than was the defendant in *Russell v. Briant*, or in *Lyon v. Knowles*.<sup>1</sup>

In *Daly v. Palmer*, the court ruled that the unlicensed sale of the infringing drama, "with a view to its public representation, makes the seller a participant in causing the play to be publicly represented;" and the defendants were enjoined, not only from performing the play, but also from selling it for public representation.<sup>2</sup>

### WHAT AMOUNTS TO PIRACY.

In the case of playright, piracy is determined by the same general principles that govern in the case of copyright. The unauthorized performance, not only of the whole, but of a material part of a dramatic composition, will amount to piracy.<sup>3</sup>

<sup>1</sup> In *Lyon v. Knowles*, Blackburn, J., said: "I do not think that, by furnishing servants to another, a man can be said to do all that is done by those servants while under the command of that other. A familiar example may be found in the case of a man letting a ready-furnished house, leaving an old servant in it. Suppose the tenant gave a dinner, which was cooked by that servant, who also attended on him at it, and for which the plates and furniture of the landlord were used, no one could say that in any sense of the words the landlord gave that dinner." 3 Best & S. 564.

<sup>2</sup> 6 Blatchf. 256, 271.

<sup>3</sup> *Br. Planché v. Braham*, 8 Car. & P. 68, on ap. 4 Bing. N. C. 17; *Reade v. Conquest*, 11 C. B. n. s. 479, 492; *Boosey v. Fairlie*, 7 Ch. D. 801; *Chatterton v. Cave*, Law Rep. 10 C. P. 572, 1st ap. 2 C. P. D. 42, 2d ap. 3 App. Cas. 483. *Am. Daly v. Palmer*, 6 Blatchf. 256; *Shook v. Rankin*, 6 Biss. 477.

In *Chatterton v. Cave*, Lord Coleridge, C. J., said: "I concur in the opinion of the rest of the court. What I meant to convey by my finding was

that in two points or situations there had been an imitation of the plaintiff's drama by the defendant. These points so copied were not parts of the dialogue or composition of the plaintiff's drama, but were in the nature of dramatic situations or scenic effects. It appeared to me that, looking to the general character of the two dramas respectively, the extent to which the one was taken from the other was so slight, and the effect upon the total composition was so small, that there was no substantial and material taking of any one portion of the defendant's drama from any portion of the plaintiff's. Therefore, though I felt bound to find that there was a taking of these two small points, I decided to enter the verdict for the defendant, and the question now is whether I was entitled to do so in point of law."

After considering *Planché v. Braham*, *Bramwell v. Halcomb*, *Bradbury v. Hotten*, and *D'Almaine v. Boosey*, he continued: "All these authorities satisfy me that the answer to the question whether there has been an infringement of copyright, does not follow as a necessary logical consequence from

**Offender Liable to Penalties under English Statute when Material Part Taken.**—The 3 & 4 Will. IV. c. 15, s. 2, by express words, subjects to the penalties prescribed any person who shall unlawfully represent the whole or “any part” of a dramatic piece. But a person is not liable to the penalties, unless a material part has been taken. “The question in every case,” said Lord O’Hagan, “must be a question of fact; and a jury cannot be constrained to find every infinitesimal taking to be the taking of a ‘part’ of a dramatic production within the purview of the statute. ‘Part,’ as was observed, is not necessarily the same as ‘particle;’ and there may be a taking so minute in its extent, and so trifling in its nature, as not to incur the statutable liability.”<sup>1</sup> When the part taken is material, the plaintiff, according to the opinion expressed by Chief Justice Tindal, in *Planché v. Braham*, is not bound to prove actual damage. “The positive enactment,” said that Judge, “that every offender shall be liable to an amount not less than 40s., or to the full amount of the benefit derived or loss sustained, shows that damage to the plaintiff is not the test of the

the mere fact of there having been a taking from a previous work, but that it is a question of fact and of common sense, whether the part taken is of such a substance and value, or used in such a way, as to amount to an infringement of the plaintiff’s right. Here the plaintiff’s play was taken from a French original, and the plaintiff would have a literary copyright in the translation and the right of representing it; but this could not prevent another person from going to the original and making another version in which he also would have a copyright. The defendant had made what in all but two points was an entirely distinct and independent version of the original drama. The two points in question related to two appearances of the Wandering Jew. I must confess that there is a difficulty to my mind in referring the substance of the two points taken to the original French drama as my learned brethren have done. In the French drama these appearances of the Jew form part of

the prologue and epilogue respectively, and have not much reference to the action of the drama. They are introduced into the English dramas more as part of the machinery or story of the play than in the French original. The end of the French play is quite different from that of the English, and the appearance of the Jew in the latter at the end of the play is connected with the alteration of the plot. I think that the idea of these appearances was not taken by the defendant from the French original, but from the plaintiff’s play. But notwithstanding this I think the effect of them is so very small on the total result of the play, and they form such an utterly unimportant part of the scenic representation as a whole, that the defendant’s drama cannot be said to be taken in any material or substantial part from the plaintiff’s.” *Law Rep. 10 C. P. 580–582.*

<sup>1</sup> *Chatterton v. Cave*, 8 App. Cas. 483, 498. See also same case in lower courts, 2 C. P. D. 42, *Law Rep. 10 C. P. 572.*



defendant's liability, but that 40s. is to be paid, even if there be no actual damage."<sup>1</sup>

**How Far Offender Liable under American Statute when only Part Taken.**—The statute of the United States prohibits the unlicensed performance of "any dramatic composition," and fixes a minimum limit to the assessment of damages.<sup>2</sup> Above this limit, the amount is left to the discretion of the court.<sup>3</sup> The question may be raised whether the minimum of damages specified by the statute is not in the nature of a penalty;<sup>4</sup> and, if so, whether such penalty may be recovered for the unlawful performance of a part of a play.<sup>5</sup> But there can be no doubt that the unlicensed performance of a material part of a dramatic composition will amount to piracy, against which an injunction will be granted, and for which an action for the damages sustained may be maintained.<sup>6</sup>

**Substantial Identity Test of Piracy.**—It is not essential that the representation complained of shall be an exact copy of the whole or part of a protected play. Substantial identity is enough to constitute piracy.<sup>7</sup>

<sup>1</sup> 4 Bing. N. C. 19. This opinion was cited with approval by Lord Gifford in *Chatterton v. Cave*, 3 Cas. 498. But in the same case Lord Hatherley seems to have thought that some damage must be shown in order to subject the defendant to the penalties. He said: "The minimum of damages, to be awarded when the fact of damage and the right to damages have been once established, was no doubt fixed because of the difficulty of proving with definiteness what amount of actual damage had been sustained, by perhaps a single performance at a provincial theatre of a work belonging to a plaintiff, whilst at the same time his work might be seriously depreciated if he did not establish his right as against all those who infringed upon it." *Ibid.* 492. See *ante*, p. 478, note 2.

<sup>2</sup> U. S. Rev. St. s. 4966.

<sup>3</sup> In considering the statute of 1856, Mr. Justice Drummond said: "That law prescribes a particular penalty for the unauthorized performance of a

play: in the first instance, not less than \$100, and for every subsequent performance, \$50; leaving a certain discretion with the court upon that subject, 'as to the court having cognizance thereof shall appear to be just.' In other words, it does not necessarily follow that in all cases the precise penalty fixed to the violation of the law shall be given, but the court is to exercise a certain discretion in relation to the matter." *Boucicault v. Wood*, 7 Am. Law Reg. n. s. 549.

<sup>4</sup> See *post*, p. 639.

<sup>5</sup> This question in the case of copyright is considered *ante*, p. 488.

<sup>6</sup> *Daly v. Palmer*, 6 Blatchf. 256; *Shook v. Rankin*, 6 Biss. 477.

<sup>7</sup> *Br. Reade v. Conquest*, 11 C. B. n. s. 479; *Chatterton v. Cave*, Law Rep. 10 C. P. 572, 1st ap. 2 C. P. D. 42, 2d ap. 3 App. Cas. 483; *Boosey v. Fairlie*, 7 Ch. D. 301. *Am. Daly v. Palmer*, 6 Blatchf. 256; *Boucicault v. Wood*, 2 Biss. 84; *Martinetti v. Maguire*, 1 Deady, 216.

The decision in *Daly v. Palmer* affords an instructive illustration of what has been held to be a substantial identity sufficient to constitute piracy in the case of a dramatic representation. The matter alleged to have been pirated was the "railroad scene" in Daly's play *Under the Gaslight*. In this scene is represented a surface railroad and a signal-station shed, in which a woman, at her own request, is locked by the signal man, who then disappears. Next are seen two men, one of whom binds the other with a rope, fastens him to the railroad track, and leaves him to be killed by an expected train. From a window in the shed the woman sees what is done, hears the noise of the approaching train, breaks open the door with an axe, and frees the intended victim an instant before the train rushes by.

This scene was reproduced, but with noticeable variations, in Boucicault's drama *After Dark*. One of the characters, from a wine vault where he had been thrown, sees, through a door into an adjoining vault, two persons pass through a hole in the wall the body of a man who had been made unconscious by drugs. With an iron bar, he enlarges an orifice in the wall of the vault which opens on an underground railway, and sees lying insensible on the track the person whose body had just been put there by the two men in the adjoining vault. Hearing the noise of a coming locomotive, he quickly makes his way through the opening in the wall and moves the body from the track just in time to prevent it from being run over by the passing train.

In *Under the Gaslight* this incident occupies the third scene of the fourth act, and, during its progress, there is considerable conversation between the several characters on the stage. In *After Dark*, it is represented in three scenes of the third act, chiefly by action, but partly by monologue spoken by one of the characters after he has seen the body on the track. In laying down the law applicable to these facts, Mr. Justice Blatchford said:—

"The series of events so represented, and communicated by movement and gesture alone to the intelligence of the spectator, according to the directions contained in parentheses, in the two plays in question here, embraces the confinement of



A. in a receptacle from which there seems to be no feasible means of egress; a railroad track, with the body of B. placed across it in such manner as to involve the apparently certain destruction of his life by a passing train; the appearance of A. at an opening in the receptacle, from which A. can see the body of B.; audible indications that the train is approaching; successful efforts by A., from within the receptacle, by means of an implement found within it, to obtain egress from it upon the track; and the moving of the body of B., by A., from the impending danger, a moment before the train rushes by. In both of the plays, the idea is conveyed that B. is placed intentionally on the track, with the purpose of having him killed. Such idea is, in the plaintiff's play, conveyed by the joint medium of language uttered, and of movements which are the result of prescribed directions, while, in Boucicault's play, it is conveyed solely by language uttered. The action, the narrative, the dramatic effect and impression, and the series of events in the two scenes, are identical. Both are dramatic compositions, designed or suited for public representation. It is true that, in one, A. is a woman, and, in the other, A. is a man; that in one, A. is confined in a surface railroad-station shed, and, in the other, A. is confined in a cellar abutting on the track; that, in one, A. uses an axe, and, in the other, A. uses an iron bar; that, in one, A. breaks down a door, and, in the other, A. enlarges a circular hole; that, in one, B. is conscious, and is fastened to the rails by a rope, and, in the other, B. is insensible, and is not fastened; and that, in one, there is a good deal of dialogue during the scene, and, in the other, only a soliloquy by A., and no dialogue. But the two scenes are identical in substance, as written dramatic compositions, in the particulars in which the plaintiff alleges that what he has invented, and set in order, in the scene, has been appropriated by Boucicault. . . .

“ All that is substantial and material in the plaintiff's railroad scene has been used by Boucicault, in the same order and sequence of events, and in a manner to convey the same sensations and impressions to those who see it represented, as in the plaintiff's play. Boucicault has, indeed, adapted the plaintiff's series of events to the story of his play, and, in doing so, has

evinced skill and art; but the same use is made, in both plays, of the same series of events, to excite, by representation, the same emotions, in the same sequence. There is no new use, in the sense of the law, in Boucicault's play, of what is found in the plaintiff's railroad scene. The railroad scene in Boucicault's play contains every thing which makes the railroad scene in the plaintiff's play attractive as a representation on the stage. As, in the case of the musical composition, the air is the invention of the author, and a piracy is committed if that in which the whole meritorious part of the invention consists is incorporated in another work, without any material alteration in sequence of bars; so, in the case of the dramatic composition, designed or suited for representation, the series of events directed in writing by the author, in any particular scene, is his invention, and a piracy is committed if that in which the whole merit of the scene consists is incorporated in another work, without any material alteration in the constituent parts of the series of events, or in the sequence of the events in the series.

“The adaptation of such series of events to different characters who use different language from the characters and language in the first play is like the adaptation of the musical air to a different instrument, or the addition to it of variations or of an accompaniment. The original subject of invention, that which required genius to construct it and set it in order, remains the same in the adaptation. A mere mechanic in dramatic composition can make such adaptation, and it is a piracy, if the appropriated series of events, when represented on the stage, although performed by new and different characters, using different language, is recognized by the spectator, through any of the senses to which the representation is addressed, as conveying substantially the same impressions to, and exciting the same emotions in, the mind, in the same sequence or order. Tested by these principles, the railroad scene in Boucicault's play is, undoubtedly, when acted, performed, or represented on a stage or public place, an invasion and infringement of the copyright of the plaintiff in the railroad scene in his play.”<sup>1</sup>

<sup>1</sup> 6 Blatchf. 265-270.



**Dramatizations.** — As each of two or more independent dramatizations of a common original is entitled to protection, one is not a piracy of another, unless there has been unlawful copying.<sup>1</sup>

**Intention and Ignorance.** — It is no defence to an action for the violation of playright that the defendant has not knowingly or intentionally committed piracy.<sup>2</sup>

**Registration.** — In England, it has been held that an action for the penalties or a suit for an injunction may be maintained, although the dramatic piece alleged to have been infringed has not been registered.<sup>3</sup>

**Consent in Writing.** — The English statute imposes penalties on any person who shall represent a dramatic piece “without the consent in writing of the author or other proprietor first had and obtained.”<sup>4</sup> Such consent need not be in the handwriting of the author or proprietor. It may be given by an agent.<sup>5</sup> The American statute does not require the consent to be in writing.<sup>6</sup>

**Limitation of Actions.** — The 3 & 4 Will. IV. c. 15, requires that actions and suits for infringement of playright shall be brought within twelve months after the cause of action arose.<sup>7</sup>

The American statute provides that “no action shall be maintained in case of forfeiture or penalty under the copyright laws, unless the same is commenced within two years after the cause of action has arisen.”<sup>8</sup> This limitation seems to apply only to proceedings for forfeitures and penalties, and not to actions for damages or suits in equity.<sup>9</sup> Assuming this to be the sound construction, the question arises whether section 4966, which gives an action for damages and fixes a minimum limit to the assessment of the damages, is remedial or penal. If what is there prescribed is a penalty, it would seem that actions brought under that section must be begun within two years. But if a mere remedy in damages is provided by that

<sup>1</sup> See *ante*, pp. 433, 596.

<sup>2</sup> *Reade v. Lacy*, 1 Johns. & H. 524; *Reade v. Conquest*, 11 C. B. N. S. 479. See this subject considered *ante*, pp. 401–404.

<sup>3</sup> See *ante*, p. 608.

<sup>4</sup> 3 & 4 Will. IV. c. 15, s. 2.

<sup>5</sup> *Morton v. Copeland*, 16 C. B. 517.

<sup>6</sup> U. S. Rev. St. s. 4966.

<sup>7</sup> s. 3.

<sup>8</sup> s. 4968.

<sup>9</sup> See *ante*, p. 404.

section, the statutory limitation, according to the view above taken, does not apply to actions for the recovery of such damages. The sound view would seem to be that the provision under consideration is at once remedial and penal. It is remedial inasmuch as it gives an action for damages. It is penal with respect to the minimum of damages prescribed. If this is true, the amount of damages named is in the nature of a penalty, and actions for the recovery of that amount, without regard to the damages actually sustained, are governed by the statutory limitation of time. But such limitation would not apply to actions for purely remedial damages to be assessed irrespective of the minimum amount fixed by the statute. But if it shall be held that section 4966 is wholly penal, and that the statutory limitation of time applies equally to all actions for damages brought under it, then an action for damages or a suit in equity will lie independently of that section. For the principle is settled that where a right is secured by a statute, and penalties, but not the remedial action for damages, are prescribed, the common-law remedies both in law and in equity are available.<sup>1</sup> And such remedies are not lost by not being sought within the time prescribed by the statute for the recovery of penalties. The proper construction of the statute, then, would seem to be that when playright is invaded, an action for the damages actually sustained, or a suit in equity, is not barred by the fact that the relief is not sought within two years after the wrong has been done.

**Jurisdiction.**—In the United States, actions and suits for the piracy of statutory playright must be brought in a federal court.<sup>2</sup>

### MUSIC.

The view has been taken in this work that the English statute secures to the composer the exclusive right of performing every kind of music, whether it is or is not a dramatic composition, and whether it is vocal or instrumental.<sup>3</sup> Assuming this to be the true object of the statute, the owner of any musical composition has a right of action against any person

<sup>1</sup> See *ante*, p. 473.

<sup>2</sup> See Chap. XI.

<sup>3</sup> See *ante*, p. 599.



who causes it to be played in public without due authority. Piracy is governed by the same principles; and the remedies are the same in this case as in that of dramatic compositions.<sup>1</sup>

In the United States, the statute does not give to the composer the exclusive right of playing a piece of music, unless it be a dramatic composition. A work composed for instruments alone, as a symphony, concerto, &c., cannot be considered as a dramatic composition. Hence, there is no statutory remedy against any person who causes a work of this kind to be played in public without the consent of the owner.

The question may arise, whether the statute protects the music, as well as the words, of a musical dramatic composition. An opera, and sometimes a single song, is such a composition, consisting, as has been shown, of words and music allied. The unauthorized representation of the whole is a clear case of piracy. So, also, would be the performance of the libretto, or the recitation of the words, either alone, without music, or when set to music other than the original.<sup>2</sup> But has the owner of an opera any remedy against one who gives an operatic performance in which is used the music, but not the libretto, of the protected composition? Has the author of a dramatic song any lawful means of preventing another from singing in public the melody with other words? The true doctrine may be reached by applying two established principles: 1. The statute protects the whole and every substantial part of a dramatic composition. 2. The unlicensed performance of the whole or of a material part is piracy. The music forms an important and essential part of every musical dramatic composition. Hence, playing in public the music, though other words than the original be used, is the public performance of a material part of a dramatic composition, and must therefore fall within the statutory prohibition, and be piratical.

<sup>1</sup> In *Boosey v. Fairlie*, 7 Ch. D. 801, it appeared that the defendant had taken for public performance with his own libretto a material part of the music but not the words of the plaintiff's opera. This was held to be a

violation of the playright in the opera secured to the plaintiff by the International Copyright Act. See *ante*, p. 608.

<sup>2</sup> *Planché v. Braham*, 8 Car. & P. 68, on ap. 4 Bing. N. C. 17.

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# STATUTES.

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8 GEO. 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.*

[2 REV. STAT. 399.]

[1735.]

WHEREAS divers persons have by their own genius, industry, pains, and expence, invented and engraved, or worked in mezzotinto or chiaro oscuro, sets of historical and other prints, in hopes to have reaped the sole benefit of their labours: And whereas print-sellers 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 invention shall cause to be designed and engraved, etched, or worked in mezzotinto or chiaro oscuro, any historical or other print or prints, shall have the sole right and liberty of printing and reprinting the same for

Preamble.

After 24 June, 1735, the property of historical and other prints vested in the inventor for fourteen years.



Proprietor's  
name to be  
affixed to each  
print.

Penalty on print-  
sellers or others  
pirating the  
same.

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

Not to extend to  
purchasers of  
plates from the  
original propri-  
etors.

II. Provided nevertheless, that it shall and may be lawful for any person or persons who shall hereafter purchase any plate or plates for printing from the original proprietors

thereof, to print and reprint from the said plates without incurring any of the penalties in this Act mentioned.

III. And be it further enacted by the authority aforesaid, that if any action or suit shall be commenced or brought against any person or persons whatsoever, for doing or causing to be done anything in pursuance of this Act, the same shall be brought within the space of three months after so doing; and the defendant and defendants in such action 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.

Limitation of actions.

General issue.

IV. Provided always, and be it further enacted by the authority aforesaid, that if any action or suit shall be commenced or brought against any person or persons for any offence committed against this Act, the same shall be brought within the space of three months after the discovery of every such offence, and not afterwards, anything in this Act contained to the contrary notwithstanding.

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

Publick Act.

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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.*

[2 REV. STAT. 707.]

[1766.]

WHEREAS an Act of Parliament passed in the eighth year of the reign of his late Majesty King George the Second, intit-

Preamble, reciting Act 8 Geo. 2. [c. 18.]



uled "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 architecture, map, chart, or plan, or any other print or prints whatsoever, shall have and are hereby declared to have the benefit and protection of the said Act and this Act under the restrictions and limitations herein after-mentioned.

The original inventors, designers, or engravers, &c. of historical and other prints, and such who shall cause prints to be done from works, &c. of their own invention,

and also such as shall engrave, &c. any print taken from any picture, drawing, model, or sculpture; are entitled to the benefit and protection of the recited and present Act;

and those who shall engrave, or import for sale, copies of such prints, are liable to penalties.

II. And be it further enacted by the authority aforesaid, that from and after the said first day of January one thousand seven hundred and sixty seven, all and every person and persons who shall engrave, etch, or work in mezzotinto or chiaro oscuro, or cause to be engraved, etched, or worked, any print taken from any picture, drawing, model, or sculpture, either ancient or modern, shall have and are hereby declared to have the benefit and protection of the said Act and this Act for the term herein after-mentioned, in like manner as if such print had been graven or drawn from the original design of such graver, etcher, or draughtsman; and if any person shall engrave, print, and publish, or import for sale any copy of any such print contrary to the true intent and meaning of this and the said former Act, every such person shall be liable to the penalties contained in the said Act, to be recovered as therein and herein after is mentioned.

Penalties may be sued for as by the recited Act is directed;

V. And be it further enacted by the authority aforesaid, that all and every the penalties and penalty inflicted by the said Act, and extended and meant to be extended to the several cases comprised in this Act, shall and may be sued for and recovered in like manner and under the like restrictions and

limitations as in and by the said Act is declared and appointed ; and the plaintiff or common informer in every such action (in case such plaintiff or common informer shall recover any of the penalties incurred by this or the said former Act) shall recover the same, together with his full costs of suit.

and be recovered with full costs.

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

Prosecution to be commenced within 6 months.

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.

The right intended to be secured by this and the former Act, vested in the proprietors for the term of 28 years from the first publication.

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 anything in pursuance of this Act, the same shall be brought within the space of six calendar months after the fact committed ; and the defendant or defendants in any such action or suit shall or may plead the general issue and give the special matter in evidence ; and if upon such action or suit a verdict shall be given for the defendant or defendants, or if the plaintiff or plaintiffs become 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.

Limitation of actions.

General issue.

Full costs.

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15 GEO. 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 copy right 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.*

[3 REV. STAT. 81.]

[1775.]

Preamble.

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 Eaton, 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 present Parliament assembled, and by the authority of the same, that the said universities and colleges respectively shall, at their respective presses, have for ever the sole liberty of printing and reprinting all such books as shall at any time heretofore have been or (having not been heretofore published or assigned) shall at any time hereafter be bequeathed or otherwise given by the author or authors 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 Eaton, 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.

Universities, &c. in England and Scotland to have for ever the sole right of printing, &c. such books as have been or shall be bequeathed to them,

unless the same have been or shall be given for a limited time.

II. And it is hereby further enacted, that if any bookseller, printer or other person whatsoever, from and after the twenty-fourth day of June one thousand seven hundred and seventy-five, shall print, reprint or import, or cause to be printed, reprinted or imported, any such book or books, or, knowing the same to be so printed or reprinted, shall sell, publish or expose to sale, or cause to be sold, published or exposed to sale, any such book or books, then such offender or offenders shall forfeit such book or books, and all and every sheet or sheets being part of such book or books, to the university, college or house of learning respectively to whom the copy of such book or books shall have been bequeathed or given as aforesaid, who shall forthwith damask and make waste paper of them; and further, that every such offender or offenders shall forfeit one penny for every sheet which shall be found in his, her or their custody either printed or printing, published or exposed to sale, contrary to the true intent and meaning of this Act, the one moiety thereof to the King's most excellent Majesty, his heirs and successors, and the other moiety thereof to any person or persons who shall sue for the same; to be recovered in any of his Majesty's courts of record at Westminster, or in the Court of Session in Scotland, by action of debt, bill, plaint or information, in which no wager of law, essoin, privilege or protection, or more than one imparlance shall be allowed.

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 authorise 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.<sup>1</sup>

<sup>1</sup> 8 Anne, c. 19, repealed by 5 & 6 Vict. c. 45, s. 1.

After June 24, 1775, 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.

Nothing in this Act to extend to grant any exclusive right longer than such books are printed at the presses of the universities.

Universities may sell copyrights in like manner as any author.



No person subject to penalties for printing, &c. books already bequeathed, unless they be entered before June 24, 1775.

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 Eaton, 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 sixpence 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 sixpence.

All books that may hereafter be bequeathed must be registered within two months after such bequest shall be known.

6d. to be paid for each entry in the register book, which may be inspected without fee.

Clerk to give a certificate, being paid 6d.

If clerk refuse or neglect to make entry, &c.,

proprietor of such copy right to have like benefit as if such entry had been

V. 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, being thereunto required by the agent of either of the said universities or colleges aforesaid, lawfully authorised for that purpose, then either of the said universities or colleges aforesaid, being the proprietor of such copy right or copy rights as aforesaid (notice being first 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 the clerk so refusing shall for every such offence forfeit twenty pounds to the proprietor or proprietors of every such copy right, to be recovered in any of his Majesty's courts of record at Westminster, or in the Court of Session in Scotland, by action of debt, bill, plaint or information, in which no wager of law, essoin, privilege, protection, or more than one imparlance shall be allowed.

made, and the clerk shall forfeit 20*l*.

VII. And be it further enacted by the authority aforesaid, that if any action or suit shall be commenced or brought against any person or persons whatsoever for doing or causing to be done anything in pursuance of this Act, the defendants in such action may plead the general issue and give the special matter in evidence [a]; 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.

Evidence and costs in actions.

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

Publick Act.

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17 GEO. 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.*

[3 REV. STAT. 130.]

[1777.]

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

Preamble.  
Recital of Acts  
8 Geo. 2. [c. 13.]

[a So much as relates to plea of general issue, rep., Stat. Law Rev. Act, 1861.]



and 7 Geo. 8.  
c. 88.

After June 24, 1777, if any engraver, &c. shall, within the time limited by the aforesaid Acts, engrave or etch, &c. any print without the consent of the proprietor, he shall be liable to damages and double costs.

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 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, 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. [Rep., Stat. Law Rev. Act, 1861.]<sup>1</sup>

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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.*

[5 REV. STAT. 291.]

[18TH MAY 1814.]

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:<sup>2</sup> 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

Recital of 38 Geo. 3. c. 71.

From passing of this Act the sole right and property of all new and original

<sup>1</sup> So much as relates to double costs repealed. The provisions of the engraving Acts are extended to lithographs by 15 & 16 Vict. c. 12, s. 14. See *post*, p. 690.

<sup>2</sup> 38 Geo. III. c. 71, repealed by 24 & 25 Vict. c. 101.



sculpture, models, copies, and casts, vested in the original proprietors for 14 years.

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 mentioned, whether separate or combined, shall have the sole right and property of all and in every such new and original sculpture, model, copy, and cast of the human figure or human figures, and of all and in every such bust or busts, and of all and in every such part or parts of the human figure, clothed in drapery or otherwise, and of all and in every such new and original sculpture, model, copy, and cast representing any animal and 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 in 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.

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

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.

Persons putting forth pirated copies or pirated

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 figure, clothed in drapery or otherwise, or of any such work of any animal or animals, or of any such part or parts of any animal or animals, combined with the human figure or otherwise, or of any such subject being matter of invention in sculpture, or of any such alto or basso-relievo representing any of the matters or things hereinbefore mentioned, or of any such cast from nature as aforesaid, whether such pirated copy or pirated cast be produced by moulding or copying from or imitating in any way any of the matters or things put forth or published under the protection of this Act, or of any works which have been put forth or published under the protection of the said recited Act, the right and property whereof is and are secured, extended, and protected by this Act, in any of the cases as aforesaid, to the detriment, damage, or loss of the original or respective proprietor or proprietors of any such works so pirated, then and in all such cases the said proprietor or proprietors or their assignee or assignees shall and may, by and in a special action upon the case to be brought against the person or persons so offending, receive such damages as a jury on a trial of such action shall give or assess, together with double costs of suit. [Rep., 5 & 6 Vict. c. 97 s. 2.]<sup>1</sup>

casts, within the 14 years, shall be liable to damages in action on the case.

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, anything contained in this Act to the contrary notwithstanding.

Proviso for persons purchasing the copyright from the proprietors.

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

Limitation of actions.

<sup>1</sup> So much as relates to double costs repealed.



commenced within six calendar months next after the discovery of every such offence, and not afterwards.

After the 14 years, the copyright shall return to the original proprietor, if then living, for a further term of 14 years.

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, . . .

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3 & 4 WILL. IV. c. 15.

*An Act to amend the Laws relating to Dramatic Literary Property.*

[7 REV. STAT. 355.]

[10TH JUNE 1833.]

54 Geo. 3. c. 156.  
s. 4.

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 author of any dramatic piece or his assignee shall have as his property the sole liberty of representing it when not published;

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 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.

and after publication for 28 years or during author's life.

Provido as to cases where, previously to the passing of this Act, consent has been given to such representation.

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

Penalty on persons representing pieces contrary to this Act.



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,<sup>1</sup> by such author or other proprietors, in any court having jurisdiction in such cases in that part of the said United Kingdom or of the British dominions in which the offence shall be committed; and in every such proceeding where the sole liberty of such author or his assignee as aforesaid shall be subject to such right or authority as aforesaid, it shall be sufficient for the plaintiff to state that he has such sole liberty, without stating the same to be subject to such right or authority, or otherwise mentioning the same.

Limitation of actions.

III. Provided nevertheless, 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.

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5 & 6 WILL. IV. c. 65.

*An Act for preventing the Publication of Lectures without Consent.*

[7 REV. STAT. 899.]

[9TH SEPTEMBER 1835.]

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 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 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 t<sup>h</sup>a copy thereof in order

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

<sup>1</sup> Double costs taken away by 5 & 6 Vict. c. 97, s. 2.

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 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.

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

II. And be it further enacted, 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. And be it further enacted, 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

Act not to prohibit the publishing of lectures after expiration of the copyright



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 Act 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.<sup>1</sup>

8 ANN. c. 21. [19.]

54 GEO. 3. c. 156.

Act not to extend to lectures delivered without notice to justices, &c.

V. Provided further, that nothing in this Act shall extend to any lecture or lectures, or the printing, copying, or publishing any lecture or lectures, or parts thereof, of the delivering of which notice in writing shall not have been given to two justices living within five miles from the place where such lecture or lectures shall be delivered two days at the least before delivering the same, or to any lecture or lectures delivered in any university or public school or college, or on any public foundation, or by any individual in virtue of or according to any gift, endowment, or foundation; and that the law relating thereto shall remain the same as if this Act had not been passed.

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6 & 7 WILL. IV. c. 59.

*An Act to extend the Protection of Copyright in Prints and Engravings to Ireland.*

[7 REV. STAT. 1055.]

[13TH AUGUST 1836.]

17 GEO. 3. 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

<sup>1</sup> 8 Anne, c. 19, and 54 Geo. III. c. 156, repealed by 5 & 6 Vict. c. 45, s. 1.

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.

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 so 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.<sup>1</sup>

Penalty on engraving or publishing any print without consent of proprietor in any part of the United Kingdom.

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5 & 6 VICT. C. 45.

*An Act to amend the Law of Copyright.*

[8 REV. STAT. 1152.]

[1ST JULY 1842.]

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: . . .

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 letterpress, sheet of music, map, chart, or plan separately published; that the words "dramatic piece" shall be construed to mean

Interpretation of Act.  
"Book."

"Dramatic piece."

<sup>1</sup> Double costs taken away by 5 & 6 Vict. c. 97, s. 2.



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.

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

or after the author's death.

In cases of subsisting copyright, the term

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

IV. 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 passing this Act shall subsist in any book theretofore published (except as herein-after 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 herein-after 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.

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.

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 sec-

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.

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

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.

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

Mode of deliv-  
ering copies at  
the British Mu-  
seum.

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 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 de-  
livered within a  
month after  
demand to the  
officer of the  
Stationers Com-  
pany, for the fol-  
lowing libraries:  
the Bodleian at  
Oxford, the pub-  
lic library at  
Cambridge, the  
Faculty of Advo-  
cates at Edin-  
burgh, and that  
of Trinity Col-  
lege, 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 expense, to such librarian or other person authorized to receive the same (who is hereby required in such case to receive and give a receipt in writing for the same); and such delivery shall to all intents and purposes of this Act be held as equivalent to a delivery to the said officer of 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

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

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



reasonably incurred, to be taxed as between attorney and client.

Book of registry to be kept at Stationers Hall.

XI. And be it enacted, that a book of registry, wherein may be registered, as herein-after enacted, the proprietorship in the copyright of books, and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licences affecting such copyright, shall be kept at the hall of the Stationers Company by the officer appointed by the said company for the purposes of this Act, and shall at all convenient times be open to the inspection of any person, on payment of one shilling for every entry which shall be searched for or inspected in the said book; and that such officer shall, whenever thereunto reasonably required, give a copy of any entry in such book, certified under his hand, and impressed with the stamp of the said company, to be provided by them for that purpose, and which they are hereby required to provide, to any person requiring the same, on payment to him of the sum of five shillings; and such copies so certified and impressed shall be received in evidence in all courts, and in all summary proceedings, and shall be *primâ facie* proof of the proprietorship or assignment of copyright or licence as therein expressed, but subject to be rebutted by other evidence, and in the case of dramatic or musical pieces shall be *primâ facie* proof of the right of representation or performance, subject to be rebutted as aforesaid.

Copies of entries to be given when required, and to be received in evidence.

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.

XIV. And be it enacted, that if any person shall deem himself aggrieved by any entry made under colour of this Act in the said book of registry, it shall be lawful for such person to apply by motion to the Court of Queen's Bench, 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 ses-

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



sion in Scotland, which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there.

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

XVI. 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 objection stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the copyright therein, than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication, with the title, time, and place specified in such notice.

No person except the proprietor, &c. shall import into the British dominions for sale or hire any book first composed, &c. within the United Kingdom, and reprinted

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.

elsewhere, under penalty of forfeiture thereof, and also of 10% 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 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

Copyright in encyclopædias, periodicals, and works published in a series, reviews, or magazines.



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, and works published in a series; may enter at once at Stationers Hall, and thereon have the benefit of the registration of the whole.

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

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 of this Act provided for the duration of copyright in books; and the provisions herein-before enacted in respect of the property of such copyright, and of registering the same, shall apply to the liberty of representing or performing any dramatic piece or musical composition, as if the same were herein expressly re-enacted and applied thereto, save and except that the first public representation or performance of any dramatic piece or musical composition shall be deemed equivalent, in the construction of this Act, to the first publication of any book: Provided always, that in case of any dramatic piece or musical composition in manuscript, it shall be sufficient for the person having the sole liberty of representing or performing or causing to be represented or performed the same, to register only the title thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor thereof, and the time and place of its first representation or performance.

Provisions of recited Act and this Act shall apply to musical compositions; and the sole liberty of representing dramatic pieces and musical compositions shall remain in the author during the term of copyright provided by this Act.

**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.

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

**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.

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

**XXIII.** And be it enacted, that all copies of any book

Books pirated shall become the



property of the proprietor of the copyright, and may be recovered by action.

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.

Proviso for dramatic pieces.

Copyright shall be personal property.

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.

General issue.

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 anything in pursuance of this Act, the defendant or defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff shall become nonsuited, or discontinue his action, then the defendant shall have and recover

his full costs, 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 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 herein-before mentioned.

Costs.  
Limitation of actions ;

except actions, &c. in respect of the delivery of books.

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, anything to the contrary herein contained notwithstanding.

Saving the rights of the universities, and the colleges of Eton, Westminster,

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, anything herein contained to the contrary notwithstanding.

Saving as to subsisting rights, contracts, and engagements.

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.

Extent of Act.

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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





## 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.
<i>Y. Z.</i>	<i>A. B.</i>	<i>C. D.</i>

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 .  
(Signed) *A. B.*

## No. 5.

FORM OF ENTRY of ASSIGNMENT of COPYRIGHT in any Book pre-  
viously 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.]	<i>A. B.</i>	<i>C. D.</i>

## 7 &amp; 8 VICT. c. 12.

*An Act to amend the Law relating to International Copyright.*

[9 REV. STAT. 224.]

[10TH MAY 1844.]

[SECTION 1 recites 1 & 2 Vict. c. 59, which is designated as the International Copyright Act; 5 & 6 Vict. c. 45, designated as the Copyright Amendment Act; 3 & 4 Will. IV, c. 15, des-



ignated as the Dramatic Literary Property Act; 8 Geo. II. c. 13, 7 Geo. III. c. 38, 17 Geo. III. c. 57, and 6 & 7 Will. IV. c. 59, designated as the Engraving Copyright Acts; and 38 Geo. III. c. 71 (repealed by 24 & 25 Vict. c. 101), and 54 Geo. III. c. 56, designated as the Sculpture Copyright Acts. It then declares:] And whereas the powers vested in her Majesty by the said International Copyright Act are insufficient to enable her Majesty to confer upon authors of books first published in foreign countries copyright of the like duration, and with the like remedies for the infringement thereof, which are conferred and provided by the said Copyright Amendment Act with respect to authors of books first published in the British dominions; and the said International Copyright Act does not empower her Majesty to confer any exclusive right of representing or performing dramatic pieces or musical compositions first published in foreign countries upon the authors thereof, nor to extend the privilege of copyright to prints and sculpture first published abroad; and it is expedient to vest increased powers in her Majesty in this respect, and for that purpose to repeal the said International Copyright Act, and to give such other powers to her Majesty, and to make such further provisions, as are herein-after contained: 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 common, in this present Parliament assembled, and by the authority of the same, that the said recited Act herein designated as the International Copyright Act shall be and the same is hereby repealed. [Rep., Stat. Law Rev. Act, 1874 (No. 2).]

Repeal of International Copyright Act, 1 & 2 Vict. c. 59.

Her Majesty, by order in council, may direct that authors, &c. of works first published in foreign countries shall have copyright therein within her Majesty's dominions for any term not exceeding that for which authors, &c. of like works first published in the United Kingdom would be entitled to copyright.

II. And be it enacted, that it shall be lawful for her Majesty, by any order of her Majesty in council, to direct that, as respects all or any particular class or classes of the following works, (namely,) books, prints, articles of sculpture, and other works of art, to be defined in such order, which shall after a future time, to be specified in such order, be first published in any foreign country to be named in such order, the authors, inventors, designers, engravers, and makers thereof respectively, their respective executors, administrators, and assigns, shall have the privilege of copyright therein during such period or respective periods as shall be defined in such order, not exceeding, however, as to any of the above-mentioned works, the term of copyright which authors, inventors, designers,

engravers, and makers of the like works respectively first published in the United Kingdom may be then entitled to under the herein-before recited Acts respectively, or under any Acts which may hereafter be passed in that behalf.<sup>1</sup>

III. And be it enacted, that in case any such order shall apply to books, all and singular the enactments of the said Copyright Amendment Act, and of any other Act for the time being in force with relation to the copyright in books first published in this country, shall, from and after the time so to be specified in that behalf in such order, and subject to such limitation as to the duration of the copyright as shall be therein contained, apply to and be in force in respect of the books to which such order shall extend, and which shall have been registered as herein-after is provided, in such and the same manner as if such books were first published in the United Kingdom, save and except such of the said enactments, or such parts thereof, as shall be excepted in such order, and save and except such of the said enactments as relate to the delivery of copies of books at the British Museum, and to or for the use of the other libraries mentioned in the said Copyright Amendment Act.

If the order applies to books, the copyright law as to books first published in this country shall apply to the books to which the order relates, if registered, with certain exceptions.

IV. And be it enacted, that in case any such order shall apply to prints, articles of sculpture, or to any such other works of art as aforesaid, all and singular the enactments of the said Engraving Copyright Acts, and the said Sculpture Copyright Acts, or of any other Act for the time being in force with relation to the copyright in prints or articles of sculpture first published in this country, and of any Act for the time being in force with relation to the copyright in any similar works of art first published in this country, shall, from and after the time so to be specified in that behalf in such order, and subject to such limitation as to the duration of the copyright as shall be therein contained respectively, apply to and be in force in respect of the prints, articles of sculpture, and other works of art to which such order shall extend, and which shall have been registered as herein-after is provided, in such and the same manner as if such articles and other works of art were first published in the United Kingdom, save and except such of the said enactments or such parts thereof as shall be excepted in such order.

If the order applies to prints, sculptures, &c. the copyright law as to prints or sculptures first published in this country shall apply to the prints, sculptures, &c. to which such order relates, if registered.

<sup>1</sup> By section 12 of 25 & 26 Vict. c. 68, *post*, p. 607, the provisions of this statute are extended to paintings, drawings, and photographs.



Her Majesty may, by order in council, direct that authors and composers of dramatic pieces and musical compositions first publicly represented and performed in foreign countries shall have exclusive rights of representation in the British dominions.

Enactments relating to similar pieces first represented in this country shall apply to such pieces, if registered.

Particulars to be observed as to registry and to delivery of copies;

as to books and printed dramatic pieces or musical compositions;

V. And be it enacted, that it shall be lawful for her Majesty, by any order of her Majesty in council, to direct that the authors of dramatic pieces and musical compositions which shall after a future time, to be specified in such order, be first publicly represented or performed in any foreign country to be named in such order, shall have the sole liberty of representing or performing in any part of the British dominions such dramatic pieces or musical compositions during such period as shall be defined in such order, not exceeding the period during which authors of dramatic pieces and musical compositions first publicly represented or performed in the United Kingdom may for the time be entitled by law to the sole liberty of representing and performing the same; and from and after the time so specified in any such last-mentioned order the enactments of the said Dramatic Literary Property Act and of the said Copyright Amendment Act, and of any other Act for the time being in force with relation to the liberty of publicly representing and performing dramatic pieces or musical compositions, shall, subject to such limitation as to the duration of the right conferred by any such order as shall be therein contained, apply to and be in force in respect of the dramatic pieces and musical compositions to which such order shall extend, and which shall have been registered as herein-after is provided, in such and the same manner as if such dramatic pieces and musical compositions had been first publicly represented and performed in the British dominions, save and except such of the said enactments or such parts thereof as shall be excepted in such order.

VI. Provided always, and be it enacted, that no author of any book, dramatic piece, or musical composition, or his executors, administrators, or assigns, and no inventor, designer, or engraver of any print, or maker of any article of sculpture, or other work of art, his executors, administrators, or assigns, shall be entitled to the benefit of this Act, or of any order in council to be issued in pursuance thereof, unless, within a time or times to be in that behalf prescribed in each such order in council, such book, dramatic piece, musical composition, print, article of sculpture, or other work of art, shall have been so registered and such copy thereof shall have been so delivered as herein-after is mentioned; (that is to say,) as regards such book, and also such dramatic piece or musical composition, (in the event of the same having been printed,)

the title to the copy thereof, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the copyright thereof, the time and place of the first publication, representation, or performance thereof, as the case may be, in the foreign country named in the order in council under which the benefits of this Act shall be claimed, shall be entered in the register book of the Company of Stationers in London, and one printed copy of the whole of such book, and of such dramatic piece or musical composition, in the event of the same having been printed, and of every volume thereof, upon the best paper upon which the largest number or impression of the book, dramatic piece, or musical composition shall have been printed for sale, together with all maps and prints relating thereto, shall be delivered to the officer of the Company of Stationers at the hall of the said company; and as regards dramatic pieces and musical compositions in manuscript, the title to the same, the name and place of abode of the author or composer thereof, the name and place of abode of the proprietor of the right of representing or performing the same, and the time and place of the first representation or performance thereof in the country named in the order in council under which the benefit of the Act shall be claimed, shall be entered in the said register book of the said Company of Stationers in London; and as regards prints, the title thereof, the name and place of abode of the inventor, designer, or engraver thereof, the name of the proprietor of the copyright therein, and the time and place of the first publication thereof in the foreign country named in the order in council under which the benefits of the Act shall be claimed, shall be entered in the said register book of the said Company of Stationers in London, and a copy of such print, upon the best paper upon which the largest number or impressions of the print shall have been printed for sale, shall be delivered to the officer of the Company of Stationers at the hall of the said company; and as regards any such article of sculpture, or any such other work of art as aforesaid, a descriptive title thereof, the name and place of abode of the maker thereof, the name of the proprietor of the copyright therein, and the time and place of its first publication in the foreign country named in the order in council under which the benefit of this Act shall be claimed, shall be entered in the said register book of the said Company of Stationers in

as to dramatic pieces and musical compositions in manuscript;

as to prints;

as to sculpture, &c.



London; and the officer of the said Company of Stationers receiving such copies so to be delivered as aforesaid shall give a receipt in writing for the same, and such delivery shall to all intents and purposes be a sufficient delivery under the provisions of this Act.

In case of books published anonymously, it shall be sufficient to register the name, &c. of the publisher.

VII. 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.

The provisions of the Copyright Amendment Act 5 & 6 Vict. c. 45. as regards entries in the register book of the Company of Stationers, &c. to apply to books, &c. registered under this Act.

VIII. And be it enacted, that the several enactments in the said Copyright Amendment Act contained with relation to keeping the said register book, and the inspection thereof, the searches therein, and the delivery of certified and stamped copies thereof, the reception of such copies in evidence, the making of false entries in the said book, and the production in evidence of papers falsely purporting to be copies of entries in the said book, the applications to the courts and judges by persons aggrieved by entries in the said book, and the expunging and varying such entries, shall apply to the books, dramatic pieces, and musical compositions, prints, articles of sculpture, and other works of art, to which any order in council issued in pursuance of this Act shall extend, and to the entries and assignments of copyright and proprietorship therein, in such and the same manner as if such enactments were here expressly enacted in relation thereto, save and except that the forms of entry prescribed by the said Copyright Amendment Act may be varied to meet the circumstances of the case, and that the sum to be demanded by the officer of the said Company of Stationers for making any entry required by this Act shall be one shilling only.

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

IX. And be it enacted, that every entry made in pursuance of this Act of a first publication shall be *primâ facie* proof of a rightful first publication; but if there be a wrongful first publication, and any party have availed himself thereof to obtain an entry of a spurious work, no order for expunging or varying such entry shall be made unless it be proved to the satisfaction of the court or of the judge taking cognizance of the application for expunging or varying such entry, first, with respect to a wrongful publication in a country to which the

author or first publisher does not belong, and in regard to which there does not subsist with this country any treaty of international copyright, that the party making the application was the author or first publisher, as the case requires; second, with respect to a wrongful first publication either in the country where a rightful first publication has taken place, or in regard to which there subsists with this country a treaty of international copyright, that a court of competent jurisdiction in any such country where such wrongful first publication has taken place has given judgment in favour of the right of the party claiming to be the author or first publisher.

X. And be it enacted, that all copies of books wherein there shall be any subsisting copyright under or by virtue of this Act, or of any order in council made in pursuance thereof, printed or reprinted in any foreign country except that in which such books were first published, shall be and the same are hereby absolutely prohibited to be imported into any part of the British dominions, except by or with the consent of the registered proprietor of the copyright thereof, or his agent authorized in writing, and if imported contrary to this prohibition the same and the importers thereof shall be subject to the enactments in force relating to goods prohibited to be imported by any Act relating to the customs; and as respects any such copies so prohibited to be imported, and also as respects any copies unlawfully printed in any place whatsoever of any books wherein there shall be any such subsisting copyright as aforesaid, any person who shall in any part of the British dominions import such prohibited or unlawfully printed copies, or who, knowing such copies to be so unlawfully imported or unlawfully printed, shall sell, publish, or expose to sale or hire, or shall cause to be sold, published, or exposed to sale or hire, or have in his possession for sale or hire, any such copies so unlawfully imported or unlawfully printed, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright, to be brought and prosecuted in the same courts and in the same manner, and with the like restrictions upon the proceedings of the defendant, as are respectively prescribed in the said Copyright Amendment Act with relation to actions thereby authorized to be brought by proprietors of copyright against persons importing or selling books unlawfully printed in the British dominions.

Copies of books wherein copyright is subsisting under this Act printed in foreign countries other than those wherein the book was first published shall not be imported, except with consent of registered proprietors, and shall be subject to laws of customs as to prohibited goods.

Liability of persons selling such copies or any copies unlawfully printed.



Officer of Stationers Company to deposit books, &c. delivered in the British Museum.

As to depositing copies of second or subsequent editions.

Different periods may be specified for continuance of privilege for different foreign countries and classes of works, and times for entries, &c. may be different.

No order to take effect unless it states that reciprocal protection is secured for parties interested in works first published in British dominions.

Orders to be published in Gazette, and to have effect as if included in this Act.

Orders to be laid a<sup>r</sup>lia-

XI. And be it enacted, that the said officer of the said Company of Stationers shall receive at the hall of the said company every book, volume, or print so to be delivered as aforesaid, and within one calendar month after receiving such book, volume, or print shall deposit the same in the library of the British Museum.

XII. Provided always, and be it enacted, that it shall not be requisite to deliver to the said officer of the said Stationers Company any printed copy of the second or of any subsequent edition of any book or books so delivered as aforesaid, unless the same shall contain additions or alterations.

XIII. 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 in respect of works to be first published in foreign countries may be different for works first published in different foreign countries and for different classes of such works; and that the times to be prescribed for the entries to be made in the register book of the Stationers Company, and for the deliveries of the books and other articles to the said officer of the Stationers Company, as herein-before is mentioned, may be different for different foreign countries and for different classes of books or other articles.

XIV. 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 has been secured by the foreign power so named in such order in council for the benefit of parties interested in works first published in the dominions of her Majesty similar to those comprised in such order.

XV. 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.

XVI. And be it enacted, that a copy of every order of her Majesty in council made under this Act shall be laid before both Houses of Parliament within six weeks after issuing the same, if Parliament be then sitting, and if not, then within six weeks after the commencement of the then next session of Parliament.

XVII. 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 may be revoked.

[XVIII. *a*] 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.

Transl . 15.

XIX. And be it enacted, that neither the author of any book, nor the author or composer of any dramatic piece or musical composition, nor the inventor, designer, or engraver of any print, nor the maker of any article of sculpture, or of such other work of art as aforesaid, which shall after the passing of this Act be first published out of her Majesty's dominions, shall have any copyright therein respectively, or any exclusive right to the public representation or performance thereof, otherwise than such (if any) as he may become entitled to under this Act.

Authors, &c. of works first published in foreign countries not entitled to copyright except under this Act.

XX. 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 expression "articles of sculpture" shall mean all such sculptures, models, copies, and casts as are described in the said Sculpture Copyright Acts, and in respect of which the privileges of copyright are thereby conferred; and the words "printing" and "re-printing" 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," "order in council," and "order," shall respectively mean order of her Majesty acting by and with the advice of her Majesty's most honourable privy council; and the expression "officer of the Company of Stationers," shall mean the officer appointed by the said Company of Stationers for the purposes of the said Copyright Amendment Act; 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

Interpretation clause.

[*a* Section 18 is rep., 15 & 16 Vict. c. 12. s. 1, so far as the same is inconsistent with the provisions thereafter contained.]



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.

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13 & 14 VICT. c. 104.

*An Act to extend and amend the Acts relating to the Copyright of Designs.*

[10 REV. STAT. 1162.]

[14th AUGUST 1850.]

This statute contains the following provisions relating to sculpture:—

Registration of sculpture, models, &c. within protection of Sculpture Copyright Acts.

VI. That the registrar of designs, upon application by or on behalf of the proprietor of any sculpture, model, copy, or cast within the protection of the Sculpture Copyright Acts, and upon being furnished with such copy, drawing, print, or description, in writing or in print, as in the judgment of the said registrar shall be sufficient to identify the particular sculpture, model, copy, or cast in respect of which registration is desired, and the name of the person claiming to be proprietor, together with his place of abode or business or other place of address, or the name, style, or title of the firm under which he may be trading, shall register such sculpture, model, copy, or cast, in such manner and form as shall from time to time be prescribed or approved by the Board of Trade, for the whole or any part of the term during which copyright in such sculpture, model, copy, or cast may or shall exist under the Sculpture Copyright Acts; and whenever any such registration shall be made, the said registrar shall certify under his hand and seal of office, in such form as the said board shall direct or approve, the fact of such registration, and the date of the same, and the name of the registered proprietor, or the style or title of the firm under which such proprietor may be trading, together with his place of abode or business or other place of address.<sup>1</sup>

<sup>1</sup> By the 38 & 39 Vict. c. 93, ss. 2-4 (Law Rep. 10 Stat. 1042), passed in 1875, the duties vested in the Board of Trade by the Designs Acts were transferred to the Commissioners of Patents, who were also empowered to make arrangements for the performance of the duties of Registrar of Designs, whose office was abolished.

VII. That if any person shall, during the continuance of the copyright in any sculpture, model, copy, or cast which shall have been so registered as aforesaid, make, import, or cause to be made, imported, exposed for sale, or otherwise disposed of, any pirated copy or pirated cast of any such sculpture, model, copy, or cast, in such manner and under such circumstances as would entitle the proprietor to a special action on the case under the Sculpture Copyright Acts, the person so offending shall forfeit for every such offence a sum not less than five pounds, and not exceeding thirty pounds, to the proprietor of the sculpture, model, copy, or cast whereof the copyright shall have been infringed: and for the recovery of any such penalty the proprietor of the sculpture, model, copy, or cast which shall have been so pirated shall have and be entitled to the same remedies as are provided for the recovery of penalties incurred under the Designs Act, 1842: Provided always, that the proprietor of any sculpture, model, copy, or cast which shall be registered under this Act shall not be entitled to the benefit of this Act, unless every copy or cast of such sculpture, model, copy, or cast which shall be published by him after such registration shall be marked with the word "registered," and with the date of registration.

Penalty for making, selling, &c. copies of registered sculptures, &c.

5 & 6 Vict. c. 100.

Copies published by proprietor of registered sculpture, &c. to be marked as "registered."

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15 & 16 VICT. C. 12.

*An Act to enable Her Majesty to carry into effect a Convention with France on the Subject of Copyright; to extend and explain the International Copyright Acts; and to explain the Acts relating to Copyright in Engravings.*

[11 REV. STAT. 283.]

[28th MAY 1852.]

WHEREAS an Act was passed in the seventh year of the reign of her present Majesty, intituled "An Act to amend the law relating to international copyright," herein-after called "The International Copyright Act:" And whereas a convention has lately been concluded between her Majesty and the French Republic, for extending in each country the enjoyment of copyright in works of literature and the fine arts first published in the other, and for certain reductions of duties now levied on books, prints, and musical works published in France: And whereas certain of the stipulations on the part of her

7 & 8 Vict. c. 12.



Majesty contained in the said treaty require the authority of Parliament: And whereas it is expedient that such authority should be given; and that her Majesty should be enabled to make similar stipulations in any treaty on the subject of copyright which may hereafter be concluded with any foreign power: 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, as follows:

*Translations.*

Repeal of 7 & 8  
Vict. c. 12. s. 18.  
in part.

Her Majesty may  
by order in council  
direct that the authors  
of books published  
in foreign countries  
may for a limited  
time prevent unauthor-  
ized translations.

I. The eighteenth section of the said Act of the seventh year of her present Majesty, chapter twelve, shall be repealed, so far as the same is inconsistent with the provisions hereinafter contained.

II. Her Majesty may, by order in council, direct that the authors of books which are, after a future time to be specified in such order, published in any foreign country to be named in such order, their executors, administrators, and assigns, shall, subject to the provisions hereinafter contained or referred to, be empowered to prevent the publication in the British dominions of any translations of such books not authorized by them, for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorized translations of such books hereinafter mentioned are respectively first published, and in the case of books published in parts, not extending as to each part beyond the expiration of five years from the time at which the authorized translation of such part is first published.

Thereupon the  
law of copyright  
shall extend to  
prevent such  
translations.

III. Subject to any provisions or qualifications contained in such order, and to the provisions herein contained or referred to, the laws and enactments for the time being in force for the purpose of preventing the infringement of copyright in books published in the British dominions shall be applied for the purpose of preventing the publication of translations of the books to which such order extends which are not sanctioned by the authors of such books, except only such parts of the said enactments as relate to the delivery of copies of books for the use of the British Museum, and for the use of the other libraries therein referred to.

Her Majesty may  
by order in council  
direct that the  
authors of dramatic  
works represented  
in foreign countries

IV. Her Majesty may, by order in council, direct that authors of dramatic pieces which are, after a future time to be specified in such order, first publicly represented in any foreign country to be named in such order, their executors, ad-

ministrators, and assigns, shall, subject to the provisions herein-after mentioned or referred to, be empowered to prevent the representation in the British dominions of any translation of such dramatic pieces not authorized by them, for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorized translations of such dramatic pieces herein-after mentioned are first published or publicly represented.

may for a limited time prevent the representation of unauthorized translations.

V. Subject to any provisions or qualifications contained in such last-mentioned order, and to the provisions herein-after contained or referred to, the laws and enactments for the time being in force for ensuring to the author of any dramatic piece first publicly represented in the British dominions the sole liberty of representing the same shall be applied for the purpose of preventing the representation of any translations of the dramatic pieces to which such last-mentioned order extends, which are not sanctioned by the authors thereof.

Thereupon the law for protecting the representation of dramatic pieces shall extend to prevent the representation of such unauthorized translations.

VI. Nothing herein contained shall be so construed as to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country.<sup>1</sup>

Saving as to imitations of dramatic pieces, &c.

VII. Notwithstanding anything in the said International Copyright Act or in this Act contained, any article of political discussion which has been published in any newspaper or periodical in a foreign country, may, if the source from which the same is taken be acknowledged, be republished or translated in any newspaper or periodical in this country; and any article relating to any other subject which has been so published as aforesaid may, if the source from which the same is taken be acknowledged, be republished or translated in like manner, unless the author has signified his intention of preserving the copyright therein, and the right of translating the same, in some conspicuous part of the newspaper or periodical in which the same was first published, in which case the same shall, without the formalities required by the next following section, receive the same protection as is by virtue of the International Copyright Act or this Act extended to books.

Articles in foreign newspapers, &c. relating to politics may be republished or translated if the source be acknowledged; and also articles on other subjects, unless the author has signified his intention of preserving the copyright.

VIII. No author, or his executors, administrators, or assigns, shall be entitled to the benefit of this Act, or of any order in

No author to be entitled to benefit of this

<sup>1</sup> See 38 & 39 Vict. c. 12, *post*, p. 697.



Act, or any order in council pursuant thereto, without complying with the requisitions herein specified.

council issued in pursuance thereof, in respect of the translation of any book or dramatic piece, if the following requisitions are not complied with: (that is to say,)

1. The original work from which the translation is to be made must be registered and a copy thereof deposited in the United Kingdom in the manner required for original works by the said International Copyright Act, within three calendar months of its first publication in the foreign country:
2. The author must notify on the title page of the original work, or, if it is published in parts, on the title page of the first part, or, if there is no title page, on some conspicuous part of the work, that it is his intention to reserve the right of translating it:
3. The translation sanctioned by the author, or a part thereof, must be published either in the country mentioned in the order in council by virtue of which it is to be protected, or in the British dominions, not later than one year after the registration and deposit in the United Kingdom of the original work; and the whole of such translation must be published within three years of such registration and deposit:
4. Such translation must be registered and a copy thereof deposited in the United Kingdom within a time to be mentioned in that behalf in the order by which it is protected, and in the manner provided by the said International Copyright Act for the registration and deposit of original works:
5. In the case of books published in parts, each part of the original work must be registered and deposited in this country in the manner required by the said International Copyright within three months after the first publication thereof in the foreign country:
6. In the case of dramatic pieces the translation sanctioned by the author must be published within three calendar months of the registration of the original work:
7. The above requisitions shall apply to articles originally published in newspapers or periodicals, if the same be afterwards published in a separate form, but shall not apply to such articles as originally published.

IX. All copies of any works of literature or art wherein there is any subsisting copyright by virtue of the International Copyright Act and this Act, or of any order in council made in pursuance of such Acts or either of them, and which are printed, reprinted, or made in any foreign country except that in which such work shall be first published, and all unauthorized translations of any book or dramatic piece the publication or public representation in the British dominions of translations whereof, not authorized as in this Act mentioned, shall for the time being be prevented under any order in council made in pursuance of this Act, are hereby absolutely prohibited to be imported into any part of the British dominions, except by or with the consent of the registered proprietor of the copyright of such work or of such book or piece, or his agent authorized in writing; and the provision of the Act of the sixth year of her Majesty "to amend the law of copyright." for the forfeiture, seizure, and destruction of any printed book first published in the United Kingdom wherein there shall be copyright, and reprinted in any country out of the British dominions, and imported into any part of the British dominions by any person not being the proprietor of the copyright, or a person authorized by such proprietor, shall extend and be applicable to all copies of any works of literature and art, and to all translations, the importation whereof into any part of the British dominions is prohibited under this Act.

Pirated copies prohibited to be imported, except with consent of proprietor;

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

X. The provisions herein-before contained shall be incorporated with the International Copyright Act, and shall be read and construed therewith as one Act.

Foregoing provisions to be incorporated with 7 & 8 Vict. c. 12.

XI. And whereas her Majesty has already, by order in council under the said International Copyright Act, given effect to certain stipulations contained in the said convention with the French Republic; and it is expedient that the remainder of the stipulations on the part of her Majesty the said convention contained should take effect from the passing of this Act without any further order in council: During the continuance of the said convention, and so long as the order in council already made under the said International Copyright Act remains in force, the provisions herein-before contained shall apply to the said convention, and to translations of books and dramatic pieces which are, after the passing of this Act,

Translations of French books, &c. to be protected as herein-before mentioned, during the continuance of the existing convention and of the order in council already made without further order in council.



published or represented in France, in the same manner as if her Majesty had issued her order in council in pursuance of this Act for giving effect to such convention, and had therein directed that such translations should be protected as hereinbefore mentioned for a period of five years from the date of the first publication or public representation thereof respectively, and as if a period of three months from the publication of such translation were the time mentioned in such order as the time within which the same must be registered and a copy thereof deposited in the United Kingdom.

*Lithographs,  
&c.*

Recit. of  
8 Geo. 2. c. 13.  
7 Geo. 3. c. 88.  
17 Geo. 3. c. 57.  
6 & 7 Will. 4.  
c. 59.

XIV. And whereas by the four several Acts of Parliament following; (that is to say,) an Act of the eighth year of the reign of King George the Second, chapter thirteen: an Act of the seventh year of the reign of King George the Third, chapter thirty-eight: An act of the seventeenth year of the reign of King George the Third, chapter fifty-seven; and an Act of the seventh year of King William the Fourth, chapter fifty-nine, provision is made for securing to every person who invents, or designs, engraves, etches, or works in mezzotinto or chiaro-oscuro, or, from his own work, design, or invention, causes or procures to be designed, engraved, etched, or worked in mezzotinto or chiaro-oscuro, any historical print or prints, or any print or prints of any portrait, conversation, landscape, or architecture, map, chart, or plan, or any other print or prints whatsoever, and to every person who engraves, etches, or works in mezzotinto or chiaro-oscuro, or causes to be engraved, etched, or worked any print taken from any picture, drawing, model, or sculpture, notwithstanding such print has not been graven or drawn from his own original design, certain copyrights therein defined: And whereas doubts are entertained whether the provisions of the said Acts extend to lithographs and certain other impressions; and it is expedient to remove such doubts:

Provisions of  
recited Acts shall  
include litho-  
graphs, &c.

It is hereby declared, that the provisions of the said Acts are intended to include prints taken by lithography, or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely; and the said Acts shall be construed accordingly.

## 25 &amp; 26 VICT. C. 68.

*An Act for amending the Law relating to Copyright in Works of the Fine Arts, and for repressing the Commission of Fraud in the Production and Sale of such Works.*

[14 REV. STAT. 162.]

[29TH JULY 1862.]

WHEREAS by law, as now established, the authors of paintings, drawings, and photographs have no copyright in such their works; and it is expedient that the law should in that respect be amended: 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, as follows: —

I. The author, being a British subject or resident within the dominions of the Crown, of every original painting, drawing, and photograph which shall be or shall have been made either in the British dominions or elsewhere, and which shall not have been sold or disposed of before the commencement of this Act, and his assigns, shall have the sole and exclusive right of copying, engraving, reproducing, and multiplying such painting or drawing, and the design thereof, or such photograph, and the negative thereof, by any means and of any size, for the term of the natural life of such author, and seven years after his death; provided, that when any painting or drawing, or the negative of any photograph, shall for the first time after the passing of this Act be sold or disposed of, or shall be made or executed for or on behalf of any other person for a good or a valuable consideration, the person so selling or disposing of or making or executing the same shall not retain the copyright thereof, unless it be expressly reserved to him by agreement in writing, signed, at or before the time of such sale or disposition, by the vendee or assignee of such painting or drawing, or of such negative of a photograph, or by the person for or on whose behalf the same shall be so made or executed, but the copyright shall belong to the vendee or assignee of such painting or drawing, or of such negative of a photograph, or to the person for or on whose behalf the same shall have been made or executed; nor shall the vendee or assignee thereof be entitled to any such copyright, unless, at or before the time of such sale or disposition, an agreement in

Copyright in paintings, &c. hereafter made or sold to vest in the author for his life and for seven years after his death.



writing, signed by the person so selling or disposing of the same, or by his agent duly authorized, shall have been made to that effect.

Copyright not to prevent the representation of the same subjects in other works.

II. Nothing herein contained shall prejudice the right of any person to copy or use any work in which there shall be no copyright, or to represent any scene or object, notwithstanding that there may be copyright in some representation of such scene or object.

Copyright to be personal estate. Assignments, licences, &c. to be in writing.

III. All copyright under this Act shall be deemed personal or moveable estate, and shall be assignable at law; and every assignment thereof, and every licence to use or copy by any means or process the design or work which shall be the subject of such copyright, shall be made by some note or memorandum in writing, to be signed by the proprietor of the copyright, or by his agent appointed for that purpose in writing.

Register of proprietors of copyright in paintings, drawings, and photographs to be kept at Stationers Hall by the officer appointed for the purposes of 5 & 6 Vict. c. 45.

IV. There shall be kept at the hall of the Stationers Company, by the officer appointed by the said Company for the purposes of the Act passed in the sixth year of Her present Majesty, intituled "An Act to amend the law of copyright," a book or books, entitled "The Register of Proprietors of Copyright in Paintings, Drawings, and Photographs," wherein shall be entered a memorandum of every copyright to which any person shall be entitled under this Act, and also of every subsequent assignment of any such copyright; and such memorandum shall contain a statement of the date of such agreement or assignment, and of the names of the parties thereto, and of the name and place of abode of the person in whom such copyright shall be vested by virtue thereof, and of the name and place of abode of the author of the work in which there shall be such copyright, together with a short description of the nature and subject of such work, and in addition thereto, if the person registering shall so desire, a sketch, outline, or photograph of the said work; and no proprietor of any such copyright shall be entitled to the benefit of this Act until such registration; and no action shall be sustainable nor any penalty be recoverable in respect of anything done before registration.

Certain enactments of 5 & 6 Vict. c. 45. to apply to the register to be kept under this Act.

V. The several enactments in the said Act of the sixth year of Her present Majesty contained, with relation to keeping the register book thereby required, and the inspection thereof, the searches therein, and the delivery of certified and stamped copies thereof, the reception of such copies in evidence, the

making of false entries in the said book, and the production in evidence of papers falsely purporting to be copies of entries in the said book, the application to the courts and judges by persons aggrieved by entries in the said book, and the expunging and varying such entries, shall apply to the book or books to be kept by virtue of this Act, and to the entries and assignments of copyright and proprietorship therein under this Act, in such and the same manner as if such enactments were here expressly enacted in relation thereto; save and except that the forms of entry prescribed by the said Act of the sixth year of Her present Majesty may be varied to meet the circumstances of the case, and that the sum to be demanded by the officer of the said Company of Stationers for making any entry required by this Act shall be one shilling only.

VI. If the author of any painting, drawing, or photograph in which there shall be subsisting copyright, after having sold or disposed of such copyright, or if any other person, not being the proprietor for the time being of copyright in any painting, drawing, or photograph, shall, without the consent of such proprietor, repeat, copy, colourably imitate, or otherwise multiply for sale, hire, exhibition, or distribution, or cause or procure to be repeated, copied, colourably imitated, or otherwise multiplied for sale, hire, exhibition, or distribution, any such work or the design thereof, or, knowing that any such repetition, copy, or other imitation has been unlawfully made, shall import into any part of the United Kingdom, or sell, publish, let to hire, exhibit, or distribute, or offer for sale, hire, exhibition, or distribution, or cause or procure to be imported, sold, published, let to hire, distributed, or offered for sale, hire, exhibition, or distribution, any repetition, copy, or imitation of the said work, or of the design thereof, made without such consent as aforesaid, such person for every such offence shall forfeit to the proprietor of the copyright for the time being a sum not exceeding ten pounds; and all such repetitions, copies, and imitations made without such consent as aforesaid, and all negatives of photographs made for the purpose of obtaining such copies, shall be forfeited to the proprietor of the copyright.

Penalties on infringement of copyright.

VII. No person shall do or cause to be done any or either of the following acts; that is to say,

Penalties on fraudulent productions and sales.

First, no person shall fraudulently sign or otherwise affix, or fraudulently cause to be signed or otherwise affixed,



to or upon any painting, drawing, or photograph, or the negative thereof, any name, initials, or monogram :

Secondly, no person shall fraudulently sell, publish, exhibit, or dispose of, or offer for sale, exhibition, or distribution, any painting, drawing, or photograph, or negative of a photograph, having thereon the name, initials, or monogram of a person who did not execute or make such work :

Thirdly, no person shall fraudulently utter, dispose of, or put off, or cause to be uttered or disposed of, any copy or colourable imitation of any painting, drawing, or photograph, or negative of a photograph, whether there shall be subsisting copyright therein or not, as having been made or executed by the author or maker of the original work from which such copy or imitation shall have been taken :

Fourthly, where the author or maker of any painting, drawing, or photograph, or negative of a photograph, made either before or after the passing of this Act, shall have sold or otherwise parted with the possession of such work, if any alteration shall afterwards be made therein by any other person, by addition or otherwise, no person shall be at liberty, during the life of the author or maker of such work, without his consent, to make or knowingly to sell or publish, or offer for sale, such work or any copies of such work so altered as aforesaid, or of any part thereof, as or for the unaltered work of such author or maker :

Every offender under this section shall, upon conviction, forfeit to the person aggrieved a sum not exceeding ten pounds, or not exceeding double the full price, if any, at which all such copies, engravings, imitations, or altered works shall have been sold or offered for sale ; and all such copies, engravings, imitations, or altered works shall be forfeited to the person, or the assigns or legal representatives of the person, whose name, initials, or monogram shall be so fraudulently signed or affixed thereto, or to whom such spurious or altered work shall be so fraudulently or falsely ascribed as aforesaid : Provided always, that the penalties imposed by this section shall not be incurred unless the person whose name, initials, or monogram shall be so fraudulently signed or affixed, or to whom such spurious or altered work shall be

so fraudulently or falsely ascribed as aforesaid, shall have been living at or within twenty years next before the time when the offence may have been committed.

VIII. All pecuniary penalties which shall be incurred, and all such unlawful copies, imitations, and all other effects and things as shall have been forfeited by offenders, pursuant to this Act, and pursuant to any Act for the protection of copyright engravings, may be recovered by the person herein-before and in any such Act as aforesaid empowered to recover the same respectively, and herein-after called the complainant or the complainer, as follows :

Recovery of  
pecuniary pen-  
alties.

In England and Ireland, either by action against the party offending, or by summary proceeding before any two justices having jurisdiction where the party offending resides :

In England  
and Ireland.

In Scotland by action before the Court of Session in ordinary form, or by summary action before the sheriff of the county where the offence may be committed or the offender resides, who, upon proof of the offence or offences, either by confession of the party offending, or by the oath or affirmation of one or more credible witnesses, shall convict the offender, and find him liable to the penalty or penalties aforesaid, as also in expenses ; and it shall be lawful for the sheriff, in pronouncing such judgment for the penalty or penalties and costs, to insert in such judgment a warrant, in the event of such penalty or penalties and costs not being paid, to levy and recover the amount of the same by poinding : Provided always, that it shall be lawful to the sheriff, in the event of his dismissing the action and assoilzieing the defender, to find the complainer liable in expenses ; and any judgment so to be pronounced by the sheriff in such summary application shall be final and conclusive, and not subject to review by advocacy, suspension, reduction, or otherwise.

In Scotland.

IX. In any action in any of Her Majesty's Superior Courts of Record at Westminster and in Dublin, for the infringement of any such copyright as aforesaid, it shall be lawful for the Court in which such action is pending, if the Court be then sitting, or if the Court be not sitting, then for a judge of such Court, on the application of the plaintiff or defendant

Superior Courts  
of Record in  
which any  
action is pending  
may make an  
order for an in-  
junction, inspec-  
tion, or account.



respectively, to make such order for an injunction, inspection, or account, and to give such direction respecting such action, injunction, inspection, and account, and the proceedings therein respectively, as to such Court or judge may seem fit.

Importation of  
pirated works  
prohibited.

X. All repetitions, copies, or imitations of paintings, drawings, or photographs, wherein or in the design whereof there shall be subsisting copyright under this Act, and all repetitions, copies, and imitations of the design of any such painting or drawing, or of the negative of any such photograph, which, contrary to the provisions of this Act, shall have been made in any foreign state, or in any part of the British dominions, are hereby absolutely prohibited to be imported into any part of the United Kingdom, except by or with the consent of the proprietor of the copyright thereof, or his agent authorized in writing; and if the proprietor of any such copyright, or his agent, shall declare that any goods imported are repetitions, copies, or imitations of any such painting, drawing, or photograph, or of the negative of any such photograph, and so prohibited as aforesaid, then such goods may be detained by the officers of Her Majesty's Customs.

Right to bring  
action for dam-  
ages, &c.

XI. If the author of any painting, drawing, or photograph, in which there shall be subsisting copyright, after having sold or otherwise disposed of such copyright, or if any other person, not being the proprietor for the time being of such copyright, shall, without the consent of such proprietor, repeat, copy, colourably imitate, or otherwise multiply, or cause or procure to be repeated, copied, colourably imitated, or otherwise multiplied, for sale, hire, exhibition, or distribution, any such work or the design thereof, or the negative of any such photograph, or shall import or cause to be imported into any part of the United Kingdom, or sell, publish, let to hire, exhibit, or distribute, or offer for sale, hire, exhibition, or distribution, or cause or procure to be sold, published, let to hire, exhibited, or distributed, or offered for sale, hire, exhibition, or distribution, any repetition, copy, or imitation of such work, or the design thereof, or the negative of any such photograph, made without such consent as aforesaid, then every such proprietor, in addition to the remedies hereby given for the recovery of any such penalties, and forfeiture of any such things as aforesaid, may recover damages by and in a special action on the case, to be brought against the person so offending, and may in such action recover and enforce the delivery to

him of all unlawful repetitions, copies, and imitations, and negatives of photographs, or may recover damages for the retention or conversion thereof: Provided, that nothing herein contained, nor any proceeding, conviction, or judgment, for any act hereby forbidden, shall affect any remedy which any person aggrieved by such act may be entitled to either at law or in equity.

XII. This Act shall be considered as including the provisions of the Act passed in the session of Parliament held in the seventh and eighth years of Her present Majesty, intituled "An Act to amend the law relating to international copyright," in the same manner as if such provisions were part of this Act.

Provisions of  
7 & 8 Vict. c. 12.  
to be considered  
as included in  
this Act.

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38 & 39 VICT. C. 12.

*An Act to amend the Law relating to International Copyright.*

[LAW REP. 10 STAT. 133.]

[13TH MAY 1875.]

WHEREAS by an Act passed in the fifteenth year of the reign of Her present Majesty, chapter twelve, intituled "An Act to enable Her Majesty to carry into effect a convention with France on the subject of copyright; to extend and explain the International Copyright Acts; and to explain the Acts relating to copyright in engravings," it is enacted, that "Her Majesty may, by Order in Council, direct that authors of dramatic pieces which are, after a future time, to be specified in such order, first publicly represented in any foreign country, to be named in such order, their executors, administrators, and assigns, shall, subject to the provisions therein-after mentioned or referred to, be empowered to prevent the representation in the British dominions of any translation of such dramatic pieces not authorized by them, for such time as may be specified in such order, not extending beyond the expiration of five years from the time at which the authorized translations of such dramatic pieces are first published and publicly represented:"

And whereas by the same Act it is further enacted, "that, subject to any provisions or qualifications contained in such order, and to the provisions in the said Act contained or referred to, the laws and enactments for the time being in force for ensuring to the author of any dramatic piece first publicly



represented in the British dominions the sole liberty of representing the same shall be applied for the purpose of preventing the representation of any translations of the dramatic pieces to which such order extends, which are not sanctioned by the authors thereof:”

And whereas by the sixth section of the said Act it is provided, that “nothing in the said Act contained shall be so construed as to prevent fair imitations or adaptations to the English stage of any dramatic piece or musical composition published in any foreign country:”

And whereas it is expedient to alter or amend the last-mentioned provision under certain circumstances:

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, as follows; viz.,

I. In any case in which, by virtue of the enactments herein-before recited, any Order in Council has been or may hereafter be made for the purpose of extending protection to the translations of dramatic pieces first publicly represented in any foreign country, it shall be lawful for Her Majesty by Order in Council to direct that the sixth section of the said Act shall not apply to the dramatic pieces to which protection is so extended; and thereupon the said recited Act shall take effect with respect to such dramatic pieces and to the translations thereof as if the said sixth section of the said Act were hereby repealed.

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*Revised Statute of the United States, being the Act of July 8, 1870, as contained in the Revised Statutes, Second Edition, 1878, page 957.*

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4949. Seal of office.

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4952. What publications may be entered for copyright.

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- 4956. Deposit of title and published copies.
- 4957. Book of entry and attested copy.
- 4958. Fees.
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- 4960. Penalty for omission.
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SEC. 4948. All records and other things relating to copyrights and required by law to be preserved, shall be under the control of the Librarian of Congress, and kept and preserved in the Library of Congress; and the Librarian of Congress shall have the immediate care and supervision thereof, and, under the supervision of the joint committee of Congress on the Library, shall perform all acts and duties required by law touching copyrights.

Copyrights to be under charge of Librarian of Congress.

SEC. 4949. The seal provided for the office of the Librarian of Congress shall be the seal thereof, and by it all records and papers issued from the office and to be used in evidence shall be authenticated.

Seal of office.

SEC. 4950. The Librarian of Congress shall give a bond, with sureties, to the Treasurer of the United States, in the sum of five thousand dollars, with the condition that he will render to the proper officers of the Treasury a true account of all moneys received by virtue of his office.

Bond of Librarian.

SEC. 4951. The Librarian of Congress shall make an annual report to Congress of the number and description of copyright publications for which entries have been made during the year.

Annual report.

SEC. 4952. Any citizen of the United States or resident

What publica-



tions may be entered for copyright.

therein, who shall be the author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print,<sup>1</sup> or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, and the executors, administrators, or assigns of any such person shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and, in the case of a dramatic composition, of publicly performing or representing it, or causing it to be performed or represented by others. And authors may reserve the right to dramatize or to translate their own works.

Term of copyrights.

SEC. 4953. Copyrights shall be granted for the term of twenty-eight years from the time of recording the title thereof, in the manner hereinafter directed.

Continuance of term.

SEC. 4954. The author, inventor, or designer, if he be still living and a citizen of the United States or resident therein, or his widow or children, if he be dead, shall have the same exclusive right continued for the further term of fourteen years, upon recording the title of the work or description of the article so secured a second time, and complying with all other regulations in regard to original copyrights, within six months before the expiration of the first term. And such person shall, within two months from the date of said renewal, cause a copy of the record thereof to be published in one or more newspapers, printed in the United States, for the space of four weeks.

Assignment of copyrights and recording.

SEC. 4955. Copyrights shall be assignable in law, by any instrument of writing, and such assignment shall be recorded in the office of the Librarian of Congress within sixty days after its execution; in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice.

Deposit of title and published copies.

SEC. 4956. No person shall be entitled to a copyright unless he shall, before publication, deliver at the office of the Librarian of Congress or deposit in the mail addressed to the Librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the book or other article, or a description of the painting, drawing, chromo, statue, statuary, or a model or design for a work of the fine arts, for which he

<sup>1</sup> See Act of 1874, s. 8, *post*, p. 705.

desires a copyright, nor unless he shall also, within ten days from the publication thereof, deliver at the office of the Librarian of Congress or deposit in the mail addressed to the Librarian of Congress, at Washington, District of Columbia, two copies of such copyright book or other article, or in case of a painting, drawing, statue, statuary, model, or design for a work of the fine arts, a photograph of the same.

SEC. 4957. The Librarian of Congress shall record the name of such copyright book or other article, forthwith, in a book to be kept for that purpose, in the words following: "Library of Congress, to wit: Be it remembered that on the      day of      , A. B., of      , hath deposited in this office the title of a book, (map, chart, or other rise, as the case may be, or description of the article,) the title or description of which is in the following words, to wit; (here insert the title or description,) the right whereof he claims as author, (originator, or proprietor, as the case may be,) in conformity with the laws of the United States respecting copyrights. C. D., Librarian of Congress." And he shall give a copy of the title or description, under the seal of the Librarian of Congress, to the proprietor whenever he shall require it.

Book of entry  
and attested  
copy.

SEC. 4958. The Librarian of Congress shall receive, from the persons to whom the services designated are rendered, the following fees:—

Fees.

First. For recording the title or description of any copyright book or other article, fifty cents.

Second. For every copy under seal of such record actually given to the person claiming the copyright, or his assigns, fifty cents.

Third. For recording any instrument of writing for the assignment of a copyright, fifteen cents for every one hundred words.<sup>1</sup>

Fourth. For every copy of an assignment, ten cents for every one hundred words.<sup>1</sup>

All fees so received shall be paid into the Treasury of the United States.

SEC. 4959. The proprietor of every copyright book or other article shall deliver at the office of the Librarian of Congress, or deposit in the mail addressed to the Librarian of Congress at Washington, District of Columbia, within ten days after its publication, two complete printed copies thereof, of the best edition issued, or description or photograph of such article as

Copies of copy-  
right works to be  
furnished to  
Librarian of  
Congress.

<sup>1</sup> See Act of 1874, s. 2, *post*, p. 705.



hereinbefore required, and a copy of every subsequent edition wherein any substantial changes shall be made.

Penalty for omission.

SEC. 4960. For every failure on the part of the proprietor of any copyright to deliver or deposit in the mail either of the published copies, or description or photograph, required by sections four thousand nine hundred and fifty-six, and four thousand nine hundred and fifty-nine, the proprietor of the copyright shall be liable to a penalty of twenty-five dollars, to be recovered by the Librarian of Congress, in the name of the United States, in an action in the nature of an action of debt, in any district court of the United States within the jurisdiction of which the delinquent may reside or be found.

Postmaster to give receipts.

SEC. 4961. The postmaster to whom such copyright book, title, or other article is delivered, shall, if requested, give a receipt therefor; and when so delivered he shall mail it to its destination.

Publication of notice of entry for copyright prescribed.

SEC. 4962. No person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published, on the title-page or the page immediately following, if it be a book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some portion of the face or front thereof, or on the face of the substance on which the same shall be mounted, the following words: "Entered according to Act of Congress, in the year \_\_\_\_\_, by A. B., in the office of the Librarian of Congress, at Washington."<sup>1</sup>

Penalty for false publication of notice of entry.

SEC. 4963. Every person who shall insert or impress such notice, or words of the same purport, in or upon any book, map, chart, musical composition, print, cut, engraving, or photograph, or other article, for which he has not obtained a copyright, shall be liable to a penalty of one hundred dollars, recoverable one-half for the person who shall sue for such penalty, and one-half to the use of the United States.

Damages for violation of copyright of books.

SEC. 4964. Every person who, after the recording of the title of any book as provided by this chapter, shall within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, print, publish, or import, or knowing

<sup>1</sup> See Act of 1874, s. 1, *post*, p. 704.

the same to be so printed, published, or imported, shall sell or expose to sale any copy of such book, shall forfeit every copy thereof to such proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action by such proprietor in any court of competent jurisdiction.

SEC. 4965. If any person, after the recording of the title of any map, chart, musical composition, print, cut, engraving, or photograph, or chromo, or of the description of any painting, drawing, statue, statuary, or model or design intended to be perfected and executed as a work of the fine arts, as provided by this chapter, shall, within the term limited, and without the consent of the proprietor of the copyright first obtained in writing, signed in presence of two or more witnesses, engrave, etch, work, copy, print, publish, or import, either in whole or in part, or by varying the main design with intent to evade the law, or, knowing the same to be so printed, published, or imported, shall sell or expose to sale any copy of such map or other article, as aforesaid, he shall forfeit to the proprietor all the plates on which the same shall be copied, and every sheet thereof, either copied or printed, and shall further forfeit one dollar for every sheet of the same found in his possession, either printing, printed, copied, published, imported, or exposed for sale; and in case of a painting, statue, or statuary, he shall forfeit ten dollars for every copy of the same in his possession, or by him sold or exposed for sale; one-half thereof to the proprietor and the other half to the use of the United States.

For violating copyright of maps, charts, prints, &c.

SEC. 4966. Any person publicly performing or representing any dramatic composition for which a copyright has been obtained, without the consent of the proprietor thereof, or his heirs or assigns, shall be liable for damages therefor, such damages in all cases to be assessed at such sum, not less than one hundred dollars for the first, and fifty dollars for every subsequent performance, as to the court shall appear to be just.

For violating copyright of dramatic compositions.

SEC. 4967. Every person who shall print or publish any manuscript whatever, without the consent of the author or proprietor first obtained, if such author or proprietor is a citizen of the United States, or resident therein, shall be liable to the author or proprietor for all damages occasioned by such injury.

Damages for printing or publishing any manuscript without consent of author, &c.

SEC. 4968. No action shall be maintained in any case of forfeiture or penalty under the copyright laws, unless the

Limitation of action in copyright cases.



same is commenced within two years after the cause of action has arisen.

Defenses to action in copyright cases.

SEC. 4969. In all actions arising under the laws respecting copyrights, the defendant may plead the general issue, and give the special matter in evidence.

Injunctions in copyright cases.

SEC. 4970. The circuit courts, and district courts having the jurisdiction of circuit courts, shall have power, upon bill in equity, filed by any party aggrieved, to grant injunctions to prevent the violation of any right secured by the laws respecting copyrights, according to the course and principles of courts of equity, on such terms as the court may deem reasonable.

Aliens and non-residents not privileged.

SEC. 4971. Nothing in this chapter shall be construed to prohibit the printing, publishing, importation, or sale of any book, map, chart, dramatic or musical composition, print, cut, engraving, or photograph, written, composed, or made by any person not a citizen of the United States nor resident therein.

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ACT OF JUNE 18, 1874.

(18 U. S. ST. AT L. 78.)

*An act to amend the law relating to patents, trade marks, and copyrights.*

No right of action for infringement of copyright unless, &c.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published, on the title-page or the page immediately following, if it be a book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statue, statuary, or model, or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some visible portion thereof, or of the substance on which the same shall be mounted, the following words, viz.: "Entered according to act of Congress, in the year —, by A. B., in the office of the Librarian of Congress, at Washington;" or, at his option the word "Copyright," together with the year the copyright was entered, and*

Modes of entry.

the name of the party by whom it was taken out; thus — “ Copyright, 18—, by A. B.”

SEC. 2. That for recording and certifying any instrument of writing for the assignment of a copyright, the Librarian of Congress shall receive from the persons to whom the service is rendered, one dollar; and for every copy of an assignment, one dollar; said fee to cover, in either case, a certificate of the record, under seal of the Librarian of Congress; and all fees so received shall be paid into the Treasury of the United States.

Fee for recording and certifying assignments of copyright.

SEC. 3. That in the construction of this act, the words “ Engraving,” “ cut,” and “ print ” shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the Patent Office. And the Commissioner of Patents is hereby charged with the supervision and control of the entry or registry of such prints or labels, in conformity with the regulations provided by law as to copyright of prints, except that there shall be paid for recording the title of any print or label not a trade mark, six dollars, which shall cover the expense of furnishing a copy of the record under the seal of the Commissioner of Patents, to the party entering the same.

Restriction on application of words “ Engraving,” “ cut,” and “ print.”

Other prints and labels may be registered in Patent Office. Commissioner of Patents charged with supervision.

Fees.

SEC. 4. That all laws and parts of laws inconsistent with the foregoing provisions be and the same are hereby repealed.

Repeal of inconsistent laws.

SEC. 5. That this act shall take effect on and after the first day of August, eighteen hundred and seventy-four.

Takes effect Aug. 1, 1874.

Approved, June 18, 1874.

*Provisions of the Revised Statutes of the United States which, with section 4970 (ante, p. 704), govern Jurisdiction in Copyright Cases.*

SEC. 629. The circuit courts shall have original jurisdiction as follows:

Jurisdiction.

First. Of all suits of a civil nature at common law or in equity, where the matter in dispute, exclusive of costs, exceeds the sum or value of five hundred dollars, and an alien

Allens, citizens of different States.



is a party, or the suit is between a citizen of the State where it is brought and a citizen of another State. . . .

Ninth. Of all suits at law or in equity arising under the patent or copyright laws of the United States.<sup>1</sup>

Writs of error  
and appeals,  
without reference  
to amount.

SEC. 699. A writ of error [to the Supreme Court of the United States] may be allowed to review any final judgment at law, and an appeal shall be allowed from any final decree in equity hereinafter mentioned, without regard to the sum or value in dispute :

Patent and copy-  
right cases.

First. Any final judgment at law or final decree in equity of any circuit court, or of any district court acting as a circuit court, or of the supreme court of the District of Columbia, or of any Territory, in any case touching patent-rights or copyrights.<sup>2</sup>

<sup>1</sup> U. S. Rev. St. 110, 111.

The Act of March 3, 1875, 18 U. S. St. at L. 470, provides that "the circuit courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars, and arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or in which the United States are plaintiffs or petitioners, or in which there shall be a controversy between citizens of different States or a controversy between citizens of the same State claiming land under grants of different States, or a controversy between citizens of a State and foreign states, citizens, or subjects."

<sup>2</sup> U. S. Rev. St. 130.

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# INDEX.

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