property cannot be seized, nor can one who has levied upon the manuscript avail himself of the intangible literary property.

The earliest recognition of this principle was probably embraced in a decree of the French king, Louis the Fifteenth, in 1749. When Crebillon,[1] the French tragic poet, published his Catilina, the creditors of the poet attached the profits thereof, as well at the bookseller's, who had printed the tragedy, as at the theatre where it was performed. The poet, much irritated at these proceedings, addressed a petition to the king, in which he showed that "it was a thing yet unknown, that it should be allowed to class the productions of the human mind amongst seizable effects; that if such a practice was permitted, those who had consecrated their vigils to the studies of literature, and who had made the greatest efforts to render themselves, by this means, useful to their country, would see themselves in the cruel predicament of not daring to publish works, often precious and interesting to the state; that the greater part of those who devote themselves to literature require, for the necessaries of life, those succors which they have a right to expect from their labors; and that it never has been suffered in France to seize the fees of lawyers, and other persons of liberal professions." In answer to this petition, a decree immediately issued from the king's council, commanding a withdrawal of the arrests and seizures, of which the petitioner complained. This honorable decree was dated 21st May, 1749, and bore title, "Decree of the Council of his Majesty, in favor of

[1] Louis XV. further testified his esteem of Crebillon by having his works printed at the Louvre, and, after his death, by consecrating to his glory a tomb of marble.

M. Crebillon, author of the tragedy of Catilina, which declares that the productions of the mind are not amongst seizable effects."

And it has been held in the United States, that although a sheriff may seize upon the manuscript of an author, he may not publish its contents for the benefit of his creditors.[1] It is piracy, therefore, for an officer who has levied upon a manuscript, of value to its author, to multiply copies thereof.[2] So, where a sheriff had seized upon a manuscript set of abstract books and indices, containing complete abstracts of title to all the lands in a county, with the incumbrances and liens thereupon, and a sheriff had seized upon them in execution, it was held, that he was entitled to hold the manuscript as a chattel, but that he could not print and dispose of a set of abstract books and books of indices, containing complete abstracts of title to all the lands in a county, with the incumbrances and liens upon them, prepared with labor, skill, and care, by an individual, for his own use, in the prosecution of his practice as a conveyancer, which are proper subjects of protection by copyright so long as the author retains the ownership of the manuscript thereof.[3]

And in the case of Stevens v. Cady[4] it was held,

[1] Banker v. Caldwell, 5 Minn. 89. Paper and ink used by a printer, in a state where by law they are not exempt as tools and implement, are liable to levy (Salle v. Walker, 17 Ala. 482). "And where a newspaper printing establishment has been seized," says Herman on Executions, p. 145, "the subscription list may be included."

[2] Banker v. Caldwell, 3 Minn. 94.

[3] Banker v. Caldwell, 3 Min. 94; see also Matthewson v. Stockdale, 12 Ves. 270; Longman v. Winchester, 16 Id. 424; Casey v. Longman, 1 East, 354.

[4] 14 How. U. S. 528; see also Stevens v. Gladding, 17 How. 447.

that copyright in a published print is not the subject of seizure or sale by execution, although it may be reached by a creditor's bill, and applied to the payment of the debts of the author. In that case the copperplate engraving of a map, in which the plaintiff had secured a copyright, was seized and sold under an execution; but the purchaser was restrained from striking off and selling copies of the map. "The copperplate engraving," said the court, "like any other tangible personal property, is the subject of seizure and sale, on execution, and the title passes to the purchaser, the same as if made at a private sale. But the incorporeal right, secured by the statute to the author, to multiply copies of the map by the use of the plate, being intangible, and resting altogether in grant, is not the subject of seizure or sale by means of this process —certainly not at common law. No doubt the property may be reached by a creditor's bill, and be applied to the payment of the debts of the author, the same as stock of the debtor is reached and applied, the court compelling a transfer and sale of the stock for the benefit of the creditors. But in case of such remedy, we suppose, it would be necessary for the court to compel a transfer to the purchaser, in conformity with the requirements of the copyright act, in order to invest him with a complete title to the property."

443. Any contract to reprint a literary work, in violation of a copyright of such work, secured to, and existing in, a third person, is void.[1] Nor will a sale or transfer, for value, between two persons, of any physical substance, carry a copyright. So, for example, the sale, upon execution, of a copperplate for a map, does not pass in the purchaser a right to use the copperplate to print such a map.

[1] Nichols v. Ruggles, 3 Day, Con. 145.

In Warne v. Routledge,[1] the facts were as follows: In April, 1873, a married woman, Mrs. Cook, verbally agreed with the Messrs. Warne that they should take a manuscript which she had written, entitled "How to Dress on £15 a Year as a Lady," and should publish it anonymously, bearing all expenses connected therewith, selling each copy of the book at one shilling, and paying her a royalty of one cent upon each copy, reckoning every thirteen copies as twelve for that purpose. Plaintiffs thereupon expended large sums in advertising the book, which reached a large sale, whereupon they paid Mrs. Cook the sum of one hundred pounds, as her royalty on the copies sold. Differences having arisen between Mrs. Cook and the plaintiffs, in November, 1873, she and her husband agreed with the Messrs. Routledge that they should publish a revised edition of the book, which they accordingly advertised, under the same title; while about two thousand copies of the edition published by the plaintiffs remained unsold. Said the court: "This bill in effect seeks to restrain the authoress from publishing, or allowing others to publish, a work, the copyright in which is undoubtedly vested in her. If there is anything to prevent her exercising her rights, it must be found either in the bill or in the evidence, and I cannot find it in either. There is not, as far as I can see, a pretense for saying that she ever contracted not to publish the book, and this is what I am asked to prevent her from doing." "It is said," continued the court, "that if you give the publisher no protection, the result may be that the author may publish another edition a day or two after the publish-

[1] L. R. 18 Eq. 497; and see also Howitt v. Hall, 10 W. R. 381; Sweet v. Cater, 11 Sim. 572; Stevens v. Benning, 1 K. & J. 168; Lumley v. Wagner, 1 D. M. & G. 604.

ing of the first edition, and so destroy the value of the remaining copies of the first edition remaining unsold. That may be. And it is said that this is so unreasonable that you must infer some stipulation to prevent it. Why? No doubt partnerships have their inconveniences as well as their conveniences. There is no reason why I should make persons take up a totally different position from that which they have agreed to take up, because it might be convenient to one of the parties after the termination of the arrangement. If you want that protection for a definite term, you must contract for it. But I cannot import such a term into the contract. If I did, I should make partnerships at will involve consequences that partners never dreamt of."

Where a published work is advertised as copyrighted in the name of an assignee of its author, courts will disregard a license from the author to publish it.[1]

444. Leading as to the right of an author upon the bankruptcy of his publisher, is Curry's Case, arising out of the property in the novels "Jack Hinton," "Tom Burke of Ours," and "The O'Donahue," which were to be published by the bankrupt firm, from manuscript supplied by Charles Lever. It was agreed that these novels should be supplied to the publishers, Curry & Company, by Lever, in monthly numbers, the publishers to pay all expenses of eleven thousand copies of each number, and one hundred pounds to Lever, such copies to be sold at one shilling each, and upon all numbers above the said eleven thousand, the said Lever and said Curry & Company to share and share alike. The publishers becoming bankrupt

[1] Hodge v. Welsh, 2 I. E. R. 266.

meanwhile, and having sold two thousand copies to a publisher, at a reduced rate, Mr. Lever claimed to recover for them, and in the premises, from the assignee. But the court held, that if Mr. Lever was a partner, he was only a dormant partner as to the unsold stock; that it all belonged to the bankrupts' creditors' and that Mr. Lever had no lien upon it; that the sale of copies at a reduced price, raised, if anything, a claim for damages, and not for compensation out of the bankrupts' estate. The court further pronounced that a mere question of title between an author and a bankrupt publisher, as to which is owner of a portion of a copyright, cannot be decided in a proceeding in bankruptcy, but that semble, that where an author allowed a publisher to advertise himself as the owner of a copyright, though it had never been assigned in writing to him, such copyright should be dealt with as the publisher's property in bankruptcy.[1]

445. Letters and communications sent impliedly or expressly for publication, and received from correspondents by the editors or proprietors of periodical publications, become the property of the person to whom they are directed, and cannot be published by any other person obtaining possession of them.[2]

446. No agreement will be implied on the part of an author not to publish a subsequent edition of a work until a previous edition is exhausted. Nor will equity enjoin an author from publishing the second edition under such circumstances.[3]

The contract between an author and his publisher

[1] Re Curry, 12 I. E. R. 382.
[2] Copinger on Copyright, p. 32.
[3] Warne v. Routledge, L. R. 8 Eq. 469.

is in the nature of a partnership at will, wherein one partner contributes the skill, and another the capital; in the absence of any contract continuing the partnership, either can withdraw at any time, and the other cannot restrain him from continuing to do business, because of the loss he has sustained by the withdrawal.[1]

447. In the absence of any special contract to the contrary, the assignor of a copyright is entitled to continue selling copies of the work printed by him before the assignment, and remaining in his possession.[2]

448. A shopkeeper cannot recover for the price of immoral or obscene prints and libels sold by him;[3] and a printer has no action against a publisher for the price agreed to be paid for printing an indecent, libelous, and immoral history.[4] Where the plaintiff,

[1] "Suppose two people took a shop, one finding the capital, and the other the skill and power of management, and the one finding the capital took a lease of the shop and expended a large sum of money in furniture, fixtures, stock in trade, and goods, and suppose a week afterwards the other one determined the partnership, no doubt that might occasion a very great loss to the capitalist; but could I import an agreement that the other man should not carry on any business elsewhere, until sufficient time had been given to enable the first man to get remuneration in buying stock and leasing the shop." Per Jessel, M. R. Id. Warne v. Routledge, L. R. 8 Eq. 469.

[2] Taylor v. Pillow, L. R. 7 Eq. 418.

[3] Fores v. Johnes, 4 Esp. 97.

[4] Poplett v. Stockdale, 2 C. & P. 200. "It is not material whether the person who disperses libels is acquainted with their contents or otherwise, for nothing would be more easy than to publish the most virulent papers with the greatest security, if the concealing the purport of them from an illiterate publisher would make him safe in dispersing them" 2 Starkie on Slander, 30, note *z*; Moore, 627; Wood's Inst. 431; Bac. Abr. tit. Libel, 458.

Nutt's Case, Fitzg. 47; Barnard 306, was where defendant

a printer, agreed to print for the defendant a certain number of copies of a treatise, to which a dedication was to be prefixed, and, after the treatise was printed, and the proof-sheet of the dedication was revised by the defendant and returned to the plaintiff, the latter, for the first time, discovered that it contained libelous matter, and on that account refused to complete the printing, it was held, that he was justified in so refusing, and was also entitled to recover for printing the treatise. "I told the jury," said Pollock, C. B., in that case,[1] "that if the plaintiff agreed to print the dedication and the treatise, and so undertook to print that which he knew to be libelous, and afterwards said that he would not print both; in such case he could not recover. I think his right to recover rests entirely on the ground that he had been fur-

was tried for publishing a libel. It appeared in evidence the defendant kept a pamphlet shop, and that the libel was sold in defendant's shop, by her servant, in her absence, and that she did not know the contents of it, nor of its coming in or going out. Held to be a publication by the defendant.

Rex v. Dodd, 2 Sess. Cas. 33: The defendant was tried for publishing a libel. It was insisted for the defendant that she was sick, and that the libel was taken into her house, without her knowledge; held no excuse. And see Rex v. Almon, 5 Burr. 2689, where the court said that the sale of a libel in a bookseller's shop was prima facie evidence of a publication, though rebuttable by circumstances. A defendant may rebut the presumption by evidence that the libel was sold contrary to his orders, or clandestinely; or that some deceit or purprise was practiced upon him; or that he was absent under circumstances which entirely negatived any presumption of privity or connivance. 2 Starkie on Slander, p. 34.

Chubb v. Flanaghan, 6 Car. & P. 431, held that where a publication consists in selling copies of a periodical in which the libel was contained, it was a question for the jury whether the defendant knew what he was selling; and see *ante*, vol. i. chapter on Innocence and Libel.

[1] Clay v. Gates, 1 H. & N. 73.

nished with the treatise without the dedication. The dedication was afterwards sent, but he had no opportunity of reading it, until after it was printed. He then discovered that it was libelous, and refused to permit the defendant to have it. I think that if a contract is bona fide entered into by a printer to print a work, consisting of two parts, and at the time he enters into the contract he has no means of knowing that one part is unlawful, and he executes both, but afterwards suppresses that which is unlawful, there is an implied undertaking on the part of the person employing him to pay for so much of the work as is lawful."

"Although the illegality or immorality of an intended publication, would be a good defense to an action brought against the author for breach of contract to deliver his manuscript for publication, this illegality or immorality is not to be presumed where the work itself is not produced at the trial.'

449. It is a rule of law, that the personal representative is entitled to the benefit of all such of the executory contracts of the deceased as he can fairly and efficiently fulfill; and, therefore, if a man builds half a house, or makes half a wheel-barrow, or half a pair of shoes, and dies, the executors may complete and deliver them, and sue either for work and labor done by them, or for goods sold and delivered by them as executors.[2] When, however, the contract is founded upon the known skill of the deceased, or his peculiar talents, and intellectual capabilities, and acquirements, it is determined by his death. If a publisher, for example, agrees to pay some celebrated poet or author

[1] Gale v. Leckie, 2 Stark, N. P. 110.

[2] Werner v. Humphreys, 3 Sc. N. R. 226; Marshal v. Broadhurst, 1 Cr. & J. 405; Collinson v. Lister, 20 Beav. 365.

a fixed sum of money for a poem or treatise, and the writer dies before he has completed his task, the contract is absolutely determined, and the publisher is not bound to pay any part of the stipulated remuneration, unless he has accepted and used some portion of the work; in which case he will be liable upon the ordinary implied promise in respect of a benefit actually received.[1]

450. It would appear that there is no general custom of trade binding printers to insure, for

[1] Morgan's Addison on Contract, vol. i. § 456, p. 630. But where an engineer was appointed to construct certain works, which it was calculated would occupy fifteen months, and was to be paid for his services during that period the sum of £500, by equal quarterly instalments, and shortly after the end of the third quarter he died, two of the quarterly instalments then remaining unpaid, it was held that, although his death put an end to the contract for the future, it did not divest the right of action for those instalments which had already accrued to him, and that his administrator was therefore entitled to recover them, and not merely to sue upon a quantum meruit for the value of the amount of the work actually done. Stubbs v. Holywell Ry. Co. L. R. 2 Ex. 311; 36 L. J. Ex. 166.

In England, printers are required (2 & 3 Vict. c. 12, s. 2; 32 & 33 Vict. c. 24) to affix their names and places of abode or business to all papers and books printed by them for publication; and if a printer neglects to comply with the requisitions of the statute, he cannot maintain an action for his labor, or for the materials provided for the printing. But, as the name is required to be printed on the first or last leaf of every book, the omission might be rectified by the tender of the requisite printed leaf to the author or publisher at any time before actual publication. As soon as a printer discovers that he is printing libelous matter, he ought to stop, and may then recover for what he has done; but, if he goes on with his printing, he makes himself a party to the unlawful transaction, and cannot recover his charges (Morgan's Addison on Contracts, vol. i. p. 230; Clay v. Yates, 1 H. & N. 73; 25 L. J., Ex. 237). As to the registration of printing presses, see Day v. Hemming, 9 W. R. 703.

booksellers, the paper given for works to be printed.[1] If there is an express undertaking by the printer to insure the paper given him for a work which he contracts to print within a certain time, he is liable for a loss by fire which takes place after that time, even though the completion of the work within the specified time has been prevented by the failure of his employer to supply copy fast enough.[2] If he wishes to exonerate himself from all risk after the specified time has elapsed, he must abandon the contract altogether. If, whilst complaining of the delay in supplying copy, he continues to print, his contract to insure continues.[3]

Where certain printers were employed to print a work, of which the impression was to be seven hundred and fifty copies, and a fire broke out on their premises before the whole number of copies had been delivered, in an action to recover the amount to be paid for the work, Tindal, C. J., held, that the printers' right to recover depended on the question whether the whole seven hundred and fifty copies had been printed when the fire broke out, or whether the fire took place while the press was set, and before the whole was printed off; in which latter case they would not be entitled to recover anything.[4] Disraeli mentions a custom of insurance companies, to insure authors' manuscripts, adding that the companies will decline to allow the authors themselves to estimate the value of such manuscripts. It is not difficult to see how impracticable such a plan would be. Unless an insurance company kept a "reader," like a publishing-

[1] Mawmann v. Gillett, 2 Taunt. 325.
[2] Id.
[3] Id.
[4] Adlard v. Booth, 7 C. & P. 108.

house, it would be impossible to place any value, and consequently to write any policy, upon a manuscript. In the United States, insurance companies do not underwrite upon authors' manuscripts, but, upon application for such insurance, advise the applicant to invest his intended premium in copying-charges, and keep his two copies in two different places, not likely to be exposed to one fire. Their principle is to guard against any insured making a profit by a fire. The value of a manuscript is, in a commercial aspect, estimated in the market as purely fictitious; and no sensible underwriter would put himself in a position where a writer could force him to buy his manuscript, at his own valuation. A manuscript is, in its very nature, uninsurable. As composing parts of libraries, ancient and rare manuscripts are sometimes insured, but, without specific bargain, they are excluded.

451. A printer who is employed to print certain numbers, but not all consecutive numbers, of an entire work, has a lien upon the copies not delivered for his general balance due for printing the whole of those numbers.[1]

Where a printer so employed by one Stratford, printed eight thousand seven hundred and fifty copies, of which he delivered only five thousand nine hundred and eighty-seven to Stratford, the residue remaining in his own warehouse, though Stratford supplied the paper for printing the several numbers from time to time, as they were to be printed, and the printer made a separate charge for each number, the assignees of Stratford, who afterwards became bankrupt, were held not entitled to recover

[1] Blake v. Nicholson, 3 M. & S. 167.

from the printer the copies remaining in his possession, on tendering to him so much as was due for the printing of those copies, in proportion to his charge for the whole. Lord Ellenborough, C. J., said: "I think the defendant had a lien for the whole balance, the work being an entire work in the course of prosecution, upon the same principle that a tailor, who is employed to make a suit of clothes, has a lien for the whole price upon any part of them. It would be inconvenient if he was obliged to make stops in the course of the work: the nature of the work affords a reason for his general lien." And Le Blanc, J., added: "The supplying the paper from time to time did not make it the less one entire work.[1]

It seems that a stereotype printer has not a general lien on stereotype plates, not manufactured by himself, but only put into his hands for the purpose of printing from them.[2]

To establish a general lien in such a case, the stereotype printer must show, according to Tindal, C. J., such a custom of trade that the other party to the transaction must be taken to have contracted with with reference to it. "Nothing short of this," said the chief justice, "will dispense with an express contract; for generally that is the only mode of creating such a lien as this, which the common law does not recognize. In trades long established such a usage may not improbably have grown up; but it requires strong evidence to show its existence in a new trade like that of stereotype printing, which has sprung up within a short period, and in which it is not very

[1] Blake v. Nicholson, 7 C. & P. 103.

[2] Bleaden v. Hancock, M. & Mal. 465; 4 C. & P. 152. This case was decided in 1829.

probable that any such general usage has yet been established."[1]

It seems, that by the custom of trade a printer cannot recover for the printing of a work before the whole is completed and delivered.[2]

[1] Bleaden v. Hancock, M. & Mal. 456; 4 C. & P. 152.

[2] Gillet v. Mawmann, 1 Taunt. 137. See also Adlard v. Booth, 7 C. & P. 108.

CHAPTER VII.

OF PIRACY.

452. Copyright being, as we have seen, not monopoly, but property,[1] trespass can be committed upon it, as upon all other property; and this trespass is called piracy. If this property be innocent and lawful in its nature,[2] both equity and law will take cognizance of piracy—the former, by preventing its continued commission; and the latter, by compensating in damages for that already committed.

453. It will be found a much less difficult task to seek for a definition of piracy, by inquiring in what it does not, rather than in what it does, consist. It is, in the first place, a trespass or tort committed upon copyrighted matter. But its peculiar character must be derived from an examination of the cases. It will be readily perceived that the question of damages does not enter into the definition, for there may be

[1] *Ante*, vol. ii. p. 2. Pierpont v. Fowle, 2 Wood. & M. 46.

[2] See *ante*, vol. i. chapter on Innocence. The recent case of Commonwealth v. Landis, 8 Phil. (Pa.) R. 453, goes further than many cases we were able to cite in the earlier pages of this work, and holds that a work ostensibly written in the interests of science may come under the penalty of the law of Innocence. The question whether a work is obscene or not, does not depend upon the question whether it is true or false, but upon its tendency to inflame the passions and debauch society. Anything which offends modesty—which is lewd, indecent, or has a tendency to produce lascivious desires, is obscene—such tendency is matter of fact, and to be judged of by the jury. A book purporting to give medical instruction may be found by a jury to have a tendency to debauch society, rather for purposes of personal gain to its writer than to benefit the public, even though it appear from the evidence of scientific men that its statements are true.

piracy where no damage (by which term the law always understands pecuniary damage, or damage reducible to a pecuniary estimate) is done to the proprietor of the pirated work. And again, on the other hand, there may be great and lasting damage done by the publication without its constituting piracy. For example, in the case of Prince Albert v. Strange,[1] which was held to be piracy, the plaintiff was not damaged at all, but sought to restrain the multiplication of copies of his work, merely because he preferred that it should not be made public; while in the case of Martinetti v. Maguire,[2] where the plaintiff was very seriously injured by an interference which was held to be no piracy, from the fact that the production interfered with was not itself entitled to protection under the copyright laws. Neither will, as in other cases, the intention constitute the wrong-doing. In other cases the maxim of the law is intentio cæca mala. But the intention to pirate has been held not to be necessary to constitute the offense of piracy. The animus furendi may be entirely wanting, and a later writer may, in perfect good faith, and without any idea of surreptitiously appropriating that which is not his, pirate and infringe upon the labors of a predecessor, with the best intentions, and yet be liable therefor.[3]

454. The simple, and at the same time a perfect,

[1] De G. & S. 652; 1 Mac. & G. 25. [2] Deady, R. 216.

[3] "The intention to pirate," says Lord Ellenborough (1 Camp. 98), "is not necessary in an action of this sort; it is enough that the publication complained of is in substance a copy, whereby a work vested in another is prejudiced." And says Shadwell, V. C., in Campbell v. Scott, 11 Sim. 38, with reference to a book of avowed extracts from the poetical writings of others, "If A. takes the property of B., the animus furendi is inferred from the act." *Vid.* also Clement v. Maddick, 1 Giff. 98; Milett v. Snowden, 1 West. Law. Jour. 240

definition of piracy is, that it is "an infringement of a statute of copyright." That is to say, it must infringe upon something protected by statute, and is to be carefully distinguished, first, from a trespass upon a common-law right, and second, from an appropriation of matter other than that protected by an exact statute of copyright. For example, the stealing of a man's manuscript is not piracy, neither is the taking of a photograph of the Coloseum at Rome a piracy of a former photograph of the Coloseum, even though both be taken from precisely the same point of observation, the camera in each instance being planted on precisely the same spot. In the former case, the misdemeanor is a theft, against which it was not necessary to pass a statute; while in the second case, the only imitation which could be assigned to the second photographer, was the use of the same process for taking his picture. Although patents often protect processes, copyrights only protect the results of processes. So, as we have seen, the process by which a result is accomplished, whether it consist of the formation of a picture by pasting pieces of bark upon sheets of paper,[1] of a photograph, or by combining acids with a surface upon which light is admitted, or of representing an incident upon a stage by means of a mechanical contrivance, must be patented.[2] The picture, the photograph, or the romantic incident, are, however, legitimate subjects of copyright. If it were otherwise, the copyright of the photograph would protect the inventor of the camera which the operator used, the chemical process by which the negative was produced, the contrivance which printed the lights and shades

[1] Sprague, Joseph B. Official Gazette of U. S. Patent Office, vol. vi. (No. 14) 469.

[2] Freligh v. Carrol & Thompson, *ante*, this vol. pp. 221–319.

from the negative upon the paper, the paper itself, and the very tripod upon which the instrument stood. That the method employed to effect a piracy will not mitigate the character of the misdemeanor, we have already seen in Palmer v. Thorne,[1] where an infringing drama was constructed from a newspaper correspondent's outline of a play, written out and sent across the ocean; and again, in Toole v. Young,[2] where an infringing play was dramatized from a novel whose author—unknown to the infringer—had already dramatized it,—the solitary instance in which this doctrine has been heretofore held inapplicable, *t. e.*, the case of piracy by memorization, we have taken the liberty of questioning.[3]

Neither, it seems, will it make any difference in the act of piracy that the defendant has received no profit or gain by the particular acts; infringement and a multiplication of copies of a protected piece, is as much a piracy as if the multiplication had been made for purposes of pecuniary profit. So, where a member of a philharmonic society, desirous of having a certain piece of published music performed at a concert of the society, to which, besides the performers, an audience was admitted for money, caused copies of the said musical composition to be lithographed and gratuitously distributed among the performers, without consent of its proprietor, such act was held to be an act of piracy, and an infringement upon the proprietor's right in the published music.[4] In this case, however, it might have made a difference if no audience had been admitted for money.[5]

[1] Freligh v. Carrol & Thompson, *ante*, this vol. p. 364.
[2] Id. p. 296.
[3] Id. p. 330.
[4] Novello v. Sudlow, 12 C. B. 177.
[5] And see *ante*, this vol. p. 345, as to amateur theatricals.

Neither will it make any difference where the pirator procures the pirated matter. If A. publish and copyright a book, and B. pirates it, and C., upon meeting with B.'s book, without knowing its source, prints it over again, C. is none the less an infringer upon A.'s copyright, even though he never heard of his book, or that B. had pirated it. Nor need A. pursue his remedy against B. before suing C., but may proceed against both or either at his option. But if A. publish a guide-book or work of reference, from month to month, the copyrighted number for every month consisting of the same material as that of the month before, with the slight addition or change, perhaps, of such figures or words as would keep up with changes in the matters or arrangements to which it was a handbook: if B. should, without authority, copy from the number for June, we think it would be an infringement upon only the number for June, or upon the preceding numbers. For it could not well be an infringement upon those numbers which should be published after and subsequent to B.'s publication.

Hence it happens that while the offense is not defined by statute expressly, a multitude of decisions have arisen, wavering among themselves according to the circumstances of the particular cases presented.

455. We have seen that there can be no property in a subject or theme; that no writer on mathematics can lay claim, therefrom, to a monopoly of the science of mathematics, or if he write of Asia, can he copyright the subject, or the geography, or the climate, or any of the characteristics of that continent. It is equally apparent that one may refer to, or quote from, or translate, or versify, or even abridge a copyrighted work, even though by such abridgment he seriously impair the profits arising from the publication of the

larger work,[1] without being liable to the penalties attending piracy.

456. So one may, without infringing, take ideas from another's work, as for instance, the idea of alphabetically arranging a list of residents in a city, or of authorities cited in a treatise. Undoubtedly the idea of arranging indices, tables of contents, &c., alphabetically, occurred to some one originally, and was used by some one for the first time, but it is no infringement on his plan to make out tables of cases, or of contents, or directories, or indices, alphabetically. But an idea is not copyrightable, though the words in which it is expressed or demonstrated may be. This is analogous to the law of patents, which says that "an idea of itself is not patentable, although a new device by which it may be made practically useful is,"[2] *e. g.*, the idea of advertising by means of a baloon

[1] Shortt, 169. *Ante*, vol. i. p. 340.

[2] Waite, C. J., U. S. supreme court.—The Rubber Pencil Company, appellants, v. Samuel E. Howard et al.—This is the case of Blair's patent for a new and useful rubber head for lead pencils. After stating the claim of the patentee in his specifications, the court proceeds: The first question which naturally presents itself for consideration at the outset of this inquiry is, whether the new article of manufacture, claimed as an invention, was patentable as such. If not, there is an end of the case, and we need go no further. A patent may be obtained for a new or useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof. In this case Blair's patent was for a "new manufacture," being a new and useful rubber head for lead pencils. It was not for the combination of the head with the pencil, but for a head to be attached to a pencil, or something else of like character. It becomes necessary, therefore, to examine the description which the patentee has given of his new article of manufacture, and to determine what it is, and whether it was properly the subject of a patent. It is made of rubber, or rubber and some other material which will increase its erasive properties. This part of the invention alone could not have

is not patentable, although a balloon made for the purpose might be.[1]

457. As piracy is an offense against a statute of copyright, and not against whatever common-law rights may exist, the earliest case is to be sought for been patented. Rubber had long been known, and so had rubber combined with other substances to increase its naturally erasive qualities. It is to be of any convenient external form. It may have a flat top surface, or it may be of a semicircular or conical shape, or any other that may be desirable. This would seem to indicate clearly that the external form was not a part of the invention. It was, however, urged upon the argument that the invention did consist in the projecting surfaces extending out of the head, and which appear, as is claimed, in the drawing attached to the specifications. It is true that in two out of three drawings projecting surfaces are indicated, but such is not, beyond question, the case with the third. The shape then shown is conical, extending to a point, and evidently intended to represent the form mentioned as specially adapted to the use of draughtsmen in erasing lines from their drawings. It was the end of such a pencil, not the the sides, that was to furnish the particular advantage of form. But although drawings do accompany the specification and all referred to, it is evident that this reference is for the purpose of illustration only, because the patentee is careful to say that "he does not limit his invention to the precise forms shown, as it may have such, or any other convenient for the purpose, so long as it is made so as to encompass the pencil and present an erasive surface upon the sides of the same." Certainly words could not have been chosen to indicate more clearly that a patent was not asked for the external form, and it is very evident that the essential element of the invention, as understood by the patentee, was the facility provided for attaching the head of the pencil. The prominent idea in the mind of the inventor clearly was the form of the attachment, not the head. If additional proof of this is required, it may be found in the further statement in the specifications, which locates the head for use at or near the end of the pencil, and so made as to surround the part on which it is to be placed, and to be held thereon by the inherent elasticity of the

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[1] Gould, Henry W. U. S. Official Gazette of the Patent Office, vol. v. (No. 5) p. 121.

subsequent to the first copyright law, *i. e.*, the English statute of Anne, in 1710. But none appear until 1735, when the limitation of twenty-one years had

material of which it is to be composed. If intended for use at any other place than on the end of the pencil, the projections could not be essential, as any form that would surround the part would present the requisite erasive surface Again, the head is to have in it, longitudinally, a socket to receive one end of a lead pencil or a tenor extending from it. This socket is to be cylindrical, or of any other proper shape. Usually, the inventor says, he made it so as to extend part way through the head, but if desirable it might be extended entirely through. It must be within one end, but any particular location at the end is not made essential. This clearly is no more than providing that the piece of rubber to be used must have an opening leading from one end into or through it. This opening may be of any form and of any shape longitudinally. The form, therefore, of the inside cavity is no more the subject of the patent than the external shape. Any piece of rubber with a hole in it is all that is required thus far to meet the calls of the specifications, and thus far there is nothing new, therefore, in the invention. Both the outside and inside may be made of any form which will accommodate the parties desiring the use. But the cavity must be made smaller than the pencil, and so constructed as to encompass its sides and be held thereon by the inherent elasticity of the rubber. This adds nothing to the patentable character of the invention. Everybody knew, when the patent was applied for, that if a solid substance was inserted into a cavity in a piece of rubber smaller than itself, the rubber would cling to it; the small opening in the piece of rubber, not limited to form or shape, was not patentable, neither was the elasticity of the rubber. What, therefore, is left for this patentee but the idea that if a pencil is inserted into a cavity in a piece of rubber smaller than itself, the rubber will attach to the pencil, and when so attached become convenient for use as an eraser. An idea of itself is not patentable, but a new device by which it may be made practically useful is. The idea of this patentee was a good one, but his device to give it effect, though useful, was not new. Consequently he took nothing by his patent.—Reported in the New York Times, August 8, 1875. And so the idea of advertising by means of balloons is not patentable either as a contrivance or as a design.

already passed. The first case seems to have been in that year, when the Master of the Rolls enjoined the publication of "The Whole Duty of Man," which had appeared first in 1657.[1] In the same year also the printing of Pope's and Swift's Miscellanies was enjoined,[2] in the face of the objection that the statute term had expired, according to Lord Mansfield[3] In 1736, an injunction was granted against publishing Nelson's "Festivals and Fasts" (originally published in 1703,[4] and before the statute of Anne). In 1739, and again in 1751, injunctions were granted against printing Milton's "Paradise Lost," the first, under the plaintiff's assignment from Milton of the work, in 1667,[5] and the second, as to the poem, which was printed with Dr. Newton's notes, and those of other commentators, all of which belonged to the plaintiff. The bill in the latter case alleged title to the poem by Milton's assignment, in 1677; to the life by Fenton, published in 1727; to Bentley's notes, published in 1732; and to those of Dr. Newton, published in 1749. Lord Hardwicke, before whom this case came, said that he granted this injunction as to the poem, only "until the matter could be considered at the hearing," because there was a "probability of right in the plaintiffs."[6] The fact was, that the question upon which Lord Hardwicke ruled so cautiously, *i. e.*, the continuing literary property of the author's assignee, was at that moment depending in the court of King's Bench.[7]

[1] Eyre v. Walker, cited 4 Burr. 2325; 3 Swanst. 673.
[2] Motte v. Falkner, cited Id.
[3] 1 W. Bl. 334.
[4] Walthoe v. Walker, cited 4 Burr. 2325.
[5] Tonson v. Walker, cited 4 Burr. 2325.
[6] Curtis on Copyright, p. 48, note.
[7] *I e.*, in the case of Baskett v. University of Cambridge, 1 Black, P. 105.

That question was not finally settled until 1758, when it was held that the right of the copy in the king continues after publication at common law, and by analogy in the subject.[1]

But Lord Hardwicke's injunction, however charily granted, was esteemed by Lord Mansfield as a precedent, "for," said he, "the judicial opinions of the great men who granted these injunctions, in cases clearly not within the statute, uncontradicted by any book, judgment, or saying, must weigh in any question of law, much more in a question of mere theory and speculation, as to what is agreeable or repugnant to natural principles."[2]

In 1761, the case of Tonson v. Collins was brought by the plaintiffs, as assigns of one Jacob Tonson, who, in 1712, had purchased of Addison and Steele the "copy" of The Spectator, which, however, the copyright having expired, was not then within the protection of any statute. But the case, after two elaborate arguments, was left undecided, and no settlement of the question was arrived at until the renowned case of "Thompson's Seasons," and then only to be overthrown again, not many years later.[3]

"The Seasons," by the poet Thompson, was first published by him on his own account, as proprietor, in 1727, and several times subsequently, until 1729.

In the latter year he sold the work to one Andrew Millar, who entered it at Stationers' Hall, and continued to publish it after the poet's death, and until the year 1763, when one Robert Taylor also published an edition. The protection of the statute of Anne had

[1] *Vid.* also 2 Edm. 137, and 4 Burr, 2401, 2404, per Lord Mansfield.

[2] 4 Burr. 2399.

[3] 1 W. Black, 301–321–345; 4 Burr. 2400, per Lord Mansfield.

expired, and the action brought by Millar, in 1766, could only stand upon the theory of a perpetual copyright at common law.

The eminent character of the judges concerned in this case make it, in every regard, leading. It was twice argued, with great learning and ability, before a full bench, a special verdict having been first obtained. At the end of three years, judgment was pronounced by Lord Mansfield, in favor of the plaintiff, Yates, J., delivering an equally learned and elaborate dissenting opinion; and, in 1770, the injunction was issued.

The law then, in 1770, was:

I. That property exists in the author's work, and the publication thereof shows no intention on the part of the author to abandon such property; and,

II. That statutes of copyright are merely intended to give, for a term of years, a more efficient protection than could be attained without them, and do not take away any existing property at common law.

And so the law continued for about four years.

A case, destined to be equally illustrious, was even then pending.

One Becket had sued for an injunction against the Donaldsons, for publishing a book, in which he claimed a common-law copyright. After Millar v. Taylor, the lord chancellor (Apsley) granted it, as of course, against the defendants, who appealed to the house of lords.

In 1774, this appeal was argued with a learning and ability equal to that displayed in Millar v. Taylor, and heard by jurists of equal eminence.

At the close of the evidence, ten judges declared in favor of the author's right of first printing and publishing, and of restraining the publication and sale

of his work without his consent, and one was of opinion to the contrary.

Six were of opinion that the statute of Anne superseded the common-law right of action, and five were of opinion to the contrary.

Seven were of opinion that the author and his representatives had the right to publish, as a perpetuity, by common law, and four were of opinion to the contrary.

Six were of opinion that this right in perpetuity was taken away by the statute, and five were of opinion to the contrary.

Lord Mansfield being a peer, was not allowed to deliver any opinion, though he was considered as maintaining his reasoning in the prior case. And thus, upon the question of the perpetuity at common law, the judges stood seven to four, and upon the question as to whether the statute abrogated such perpetuity, they were equally divided.

In this state of the case Lord Camden, who was its greatest enemy, delivered his celebrated argument against literary property.[1] He denounced the per-

[1] It was in this speech that the passage so often quoted, as to "glory being the reward of authorship" (quoted *ante*, vol. i. p. 9) occurs It was not to have been supposed that Lord Camden would have agreed with his greatest rival, Lord Mansfield, but the bitterness with which the former attacked the idea of literary property—the "wretched scribblers" and "hackney compilers" must have sprung from conviction. But how about Milton? The poet's career and writings, as we have had occasion to allude to them in noticing the history of literary property, do not seem to warrant the belief that he was insensible to the tangible reward for literary labor. Milton did, indeed, sell the copyright of "Paradise Lost" to Samuel Simmons, for five pounds, but that sum was not "a miserable pittance" in those days; neither did the poet suppose that he was parting with his copyright for that sum. The five pounds was only an immediate payment, the agreement

petuity contended for, as odious and selfish, and likely to become intolerable; asserted that an author's thoughts, once published, were his no longer; denied that there was any implied contract between the seller and buyer of a printed copy of a book; and it was through his exertions that the author's common-law right, so lately asserted, was lost to Englishmen forever.

458. It has been well said by an American writer,[1] that the law endeavors, in treating cases of piracy, to protect the author, without curtailing the fair use of existing material in any department of letters; that "it proposes to itself, first, the vindication of rights acquired by genius, discovery, invention, and labor in the productions of the mind; and, secondly, the acknowledgment, upon motives of public policy, of the right to a fair use, by any writer, of all that has been recorded by previous authors." This question is of constant recurrence in regard to what we have classified as secondary works;[2] *i. e.*, abridgments,

setting forth that five pounds more should be paid when thirteen hundred copies of the first edition should be sold, and the like sum when the same number of the second edition should be sold, and the same of the third,—the editions not to exceed fifteen hundred copies each. At the end of two years the second five pounds were paid, and his receipt made on the 26th day of April, 1669, is still preserved. The second edition stipulated for was published in 1674, after Milton's death, and for the third edition, in 1678, his widow receipted, under date December 21, 1680, for eight pounds, and gave him her general release, dated April 29, 1681. Simmons afterward sold the right to Aylmer, for twenty-five pounds, who in turn sold it to Tonsont, half in August, 1683, and half in March, 1690 (Todd's Life of Milton, 193–195). Thomas Lord Lyttleton replied to Camden upon this occasion, "and the house of lords stood twenty-two to eleven against the common-law right of authors."

[1] Curtis on C., p. 237.

[2] *Ante*, vol. i. chapter on Originality

compilations, guide-books, indices, and the like, or what is sometimes called "base copy."[1]

In Scott v. Stanford,[2] the defendant, in a book of "Mineral Statistics of the United Kingdom of Great Britain and Ireland, for the year 1865," published by him, had inserted, in a different arrangement, the whole of certain statements (amounting to about one-third of the work) of the quantity of coal, &c. brought into London, which the plaintiff, as clerk and registrar of the city coal market, had compiled, published, and registered. There was no concealment, in the defendant's book, of the source from which the information was obtained, it being distinctly stated, at the head of the statistics, that they were "compiled from the returns published by authority of the corporation of London, by James R. Scott, Esq., clerk and registrar of the coal market." Nevertheless, the defendant was held to have infringed the copyright of the plaintiff, and an injunction was granted to restrain the publication of such portions of the defendant's work as contained the statistics compiled by the plaintiff. "The term animus furendi could not be defined in so restricted a sense," said the court, "as to allow a man who had an honest intention of benefiting the public, and no idea that he was infringing a copyright, to take, and without any labor, a very large portion of the work of another, and materially injure sale of it. It was as impossible to define the internal act of a man, as to measure it. It was only the result of the internal act that could be measured. A man must be presumed, in point of law, to intend all that the publication of his work effects."

[1] So called in the English statute, 8 Geo. 2 C. 13; see Appendix II., and see Graves v. Ashford, L. R. 2 C. P. 419; 16 L. T. N. S. 98. [2] 16 L. T. N. S. 51; L. Rep.; 3 Eq. 718.

And it was held in Reade v. Lacy,[1] that the cases to which the animus furendi test properly applies, is that difficult class relating to dictionaries, road books, and the like, where a certain amount of common material is used by different persons, and the matter in issue is "piracy or no piracy." But copyright is like patent right in that, if it is infringed, ignorance will not avail as a defense to the infringement.

Reade v. Lacy was a case where the plaintiff had written a drama called "Gold," and afterwards published a novel founded upon it, called "Never Too Late to Mend," into which were introduced many scenes and passages from the play. The defendant afterwards published a drama called "Never Too Late to Mend," founded on the plaintiff's novel, containing scenes and passages substantially identical with scenes and passages common both to the plaintiff's novel and his play of "Gold." On motion for injunction to restrain publication of the defendant's drama as an infringement of the plaintiff's copyright in his play of "Gold," evidence was given that the defendant's play was a bona fide adaptation of the novel, written without any reference to and without any knowledge of the published play. The Vice-Chancellor granted the injunction prayed for, saying: "The plaintiff has a copyright in the printed book called 'Gold,' and no one has a right to reprint it without his consent. It so happens that, after having acquired this right, he himself extracted a large portion of this drama, and republished it in the form of a novel. The defendant alleges, and I assume in his favor, that he knew nothing about the drama, and that his play was compiled from the novel alone. I also assume for the purpose of the argument, and this only, that the defendant

[1] 1 J. & H. 527.

had a right to dramatise the plaintiff's novel,[1] and that, as far as the novel is concerned, what was done was a fair adaptation of a complicated novel, so as to produce a short drama. This point I shall leave to be decided by a court of law; but even supposing it to be determined in the defendant's favor, still that will not justify the reprinting of scenes and passages identical with those in 'Gold,' merely because the novel also happens to contain them, and the defendant took them from that source. The plaintiff did not by transferring these passages into his novel, lose any part of the copyright which he had in his drama; nor can ignorance of the existence of the drama on the part of the defendant be urged as a valid defense. . . . To admit such a defense would be to open a door to fraud and perjury. There is a manifest invasion of the plaintiff's copyright in the drama; and it is no answer to say that this is not an invasion, because it would not have been so if the matter appropriated had appeared only in its later form as a novel."[2]

Neither will the quantity of one work introduced into another, be a test of piracy, since, as has been said, one writer might take all the vital part of another's work, although constituting in bulk but a very small portion of his published book. It is not the quantity, but the value of the appropriated portion that will be considered. A difference is here to be observed between plagiarism and piracy. The former is an offense against morals and against taste. The latter is an offense against the law of copyright. Where there is no copyright, there can be no piracy.[3]

[1] *Vid.* Coleman v. Wathen, 5 T. R. 245.

[2] *Vid.* Story's Executors v. Halcombe, 4 McLean, 310; Webb v. Powers, 2 Wood. & Min. 512; and Lee v. Simpson, 3 C. B. 871, 883.

[3] *Ante*, this chapter, p. 666.

"I think," said Story, J.,[1] "it may be laid down as the clear result of the authorities in cases of this nature, that the true test of piracy or not, is to ascertain whether the defendant has, in fact, used the plan, arrangements, and illustrations of the plaintiff, as the model of his own book, with colorable alterations and variations only to disguise the use thereof; or whether his work is the result of his own labor, skill, and use of common materials and common sources of knowledge, open to all men, and the resemblances are either accidental or arising from the nature of the subject. In other words, whether the defendant's book is, quoad hoc, a servile or evasive imitation of the plaintiff's work, or a bona fide original compilation from other common or independent sources."

459. The question as to how far one writer may avail himself of the copyrighted labors of another, like the question of originality which arises before copyright, is of very difficult solution, and while intimately connected therewith, of much more frequent occurrence.

Lord Eldon[2] stated that the test amounted to a question whether the publication was "a legitimate use of the previous work, in the fair exercise of a mental operation deserving the character of an original work."

Another test is well stated to be, whether the use of the work of another amounts to such an extraction that it comes up to an extraction of the vital part.[3]

If the matter taken by the writer of one book from a preceding book, for the promotion of science

[1] In Emerson v. Davies, 3 St. Rep. 793.

[2] In Pike v. Nicholas, 20 L. T. N. S. 906; 38 L. J. 529, Ch. L. Rep. 5 Ch. App. 251.

[3] Murray v. Bogue, 1 Drew, 369.

and the benefit of the public, be used fairly, and without an animus furendi[1]—an intention to take for the purpose of saving himself labor[2]—it will not be piracy; and this question must depend upon the circumstances of each particular case.

Said the court, in dealing with a work in the form of question and answer, on a variety of scientific subjects:[3] "I take the illegitimate use, as opposed to the legitimate use of another man's work on subject-matters of this description to be this: If, knowing that a person whose work is protected by copyright has, with considerable labor, compiled from various sources a work in itself not original, but which he has digested and arranged, you being minded to compile a work of a like description, instead of taking the pains of searching into all the common sources, and obtaining your subject-matter from them, avail yourself of the labor of your predecessor, adopt his arrangements, adopt moreover the very questions he has asked, or adopt them with but a slight degree of colorable variation, and thus save yourself pains and labor, by availing yourself of the pains and labor which he has employed, that I take to be an illegitimate use."

[1] *Vid.* Cary v. Kearsley, 4 Esp. 169; Shortt, p. 182–183.

[2] Jarrold v. Houston, 3 K. & J. 716.

[3] Jarrold v. Houston, 3 K. & J. 716, and said Lord Jeffrey in Alexander v. Mackenzie (9 Scotch Sess. Cas. 2 Ser. 758): "Is there reasonable evidence that the two works are identical, and that the last author did not mount upon the back, and walk on the crutches of, his predecessor, but actually used his own muscular exertions in traversing the field in which he made his observations? Did he, on the whole, do so fairly and honestly for himself, although he may occasionally have followed in the vestigia left by his precursor? Or is there evidence that the second writer's not going over the ground for himself is not the very cause why he has arrived at almost identical conclusions with his predecessors?"

"No finer test," says a late writer,[1] "of piracy has been applied in the various cases on record than that of the degree in which one work interferes, by reproduction, with the benefits derivable from another work in which copyright exists. It may well be supposed that a test of this character has afforded scope for variance of opinion, and that many litigated cases have arisen with respect to its application. It will be well to treat the subject separately as to each class of productions in which piracy may be committed. Neither is it necessary, to constitute piracy, that the pirator receive profit by the trespass. Ordinarily piracy can only be committed by the multiplication of copies of a copyrighted work,[2] whether that multiplication be by a printing, publishing, and selling of the work, or by dramatization, or by reading the book before an audience, and at the same time distributing among the audience gratuitous copies of the work, to assist them in following the reading or representation.[3]

460. The multiplication of copies for gratuitous distribution is as much an infringement of the proprietor's copyright as if made for purposes of pecuniary profit. So, where a member of a philharmonic society, desiring to have a particular piece of published music performed at a concert of the society, to which, besides members, other persons were admitted for money, caused a number of copies of the piece of music to be lithographed and distributed amongst the members of the choir, without the consent of the proprietor of the copyright, this was held to be a violation of the proprietor's right.[4]

[1] Shortt, p. 169. [2] Ib. p. 168–169.

[3] Tinsley v. Lacy, 1 H. & M. 747; 32 L. J. 535, Ch. 11, W. R. 877.

[4] Novello v. Sudlow, 12 C. B. 177; *vid.* also Alexander v. Mackenzie, 9 Scotch Sess. Cas. 2 ser. 748.

461. As to the taking of parts or portions of a work, it may be said, generally, that if a work be not original, its proprietor will be liable for piracy to the owner of the work from which it was copied; and the first work will be the one protected, unless indeed it appears, as in the celebrated case of The Road Book,[1] that that first work was not itself original; in which case, of course, it cannot look for protection.

In case of a book on the "Origin of the English Nation," the court held, that there was no monopoly in the main theory of the plaintiff, nor in the theories and speculations by which he supported it, nor even in the use of the published results of his own observations, though the plaintiff had a right to say that no one is permitted, whether with or without acknowledgment, to take a material and substantial portion of his work, his argument, his illustrations, his authorities, for the purpose of making or improving a rival publication.[2]

In all cases where the sources from which materials for composition are to be derived are of a common or general nature, that is to say, in medio, it is open to any one to gain a copyright in any arrangement of them; and of this character, as we have seen, must necessarily be dictionaries, guide-books, almanacs, calendars, and other works of reference, where not only the material, but the language and comments of the compiler must necessarily be very nearly identical.[3]

[1] *Ante*, vol. i. p. 335.

[2] Pike v. Nicholas, 20 L. J. N. S. 906, 38 L. J. 529, Ch. L. Rep. 5 Ch. App. 251. The decision of Samer v. C. in this case was, however, overborne by the lord justices of appeal.

[3] Spiers v. Brown, 6 W. R. 325; Longmann v. Winchester, 16 Ves. 271; Cox v. Land & Water Journal Co., L. Rep. 9 Eq. 324.

462. The test can only be whether in the work of the defendants no other labor has been applied than copying the plaintiff's work; if it is impossible to deny that the one was copied from the other verbatim et literatim, an injunction must lie. And of the whole class of works, embracing tables of figures, directories, calendars, guides, and other such, the only mode of arriving at the amount of labor bestowed, was by the common test resorted to of discovering the copy of errors and misprints indicating a servile copying.[1]

463. If a book in a foreign or dead language be copyrighted, an original translation will, it seems, be no infringement of the copyright; but it will itself be entitled to copyright protection. In Burnett v. Chetwood,[2] the defendant had published a translation of Burnett's "Archæologia Sacra." It was held that a translation was not the same as reprinting the original, and not within the prohibition of the act, "on account that the translator has bestowed his care and pains upon it."[3]

If a foreigner translates an English copyright work, and then an Englishman re-translates that foreign work into English, that would be an infringement of the original copyright. And it would be no defense that the re-translator was not aware that the work he translated was itself a translation from an English work.[4]

[1] Ib.

[2] *Vid.* note to Southey v. Sherwood, 2 Meriv. 443.

[3] The injunction in this case was granted upon other grounds. *Vid.* also Millar v. Taylor, 4 Burr. 235; Prince Albert v. Strange, 2 De G. & M. 693.

[4] Murray v. Bogue, 1 Drew, 353; 22 L. J. 457 Ch. For the English law of translations *vid.* the International copyright act of 15 & 16 Vict. c. 12.—The right of a translator in Eng-

464. As to quotation also, great difficulty is experienced in endeavoring to lay down any general rule. That part of the work of one author is found in another, is not of itself piracy, or sufficient to support an action.[1] But the extracts may be too many, or contain too large or important a portion of the work from which they are made, and then they will amount to piracy, even though they are published in the form of quotations, and the source from which they are taken is expressly declared.[2]

"Quotation," says Lord Eldon,[3] "is necessary for the purpose of reviewing; and quotation for such a purpose is not to have the appellation of piracy affixed to it; but quotation may be carried to the extent of manifesting piratical intention." Said Lord Ellenborough, in Roworth v. Wilkes:[4] "A review will not in general serve as a substitute for the book reviewed; and even there, if so much is extracted that it communicates the same knowledge with the original work, it is an actionable violation of literary property. The intention to pirate is not necessary in an action of this sort. It is enough that the publication complained of is in substance a copy, whereby a work vested in another is prejudiced. A compilation of this kind [a large encyclopædia] may differ from a

land seemes only to exist for five years, which is the shortest period of protection ever given by statute in literary composition. With us, the same period is given in translations as in every other work.

[1] Per Lord Ellenborough in Cary v. Kearsley, 4 Esp. 169.

[2] Lee v. Simpson, 3 C. B. 871, 883; Webb v. Powers, 2 Wood and Min 512; and Story's Executors v. Holcombe, 4 M'Clean, 310; Bohn v. Bogue, 19 Jur. 420; and Scott v. Stanford, L. Rep. 3 Eq. 718; 10 L. T. N. S. 51.

[3] Mawman v. Tegg, 2 Rus. 393.

[4] 1 Camp. 97.

treatise published by itself, but there must be certain limits fixed to its transcripts; it must not be allowed to sweep up all modern works, or an encyclopædia would be a recipe for completely breaking down literary property."

465. The question is, would the defendant's work serve, by reason of its quotation therefrom, as a substitute.[1]

"No one can doubt," says Justice Story,[2] "that a reviewer may fairly cite largely from the original work, if his design be really and truly to use the passages for the purposes of fair and reasonable criticism On the other hand, it is as clear that if he thus cites the most important parts of the work with a view, not to criticise, but to supersede the use of the original work, and substitute the review for it, such a use

[1] Referring to this word substitute, used in the above case by Lord Ellenborough, Shadwell, J., in Sweet v. Shaid, 3 Jur. 216; 8 L. J. Ch. 216, said: "That does not mean a substitute for the whole work. From what you state, suppose a book to contain a hundred articles, and ninety-nine were taken, still it would not be a substitute;" and again, in Bohn v. Bogue, the same judge observes: "With respect to that expression of Lord Ellenborough, 'substitute,' his Lordship must be taken to have used that word with reference to the particular case before him; and it is perfectly clear to my mind that never can be the criterion." His Honor put the case of a publication of "Liddell and Scott's Lexicon," omitting three or four words at the end of each letter of the alphabet. This could not be taken as a substitute. "But can it be doubted," he asks, "that it might have a very material effect in diminishing the price of the first book; for though nobody would take it as a substitute, many people might not care about so much, and might take it cheaply for what it really did contain, which might be more than ninety-nine hundreths of the whole, and yet it would in no manner be a 'substitute?' And, therefore, the language is not generally correct, so as to be capable of application to every case." *Vid.* also Sweet v. Cater, 11 Sim. 580.

[2] Folsom v. Marsh, 3 Story R. 106.

will be deemed in law a piracy. A wide interval might, of course, exist, between these two extremes, calling for great caution, and involving great difficulty, where the court is approaching the dividing middle line which separates the one from the other."

When the publisher of a theatrical newspaper was sued for publishing six or seven pages of a dramatic piece, about forty pages in length, the court held, that, as the defendant had given no entire act or scene, but only broken and detached fragments, it was not a piracy.[1]

In Dodsley v. Kinnersley, the plaintiffs were assignees of Johnson's "Prince of Abyssinia," and had already published an abstract of that work in a newspaper known as "The London Chronicle." The defendant printed part of the narrative in his magazine, leaving out all the "reflections." The court held, that such publication would have tended to prejudice the plaintiffs, had they not themselves before published an abstract of the work in "The London Chronicle," and the injunction was refused.

466. So, where it appeared that seventy-five out of one hundred and eighteen pages of a work on fencing had been transcribed into an encyclopædia, it was held to be a piracy; and the same rule will undoubtedly apply in the case of a review. In the case of the encyclopædia and the review, the latest information, and a correct purview of the subject of the book under analysis might be given, but neither have a right to take enough matter from a copyrighted work to injure that work, by providing a substantial substitute for it.[2]

[1] Whittingham v. Wooler, 2 Swanst. 428.

[2] 1 Camp. 97; 4 Esp. 168; 17 Ves. 422; Eden on Inj. 281; Murray v. McFargilhar, June 25, 1785, Mor. Dic. of Dec. 8309; Green v. Bishop, 2 Cliff. 186.

467. If a literary composition be taken by another author as a basis for annotations or notes of his own, he may publish the original text along with his own composition, without being liable for piracy.[1] Especially, in the case of legal text-books, and elementary works, is it customary for writers to publish their notes upon the labors of their predecessors or contemporaries,[2] or reports of cases extracted from books of reports in which copyright exists, but it has never been judicially determined whether such a practice does or does not amount to piracy of the original reports. The question was raised but not settled in the case of Saunders v. Smith,[3] the decision in that case against the proprietor of the original reports proceeding on the ground of his acquiescence in the labors of the defendant.

468. In miscellaneous works, as well as legal, the quantity as well as the character of the critical notes added to the work of another, is an important element in determining the question of bona fides. Thus, where a book of selections of poetry contained seven hundred and ninety pages, of which thirty-four were taken up with a general disquisition upon the nature of the poetry of the nineteenth century, and all the rest consisted of extracts, without any notes appended,

[1] Martin v. Wright, 2 Sim. 298.

In Cary v. Kearsley (4 Esp. 169), says Shortt, p. 187, the question was put in argument to Lord Ellenborough whether, if a man took "Paley's Philosophy" and copied a whole essay with observations and notes, or additions at the end of it, such a proceeding would amount to piracy. Lord Ellenborough replied, "That would depend on the facts of whether the publication of that essay was to convey to the public the notes and observations fairly, or only to color the publication of the original essay, and make that a pretext for pirating it; if the latter, it could not be sustained."

[2] Shortt, p. 187.

[3] 3 M. & Cr. 711.

from the works of different poets, some of their poems being given entire, the court considered that the book could in no sense be said to be a book of criticism; and an injunction was granted to restrain its publication at the suit of Mr. Campbell, one of the poets from whose writings large extracts had been made.[1] "If," said the vice-chancellor, "there were critical notes appended to each separate passage, or to several of the passages in succession, which might illustrate them, and show from whence Mr. Campbell had borrowed an idea, or what idea he had communicated to others, I could understand that to be a fair criticism. But there is, first of all, a general essay, then there follows a mass of pirated matter, which in fact constitutes the value of the volume."

The addition of plates to the copyright letter-press of another would not, it seems, constitute a defense to a charge of pirating the letter-press. The mere act of embellishing cannot divest the right of the owner in the text.[2]

469. The question of good faith in cases of this kind is the important one. In legal works, especially, where the course of time, the growing wants of the public, and the new light which each additional case often throws upon an old rule or doctrine, the original work often becomes speedily unreliable, if not wholly obsolete, and the labors of the annotator, by pointing out changes in the law, and the reasons therefor, of the utmost value.

In the case of abridgments of, or annotations to, a literary work, the question of the usefulness may arise, to determine whether the publication of the abridged

[1] Campbell v. Scott, 11 Sim. 31; *vid.* Tonson v. Walker, 3 Swanst. 672.

[2] Carnam v. Bowles, 2 Br. C. C. 85.

or annotated work be a piracy; but in what may seem at first to be the analogous case of variations, or new and peculiar arrangements of a musical work, the same rule could not be applied; for music being a purely pleasurable science and art, although requiring a certain amount of skill and original labor, will be an infringment. It is the air or melody which is the invention of the author, and it is piracy if, by taking not a single bar, but several, the subsequent author incorporate in the new work that in which the whole meritorious part of the invention consists." "It appears to me," said Lyndhurst, J., "that if you take from the composition of an author all those bars consecutively which form the entire air or melody, without any material alteration, it is a piracy; though, on the other hand, you might take them, in a different order, or broken by the intersection of others, like words, in such a manner as should not be a piracy. It must depend on whether the air taken is substantially the same with the original. Now, the most unlettered in music can distinguish one song from another, and the mere adaptation of the air, either by changing it to a dance, or by transferring it from one instrument to another, does not, even to common apprehensions, alter the original subject. The ear tells you that it is the same. The original air requires the aid of genius for its construction, but a mere mechanic in music can make the adaptation or accompaniment. Substantially, the piracy is where the appropriated music, though adapted to a different purpose from that of the original, may still be recognized by the ear. The adding of variations makes no difference in the principle."

470. "The composition of a new air or melody," says Nelson J., in Jollie v. Jacques,[1] "is entitled to

[1] 1 Blatchf. 618.

protection; and the appropriation of the whole or of any substantial part of it, without the license of the proprietor, is a piracy." How far the appropriation might be carried in the arrangement and composition of a new piece of music, without an infringement, is a question that must be left to the facts in each particular case. If the new air be substantially the same as the old, it is, no doubt, a piracy; and the adoption of it, either by changing it to a dance, or by transferring it from one instrument to another, if the ear detects the same air in the new arrangement, will not relieve it from the penalty; and the addition of variations makes no difference. The original of an air requires genius for its construction, but a mere mechanic, it is said, can make the adaptation or accompaniment."

471. The question of abridgments has been fully considered in the chapter on Originality. They will be severally examined, and unless the labors of the abridger appear to be useful, candid, and original, involving original care, labor, judgment, study, and research, they will not be protected.[1]

472. The protection of copyright extends not only to a work in its entirety, but to every part thereof, and it seems, it would be piracy to republish separately the prints or engravings in a copyrighted work.[2]

473. As we have seen,[3] the name or title of a work may be considered as a kind of trade-mark which no other person than the proprietor of the work can use so as to damage him in his property therein.[4] "Cases of this kind depend rather upon the question

[1] *Ante*, vol. i. pp. 338–344, and cases cited; also Bullarworth v. Robinson, 5 Ves. 709.

[2] Bogue v. Houlston, 5 DeG. & Sm. 267.

[3] *Ante*, this vol. pp. 219, 306, 387

[4] *Vid.* Seely v. Fisher, 11 Sm. 582; Spottiswoode v. Clarke, 42 P. K. 154.

whether the defendant has a right to sell, as his own, that in which another has acquired a description of property, than on the question of copyright."[1] The cases of Hogg v. Kirby,[2] Prowett v. Mortimer,[3] and Clement v. Maddick, are English cases in which the plaintiff's right to a title came into court. In the first, the proprietor of a magazine called "The Wonderful Magazine," obtained an injunction to restrain the publication of a magazine under a similar title, described as a new series "improved."

In the second, the proprietor of a newspaper called "The John Bull" having incorporated it with another newspaper called "The Britannia," and issued the publication under the title of "The John Bull and Britannia," was held entitled to an injunction to restrain the publication, by the printer and publisher of "The Britannia" of a publication called the "True Britannia," in imitation of and as a continuation of "The Britannia." The injunction in this case also restrained the defendant from soliciting custom, in the name of the plaintiff's trade and business, as for "The Britannia" newspaper. In the last mentioned case the proprietor of a newspaper known as "Bell's Life in London" obtained an injunction to restrain the publication of a newspaper under the title of the "Penny Bell's Life." The possibility of mistaking the one publication for the other (the plaintiffs having an exclusive right to the title) was considered sufficient by Sir John Stuart, V.C., to entitle the proprietors to the protection of the court.[5]

[1] Shortt, p. 196; Chappel v. Davidson, 2 K. & J. 126.

[2] 8 Ves. 215; *vid.* also Longman v. Winchester, 16 Ves. 271.

[3] 2 Jur. N. S. 414; 4 W. R. 517.

[4] 1 Giff. 98.

[5] The case of Ingram v. Stiff (5 Jur. N. S. 947), says Shortt (L. Lit. p. 197), went very far in this direction. There

In Chappel v. Davidson,[1] the title "Lillie Dale," being the name of the piece of vocal music, was held as entitled to protection, and the title "Minnie Dale," the proprietor of a weekly penny publication, called "The London Journal"—a publication which was not a newspaper, but contained tales and romances, illustrated with wood engravings—sold his interest therein to the plaintiff, and covenanted with him not to publish, either alone or in partnership with anybody else, any weekly publication of a nature similar to "The London Journal." An injunction to restrain him from publishing a daily penny newspaper, called "The Daily London Journal" was granted, on the plaintiff undertaking to abide by any order the court might make as to damages, and to bring an action at law within a week.

[1] 2 K. & J. 123. A song consisting of original words, adapted to an old American air by the plaintiffs, was published by them under the title of "'Minnie;' sung by Madame Anna Thillon and Miss Dolby, at Monsieur Jullien's Concerts. Written by George Linley. London: Jullien and Co., 214 Regent-street, and 45 King-street," the title-page containing also a portrait of Madame Anna Thillon. The defendants having subsequently published a song to the same air, on the title-page being printed the words "Musical Bouquet. 'Minnie Dale;' sung at Jullien's Concerts (and always encored) by Madame Anna Thillon. The music composed by H. S. Thompson. London: Musical Bouquet Office, No. 192 High Holborn, and J. Allen, 20 Warwick-lane, Paternoster-row," the title-page containing also a portrait of Madame Anna Thillon, which was a copy with some slight alterations, but reduced in size, of the portrait on the title-page of the plaintiffs' song, Vice-Chancellor Wood granted an injunction to restrain the defendants from publishing their song, "Minnie Dale," or any copy or copies thereof, or any other publication containing a colorable imitation of the name, title, or title-page of the plaintiffs' song. "The defendants," said the vice-chancellor, "do not profess that their song is by the same composer or the same publisher. But the first thing anybody proposing to purchase the song would say would probably be, 'I want "Minnie," sung by Madame Thillon;' and that name and description, it seems to me, the defendants have no right to whatever. The plaintiffs' publication is the identical song which that lady did sing; it was composed for the plaintiffs, it is called by the name of 'Minnie,' and they had a perfect right to entitle it 'Minnie,' as a song sung by

given to the same tune, to be a colorable imitation thereof.

474. Copyright in periodical publications may be infringed in the same manner as in the case of other literary works, in England, by statute. But this species of property may also, probably, be infringed in a manner peculiar to itself. Even when the copyright in contributions to encyclopædias, reviews, magazines, and other periodicals is vested in the proprietors of such encyclopædias, &c., the right of publishing his contribution in a separate form, reverts to the author after twenty-eight years from the first publication, and the proprietor cannot, during the term of his own copyright, publish it in a separate form without the previous consent of the author or his assigns. The

that lady; and then the name, having acquired a celebrity as the name of a song sung by her, the defendants advertise another song by the same name as sung by this lady, which cannot be meant merely to refer to the melody as sung by her. No person who heard 'Scots wha hae,' sung by Braham, would ask for 'Hey Tuitte Taitte,' the name of the old melody. Therefore, it seems to me that there was a plain and palpable purpose in the assumption of the name. The original song, as sung in America, was 'Lillie Dale,' and the defendants have changed it into 'Minnie Dale,' sung by Madame Thillon, and a description can be for no other purpose than to appropriate the property of the plaintiffs."

An injunction was also granted to restrain another defendant from publishing a song consisting of different words to the same air, with a title-page on which was a different portrait of Madame Anna Thillon copied from an American publication, and the words "Minnie, dear Minnie. Madame Anna Thillon." This Vice-Chancellor Wood considered an obvious attempt to pass off the defendants' publication for that of the plaintiff. It was urged on the part of the defendant in this case that he had cautioned his shop-boys and others to say that it was not the song of the plaintiffs; but the vice-chancellor considered that that afforded no defense, as there was no security that retail dealers would sell the song with the same caution to the public.—Shortt, p. 197.

author has a modified property in possession, and the sole property in reversion.[1]

It is, then, an infringement of the author's property to publish, without his consent, any of his contributions in a separate form; and such separate publication will be restrained.[2] It is not improbable that in the United States, this right may also exist by common law, for, if the proprietary copyright exist at all, it would exist for the term allowed by statute, The question never appears to have come before a court in this country, but it seems to have been held, or at least strongly suggested, in England, that the author had a similar right at common law.[2]

[1] Shortt, pp. 98, 99.

[2] *Vid.* Bishop of Hereford v. Griffin, 16 Sim. 190; Mayhew v. Maxwell, 1 J. & H. 312; Murray v. Maxwell, 3 L. T. N. S. 466. Stewart v. Black, 7 Scotch Sess. Cas. 1026; Fullerton v. McPhun, 13 Id. 219.

A republication in supplemental numbers of a periodical of a selection of various tales previously published in that periodical, is a separate publication within the meaning of sect. 18 of 5 & 6 Vict. c. 45, and such republication will be restrained. Smith v. Johnson, 4 Giff. 632; 32 L. J. 137 Ch.

[3] But see Wyatt v. Barnard, 3 V. & B. 77; Barfield v. Nicholson, 2 S. J. 90, 102; 2 Sim. & S. 1.

This, however, is specially provided for in England by statute. Sect. 18 of 5 & 6 Vict. c. 45, enacts that the proprietor, projector, &c., of an encyclopædia or periodical publication, "composed of articles, essays, &c., shall enjoy the same rights" in articles, &c., composed on the terms that the copyright therein shall belong to him, "as if he were the actual author thereof;" this right, as already pointed out, is limited by the subsequent part of the section which prohibits the proprietor, &c., from publishing anv contribution in a separate form without the author's consent. The author's right to prohibit separate publication in such a case is founded on the words of this enactment, which give him a future right of property in his composition, viz., the option of publishing it or not in a separate form at the end of twenty-eight years, a right which would be seriously injured if, being minded at the end of that period to publish his writings separately or in a col-

475. Taking copies of a protected picture or engraving by the process of photography, or by any other process, mechanical or otherwise, whereby copies may be indefinitely multiplied—is piracy,[1] but, as we have seen must be the case,[2] the piracy consists in the multiplication and copies of the picture, and not in the chemical and mechanical process of the photography.

476. A tradesman's advertisement is not such an original composition as can be copyrighted, not being a work of a literary character or of lasting benefit to mankind. And so the catalogue of an upholsterer,[3] or the circular of a billiard manufacturer,[4] was not held entitled to protection, although they had been copyrighted by the manufacturers. Neither can there be any copyright in matter which is itself copied.[5] But where persons, by paying a certain sum, had their names published in a directory in larger type than was ordinarily employed in the work, with additional descriptions of their trade or business, this was not held to make those names such common

lected form, he should find that they had already been published separately from the periodical work to which they were contributed. *Vid.* Mayhew v. Maxwell, 1 John & H. 315.

"This right of an author" of an article in a periodical to prevent a separate publication is not copyright within the meaning of the 24th section of 5 & 6 Vict. c. 45, and so no registration by the author is necessary to entitle him to an injunction to restrain such separate publication. Shortt, p. 103; *vid.* also Brown v. Cocker, 11 Jur. 77; Richardson v. Gilbert, 1 Sim. N. S. 336; Sweet v. Benning, 16 C. B. 459, 481, 489.

[1] Graves v. Ashford, L. R. 2 C. P. 410.

[2] *Ante*, this chapter, p. 667.

[3] Cobbett v. Woodward, L. R. 14 Eq. 407; see also Leather Cloth Co. v. American Leather Cloth Co., 1 H. L. C. 523; Jarrold v. Houlston, 3 K. & J. 708.

[4] Collender v. Griffiths, 11 Blatchf. 222; 19 Wall. 212.

[5] Jarrold v. Houlston, 3 K. & J. 708.

property, that another directory-maker could reprint the names so printed in the first directory. In granting an injunction against the imitation, the court expressly stated that it would not apply to advertisements, distinct from the body of the work.[1]

477. Piracy of a copyrighted dramatic production may be committed, as we have seen,[2] by its publication, representation, or imitation. The case of Reade v. French was a motion by the author, Mr. Charles Reade (applying in person), for an interim injunction, restraining the defendant, French, a theatrical publisher, and successor to Lacy, from publishing or selling copies of the comedy of "Masks and Faces," the joint production of the plaintiff and one Taylor, and the drama of "Never Too Late to Mend," which the plaintiff alleged, was adapted from and largely contained characters, scenes, situations, and passages in the play entitled "Gold." Plaintiff stated that with regard to the second of the works of which he sought to have the publication restrained, an injunction had already been obtained by him many years ago from Lord Hatherley against Lacy, the first-mentioned play being a mere reprint. The plaintiff proceeded to read the affidavit of a gentleman, stating that a printed list of plays issued by one Heywood, of Manchester (a provincial agent of the defendant), having come to his hands, comprising "Never Too Late to Mend," he apprised said Reade of the fact, and it was then further ascertained that "Masks and Faces" was also advertised for sale in London by the defendant, from whom copies were thereupon purchased on the plaintiff's behalf. The present application was supported by the usual affidavit of service

[1] Morris v. Ashbee, L. R. 7 Eq. 34.
[2] *Ante*, chapter on Stageright.

upon the notice of motion. Plaintiff claimed that in consequence of the unfortunate non-existence of an international copyright, the defendant (who also carries on business in New York) was enabled to reprint these works in America, whence they were imported into England in a semi-clandestine manner. The defendant made no appearance, and the vice-chancellor granted an interim injunction against him, until the hearing, in the terms asked.[1]

478. Mere delay in taking proceedings against a defendant, after knowledge of a piracy, will not in itself constitute such acquiescence in the piracy as will deprive a plaintiff of his right to an injunction.[2]

479. Letters and communications sent to a periodical publication, upon receipt by its proprietor or editor, become its property, and it would be piracy for any other person or periodical to publish them without the consent of the writer.[3]

480. Courts will interfere by injunction to protect the copyright of the assignee of an author, although there is no assignment in writing, and the assignee's title is merely an equitable one.[4]

481. The proprietor of a copyright in a book, need not, in an action for the infringement thereof, aver that the defendant published the plaintiff's book; the complaint sets forth a good cause of action if it aver that defendant published "parts" of the plain-

[1] London Times, 1874.

[2] 1 Hogg v. Scott, L. R. 18 Eq. 444. Nor does the 26th section of the act, 5 & 6 Vict. c. 45, prevent such an injunction to restrain a piraces of copyright by sale of a book published more than twelve months before bill filed, see *post*, p. 714.

[3] Copinger on Copyright, p. 32; 8 Ves. 215.

[4] Hodges v. Welsh, 2 I. E. R. 266.

tiff's book. And it is no answer to such a cause of action that the plaintiff's book and the defendant's book were composed by one and the same author from sources of common information.[1]

482. "In an action for an infringement of an author's copyright," says Espinasse, in his tract on Evidence, "the only evidence required for the plaintiff is the proof that he is the author of the book or work in question, which may consist of its production, by calling a witness who knows it, or by the printer who received the copy from him. He should then produce the work or book published by the defendant, and prove that he published it, which may be done by a witness who bought it at defendant's house, and then, by comparing one book with another, the piracy will appear. Thirdly, he should prove the injury from the sale of the defendant's book.

"The evidence for the defendant may show: 1. That the book published by him is essentially different from the plaintiff's, though the subject is the same, by pointing out the additions or amendments made by him. This is done by collating the two books, and pointing out the passages; that reduces the matter to a question for the jury to say whether the books are the same or different. 2. He may show

[1] Rooney v. Kelly, 14 I. C. L. R. 158. And so complaint that plaintiff was the owner of the copyright of a book entitled: "The Æneid of Virgil: first six books, as read at the Entrance Course, T. C. D., military examination at Sandhurst, and the various endowed schools in Ireland, literally translated, by J. R. Morgan, ex-scholar, T. C. D.," and that defendant, &c., did print divers parts of plaintiff's said book, &c., in a volume, entitled "Morgan's Aldine Virgil: Virgil, the Æneid," books one to twelve, complete: with English notes, explanatory and critical, also a metrical analysis of the Æneid, by Roscoe Morgan, N. B., ex-scholar, Trinity College, Dublin, &c.," was held good.—Id.

that the time given by the statute to the author has expired. This may be proved either by the person who printed the first edition of the plaintiff's work, or by others who know when it first came out; the time of the printing of the defendant's work or book will appear from the title-page."[1] The author might have added a third case, viz.: Defendant may show that the work claiming to be infringed is in itself an infringement of a previous work, that is, that it is not original; or, 4. That it is not entitled to its copyright, by reason of being not innocent in any of the forms in which we have seen that the reverse of innocence exists, viz., that it is libelous, contemptuous of a court, seditious, obscene, blasphemous, &c., &c.

483. In determining what is or is not a piracy, the court must instruct the jury as to the law, and the question as to the fact will remain with them. The nearest approach to a simple rule regulating cases of piracy would be that not so much of the quantity as of the value of the selected materials is to be regarded. As was significantly said on another occasion—"Non numerantur, ponderantur."[2] It may make a difference, too, as we have seen, as to how the transfer of the matter not original is effected,[3] as to whether he who transfers or he who uses after the transfer, will be held liable for piracy.

Even if the public recitation of a book, in which copyright exists, is not made from memory, but takes the form of a public reading, from the

[1] Espinasse on Evidence, ch. xiii. p. 2787.

[2] Per Story, J. (1 St. Rep. 20); *vid.* also Story's Exccutors v. Holcome, 4 McLean 310; Bramwell v. Holcombe, 3 My. & Cr. 738.

[3] Coleman v. Wathen, 5 T. R. 245; Murray v. Elliston, 5 B. & Ald. 657; *vid.* however, Palmer v. DeWitt, 7 Am. 480; 47 N. Y. 532; Stowe v. Thomas, 2 Amer. Law Reg. 231

work itself, of the whole or portions of it, this would not amount to an infringement of the author's copyright.'

484. In the pursuit of one's remedies for piracy, evidence of real authorship or proprietorship is first to be introduced. A plea of not guilty merely, in an action for infringement of copyright, only denies the alleged infringement, whether it be selling, printing, &c., or whatever be the wrongful act; it does not deny the copyright of the plaintiff. This must be done by a special plea.[2]

"The copyright act," says Wightman, J., "throws on a defendant, if he seek to defend the infringement on the ground that the plaintiff is not the proprietor, the onus of showing who is, in order that the plaintiff may not be taken by surprise at the trial."[3]

In the subsequent case of Boosey v. Purday,[4] the judges of the court of exchequer took a less strict view of the requirements of the section, and pointed out the inconveniences which would follow from a rigid adherence to its words. Alderson, B., addressing the counsel, who moved for a rule to amend the notice of objections given in that case, said: "Suppose a man were to enter his name at Stationers' Hall as proprietor of the *Εικὼν βασιλική*; according to your argument he would acquire the property in it, for it would puzzle excessively to find out the author of that book; or, as proprietor of the works of Homer —that would raise the question, Was there such a man?" Rolfe, B., observed, "The court must endeavor

[1] Tinsley v. Lacy, 1 H. & M. 747; 11 W. R. 877; 32 L. J. 535, ch. And see *ante*, this vol, p. 347.

[2] Shortt, p. 220; Boosey v. Davidson, 4 Dow. & L. 147; see also Leader v. Purday, 7 C. B. 4.

[3] Boosey v. Davidson, supra.

[4] 10 Jur. 1038.

to get at some construction of the statute which shall not force a man to say who first published at one place or another. It may have been that the defendant saw the work at both places." Alderson, B., added, "The defendant in his objections ought to show a definite publication by somebody. That construction will remove all the absurdity which otherwise would follow from a literal interpretation of the statute."

485. Where, in an action for piracy at the suit of two plaintiffs, it appeared that the defendant had published the work in question, pursuant to the conditions of a cognovit, given by him to one of the plaintiffs and one P., in a former action, for not performing an agreement to write the same work, it was held to be a sufficient defense to the action for infringement of the plaintiff's copyright.[1]

According to the decision of the Irish court of Queen's Bench, in Rooney v. Kelly,[2] it is not necessary, in an action for the infringement of copyright in a book, to aver that the defendant published the plaintiff's book; and a declaration charging the defendant with publishing "divers parts of the book of the plaintiff," states a good prima facie cause of action, though it is open to the defendant to displace such prima facie charge, by showing that either from the quantity and quality of such portions, or from the nature and character of defendant's book, the copying and printing, &c., of those portions were justifiable, and should not properly be considered as an infringement of the copyright.[3]

It was further held, on demurrer, in this case, that the charge of defendant's book "containing printed therein, various parts" of plaintiff's book, was not

[1] Sweet v. Archbold, 10 Bing. 133; Shortt, p. 221.
[2] 14 Ir. Com., 8 Rep. 158. [3] Id.

answered by a plea, in confession and avoidance, to the effect that the books of the plaintiff and defendant were composed by the same author from common sources of information, and that no part of the defendant's book was copied or colorably altered from that of the plaintiff.

486. Where an action is brought for infringement of copyright in a book, the court will allow interrogatories as to the number of copies sold for a limited period before and after the date of the infringement, to be administered to the plaintiff, for the purpose of ascertaining the amount of damage sustained, and enabling the defendant to pay into court a sum sufficient to meet it.[1]

487. Where a bookseller published a catalogue of "old and curious books" in his possession, as an advertisement, and a rival bookseller copied it in great part as an advertisement of a similar stock of his own, it was held to be an infringement of the copyright in the original catalogue, although the second catalogue was not offered for sale, and was used merely to promote the sale of the books mentioned,[2] whether a license from an author to a publisher to print and sell his work, or a transfer to him of his literary property is a contract for a sale of goods within the statute of frauds, does not appear to have been expressly held, though a contract by a printer to print and find the paper for a certain number of copies of a work has been held in England not to be.[3]

[1] Wright v. Goodlake, 13 L. T. N. S. 120; Shortt, p. 221.

[2] Boosey v. Davidson, 4 Dow. & L. 155.

[3] Hotten v. Arthur, 1 H. & M. 603; 9 L. T. N. S. 199; 32 L. J. 771, Ch.; 11 W. R. 934.

[4] Clay v. Yates, 1 H. & N. 73. In an action for infringement of

488. The production of his manuscript is sometimes very important on the part of the person charged with piracy.[1]

Where the proprietor of copyright notes on the Bible sold the stereotype plates of a quarto edition containing these notes, together with the right of printing from them, and the plates were afterwards sold to a third party, at a public sale, at which a specimen leaf of the work was exhibited, the Scotch court

the copyright of certain engravings, the locus of the alleged acts of infringement was not specified. The court of session considered this a grave defect in the averments, but allowed an amendment on payment of expenses since the closing of the record (Groves v. Logan, 7 Scotch Sess. Cas. 204). "In the second article, as it now stands," said the lord president, "there is no averment, as to where the offense was committed. The defender is designed in the summons as being a printseller at 27 Sanchie-hall-street, Glasgow; but we do not know even whether that is his shop or his residence. Be it the one or the other, however, it is not alleged that the defender sold a copy of the print there, nor that he did it in Glasgow, nor even that he did it within the United Kingdom, though that is necessary to bring the case under the statutes. That is a very grave imperfection; but I think it is just one of those which it is the policy of the recent statute to allow to be amended on certain conditions. And therefore I think that we should allow the record to be amended in this respect on payment of expenses since the closing of the record."

In the same same case the lord ordinary thought it too vague and uncertain for the pursuer to rest his case on an alleged violation of various copyright acts, "or one or other of them;" but the inner house was of a different opinion. "These statutes," said the lord president, "are all to be read together, I apprehend, in considering the nature and privileges of printers and publishers of engravings. It may very well be that in this case the provisions of one of the statutes may be more applicable than those of another; but it is not necessary for the pursuer to tie himself down to one particular statute or clause of a statute."—Shortt, p. 225.

[1] Murray v. Bogue, 1 Drew. 361; Pike v Nicholas, 20 L. T. N. S. 908; 38 L. J. 529, Ch.

of session granted an interdict to restrain the purchaser from publishing a folio Bible, printed from the plates, with the addition of a commentary at the foot of each page, on the following grounds: that what was sold were the plates of a particular Bible, of which a specimen leaf had been shown, and had been referred to in the catalogue; that the nature of stereotype plates was to multiply copies of the same work until they were worn out, whereas, if commentaries were added to each page, the work would be a different one, and if sold as cheap as the original quarto, the value of the latter would be diminished, not by the multiplication of the same work, but by a production different from the plates, a thing not intended when the sale was made.[1]

489. An advertisement of a work, which merely disparages a rival work, will not be restrained by injunction, where it is not such as would induce the public to take the one book for the other.[2] An allegation that matter contained in a particular edition of a work is spurious and of no value, is, if true, no subject for an injunction, although it might be the subject of an action, as being a libel on or disparagement of the edition.[3] To obtain a patent, it is necessary to show both novelty and utility, but nothing of the sort is required in the case of a copyright.

490. As to remedies in equity, it is not necessary for a person whose copyright has been infringed, and seeks an injunction, to specify, either in his bill or his affidavit, the parts of the defendant's work which he thinks have been pirated from his work. It is sufficient to allege generally that

[1] Fullarton v. McPhun, 13 Scotch Sess. Cas. 2nd Ser. 219
[2] Seeley v. Fisher, 11 Sim. 581.
[3] Id. 583.

the defendant's work contains certain passages pirated from the plaintiff's work, and to verify the rival work by affidavit.[1] "The great remedial process," says Shortt,[2] "which was for a long time peculiar to equity, is the writ of injunction. This may be described to be a judicial process, whereby a party is required to do a particular thing, or to refrain from doing a particular thing, according to the exigency of the writ. Its object is generally preventive and protective rather than restorative; it seeks to prevent a meditated wrong more often than to redress an injury already done.[3] It is a remedy of a very flexible nature; and it may be total or partial, qualified or unconditional, as well as temporary or perpetual.[4]

There are two sorts of injunctions—(1) provisional, *i. e.*, such as are to continue only until a certain specified period, such as the coming in of the defendant's answer, or the hearing of the cause; and (2) perpetual, *i. e.*, such as form part of the decree made at the hearing upon the merits, whereby the defendant is perpetually enjoined from the assertion of a right, or perpetually restrained from the commission of an act which would be contrary to equity and good conscience.[5] Lord Eldon[6] thus states the grounds on which equity interferes by injunction in the case of infringements of copyright: "The jurisdiction, upon subjects of this nature, is assumed merely for the purpose of making effectual the legal right, which cannot be made effectual by any action for damages; as, if the work is pirated, it is impossible to lay before a jury the

[1] Sweet v. Maugham, 11 Sim. 51.
[2] P. 231.
[3] Story, Eq. Jur. §§ 861–862.
[4] Id. § 886
[5] 2 Daniel's Chanc. Pr. 1462.
[6] 6 Wilkins v. Aikin, 17 Ves. 424.

whole evidence as to all the publications which go out in the world to the plaintiff's prejudice. A court of equity, therefore, acts with a view to make the legal right effectual by preventing the publication altogether; and, accordingly, in the exercise of this jurisdiction, where a fair doubt appears, as to the plaintiff's legal right, the court always directs it to be tried, making some provision in the interim, the best that can be, for the benefit of both parties." Elsewhere the same learned judge says, "The principle of granting the injunction in those cases is, that damages do not give adequate relief; and that the sale of copies by the defendant is in each instance not only taking away the profit upon the individual book, which the plaintiff probably would have sold, but may injure him to an incalculable extent, which no inquiry for the purpose of damages can ascertain."[1]

To obtain an injunction, the course of procedure is for the proprietor to file a bill, stating his title to the original work, the nature of the piracy, and the consequent injury. The particular facts are next to be verified by affidavit, and a special motion may then be made to restrain the publication. The whole question may thus be brought before the court; and an injunction will either be granted forthwith, or an issue directed to try the question before a jury.[2]

An injunction will not be granted where the title is in doubt. Thus, where the plaintiff claimed an injunction as the purchaser, from the composer, of the copyright of certain songs, and the defendant produced affidavits from the composer and one Elliston, from which it appeared that Elliston had a copy-

[1] Hogg v. Kirby, 8 Ves. 225.
[2] Maugham, 169.

right, but whether qualified or absolute was doubtful, Sir John Leach refused to grant an injunction.[1]

In a case decided under the copyright act of Anne, an injunction obtained by the plaintiff to restrain the unauthorized publication of a book in which he claimed copyright, was dissolved by Lord Chancellor King, on the ground that the plaintiff had not set out a good title in his bill or affidavit, as it was there stated only that he had purchased or legally acquired the copy, which was not sufficient without saying that he purchased or acquired it "of the author."[2]

A provisional injunction, if granted, would sometimes be productive of more mischief than that which it was intended to remedy, *e.g.*, if the book whose publication was sought to be restained were of such a nature that its chief value depended upon its appear-

[1] Lowndes v. Duncombe, 2 Cowp. 216.

[2] Gilliver v. Snaggs, 2 Eq. Cas. Ab. 522; 4 Viner's Abridg. 279.—Courts of equity used formerly to direct an issue to be tried by a jury in a court of common law in order to determine the plaintiff's title to copyright. But sect. 1 of 25 & 26 Vict. c. 42, now directs that every question of law or fact, cognizable in a court of common law, on the determination of which the title to the relief or remedy sought in a court of equity depends, shall be determined by or before that court, unless (sect. 2) where questions of fact may be more conveniently determined at the assizes or in a court of common law in Westminster or Middlesex, in which cases issues of fact may be directed to be tried as before. Re Hooper, 11 W. R. 130.

Courts of equity are now also empowered to award damages to the party injured, either in addition to or in substitution for an injunction (21 & 22 Vict. c. 27, 32; Tinsley v. Lacy, 11 W. R. 887). The measure of damages in a case of piracy was thus stated by James, V. C., in a recent case: "That the defendant is to account for every copy of his book sold as if it had been a copy of the plaintiff's, and pay the plaintiff the profit which he would have received from so many additional copies." Pike v. Nicholas, 20 L. T. N. S. 909; 38 L. J. 529, Ch. Shortt.

ing immediately. "There is a great difference," said Lord Eldon,[1] "between works of a permanent and of a transitory nature. The case upon the former may be brought to a hearing. But the effect is very different upon a work of this kind [an East Indian calendar], perishable; particularly in this instance; consisting of the names of persons continually fluctuating: a work that would be good for nothing in another year."

The difficulty in such cases is forcibly stated and the mode of avoiding it suggested by Lord Cottenham, C., in dealing with the question of an almanac, alleged to be pirated from another.[2] "The greatest of all objections," said the lord chancellor, "is that the court runs the risk of doing the greatest injustice in case its opinion upon the legal right should turn out to be erroneous. Here is a publication which, if not issued this month [December], will lose a great part of its sale for the ensuing year. If you restrain the party from selling immediately, you probably make it impossible for him to sell at all. You take property out of his pocket and give it to nobody. In such a case, if the plaintiff is right, the court has some means, at least, of indemnifying him, by making the defendant keep an account; whereas, if the defendant is right and he be restrained, it is utterly impossible to give him compensation for the loss he will have sustained. And the effect of the order in that event will be to commit a great and irremediable injury. Unless, therefore, the court is quite clear as to what are the legal rights of the parties, it is much the safest course to abstain from exercising its jurisdiction till the legal right has been determined."

Where the work is of such a nature as those just

[1] Mathewson v. Stockdale, 12 Ves. 275.
[2] Spottiswoode v. Clarke, 2 Phil. 156.

referred to, the court of chancery orders the defendant to keep an account of all copies sold, until the title of the plaintiff is ascertained, when the proceeds must be handed over to him.

491. There appears to be no provision in the copyright act concerning the copyright of works posthumously published. The French law expressly provides: "Les propriétaires par succession, ou à autres titres, d'un ouvrage posthume ont les mêmes droits que l'auteur; et les dispositions sur la propriété exclusive des auteurs et sur la durée leur sont applicables; toutefois à la charge d'imprimer séparément les œuvres posthumes et sans les joindre à une nouvelle édition des ouvrages déjà publiés et devenus propriété publique."[1] And the rule in the United States would probably be similar—namely, that the legal representatives who would ordinarily administer the other personal property of the decedent, would have the right to the literary property as well, and might publish the work.

492. Although an equitable title to the work pirated, is sufficient to entitle to the assistance of a court of equity,[2] the person who has the legal title should also be made a party to the suit.[3] But where there are distinct infringements of copyright by several persons, they cannot be joined as defendants in the same suit. Thus, where different booksellers take copies of a spurious edition of a work for sale, there is no privity

[1] Dècret Impériale du Fevrier, 1861, art. 89.

[2] See Mawman v. Tegg, 2 Russ. 385; Pierpoint v. Fowle, 2 Wood & Min. 35; Little v. Gould, 2 Blatch. 181; per Abinger, C.B., in Chappell v. Purday, 4 Y. & C. 493; per Shadwell, V.C., in Bohn v. Bogue, 10 Jur. 420; and Sweet v. Cater, 11 Sim. 581.

[3] Colburn v. Duncombe, 9 Sim. 151. See Sweet v. Shaw, 3 Jur. 217; and Sweet v. Cater, 11 Sim. 581.

between them, and they must be proceeded against by separate bills.[1] Where a bill for an injunction prayed that the defendant might be restrained from publishing, selling, or otherwise disposing of a number of a periodical containing a piratical abridgment of a work of fiction, and from copying or imitating in whole or in part that work, the court granted the injunction as prayed, except as to the words "or imitating," for which there appeared to be no precedent.[2]

"The largest words," said the Vice-Chancellor, "that the registrar has furnished me with, are in a case of Faden v. Stockdale,[3] which are very large indeed." The words of the injunction in that case were: "To restrain the defendant, his servants, agents, and workmen from printing, upon a reduced scale or otherwise, and from publishing or selling, any copy or copies of the map of the Island of St. Domingo, compiled, drawn, or engraved by or for the use of the plaintiff, or any other of the like nature or kind, or upon any such or the like plan, until answer or further order."

"It has been observed that nothing, in general, can call forth a court of equity into activity but conscience, good faith, and personal diligence, and one of the leading maxims that guides its interference is—vigilantibus non dormientibus æquitas subvenit.[4] If one slumbers over his rights, instead of asserting them in proper time, or if one, by his conduct, acquiesces in or encourages the infringement of a right which he afterwards seeks to enforce, equity will not grant him its aid, but leave him to his remedy at law."

493. A leading case on this subject is Saunders **v.**

[1] Dilly v. Doig, 2 Ves. 486.
[2] Dickens v. Lee, 8 Jur. 185.
[3] Reg. Lib. A. 1796, fol. 32*.
[4] See 2 Sp. Eq. Jur. 60, 61; Story Eq. Jur. §. 959, **a.**

Smith,[1] in which, without pronouncing any judgment on the legal right of the defendant to publish, with notes annexed, certain legal cases previously published by the plaintiff, the Lord Chancellor (Cottenham) refused to grant an injunction to stay the publication by the defendant of a second volume of his "Leading Cases," on account of the line of conduct pursued by the plaintiffs. Smith had published his first volume of "Leading Cases" in 1837, containing some cases taken from the plaintiff's books, and he stated, in the preface, his intention to publish a second volume, which would carry the work down to the time he wrote. Mr. Smith proceeded with his second volume, and a communication on the subject of taking a share in it was made by his publisher (Mr. Maxwell) to the plaintiffs, and the plaintiffs made no remonstrance until the first part of the second volume was published, when they applied for an injunction to restrain its publication. Lord Cottenham, in refusing the injunction, said: "I do not give any opinion upon the legal question. I am only to decide whether the plaintiffs are entitled, under the circumstances, to the interposition of the court to protect their legal right, when that legal right has not yet been established. But I assume the existence of the legal right, and I say that whatever legal right the plaintiffs may have, the circumstances are such as to make it the duty of a court of equity to withhold its hand, and to abstain from exercising its equitable jurisdiction, at all events until the plaintiffs shall come here with the legal title established. In doing this, I am only doing what Lord Eldon did in Rundell v. Murray, and what is very generally done upon questions of patent right. The court always exercises its discretion whether it

[1] 3 My. & Cr. 711.

shall interfere by injunction before the establishment of the legal right."

494. The circumstances of the case of Rundell v. Murray,[1] referred to, were peculiar. The authoress gave her book to the defendant to publish, at his expense, on condition of giving her a few copies; and she stated in the book that it was given to the public in the idea that it might be useful, and as "she will receive from it no emolument, so she trusts it will escape without censure." The book proved a success, and the publisher sent her £150, which she acknowledged by letter to be a free gift. After the period of fourteen years had elapsed from the first publication, the authoress sought to restrain the further publication of the work by the defendant, but Lord Eldon held, that she was not entitled to do so. His lordship said: "There has often been great difficulty about granting injunctions where the plaintiff has previously, by acquiescing, permitted many others to publish the work; where ten have been allowed to publish, the court will not restrain the eleventh. A court of equity frequently refuses an injunction where it acknowledges a right, when the conduct of the party complaining has led to the state of things that occasions the application; and therefore, without saying with whom the right is, whether it is in this lady, or whether it is concurrently in both, I think it is a case in which strict law only ought to govern."

In Platt v. Button,[2] Lord Eldon said, that where permission was given to some persons to publish, and then others copied, it was necessary for the proprietor

[1] 1 Jac. 311; see also Southey v. Sherwood, 2 Mer. 438; Heine v. Appleton, 4 Blatchf. 125.

[2] Coop. Ch. Cas. 304.

to bring his action at law before he could come to equity for an injunction.

If any delay occurs in the assertion of the title to a copyright infringed, the delay must be accounted for to the satisfaction of the court, otherwise no assistance will be given.[1]

The right to an account in equity appears to be entirely ancillary to the right to an injunction.[2]

"The court," says Sir John Leach, M. R.,[3] "has no jurisdiction to give to a plaintiff a remedy for an alleged piracy, unless he can make out that he is entitled to the equitable interposition of this court by injunction; and in such case, the court will also give him an account, that his remedy here may be complete. If this court do not interfere by injunction, then his remedy, as in the case of any other injury to his property, must be at law."

Neither has a court of equity any jurisdiction with reference to a mere question of damages, unless the primary right to an injunction exists.[4]

495. Commissions on the sale of a pirated work, received by a bookseller from the publisher of it, are profits which the bookseller must account for to the

[1] See Bailey v. Taylor, 1 R. & M. 76; S. C., Tamlyn, 295; Mawman v. Tegg, 2 Russ. 385, 393; Lewis v. Chapman, 3 Beav. 135; Lewis v. Fullarton, 2 Id. 6; Buxton v. James, 5 DeG. & Sm. 80, 84; per Wood, V. C., in Tinsley v. Lacy, 11 W. R. 877; 32 L. J. 539, Ch.; and the analogous cases as to patents, Bridson v. Benecke, 12 Beav. 3; per Lord Brougham, C., in Crossley v. Derby Gas Light Company, 4 L. J. 26, Ch., per Wood, V. C., in Smith v. London & South-western Railway Co., 1 Kay, 416, 417; Hogg v. Scott, L. R. 18 Eq. 444.

[2] 1 Kay, 417.

[3] Bailey v. Taylor, 1 R. & M. 75.

[4] 1 Kay, 415; Stevens v. Cady, 2 Curt. 200; and see the case of Monk v. Harper, 3 Edw. Ch. 114.

proprietor of the copyright, where a decree for an account has been made.[1]

Curtis, J., in such a case, after referring to the law relating to profits made by one member of a partnership, said: "The jurisdiction in cases of copyright rests upon a similar principle. If the proprietor will waive his action for damages, he may have an account of profits, upon the ground that the defendant has, by dealing with his property, made gains which equitably belong to the complainant. And I perceive no sound reason for restricting those gains to the difference between the cost and the sale price of the map or book, or limiting the right to an account to those persons who have sold the work solely on their own account. He who sells on commission does, in truth, sell on his own account, so far as he is entitled to a percentage on the amount of the sales. What he so receives is the gross profit coming to him from the proceeds of the sales, and what he so receives diminishes the net profit of the one who employs him to sell. That part of the profits of the sales being in the hands of the commission merchant, the consignor is not accountable for them. But why should not the commission merchant, who has them, account for them? He was liable to an action for damages for selling. That right is waived. I think he should pay over to the proprietor, in lieu of the damages, the gain he has made from the sales. It does not seem to me that the term 'profits' necessarily, or when construed in reference to the subject-matter, properly has so restricted a meaning as to exclude commissions received from the proceeds of sales of the property of the complainant."[2]

[1] Stevens v. Gladding, 2 Curt. 608.
[2] Id.

496. That the value of the property infringed is small does not disentitle the owner to an injunction;[1] though it may be of such trifling value that the court will not encourage litigation by interfering to protect it by injunction. Where some pages of an article on a subject under public discussion at the time, were extracted from a monthly periodical and commented on by a weekly newspaper, Lord Cottenham, in dissolving an injunction which had been obtained, said: "It is impossible to say there is any value in the nature of the property in what is here inserted; the question is so minute as a question of property or value—how far, in point of value, it interferes with the sale of the 'Monthly Chronicle.' The injunction is not to depend altogether on a question of account; but to what value the question in point of utility is to be carried. If no other danger were to arise from granting this application than what would be consequent on encouraging the litigation of such minute inquiries, it would be a sufficient ground to refuse it, that the court should not be so occupied to the exclusion of other matters which press upon it. The injunction is dissolved, each party paying their own costs."[2]

497. Where, however, the work, of which the copyright is infringed, is of value, the court will grant an injunction without proof of actual damage. When once the court has found that there is "injuria," the proprietor of the copyright will be allowed to judge of the "damnum."[3]

[1] Buxton v. James, 5 DeG. & Sm. 83.

[2] Bell v. Whitehead, 3 Jur. 68; see also per Lord Eldon in Matthewson v. Stockdale, 12 Ves. 275; and Cox v. Land and Water Journal Company, L. Rep. 9 Eq. 324; 21 L. T. N. S. 548; 39 L. J. 152, Ch.; 18 W. R. 207.

[3] Per Wood, V.C., in Tinsley v. Lacy, 32 L. J., 539, Ch.; 11 W. R. 876.

498. If copies pirated during the continuance of a term of copyright, are not published till after the expiration of the term, equity will, it seems, as in the similar case of patents, restrain such publication by injunction.[1]

Where part of a book only is pirated from another work, the extent to which an injunction goes will depend on the particular circumstances of the case. Lord Bathurst seems to have been of opinion that an injunction could not be granted against the whole of such a work, unless the part pirated was such that granting an injunction against that part necessarily destroyed the whole.[2]

Lord Eldon thought it was the business of the defendant, where a considerable portion of his work was shown to have been taken from that of the plaintiff, to separate and point out such pirated part.[3] The presiding judge has frequently made the comparison for himself.[4] In some cases a reference has been made to the master to report to what extent one book is pirated from another;[5] and in one case Lord Hardwicke held the best course was to get a report from two persons of learning in the law, chosen by the litigants themselves.[6]

[1] Compare the remarks of Wood, V.C., in Smith v. London & South-western Railway Co., Kay, 415, with the arguments in Sheriff v. Coates, 1 R. & M. 165, 166.

[2] Per Wood, V.C., in Jarrold v. Houlston, 3 K. & J. 719.

[3] Mawman v. Tegg, 2 Russ. 395.

[4] See the cases of Matthewson v. Stockdale, 12 Ves. 277; Whittingham v. Wooler, 2 Swanst. 460; Lewis v. Fullarton, 2 Beav. 8; Murray v. Bogue, 1 Drew, 368; Spiers v. Brown, 6 W. R. 352; Jarrold v. Houlston, 3 K. & J. 708; Pike v. Nicholas, 20 L. T. N. S. 906; 38 L. J. 529, Ch.; L. Rep. 5 Ch.App. 251.

[5] Carnan v. Bowles, 2 Bro. C. C. 85; Nicol v. Stockdale, 12 Ves. 277; Story's Executors v. Derby, 4 McLean, 160, 161.

[6] Gyles v. Wilcox, 2 Atk. 143

499. The effect of an injunction against the whole of a book is sometimes produced by an order against the publication of any copy or copies containing the portions pirated from another work, or any passages taken or colorably altered from such work.[1]

The extent to which the injunction ought to go, must, in each case, depend on the particular circumstances of that case.[2]

500. Equity suits for the infringement of a copyright are usually referred to a master before the final hearing, to ascertain whether the charge is proved, and, if so, for a final report as to the nature and extent of the infringement; and in such cases the general rule is, that the complainant, if he prevails in the suit, is entitled, if at all, to an injunction at the time the decretal order is entered, to restrain the respondent from any further violation of his rights, as the whole case is then before the court. Even when the case is heard before any such reference and report, if the charges of infringement are few and of a character that the extent of the infringement can be conveniently determined by the court, without sending the case to a master, the court, if the case be one where an injunction is the proper remedy, will order it at the same time that the decision is announced upon the merits. But where the cause comes to a final hearing without any such report, the court, if the charges of infringement are numerous, and of a character to require extended examination before the extent of the infringement can be ascertained, will ordinarily send the case to a master for further examination and report in respect to all matters not previously adjudged by the

[1] See Lewis v. Fullarton, 2 Beav. 6; Jarrold v. Houlston, 3 K. & J. 708.

[2] Per Lord Eldon, in Mawman v. Tegg, 2 Russ. 393.

court; and the general rule in such cases is, that the injunction will not be granted until the nature and extent of the infringement are fully ascertained and determined, as its effects and operation might work great injustice.[1]

The fourth section of the English act of 5 and 6 Victoria, c. 45, which made the copyright secure to an author or his representatives, in any case for at least forty-two years, enacted that all copyrights existing at the time of its passage, which had been acquired by any proprietor thereof for any other consideration than natural love and affection, should be admitted to the benefits of the act, but that in all other cases a new registry was necessary. And it has been recently held that no injunction against an alleged infringement of a copyright could issue to the executor of a survivor of seven compilers of "a collection of hymns for the use of the people called Methodists," which was published by and for the Wesleyan Society, a charity (such collection having been compiled by the seven, under the direction of trustees of that charity, in 1831, and before the passage of the above Act).[2]

[1] Lawrence v. Dana, Official Gazette of U. S. Patent Office, vol. vii., p. 81.

[2] Marzials v. Gibbons, L. R. 9 Ch. App. 518.

The two Italian chambers of parliament have passed a new artistic and literary law of proprietary rights. Exclusive right of publication and of representation is secured, and no person can execute or represent any work without the author's permission or that of his representatives. The duration of the right is eighty years from the day of execution or of publication; declaration and deposit of the works, necessary to guarantee rights, to take place within three months from performance or publication; but may be delayed to a later period, provided no claim be made for representations abroad or for edition already printed after the three months have expired. The "Royal Gazette" will publish quarterly the declarations of rights; disputes arising out of the application of the law to be settled by the law courts.

APPENDIX A.

THE LAW OF COPYRIGHT IN THE UNITED STATES.

Being the act approved of July 8, 1870, as revised in the revision of the statutes of the United States, in force December 1, 1873, together with the act approved June 18, 1874.

Section 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.

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.

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.

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.

Sec. 4952. Any citizen of the United States, or resident therein, who shall be the author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, 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 translate their own works.

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.

Sec. 4954. The author, inventor, or designer, if he still be 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.

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.

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 model or design for a work of the fine arts, for which he 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 otherwise, 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 de-

scription) 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.

Sec. 4958. The librarian of congress shall receive from the persons to whom the services designated are rendered, the following fees: 1. For recording the title or description of any copyright book or other article, fifty cents. 2. For every copy under seal of such record actually given to the person claiming the copyright, or his assigns, fifty cents. 3. For recording and certifying any instrument of writing for the assignment of a copyright, one dollar. 4. For every copy of an assignment, one dollar. 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 hereinbefore required, and a copy of every subsequent edition wherein any substantial changes shall be made.

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 4956 and 4959, 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.

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

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 or completed as a work of the fine arts, by inscribing upon some visible portion thereof, or of the substance on which the same shall be mounted, the following words, viz.: "Entered according to act of congress, in the year ——, by A. B., in the office of the librarian of congress, at Washington;" or, at his option, the word "Copyright," together with the year the

copyright was entered, and the name of the party by whom it was taken out, thus: "Copyright, 18—, by A. B."

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.

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 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, photograph, or chromo, or of the description of any painting, drawing, statue, statutary, 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.

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.

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.

Sec. 4968. No action shall be maintained in any case of forfeiture or penalty under the copyright laws, unless the same is commenced within two years after the cause of action has arisen.

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.

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 violations 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.

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.

AMENDMENT OF JUNE 18, 1874.

An Act to amend the law relating to patents, trade-marks, and copyrights.

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 page immediately following, if it be a book; or if a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing, chromo, statute, statuary, or model or design intended to be perfected and completed as a work of the fine arts, by inscribing upon some visible portion thereof, or of the substance on which the same shall be mounted, the following words, viz.: "Entered according to act of congress, in the year——, by A. B., in the office of the librarian of congress, at Washington;" or at his option the word "copyright," together with the year the copyright was entered, and the name of the party by whom it was taken out; thus—"Copyright, 18—, by A. B."

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.

Sec. 3. That in the construction of this act, the word "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.

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

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

Approved, June 18, 1874.

APPENDIX B.

BRITISH STATUTES.

8 Geo. 2, cap. 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 times therein mentioned.

Whereas divers persons have, by their own genius, industry, pains, and expense, invented and engraved, or worked in mez-

zotinto, or chiaro oscuro, sets of historical and other prints, in hopes to have reaped the sole benefit of their labors; and whereas printsellers and other persons have of late, without the consent of the inventors, designers, and proprietors of such prints, frequently taken the liberty of copying, engraving, and publishing, or causing to be copied, engraved and published, base copies of such works, designs, and prints, to the very great prejudice and detriment of the inventors, designers, and proprietors thereof: for remedy thereof, and for preventing such practices for the future, may it please your majesty that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the twenty-fourth day of June, which shall be in the year of our Lord one thousand seven hundred and thirty-five, every person who shall invent and design, engrave, etch, or work in mezzotinto or chiaro oscuro, or from his own works and invention shall cause to be designed and engraved, etched, or worked, in mezzotinto or chiaro oscuro, any historical or other print or prints, shall have the sole right and liberty of printing and reprinting the same for the term of fourteen years, to commence from the day of the first publishing thereof, which shall be truly engraved with the name of the proprietor on each plate, and printed on every such print or prints; and that if any printseller or other person whatsoever, from and after the said twenty fourth day of June, one thousand seven hundred and thirty-five, within the 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 or 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.

2. 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.

3. 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 non-suited, or discontinue his, her, or their action or actions, then the defendant or defendants shall have and recover full costs, for the recovery whereof he shall have the same remedy as any other defendant or defendants in any other case hath or have by law.

4. 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 offense 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.

5. Clause relating to J. Pyne.

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

3 Will. 4, cap. 15.—An act to amend the laws relating to dramatic literary property.

[10th June, 1833.]

Whereas by an act passed in the fifty-fourth year of the reign of his late majesty King George the Third, entituled "An act to amend the several acts for the encouragement of learning, by securing the copies and copyright of printed books to the authors of such books, or their assigns," it was

amongst other things provided and enacted, that from and after the passing of the said act the author of any book or books composed, and not printed or published, or which should thereafter be composed and printed and published, and his assignee or assigns, should have the sole liberty of printing and reprinting such book or books for the full term of twenty-eight years, to commence from the day of first publishing the same, and also if the author should be living at the end of that period, for the residue of his natural life; and whereas it is expedient to extend the provisions of the said act: be it therefore enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act the author of any tragedy, comedy, play, opera, farce, or any other dramatic piece or entertainment, composed, and not printed and published by the author thereof or his assignee, or which hereafter shall be composed, and not printed or published by the author thereof or his assignee, or the assignee of such author, shall have as his own property the sole liberty of representing, or causing to be represented, at any place or places of dramatic entertainment whatsoever, in any part of the United Kingdom of Great Britain and Ireland, in the Isles of Man, Jersey, and Guernsey, or in any part of the British dominions, any such production as aforesaid, not printed and published by the author thereof or his assignee, and shall be deemed and taken to be the 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.

2. And be it further enacted, That if any person shall, during the continuance of such sole liberty as aforesaid, contrary to the intent of this act, or right of the author or his assignee, represent, or cause to be represented, without the consent in writing of the author or other proprietor first had and obtained, at any place of dramatic entertainment within the limits aforesaid, any such production as aforesaid, or any part thereof, every such offender shall be liable for each and every such representation to the payment of an amount not less than forty shillings, or to the full amount of the benefit or advantage arising from such representation, or the injury or loss sustained by the plaintiff therefrom, whichever shall be the greater damages, to the author or other proprietor of such production so represented contrary to the true intent and meaning of this act, to be recovered, together with double costs of suit, by such author or other proprietors, in any court having jurisdiction in such cases in that part of the said United Kingdom or of the British dominions in which the offence shall be committed; and in every such proceeding where the sole liberty of such author or his assignee as aforesaid, shall be subject to such right or authority as aforesaid, it shall be sufficient for the plaintiff to state that he has such sole liberty, without stating the same to be subject to such right or authority, or otherwise mentioning the same.

3. 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.

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

5 & 6 Will. 4, cap. 65.—An act for preventing the publication of lectures without consent.

[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 the copy thereof, in order to deliver the same in any school, seminary, institution, or

other place, or for any other purpose, shall have the sole right and liberty of printing and publishing such lecture or lectures; and that if any person shall, by taking down the same in shorthand 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.

2. 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.

3. 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.

4. Provided always, That nothing in this act shall extend to prohibit any person from printing, copying, and publishing any lecture or lectures which have or shall have been printed and published with leave of the authors thereof, or their assignees, and whereof the time hath or shall have expired within which the sole right to print and publish the same is given by an act passed in the eighth year of the reign of Queen Anne, intituled "An act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies during the times therein mentioned," and by another 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.

5. Provided further, That nothing in this act shall extend to any lectures 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.

5 & 6 Vict. cap. 45.—An act to amend the law of copyright.

[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: Be it enacted by the queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from the passing of this act an act passed in the eighth year of the reign of Her Majesty Queen Anne, intituled "An act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies during the times therein mentioned;" and also an act passed in the forty-first year of the reign of His Majesty King George the Third, intituled "An act for the further encouragement of learning in the United Kingdom of Great Britain and Ireland, by securing the copies and copyright of printed books to the authors of such books, or their assigns, for the time therein mentioned;" and also an act passed in the fifty-fourth year of the reign of His Majesty King George the Third, intituled "An act to amend the several acts for the encouragement of learning, by securing the copies and copyright of printed books to the authors of such books, or their assigns," be and the same are hereby repealed, except so far as the continuance of either of them may be necessary for carrying on or giving effect to any proceedings at law or in equity pending at the time of passing this act, or for enforcing any cause of action or suit, or any right or contract, then subsisting.

2. 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 pub-

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

3. 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 time 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.

4. 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 hereinafter mentioned) shall be extended and endure for the full term provided by this act in cases of books thereafter published, and shall be the property of the person who at the time of passing of this act shall be the proprietor of such copyright: Provided always that in all cases in which such copyright shall belong in whole

or in part to a publisher or other person who shall have acquired it for other consideration than that of natural love and affection, such copyright shall not be extended by this act, but shall endure for the term which shall subsist therein at the time of passing of this act, and no longer, unless the author of such book, if he shall be living, or the personal representative of such author, if he shall be dead, and the proprietor of such copyright, shall, before the expiration of such term, consent and agree to accept the benefits of this act in respect of such book, and shall cause a minute of such consent in the form in that behalf given in the schedule to this act annexed to be entered in the book of registry hereinafter directed to be kept, in which case such copyright shall endure for the full term by this act provided in cases of books to be published after the passing of this act, and shall be the property of such person or persons as in such minute shall be expressed.

5. 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 license 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 license.

6. 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 colored in the same manner as the best copies of the same shall be published, and also of any second or subsequent edition which shall be so published with any additions or alterations, whether the same shall be in letter-press, or in the maps, prints or other engravings belonging thereto, and whether the first edition of such book shall have been published before or after the passing of this act, and also of any second or subsequent edition of every book of which the first or some preceding edition shall not have been delivered for the use of the British Museum, bound, sewed, or stitched together, and upon the best paper on which the same shall be printed, shall, within one calendar month after the day on which any such book shall first be sold, published, or offered for sale within the bills of mortality, or within three 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 be first 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.

7. 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 to 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.

8. 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.

9. 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.

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

11. And be it enacted, that a book of registry, wherein may be registered, as hereinafter enacted, the proprietorship in the copyright of books, and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licenses 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 prima facie proof of the proprietorship or assignment of copyright or license as therein expressed, but subject to be rebutted by other evidence, and in the case of dramatic or musical pieces shall be prima facie proof of the right of representation or performance, subject to be rebuted as aforesaid.

12. And be it enacted, that if any person shall willfully make or cause to be made any false entry in the registry book of the stationers' company, or shall willfully 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.

13. 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 registery 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.

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

15. 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 offense shall be committed: Provided always, that in Scotland such offender shall be liable to an action in the court of session in Scotland,

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

16. 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 defense 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 defense, any other book than one substantially corresponding in title, time, and place of publication with the title, time, and place specified in such notice.

17. 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 offense 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.

18. 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 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 com-

position 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.

19. And be it enacted, that the proprietor of the copyright in any enclyclopædia, 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 enclyclopædia, 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.

20. And whereas an act was passed in the third year of the reign of his late majesty, to amend the law relating to dramatic literary property, and it is expedient to extend the term of the sole liberty of representing dramatic pieces given by that act to the full time by this act provided for the continuance of copyright: And whereas it is expedient to extend to musical compositions the benefits of that act, and also of this act; be it therefore enacted, that the provisions of the said act of his late majesty, and of this act, shall apply to musical compositions, and that the sole liberty of representing or performing, or causing or permitting to be represented or performed, any dramatic piece or musical composition, shall endure and be the property of the author thereof, and his assigns, for the term in this act provided for the duration of copyright in books; and the provisions hereinbefore enacted in respect of the property of such copyright, and of registering the same, shall apply to the liberty of representing or performing any dramatic piece or musical composition, as if the same were herein expressly 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.

21. 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.

22. 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.

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

24. 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.

25. 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 movable estate.

26. 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 non-suited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath; and that all actions, suits, bills, indictments, or informations for any offense that shall be committed against this act shall be brought, sued, and commenced within twelve calendar months next after such offense 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 under which the authority of this act shall or may be brought, sued, or commenced for or in respect of any copies of books to be delivered for the use of the British Museum, or of any one of the four libraries hereinbefore mentioned.

27. 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.

28. 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.

29. 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.

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

SCHEDULE TO WHICH THE PRECEDING ACT REFERS.

No. 1.

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

We, the undersigned, *A.B.* of the author of a certain book, intituled *Y.Z* [*or* the personal representative of the author, *as the case may be*], and *C.D.* of do hereby certify, that we have consented and agreed to accept the

benefits of the act passed in the fifth year of the reign of Her Majesty Queen Victoria, cap. for the extension of the term of copyright therein provided by the said act, and hereby declare that such extended term of copyright therein is the property of the said *A.B* or *C.D.*

Dated this day of 18

(Signed) *A.B.*
C.D.

Witness

To the registering officer appointed by the stationers' company.

No. 2.

FORM OF REQUIRING ENTRY OF PROPRIETORSHIP.

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

TITLE OF BOOK.	NAME OF PUBLISHER, AND PLACE OF PUBLICATION.	NAME AND PLACE OF ABODE OF THE PROPRIETOR OF THE COPYRIGHT.	DATE OF FIRST PUBLICATION.
Y.Z.		A.B.	

Dated this day of 18

Witness, *C.D.* (Signed) *A.B.*

No. 3.

ORIGINAL ENTRY OF PROPRIETORSHIP OF COPYRIGHT OF A BOOK.

TIME OF MAKING THE ENTRY.	TITLE OF BOOK.	NAME OF THE PUBLISHER, AND PLACE OF PUBLICATION.	NAME AND PLACE OF ABODE OF THE PROPRIETOR OF THE COPYRIGHT.	DATE OF FIRST PUBLICATION.
	Y.Z.	A.B.	C.D.	

No. 4.

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

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

TITLE OF BOOK.	ASSIGNOR OF THE COPYRIGHT.	ASSIGNEE OF COPYRIGHT.
Y.Z.	A.B.	C.D.

Dated this day of 18

(Signed) *A.B.*

No. 5.

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

DATE OF ENTRY.	TITLE OF BOOK.	ASSIGNOR OF THE COPYRIGHT.	ASSIGNEE OF COPYRIGHT.
	[Set out the title of the book, and refer to the page of the registry book in which the original entry of the copyright thereof is made.]	A.B.	C.D.

25 & 26 Vict. cap. 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.

[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:

1. 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 the 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 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.

2. 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.

3. All copyright under this act shall be deemed personal or movable estate, and shall be assignable at law, and every assignment thereof, and every license 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.

4. 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.

5. 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 rec·ıtion 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.

6. 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, colorably imitate, or otherwise multiply for sale, hire, exhibition, or distribution, or cause or procure to be repeated, copied, colorably 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 offense 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.

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

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 colorable 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 offense may have been committed.

8. 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 hereinbefore and in any such act as aforesaid empowered to recover the same respectively, and hereinafter called the complainant or the complainer, as follows:

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 Scotland by action before the court of session in ordinary form, or by summary action before the sheriff of the county where the offense may be committed or the offender resides, who, upon proof of the offense or offenses

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 advocation, suspension, reduction, or otherwise.

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

10. 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.

11. 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, colorably imitate, or otherwise multiply, or cause or procure to be repeated, copied, colorably 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.

12. 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.

Other British statutes, now wholly or partially in force, are: 15 Geo. 3, cap. 53, an act for enabling the universities in England and Scotland, and the several colleges, to hold in perpetuity their copyright in books; 54 Geo. 3, cap. 56, an act to amend an act for encouraging the art of making new models and casts of busts [18th May, 1814]; 17 Geo. 3, cap. 57, an act for securing the property of prints to inventors and engravers; 6 & 7 Will. 4, cap. 59, an act to extend the protection of copyright in prints and engravings to Ireland [13th August, 1836]; 5 & 6 Vict. cap. 100, an act to consolidate and amend the laws relating to the copyright of designs [10th August, 1842]; 6 & 7 Vict. cap. 65, an act to amend the laws relating to the copyright of designs [22nd August, 43]; 7 Vict. cap. 12, an act to amend the law relating to international copyright [10th May, 1844]; 10 & 11 Vict. cap. 95, an act to amend the law relating to the protection in the colonies of works entitled to copyright in the United Kingdom [22nd July, 1847]; 13 & 14. Vict. cap. 104, an act to amend the acts relating to the copyright of designs [14th August, 1850]; 15 Vict. cap. 12, an act to carry into effect a convention with France on the subject of copyright [28th May, 1852]; 21 & 22 Vict. cap. 70, an act to amend the act relating to the copyright of designs [2nd August, 1858]; 24 & 25 Vict. cap. 73, an act to amend the law relating to the copyright of designs [6th August, 1861].

APPEN

LEGISLATION

DUREE

LOI
du 19–24 *juillet* 1793, *relative aux droits de propriété des auteurs, compositeurs de musique, peintres et dessinateurs.*

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ART. 1.

Les auteurs d'écrits en tous genres, les compositeurs de musique, les peintres et dessinateurs, qui feront graver des tableaux ou dessins, jouiront durant leur vie entière du droit exclusif de vendre, faire vendre, distribuer leurs ouvrages dans le territoire de la République et d'en céder la propriété en tout ou en partie.

ART. 2.

Leurs héritiers ou cessionnaires jouiront du même droit durant l'espace de dix ans après la mort des auteurs.

ART. 7.

Les héritiers de l'auteur d'un ouvrage de littérature ou de gravure ou de toute autre production de l'esprit ou du génie qui appartiennent aux beaux-arts, en auront la propriété exclusif pendant dix ans.

DECRET
du 5 *février* 1810, *contenant règlement sur l'imprimerie et la librairie.*

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ART. 39.

Le droit de propriété est garanti à l'auteur et à sa veuve pendant leur vie, si les conventions matrimoniales de celles-ci lui en donnent le droit, et à leurs enfants pendant 20 ans. (*Abrogé.*)

ART. 40.

Les auteurs, soit nationaux, soit étrangers, de tout ouvrage imprimé ou gravé, peuvent céder leur droit à un imprimeur ou libraire ou à toute autre personne, qui est alors substituée en leur lieu et place pour eux et leurs ayants-cause, comme il est dit à l'article précédent.

LOI
du 3 *aout* 1844, *relative au droit de propriété des veuves et des enfants des auteurs d'ouvrages dramatiques.*

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ARTICLE UNIQUE.

Les veuves et les enfants des auteurs dramatiques auront à l'avenir le droit d'en autoriser la représentation et d'en conférer la jouissance pendant 20 ans, conformément aux dispositions des art. 39 et 40 du décret impérial du 5 février 1810. (*Abrogé.*)

DIX C.

FRANCAISE.

DU DROIT

LOI

du 8–15 avril 1854 sur le droit de propriété garanti aux veuves et aux enfants des auteurs, des compositeurs et des artistes.

ARTICLE UNIQUE.

Les veuves des auteurs, des compositeurs et des artistes jouiront pendant toute leur vie des droits garantis par les lois des 13 janvier 1791 et 19 juillet 1793, le décret du 5 février 1810, la loi du 3 août 1844 et les autres lois ou décrets sur la matière.

La durée de la jouissance accordée aux enfants par ces mêmes lois et décrets est portée à 30 ans à partir soit du décès de l'auteur, compositeur ou artiste, soit de l'extinction des droits de la veuve. (*Abrogé.*)

LOI

du 14–19 juillet 1866, relatives aux droits des heritiers ou ayants-cause des auteurs.

ART. 1.

La durée des droits accordées par les lois antérieures aux héritiers, successeurs irréguliers, donataires ou légataires des auteurs, compositeurs ou artistes est portée à cinquante ans à partir du décès de l'auteur.

Pendant cette périod de cinquante ans le conjoint survivant, quel que soit le régime matrimonial, et indépendamment des droits qui peuvent resulter en faveur de ce conjoint du régime de la communauté, a la simple jouissance des droits dont l'auteur prédécédé n'a pas disposé par act entre vifs ou par testament.

Toutefois, si l'auteur laisse des héritiers à réserve, cette jouissance est réduite, au profit de ces héritiers, suivant les proportions et distinctions établies par les art. 913 et 915 du code Napoléon.

Cette jouissance n'a pas lieu lorsqu'il existe, au moment du décès, une séparation de corps prononcée contre ce conjoint ; elle cesse au cas où le conjoint contracte un nouveau mariage.

Les droits des héritiers à réserve et des autres héritiers ou successeurs, pendant cette période de cinquant ans, restent d'ailleurs réglés conformément aux prescriptions de code Napoléon.

Lorsque la succession est dévolue à l'Etat, le droit exclusif s'éteint, sans préjudice des droits des créanciers et de l'exécution des traités de cession qui ont pu être consentis par l'auteur ou par ses représentants.

ART. 2.

Toutes les dispositions des lois antérieures contraires à celles de la loi nouvelle sont et demeurent abrogées.

LEGISLATION

CONSTATATION DES

(*Suite de la loi de* 1793.)	LOI *du* 25 *prairial an III* (13 *juin* 1795) *interprétative de celle du* 19 *juillet* 1793 *qui assure aux auteurs et artistes la propriété de leurs ouvrages.*	DECRET *du* 5 *février* 1810, *contenant règlement sur l'imprimerie et la librairie.*
—	—	—
ART. 3. Les officers de paix seront tenus de faire confisquer, à la réquisition et au profit des auteurs, compositeurs, peintres ou dessinateurs et autres, de leurs héritiers ou cessionnaires, tous les exemplaires des éditions imprimées ou gravées sans la permission formelle et par écrit des auteurs. (*Modifié.*)	ART. 1. Les fonctions attribuées aux officiers de paix par l'art. 3 de la loi du 19 juillet 1793 seront à l'avenir exercées par les commissaires de police et par les juges de paix dans les lieux où il n'y a pas de commissaire de police.	ART. 45. Les délits et contraventions seront constatés par les inspecteurs de l'imprimerie et de la librairie les officiers de police, et en outre par les préposés aux douanes pour les livres venant de l'étranger.

FRANCAISE (suite).

CONTRAVENTIONS.

LOI *du 21 octobre 1814, relative à la liberté de la presse.*	ORDONNANCE *du 24 octobre 1814, relative à l'impression, au dépot et à la publication des ouvrages.*	ORDONNANCE *du 13 septembre 1829, qui supprime les quatre inspecteurs de la librairie.*
—	—	—
ART. 20. Les contraventions seront constatées par des inspecteurs de la librairie et des commissaires de police.	ART. 7. En exécution de l'art. 20, les commissaires de police rechercheront et constateront d'office toutes les contraventions, et ils seront tenus aussi de déférer à toutes les réquisitions qui leur seront adressées à cette effet par les préfects, sous-préfects et maires et par les inspecteurs de la librairie. Ils enverront dans les 24 heures tous les procès-verbaux qu'ils auront dressés à Paris au directeur général de la librairie, et dans les départments aux préfects, qui les feront passer sur-le-champ au directeur générale seule chargé par l'art. 21 de dénoncer les contrevenants aux tribunaux. (*Abrogé.*)	ART. 1. Les quatre inspecteurs de la librairie actuellement existant à Paris sont supprimés ART. 2. Les commissaires de police dans toute l'étendue du royaume sont et demeurent investis des attributions légales que les inspecteurs de la librairie avaient reçues de l'art. 45 du décret du 5 février 1810, de l'art. 20 de la loi du 21 octobre 1814 et de l'art. 7 de l'ordonnance du 24 octobre de la même année.

LEGISLATION

PEINES APPLICABLES

(*Suite de la loi de* 1793.)	CODE DE PENAL DE 1810.	(*Suite du code pénal.*)
ART. 4. Tout contrefacteur sera tenu de payer au véritable propriétaire une somme équivalente au prix de 3,000 exemplaires de l'édition originale. (*Abrogé.*)	ART. 425. Toute édition d'écrits, de composition musicale, de dessin, de peinture ou de toute autre production imprimée ou gravée en entier ou en partie, au mépris des lois et règlements relatifs à la propriété des auteurs, est un contrefaçon, et toute contrefaçon est un délit.	ART. 428. Tout directeur, tout entrepreneur de spectacle, toute association d'artistes, qui aura fait représenter sur son théâtre des ouvrages dramatiques au mépris des lois et règlements relatifs à la propriété des auteurs, sera puni d'une amende de 50 fr. au moins, de 500 fr. au plus et de la confiscation des recettes.
ART. 5. Tout débitant d'édition contrefaite, s'il n'est pas reconnu contrefacteur, sera tenu de payer au véritable propriétaire une somme équivalente au prix de 500 exemplaires de l'édition originale. (*Abrogé.*)	ART. 426. Le débit d'ouvrages contrefaits, l'introduction sur le territoire français d'ouvrages qui, après avoir été imprimés en France, ont été contrefaits chez l'étranger, sont un délit de la même espèce. ART. 427. La peine contre le contrefacteur ou contre introducteur sera une amende de 100 fr. au moins et de 2,000 fr. au plus ; et contre le débitant une amende de 25 fr. au moins et de 500 fr. au plus. La confiscation de l'édition contrefaite sera prononcée tant contre le contrefacteur que contre l'introducteur et le débitant. Les planches, moules ou matrices des objets contrefaits seront aussi confisqués.	

FRANCAISE (suite).

AU CONTREFACTEUR.

(Suite du code pénal.)

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ART. 429.

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

(Suite du code pénal.)

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ART. 463, revisé en 1863.

....Dans tous les cas où la peine de l'emprisonnement et celle de l'amende sont prononcées par le code pénal, si les circonstances paraissaient atténuantes, les tribunaux correctionnels sont autorisés, même en cas de récidive, à réduire ces deux peines comme il suit :

Si la peine prononcée par la loi soit à raison de la nature du délit, soit à raison de l'état de récidive du prevenu, est un emprisonnement, dont le minimum ne soit pas inférieur à un an, ou une amende, dont le minimum ne soit pas inférieur á 500 fr., les tribunaux pourront réduire l'emprisonnement jusqu'à six jours, et l'amende jusqu'à 16 fr.

Dans tous les autres cas ils pourront réduire l'emprisonnement même au-dessous de six jours et l'amende même au-dessous de 16 fr. ; ils pourront aussi prononcer séparément l'une ou l'autre de ces peines et même substituer l'amende á l'emprisonnement, sans qu'en aucun cas, elle puisse être au-dessous des peines de simple police.

DECRET

du 28–31 mars 1852 sur la contrefaçon d'ouvrages étrangers.

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ART. 1.

La contrefaçon sur le territoire français d'ouvrages publiés à l'étranger et mentionés en l'art. 425 du code pénal, constitue un delit.

ART. 2.

Il en est de même du débit, de l'exportation et de l'expédition des ouvrages contrefaits. L'exportation et l'expédition de ces ouvrages sont un délit de la même espèce que l'introduction sur le territoire français d'ouvrages qui, après avoir été imprimés en France, ont été contrefaits chez l'étranger.

ART. 3.

Les délits prévus par les articles précédents seront réprimés conformément aux art. 427 et 429 du code pénal.

L'art. 463 du même code pourra être appliqué.

ART. 4.

Néanmoins la poursuite ne sera admise que sous l'accomplissement des conditions exigées relativement aux ouvrages publiés en France, notamment par l'art. 6 de la loi du 19 juillet 1793.

LEGISLATION

DEPOT

(*Suite de la loi de* 1793.)

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ART. 6.

Tout citoyen qui mettra au jour un ouvrage ou de littérature ou de gravure, dans quelque genre que ce soit, sera obligé d'en déposer deux exemplaires à la bibliothèque nationale ou au cabinet des estampes de la République, dont il recevra un reçu signé par le bibliothécaire ; faute de quoi il ne pourra être admis en justice pour la poursuite des contrefacteurs.

(*Modifié.*)

DECRET

du 5 *février* 1810 *sur le droit des auteurs et leur responsabilité ainsi que sur les règles prescrites aux imprimeurs et libraires.*

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ART. 48.

Chaque imprimeur sera tenu de déposer à la préfecture de son départment et à Paris à la préfecture de police cinq exemplaires de chaque ouvrage savoir :

Un pour la bibliothèque impériale, un pour le ministère de l'intérieur, un pour la bibliothèque de notre conseil d'Etat, un pour le directeur général de ... librairie.

(*Abrogé.*)

LOI

du 21 *octobre* 1814, *relative à la liberté de la press*

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ART. 14.

Nul imprimeur ne pourra imprimer un écrit avant d'avoir déclaré qu'il se propose de l'imprimer, ni le mettre en vente ou le publier de quelque manière que ce soit avant d'avoir déposé le nombre prescrit d'exemplaires savoir : à Paris au secrétariat de la direction générale et dans les départments au secrétariat de la préfecture.

FRANCAISE (suite).

D'EXEMPLAIRES

ORDONNANCE
du 24 octobre 1814, relative à l'impression au dépot et à la publication des ouvrages.

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ART. 4.

Le nombre d'exemplaires qui doivent être déposés, ainsi qu'il est dit à l'art. 14 de la loi du 21 octobre 1814, reste fixé à cinq, lesquels seront répartis ainsi qu'il suit : un pour notre bibliothèque, un pour notre amé et féal chevalier le chancelier de France, un pour notre ministre secrétaire d'Etat au départment de l'intérieur, un pour le directeur générale de la librairie et le cinquième pour le censeur qui aura été ou qui sera chargé d'examiner l'ouvrage. (*Abrogé*)

ORDONNANCE
du 9 janvier 1828 qui modifie celle du 24 octobre 1814 et relative au dépot des exemplaires, des écrits, imprimés et des épreuves des planches et des estampes.

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ART. 1.

Le nombre des exemplaires, des écrits, imprimés et des épreuves des planches et estampes, dont le dépôt est exigé par loi et qui avait été fixé à cinq par les art. 4 et 8 de l'ordonnance royale du 24 octobre 1814, est réduit, outre l'exemplaire, et les deux épreuves destinées à notre bibliothèque conformément à la même ordonnance, à un seule exemplaire et une seule épreuve pour la bibliothèque du ministère de l'intérieur.

DECRET
du 17–23 février 1852 organique sur la presse.

—

ART. 22.

Aucuns dessins, aucunes gravures, lithographies, médailles, estampes ou emblèmes, de quelque nature ou espèce qu'ils soient, ne pourront être publiés, exposés ou mis en vent sans l'autorisation préalable du ministre de la police á Paris ou des préfects dans les départements.—En cas de contravention les dessins, gravures, lithographies, médailles, estampes ou emblèmes pourront être confisqués, et ceux qui les auront publiés seront condamnés à un emprisonnement d'un mois à un an et à une amende de 100 à 1,000 fr.

APPENDIX D.

GESETZ

betreffend das Urheberrecht an Schriftwerken, Abbildungen, musikalischen Kompositionen und dramatischen Werken.
Vom 11. Juni 1870.

Wir WILHELM, von Gottes Gnaden König von Preussen etc. verordnen im Namen des Norddeutschen Bundes, nach erfolgter Zustimmung des Bundesrathes und des Reichstages, was folgt:

I. SCHRIFTSTUECKE.*

a. Ausschliessliches Recht des Urhebers.

§ 1.

Das Recht, ein Schriftwerk auf mechanischem Wege zu vervielfältigen, steht dem Urheber desselben auschliesslich zu.

§ 2.

Dem Urheber wird in Beziehung auf den durch das gegenwärtige Gesetz gewährten Schutz der Herausgeber eines aus Beiträgen Mehrerer bestehenden Werkes gleich geachtet, wenn dieses ein einheitliches Ganzes bildet.

Das Urheberrecht an den einzelnen Beiträgen steht den Urhebern derselben zu.

§ 3.

Das Recht des Urhebers geht auf dessen Erben über. Dieses Recht kann beschränkt oder unbeschränkt durch Vertrag oder durch Verfügung von Todeswegen auf Andere übertragen werden.

b. Verbot des Nachdrucks.

§ 4.

Jede mechanische Vervielfältigung eins Schriftwerkes, welche ohne Genehmigung des Berechtigten (§§ 1, 2, 3) hergestellt wird, heisst Nachdruck und ist verboten.

Hinsichtlich dieses Verbotes macht es keinen Unterschied, ob das Schriftwerk ganz oder nur theilweise vervielfältigt wird.

Als mechanische Vervielfältigung ist auch das Abschreiben anzuzehen, wenn es dazu bestimmt ist, den Druck zu vertreten.

§ 5.

Als Nachdruck (§ 4.) ist auch anzusehen:

a) der ohne Genehmigung des Urhebers erfolgte Abdruck von noch nicht veröffentlichten Schriftwerken (Manuskripten).

Auch der rechtmässige Besitzer eines Manuskrip-

* Lies: Schriftwerke.—Vergl. S. 11.

tes oder einer Abschrift desselben bedarf der Genehmigung des Urhebers zum Abdruck;

b) der ohne Genehmigung des Urhebers erfolgte Abdruck von Vorträgen welche zum Zwecke der Erbauung, der Belehrung oder der Unterhaltung gehalten sind;

c) der neue Abdruck von Werken, welchen der Urheber oder der Verleger dem unter ihnen bestehenen Vertrage zuwider veranstaltet;

d) die Anfertigung einer grössern Anzahl von Exemplaren eines Werkes Seitens des Verlegers, als demselben vertragsmässig oder gesetzlich gestattet ist.

§ 6.

Uebersetzungen ohne Genehmigung des Urhebers des Originalwerkes gelten als Nachdruck:

a) wenn von einem, zuerst in einer todten Sprache erschienenen Werke eine Uebersetzung in einer lebenden Sprache herausgegeben wird;

b) wenn von einem gleichzeitig in verschiedenen Sprachen herausgegebenen Werke eine Uebersetzung in einer dieser Sprachen veranstaltet wird;

c) wenn der Urheber sich das Recht der Uebersetzung auf dem Titelblatte oder an der Spitze des Werkes vorbehalten hat, vorausgesetzt, dass die Veröffentlichigung der vorbehaltenen Uebersetzung nach dem Ersheinen des Originalwerkes binnen einem Jahre begonnen und binnen drei Jahren beendet wird. Das Kalenderjahr, in welchem das Originalwerk ershienen ist, wird hierbei nicht mitgerechnet.

Bei Originalwerken, welche in mehreren Bänden oder Abtheilungen erscheinen, wird jeder Band oder jede Abtheilung im Sinne dieses Paragraphen als ein besonderes Werk angesehen, und muss der Vorbehalt der Uebersetzung auf jedem Bande oder jeder Abtheilung wiederholt werden.

Bei dramatischen Werken muss die Uebersetzung innerhalb sechs Monaten, vom Tage der Veröffentlichigung des Originals an gerechnet, vollständig erschienen sein.

Der Beginn und beziehungsweise die Vollendung der Uebersetzung muss zugleich innerhalb der angegebenen Fristen zur Eintragung in die Eintragsrolle (§§ 39 ff.) angemeldet werden, widrigenfalls der Schutz gegen neue Uebersetzungen erlischt.

Die Uebersetzung eines noch ungedruckten gegen Nachdruck geschützten Schriftwerkes (§ 5, Littr. a. und b.) ist als Nachdruck anzusehen.

Uebersetzungen geniessen gleich Originalwerken den Schutz dieses Gesetzes gegen Nachdruck.

c. Was nicht als Nachdruck anzusehen ist.

§ 7.

Als Nachdruck ist nicht anzusehen:

a) das wörtliche Anführen einzelner Stellen oder kleine-

rer Theile eines bereits veröffentlichten Werkes oder die Aufnahme bereits veröffentlichter Schriften von geringerem Umfang in ein grösseres Ganzes, sobald dieses nach seinem Hauptinhalt ein selbstständiges wissenschaftliches Werk ist, sowie in Sammlungen, welche aus Werken mehrerer Schriftsteller zum Kirchen-, Schul- und Unterrichtsgebrauch oder zu einem eigenthümlichen literarischen Zwecke veranstaltet werden. Vorausgesetzt ist jedoch, dass der Urheber oder die benutzte Quelle angegeben ist;

b) der Abdruck einzelner Artikel aus Zeitschriften und anderen öffentlichen Blättern mit Ausnahme von novellistischen Erzeugnissen und wissenschaftlichen Ausarbeitungen, sowie von sonstigen grösseren Mittheilungen, sofern an der Spitze der letzteren der Abdruck untersagt ist;

c) der Abdruck von Gesetzbüchern, Gesetzen, amtlichen Erlassen, öffentlichen Aktenstücken und Verhandlungen aller Art;

d) der Abdruck von Reden, welche bei den Verhandlungen der Gerichte, der politischen, kommunalen und kirchlichen Vertretungen, sowie der politishen und ähnlichen Versammlungen gehalten werden.

d. Dauer des ausschliesslichen Rechtes des Urhebers.

§ 8.

Der Schutz des gegenwärtigen Gesetzes gegen Nachdruck wird, vorbehaltlich der folgenden besonderen Bestimmungen, für die Lebensdauer des Urhebers (§§ 1. und 2.) und dreissig Jahre nach dem Tode desselben gewährt.

§ 9.

Bei einem von mehreren Personen als Miturhebern verfassten Werke erstreckt sich die Schutzfrist auf die Dauer von dreissig Jahren nach dem Tode des letztlebenden derselben.

Bei Werken, welche durch Beiträge mehrerer Mitarbeiter gebildet werden, richtet sich die Schutzfrist für die einzelnen Beiträge danach, ob die Urheber desselben genannt sind oder nicht (§§ 8, 11).

§ 10.

Einzelne Aufsätze, Abhandlungen &c., welche in periodischen Werken, als: Zeitschriften, Taschenbüchern, Kalendern &c., erschienen sind, darf der Urheber, falls nichts Anderes verabredet ist, auch ohne Einwilligung des Herausgebers oder Verlegers des Werkes, in welches dieselben aufgenommen sind, nach zwei Jahren vom Ablauf des Jahres des Erscheinens an gerechnet, anderweitig abdrucken.

§ 11.

Bei Schriftwerken, welche bereits veröffentlicht sind, ist die im § 8 vorgeschriebene Dauer des Schutzes an die Bedingung geknüpft, dass der wahre Name des Urhebers auf dem

Titelblatte oder unter der Zueignung oder unter der Vorrede angegeben ist.

Bei Werken, welche durch Beiträge mehrerer Mitarbeiter gebildet werden, genügt es für den Schutz der Beiträge, wenn der Name des Urhebers an der Spitze oder am Schluss des Beitrags angegeben ist.

Ein Schriftwerk, welches entweder unter einem anderen, als dem wahren Namen des Urhebers veröffentlicht, oder bei welchem ein Urheber gar nicht angegeben ist, wird dreissig Jahre lang von der ersten Herausgabe an gerechnet, gegen Nachdruck geschützt (§ 28).

Wird innerhalb dreissig Jahre, von der ersten Herausgabe an gerechnet, der wahre Name des Urhebers von ihm selbst oder seinen hierzu legitimirten Rechtsnachfolgern zur Eintragung in die Eintragungsrolle (§§ 39 ff.) angemeldet, so wird dadurch dem Werke die in § 8 bestimmte längere Dauer des Schutzes erworben.

§ 12.

Die erst nach dem Tode des Urhebers erschienen Werke werden dreissig Jahre lang, vom Tode des Urhebers an gerechnet, gegen Nachdruck geschützt.

§ 13.

Akademien, Universitäten, sonstige juristische Personen, öffentliche Unterrichtsanstalten, sowie gelehrte oder andere Gesellschaften, wenn sie als Herausgeber dem Urheber gleich zu achten sind (§ 2), geniessen für die von ihnen herausgegebenen Werke einen Schutz von dreissig Jahren nach deren Erscheinen.

§ 14.

Bei Werken, die in mehreren Bänden oder Abtheilungen erscheinen, wird die Schutzfrist von dem ersten Erscheinen eines jeden Bandes oder einer jeden Abtheilung an berechnet.

Bei Werken jedoch, die in einem oder mehreren Bänden eine einzige Aufgabe behandeln und mithin als in sich zusammenhängend zu betrachten sind, beginnt die Schutzfrist erst nach dem Erscheinen des letzten Bandes oder der letzten Abtheilung.

Wenn indessen zwischen der Herausgabe einzelner Bände oder Abtheilungen ein Zeitraum von mehr als drei Jahren verflossen ist, so sind die vorher erschienenen Bände, Abtheilungen &c. als ein für sich bestehendes Werk und ebenso die nach Ablauf der drei Jahre erscheinenden weiteren Fortsetzungen als ein neues Werk zu behandeln.

§ 15.

Das Verbot der Herausgabe von Uebersetzungen dauert in dem Falle des § 6, Littr. b, fünf Jahre vom Erscheinen des Originalwerkes, in dem Falle des § 6, Littr. c. fünf Jahre vom ersten Erscheinen der rechtmässigen Uebersetzung ab gerechnet.

§ 16.

In den Zeitraum der gesetzlichen Schutzfrist (§§ 8 ff.) wird das Todesjahr des Verfassers, beziehungsweise das Kalenderjahr des ersten Erscheinens des Werkes oder der Uebersetzung nicht eingerechnet.

§ 17.

Ein Heimfallsrecht des Fiskus oder anderer zu herrenlosen Verlassenschaften berechtigter Personen findet auf das ausschliessliche Recht des Urhebers und seiner Rechtsnachfolger nicht statt.

e. Entschädgigung und Strafen.

§ 18.

Wer vorsätzlich oder aus Fahrlässigkeit einen Nachdruck (§§ 4 ff.) in der Absicht, denselben innerhalb oder ausserhalb des Norddeutschen Bundes zu verbreiten, veranstaltet, ist den Urheber oder dessen Rechtsnachfolger zu entschädigen verpflichtet und wird ausserdem mit einer Geldstrafe bis zu Eintausend Thalern bestraft.

Die Bestrafung des Nachdrucks bleibt jedoch ausgeschlossen, wenn der Veranstalter desselben auf Grund entschuldbaren, thatsächlichen oder rechtlichen Irrthums in gutem Glauben gehandelt hat.

Kann die verwirkte Geldstrafe nicht beigetrieben werden, so wird diesselbe nach Maassgabe der allgemeinen Strafgesetze in eine entsprechende Freiheitsstrafe bis zu sechs Monaten umgewandelt.

Statt jeder aus diesem Gesetze entspringenden Entschädigung kann auf Verlangen des Beschädigten neben der Strafe auf eine an den Beschädigten zu erlegende Geldbusse bis zum Betrage von zweitausend Thalern erkannt werden. Für diese Busse haften die zu derselben Verurtheilten als Gesammtschuldner.

Eine erkannte Busse schliesst die Geltendmachung eines weiteren Entschädigungsanspruches aus.

Wenn den Veranstalter des Nachdrucks kein Verschulden trifft, so haftet er dem Urheber oder dessen Rechtsnachfolger für den entstandenen Schaden nur bis zur Höhe seiner Bereicherung.

§ 19.

Darüber, ob ein Schaden entstanden ist, und wie hoch sich derselbe beläuft, desgleichen über den Bestand und die Höhe einer Bereicherung, entscheidet das Gericht unter Würdigung aller Umstände nach freier Ueberzeugung.

§ 20.

Wer vorsätzlich oder aus Fahrlässigkeit einen Anderen zur Veranstaltung eines Nachdrucks veranlasst, hat die im § 18 festgesetzte Strafe verwirkt, und ist dem Urheber oder dessen Rechtsnachfolger nach Maassgabe der §§ 18 und 19 zu entschädigen verpflichtet, und zwar selbst dann, wenn der Veran-

stalter des Nachdrucks nach § 18 nicht strafbar oder ersatzverbindlich sein sollte.

Wenn der Veranstalter des Nachdrucks ebenfalls vorsätzlich oder aus Fahrlässigkeit gehandelt hat, so haften Beide dem Berechtigten solidarisch.

Die Strafbarkeit und die Ersatzverbindlichkeit der übrigen Theilnehmer am Nachdruck richtet sich nach den allgemeinen gesetzlichen Vorschriften.

§ 21.

Die vorräthigen Nachdrucks-Exemplare und die zur widerrechtlichen Vervielfältigung ausschliesslich bestimmten Vorrichtungen, wie Formen, Platen, Steine, Stereotypabgüsse &c., unterliegen der Einziehung. Dieselben sind, nachdem die Einziehung dem Eigenthümer gegenüber rechtskräftig erkannt ist, entweder zu vernichten oder ihrer gefährdenden Form zu entkleiden und alsdann dem Eigenthümer zurückzugeben.

Wenn nur ein Theil des Werkes als Nachdruck anzusehen ist, so erstreckt sich die Einziehung nur auf den als Nachdruck erkannten Theil des Werkes und die Vorrichtungen zu diesem Theile.

Die Einziehung erstreckt sich auf alle diejenigen Nachdrucks-Exemplare und Vorrichtungen, welche sich im Eigenthum des Veranstalters des Nachdrucks, des Druckers, der Sortimentsbuchhändler, der gewerbsmässigen Verbreiter und desjenigen, welcher den Nachdruck veranlasst hat (§ 20), befinden.

Die Einziehung tritt auch dann ein, wenn der Veranstalter oder der Veranlasser des Nachdrucks weder vorsätzlich noch fahrlässig gehandelt hat (§ 18). Sie erfolgt auch gegen die Erben desselben.

Es steht dem Beschädigten frei, die Nachdrucks-Exemplare und Vorrichtungen ganz oder theilweise gegen die Herstellungskosten zu übernehmen, insofern nicht die Rechte eines Dritten dadurch verletzt oder gefährdet werden.

§ 22.

Das Vergehen des Nachdrucks ist vollendet, sobald ein Nachdrucks-Exemplar eines Werkes den Vorschriften des gegenwärtigen Gesetzes zuwider, sei es im Gebiete des Norddeutschen Bundes, sei es ausserhalb desselben, hergestellt worden ist.

Im Falle des blossen Versuchs des Nachdrucks tritt weder eine Bestrafung noch eine Entschädigungsverbindlichkeit des Nachdruckers ein. Die Einziehung der Nachdrucksvorrichtungen erfolgt auch in diesem Falle.

§ 23.

Wegen Rückfalls findet eine Erhöhung der Strafe über das höchste gesetzliche Maass (§ 18) nicht statt.

§ 24.

Wenn in den Fällen des § 7, Littr. a die Angabe der Quelle oder des Namens des Urhebers vorsätzlich oder aus Fahrlässig-

keit unterlassen wird, so haben der Veranstalter und der Veranlasser des Abdrucks eine Geldstrafe bis zu zwanzig Thalern verwirkt.

Eine Umwandlung der Geldstrafe in Freiheitsstrafe findet nicht statt.

Eine Entschädigungspflicht tritt nicht ein.

§ 25.

Wer vorsätzlich Exemplare eines Werkes, welche den Vorschriften des gegenwärtigen Gesetzes zuwider angefertigt worden sind, innerhalb oder ausserhalb des Norddeutshen Bundes gewerbemässig feilhält, verkauft oder in sonstiger Weise verbreitet, ist nach Maassgabe des von ihm verursachten Schadens den Urheber oder dessen Rechtsnachfolger zu entschädigen verpflichtet und wird ausserdem mit Geldstrafe nach § 18 bestraft.

Die Einziehung der zur gewerbemässigen Verbreitung bestimmten Nachdrucks-Exemplare nach Maassgabe des § 21 findet auch dann statt, wenn der Verbreiter nicht vorsätzlich gehandelt hat.

Der Entschädigungspflicht, sowie der Bestrafung wegen Verbreitung unterliegen auch die Veranstalter und Veranlasser des Nachdrucks, wenn sie nicht schon als solche entschädigungspflichtig und strafbar sind.

f. Verfahren.

§ 26.

Sowohl die Entscheidung über den Entschädigungsanspruch, als auch die Verhängung der im gegenwärtigen Gesetze angedrohten Strafen und die Einziehung der Nachdrucks-Exemplare &c. gehört zur Kompetenz der ordentlichen Gerichte.

Die Einziehung der Nachdrucks-Exemplare &c. kann sowohl im Strafrechtswege beantragt, als im Civilrechtswege verfolgt werden.

§ 27.

Das gerichtliche Strafverfahren ist nicht von Amtswegen, sondern nur auf den Antrag des Verletzten einzuleiten. Der Antrag auf Bestrafung kann bis zur Verkündigung eines auf Strafe lautenden Erkenntnisses zurückgenommen werden.

§ 28.

Die Verfolgung des Nachdrucks steht jedem zu, dessen Urheber- oder Verlagsrechte durch die widerrechtliche Vervielfältigung beeinträchtigt oder gefährdet sind.

Bei Werken, welche bereits veröffentlicht sind, gilt bis zum Gegenbeweise derjenige als Urheber, welcher nach Maassgabe des § 11, Absatz 1, 2, auf dem Werke als Urheber angegeben ist.

Bei anonymen und pseudonymen Werken ist der Herausgeber, und wenn ein solcher nicht angegeben ist, der Verleger berechtigt, die dem Urheber zustehenden Rechte wahrzunehmen. Der auf dem Werke angegebene Verleger gilt ohne

weiteren Nachweis als der Rechtsnachfolger des anonymen oder pseudonymen Urhebers.

§ 29.

In den Rechtstreitigkeiten wegen Nachdrucks, einschliesslich der Klagen wegen Bereicherung aus dem Nachdruck, hat der Richter, ohne an positive Regeln über die Wirkung der Beweismittel gebunden zu sein, den Thatbestand nach seiner freien, aus dem Inbegriff der Verhandlungen geschöpften Ueberzeugung festzustellen.

Ebenso ist der Richter bei Entscheidung der Frage: ob der Nachdrucker oder der Veranlasser des Nachdrucks (§§ 18, 20) fahrlässig gehandelt hat, an die in den Landesgesetzen vorgeschriebenen verschiedenen Grade der Fahrlässigkeit nicht gebunden.

§ 30.

Sind technische Fragen, von welchen der Thatbestand des Nachdrucks oder der Betrag des Schadens oder der Bereicherung abhängt, zweifelhaft oder streitig, so ist der Richter befugt, das Gutachten Sachverständiger einzuholen.

§ 31.

In allen Staaten des Norddeutschen Bundes sollen aus Gelehrten, Schriftstellern, Buchhändlern und anderen geeigneten Personen Sachverständigen-Vereine gebildet werden, welche, auf Erfordern des Richters, Gutachten über die an sie gerichteten Fragen abzugeben verpflichtet sind. Es bleibt den einzelnen Staaten überlassen, sich zu diesem Behufe an andere Staaten des Norddeutschen Bundes anzuschliessen, oder auch mit denselben sich zur Bildung gemeinschaftlicher Sachverständigen-Vereine zu verbinden.

Die Sachverständigen-Vereine sind befugt auf Anrufen der Betheiligten über streitige Entschädigungsansprüche und die Einziehung nach Maassgabe der §§ 18 bis 21 als Schiedsrichter zu verhandeln und zu entscheiden.

Das Bundeskanzler-Amt erlässt die Instruktion über die Zusammensetzung und den Geschäftsbetrieb der Sachverständigen-Vereine.

§ 32.

Die in den §§ 12 und 13 des Gesetzes, betreffend die Errichtung eines obersten Gerichtshofes für Handelssachen vom 12 Juni 1869 (Bundesgesetzbl. S. 201), geregelte Zuständigkeit des Bundes-Oberhandelsgericht zu Leipzig wird auf diejenigen bürgerlichen Rechtsstreitigkeiten ausgedehnt in welchen auf Grund der Bestimmungen dieses Gesetzes durch die Klage ein Entschädigungsanspruch oder ein Anspruch auf Einziehung geltend gemacht wird.

Das Bundes-Oberhandelsgericht tritt auch in den nach den Bestimmungen dieses Gesetzes zu beurtheilenden Strafsachen an die Stelle des für das Gebiet, in welchem die Sache in erster Instanz anhänging geworden ist, nach den Landesgesetzen bestehehenden obersten Gerichtshofes, und

zwar mit derjenigen Zuständigkeit, welche nach diesen Landesgesetzen dem obersten Gerichtshofe gebührt.

In den zufolge der vorstehenden Bestimmung zur Zuständigkeit des Bundes-Oberhandelsgerichts gehörenden Strafsachen bestimmt sich das Verfahren auch bei diesem Gerichtshofe nach den für das Gebiet, aus welchem die Sache an das Bundes-Oberhandelsgericht gelangt, geltenden Strafprocessgesetzen. Die Verrichtungen der Staatsanwaltschaft in diesen Strafsachen werden bei dem Bundes-Oberhandelsgericht von dem Staatsanwalt wahrgenommen, welcher dieselben bei dem betreffenden obersten Landesgerichtshofe wahrzunehmen hat. Der bezeichnete Staatsanwalt kann sich jedoch bei der mündlichen Verhandlung durch einen in Leipzig angestellten Staatsanwalt oder durch einen in Leipzig wohnenden Advokaten vertreten lassen.

Strafsachen, für welche in letzter Instanz das Bundes-Oberhandelsgericht zuständig ist, und Strafsachen, für welche in letzter Instanz der oberste Landesgerichtshof zuständig ist, können in Einem Strafverfahren nicht verbunden werden.

Die Bestimmungen der §§ 10, 12, Absatz 2, § 16, Absatz 2, §§ 17, 18, 21 und 22 des Gesetzes vom 12. Juni 1869 finden auch auf die zur Zuständigkeit des Bundes-Oberhandelsgerichts gehörenden Strafsachen entsprechende Anwendung.

g. Verjährung.

§ 33.

Die Strafverfolgung des Nachdrucks und die Klage auf Entschädigung wegen Nachdrucks, einschliesslich der Klage wegen Bereicherung (§ 18), verjähren in drei Jahren.

Der Lauf der Verjährung beginnt mit dem Tage, an welchem die Verbreitung der Nachdrucks-Exemplare zuerst stattgefunden hat.

§ 34.

Die Strafverfolgung der Verbreitung von Nachdrucks-Exemplaren und die Klage auf Entschädigung wegen dieser Verbreitung (§ 25) verjähren ebenfalls in drei Jahren.

Der Lauf der Verjährung beginnt mit dem Tage, an welchem die Verbreitung zuletzt stattgefunden hat.

§ 35.

Der Nachdruck und die Verbreitung von Nachdrucks-Exemplaren sollen straflos bleiben, wenn der zum Strafantrage Berechtigte den Antrag binnen drei Monaten nach erlangter Kenntniss von dem begangenen Vergehen und von der Person des Thäters zu machen unterlässt.

§ 36.

Der Antrag auf Einziehung und Vernichtung der Nachdrucks-Exemplare, sowie der zur widerrechtlichen Vervielfältigung auschliesslich bestimmten Vorrichtungen (§ 21), ist so lange zulässig als solche Exemplare und Vorrichtungen vorhanden sind.

§ 37.

Die Uebertretung, welche dadurch begangen wird, dass in den Fällen des § 7, Littr. a, die Angabe der Quelle oder des Namens des Urhebers unterblieben ist, verjährt in drei Monaten.

Der Lauf der Verjährung beginnt mit dem Tage, an welchem der Abdruck zuerst verbreitet worden ist.

§ 38.

Die allgemeinen gesetzlichen Vorschriften bestimmen, durch welche Handlungen die Verjährung unterbrochen wird.

Die Einleitung des Strafverfahrens unterbricht die Verjährung der Entschädigungsklage nicht, und eben so wenig unterbricht die Anstellung der Entschädigungsklage die Verjährung des Strafverfahrens.

h. Eintragsrolle.

§ 39.

Die Eintragsrolle, in welche die in den §§ 6 und 11 vorgeschriebenen Eintragungen stattzufinden haben, wird bei dem Stadtrath zu Leipzig geführt.

§ 40.

Der Stadtrath zu Leipzig ist verpflichtet, auf Antrag der Betheiligten die Eintragungen zu bewirken, ohne dass eine zuvorige Prüfung über die Berechtigung des Antragstellers oder über die Richtigkeit der zur Eintragung angemeldeten Thatsachen stattfindet.

§ 41.

Das Bundeskanzler-Amt erlässt die Instruktion über die Führung der Eintragsrolle. Es ist Jedermann gestattet von der Eintragsrolle Einsicht zu nehmen und sich beglaubigte Auszüge aus derselben ertheilen zu lassen. Die Eintragungen werden im Börsenblatt für den Deutschen Buchhandel und, falls dasselbe zu erscheinen aufhören sollte, in einer anderen vom Bundeskanzler-Amte zu bestimmenden Zeitung öffentlich bekannt gemacht.

§ 42.

Alle Eingaben, Verhandlungen, Atteste, Beglaubigungen, Zeugnisse, Auszüge u. s. w., welche die Eintragung in die Eintragsrolle betreffen, sind stempelfrei.

Dagegen wird für jede Eintragung, für jeden Eintragsschein, sowie für jeden sonstigen Auszug aus der Eintragsrolle eine Gebühr von je 15 Sgr. erhoben, und ausserdem hat der Antragsteller die etwaigen Kosten für die öffentliche Bekanntmachung der Eintragung (§ 41) zu entrichten.

II. GEOGRAPHISCHE, TOPOGRAPHISCHE, NATURWISSENSCHAFTLICHE, ARCHITEKTONISCHE TECHNISCHE UND AEHNLICHE ABBILDUNGEN.

§ 43.

Die Bestimmungen in den §§ 1–42 finden auch Anwendung

auf geographische, topographische, naturwissenschaftliche, architektonische, technische und ähnliche Zeichnungen und Abbildungen, welche nach ihrem Hauptzwecke nicht als Kunstwerke zu betrachten sind.

§ 44.

Als Nachdruck ist es nicht anzusehen, wenn einem Schriftwerke einzelne Abbildungen aus einem anderen Werke beigefügt werden, vorausgesetzt, dass das Schriftwerk als die Hauptsache erscheint und die Abbildungen nur zur Erläuterung des Textes u. s. w. dienen. Auch muss der Urheber oder die benutzte Quelle angegeben sein, widrigenfalls die Strafbestimmung im § 24 Platz greift.

III. MUSIKALISCHE KOMPOSITIONEN.

§ 45.

Die Bestimmungen in den §§ 1 bis 5, 8 bis 42 finden auch Anwendung auf das ausschliessliche Recht des Urhebers zur Vervielfältigung musikalischer Kompositionen.

§ 46.

Als Nachdruck sind alle ohne Genehmigung des Urhebers einer musikalischen Komposition herausgegebenen Bearbeitungen derselben anzusehen, welche nicht als eigenthümliche Kompositionen betrachtet werden können, insbesondere Auszüge aus einer musikalischen Komposition, Arrangements für einzelne oder mehrere Instrumente oder Stimmen, sowie der Abdruck von einzelnen Motiven oder Melodien eines und desselben Werkes, die nicht künstlerisch verarbeitet sind.

§ 47.

Als Nachdruck ist nicht anzusehen: das Anführen einzelner Stellen eines bereits veröffentlichten Werkes der Tonkunst, die Aufnahme bereits veröffentlichter kleinerer Kompositionen in ein nach seinem Hauptinhalte selbstständiges wissenschaftliches Werk, sowie in Sammlungen von Werken, verschiedener Componisten zur Benutzung in Schulen, ausschliesslich der Musikschulen. Vorausgesetzt ist jedoch, dass der Urheber oder die benutzte Quelle angegeben ist, widrigenfalls die Strafbestimmung des § 24 Platz greift.

§ 48.

Als Nachdruck ist nicht anzusehen: die Benutzung eines bereits veröffentlichten Schriftwerkes als Text zu musikalischen Kompositionen, sofern der Text in Verbindung mit der Komposition abgedruckt wird.

Ausgenommen sind solche Texte, welche ihrem Wesen nach nur für den Zweck der Komposition Bedeutung haben, namentlich Texte zu Opern und Oratorien. Texte dieser Art dürfen nur unter Genehmigung ihres Urhebers mit den musikalischen Kompositionen zusammen abgedruckt werden.

Zum Abdruck des Textes ohne Musik ist die Einwilligung des Urhebers oder seiner Rechtsnachfolger erforderlich.

§ 49.

Die Sachverständigen-Vereine, welche nach Maassgabe des § 31 Gutachten über den Nachdruck musikalischer Kompositionen abzugeben haben, sollen aus Komponisten, Musikverständigen und Musikalienhändlern bestehen.

IV. OEFFENTLICHE AUFFUEHRUNG DRAMATISCHER, MUSIKALISCHER ODER DRAMATISCH-MUSIKALISCHER WERKE.

§ 50.

Das Recht ein dramatisches, musikalisches oder dramatisch-musikalisches Werk öffentlich aufzuführen steht dem Urheber und dessen Rechtsnachfolgern (§ 3) ausschliesslich zu.

In Betreff der dramatischen und dramatisch-musikalischen Werke ist es hierbei gleichgültig, ob das Werk bereits durch den Druck &c. veröffentlicht worden ist oder nicht. Musikalische Werke, welche durch Druck veröffentlicht worden sind, können ohne Genehmigung des Urhebers öffentlicht aufgeführt werden, falls nicht der Urheber auf dem Titelblatte oder an der Spitze des Werkes sich das Recht der öffentlichen Aufführung vorbehalten hat.

Dem Urheber wird der Verfasser einer rechtmässigen Uebersetzung des dramatischen Werkes in Beziehung auf das ausschliessliche Recht zur öffentlichen Aufführung dieser Uebersetzung gleich geachtet.

Die öffentliche Aufführung einer rechtswidrigen Uebersetzung (§ 6) oder einer rechtswidrigen Bearbeitung (§ 46) des Originalwerkes ist untersagt.

§ 51.

Sind mehrere Urheber vorhanden, so ist zur Veranstaltung der öffentlichen Aufführung die Genehmigung jedes Urhebers erforderlich.

Bei musikalischen Werken, zu denen ein Text gehört, einschliesslich der dramatisch-musikalischen Werke, genügt die Genehmigung des Komponisten allein.

§ 52.

In Betreff der Dauer des ausschliesslichen Rechts zur öffentlichen Aufführung kommen die §§ 8 bis 17 zur Anwendung.

Anonyme und pseudonyme Werke, welche zur Zeit ihrer ersten rechtmässigen öffentlichen Aufführung noch nicht durch den Druck veröffentlicht sind, werden dreissig Jahre vom Tage der ersten rechtmässigen Aufführung an, posthume Werke dreissig Jahre vom Tode des Urhebers an gegen unbefugte öffentliche Aufführung geschützt.

Wenn der Urheber des anonymen oder pseudonymen Werkes oder sein hierzu legitimirter Rechtsnachfolger innerhalb der Frist von dreissig Jahren den wahren Namen des Urhebers vermittelst Eintragung in die Eintragsrolle (§ 39) bekannt macht, oder wenn der Urheber das Werk innerhalb der-

selben Frist unter seinem wahren Namen veröffentlicht, so gelangt die Bestimmung des § 8 zur Anwendung.

§ 53.

Bei dramatischen, musikalischen und dramatisch-musikalischen Werken, welche noch nicht mechanisch vervielfältigt, aber öffentlich aufgeführt worden sind, gilt bis zum Gegenbeweise derjenige als Urheber, welcher bei der Ankündigung der Aufführung als solcher bezeichnet worden ist.

§ 54.

Wer vorsätzlich oder aus Fahrlässigkeit ein dramatisches, musikalisches oder dramatisch-musikalisches Werk vollständig oder mit unwesentlichen Acnderungen unbefugter Weise öffentlicht aufführt, ist den Urheber oder dessen Rechtsnachfolger zu entschädigen verpflichtet und wird ausserdem mit einer Geldstrafe nach Maassgabe der §§ 18 und 23 bestraft.

Auf den Veranlasser der unbefugten Aufführung findet der § 20 mit der Maassgabe Anwendung, dass die Höhe der Entschädigung nach § 55 zu bemessen ist.

§ 55.

Die Entschädigung, welche dem Berechtigten im Falle des § 54 zu gewähren ist, besteht in dem ganzen Betrage der Einnahme von jeder Aufführung ohne Abzug der auf dieselbe verwendeten Kosten.

Ist das Werk in Verbindung mit anderen Werken aufgeführt worden, so ist, unter Berücksichtigung der Verhältnisse, ein entsprechender Theil der Einnahme als Entschädigung festzusetzen.

Wenn die Einnahme nicht zu ermitteln oder eine solche nicht vorhanden ist, so wird der Betrag der Entschädigung vom Richter nach freiem Ermessen festgestellt.

Trifft den Veranstalter der Aufführung kein Verschulden, so haftet er dem Berechtigten auf Höhe seiner Bereicherung.

§ 56.

Die Bestimmungen in den §§ 26 bis 42 finden auch in Betreff der Aufführung von dramatischen, musikalischen und dramatisch-musikalischen Werken Anwendung.

V. ALLGEMEINE BESTIMMUNGEN.

§ 57.

Das gegenwärtige Gesetz tritt mit dem 1. Januar 1871 in Kraft. Alle früheren, in den einzelnen Staaten des Norddeutschen Bundes geltenden, rechtlichen Bestimmungen in Beziehung auf das Urheberrecht an Schriftwerken, Abbildungen, musikalischen Kompositionen und dramatischen Werken treten von demselben Tage ab ausser Wirksamkeit.

§ 58.

Das gegenwärtige Gesetz findet auf alle vor dem Inkrafttreten desselben erschienenen Schriftwerke Abbildungen, musikalischen Kompositionen und dramatischen Werke Anwendung, selbst wenn dieselben nach den bisherigen Landes-

gesetzgebungen keinen Schutz gegen Nachdruck, Nachbildung oder öffentliche Aufführung genossen haben.

Die bei dem Inkrafttreten dieses Gesetzes vorhandenen Exemplare, deren Herstellung nach der bisherigen Gesetzgebung gestattet war, sollen auch fernerhin verbreitet werden dürfen, selbst wenn ihre Herstellung nach dem gegenwärtigen Gesetz untersagt ist.

Ebenso sollen die bei dem Inkrafttreten dieses Gesetzes vorhandenen, bisher rechtmässig angefertigten Vorrichtungen, wie Formen, Platten, Steine, Stereotypabgüsse &c., auch fernerhin zur Anfertigung von Exemplaren benutzt werden dürfen.

Auch dürfen die beim Inkrafttreten des Gesetzes bereits begonnenen, bisher gestatteten Vervielfältigungen noch vollendet werden.

Die Regierungen der Staaten des Norddeutschen Bundes werden ein Inventarium über die Vorrichtungen, deren fernere Benutzung hiernach gestattet ist, amtlich aufstellen und diese Vorrichtungen mit einem gleichförmigen Stempel bedrucken lassen. Ebenso sollen alle Exemplare von Schrittwerken, welche nach Maassgabe dieses Paragraphen auch fernerhin verbreitet werden dürfen, mit einem Stempel versehen werden.

Nach Ablauf der für die Legalisirung angegebenen Frist unterliegen alle mit dem Stempel nicht versehenen Vorrichtungen und Exemplare der bezeichneten Werke, auf Antrag des Verletzten, der Einziehung. Die nähere Instruktion über das bei der Aufstellung des Inventariums und bei der Stempelung zu beobachtende Verfahren wird vom Bundeskanzler-Amte erlassen.

§ 59.

Insofern nach den bisherigen Landesgesetzgebungen für den Vorbehalt des Uebersetzungsrechts andere Förmlichkeiten und für das Erscheinen der ersten Uebersetzung andere Fristen, als im § 6, Littr. c vorgeschrieben sind, hat es bei denselben in Betreff derjenigen Werke, welche vor dem Inkrafttreten des gegenwärtigen Gesetzes bereits erschienen sind, sein Bewenden.

§ 60.

Die Ertheilung von Privilegien zum Schutze des Urheberrechts ist nicht mehr zulässig.

Dem Inhaber eines vor dem Inkrafttreten des gegenwärtigen Gesetzes von dem Deutschen Bunde oder den Regierungen einzelner jetzt zum Norddeutschen Bunde gehörigen Staaten ertheilten Privilegiums steht es frei, ob er von diesem Privilegium Gebrauch machen oder den Schutz des gegenwärtigen Gesetzes anrufen will.

Der Privilegienschutz kann indess nur für den Umfang derjenigen Staaten geltend gemacht werden, von welchen derselbe ertheilt worden ist.

Die Berufung auf den Privilegienschutz ist dadurch bedingt, dass das Privilegium entweder ganz oder dem wesentlichen Inhalte nach dem Werke vorgedruckt oder auf oder hinter dem Tittelblatt desselben bemerkt ist. Wo dieses nach der Natur des Gegenstandes nicht stattfinden kann, oder bisher nicht geschehen ist, muss das Privilegium, bei Vermeidung des Erlöschens, binnen drei Monaten nach dem Inkrafttreten dieses Gesetzes zur Eintragung in die Eintragsrolle angemeldet und von dem Kuratorium derselben öffentlich bekannt gemacht werden.

§ 61.

Das gegenwärtige Gesetz findet Anwendung auf alle Werke inländischer Urheber, gleichviel ob die Werke im Inlande oder Auslande erschienen oder überhaupt noch nicht veröffentlicht sind.

Wenn Werke ausländischer Urheber bei Verlegern erscheinen, die im Gebiete des Norddeutschen Bundes ihre Handelsniederlassung haben, so stehen diese Werke unter dem Schutze des gegenwärtigen Gesetzes.

§ 62.

Diejenigen Werke ausländischer Urheber, welche in einem Orte erschienen sind, der zum ehemaligen Deutschen Bunde, nicht aber zum Norddeutschen Bunde gehört, geniessen den Schutz dieses Gesetzes unter der Voraussetzung, dass das Recht des betreffenden Staates den innerhalb des Norddeutschen Bundes erschienenen Werken einen den einheimischen Werken gleichen Schutz gewährt; jedoch dauert der Schutz nicht länger als in dem betreffenden Staate selbst. Dasselbe gilt von nicht veröffentlichten Werken solcher Urheber, welche zwar nicht im Norddeutschen Bunde, wohl aber im ehemaligen Deutschen Bundesgebiete staatsangehörig sind.

Urkundlich unter Unserer Höchsteigenhändigen Unterschrift und beigedrucktem Bundes-Insiegel.

Gegeben BERLIN, den 11. Juni 1870.

(L. S.) WILHELM.

Gr. v. Bismarck-Schönhausen.

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