which cases no copyright is given on any condition. If any person obtains a copy of a protected lecture by taking it down, and publishes it without the leave of the author, or sells copies, he is to forfeit the copies, and 1*d.* for every sheet found in his custody. This law is designed m' ly to prevent unauthorized publication of lectures by printing, but as has been observed it does not prohibit unauthorized re-delivery.

84. We think that the author's copyright should extend to prevent re-delivery of a lecture without leave as well as publication by printing, though this prohibition, as to re-delivery, should not extend to lectures which have been printed and published. We also recommend that the term of copyright in lectures should be the same as in books, namely, the life of the author and 30 years after his death.

85. In the course of our inquiry it has been remarked that, in the case of popular lectures, it is the practice of newspaper proprietors to send reporters to take notes of the lectures for publication in their newspapers, and that, unless this practice is protected, it will become unlawful. It does not seem to us desirable that this practice should be prevented, but on the other hand the author's copyright should not in any way be prejudiced by his lectures being reported in a newspaper. The author should have some sort of control so as to prevent such publication if he wishes to do so; and we therefore suggest that though the author should have the sole right of publication, he should be presumed to give permission to newspaper proprietors to take notes and report his lecture, unless, before or at the time when the lecture is delivered, he gives notice that he prohibits reporting.

86. By the present law, as above stated, a condition is imposed of giving notice to two justices. Without entering into the origin of this provision we find that it is little known and probably never or very seldom acted upon; so that the statutory copyright is practically never or seldom acquired. We therefore suggest, that this provision should be omitted from any future law.

87. We do not suggest any interference with the exception made in the Act as to lectures delivered in universities and elsewhere, wherein no statutory copyright can be acquired.

Newspapers.

88. Much doubt appears to exist in consequence of several conflicting legal decisions whether there is any copyright in newspapers.

We think it right to draw Your Majesty's attention to the defect, and to suggest that in any future legislation, it may be remedied by defining what parts of a newspaper may be considered copyright, by distinguishing between announcements of facts and communications of a literary character.

Fine Arts.

89. The next subjects for our consideration were the various branches of the fine arts, consisting of engravings and works of that class, paintings, drawings, and photographs, and lastly, sculpture.

90. It might be supposed that the law relating to engravings, etchings, prints, lithographs, paintings, drawings, and photographs would be the same so far as those matters are capable of being regulated by the same law; but such is not the case. Until the 25th and 26th years of Your Majesty's reign, there was no Act of Parliament by which copyright was given for paintings, drawings, and photographs, while engravings, etchings, and prints were protected so long ago as the eighth year of the reign of His late Majesty King George II. Though engravings, etchings, and prints were thus provided for, a doubt arose in process of time whether the Acts then in force would apply to lithographs and other recently invented modes of printing pictures, and it was therefore declared, by an Act passed in the 15th and 16th years of Your Majesty's reign, that the earlier Acts were intended to include prints taken by lithography or any other mechanical process by which prints or impressions of drawings or designs are capable of being multiplied indefinitely. It might be questioned whether the language of this Act would not embrace photography, but it seems to have been assumed that it would not, for in the 25th and 26th years of Your Majesty's reign, an Act was passed to give copyright in paintings, drawings, and photographs, and the right thus given was placed on an entirely different footing and made subject to different conditions from those to which engravings, etchings, lithographs, and prints are subject.

91. There is at present great diversity in the law as to the duration of copyright in works of fine art. For engravings and similar works the term is 28 years from publication; for paintings, drawings, and photographs, the life of the artist and seven years; and for sculpture 14 years from the first putting forth or publication of the work, and if the sculptor is living at the end of that time, for a

second term of 14 years. We do not think it desirable that these distinctions should continue.

92. We understand that the reason for making the term in the case of paintings the life of the artist and seven years, was to avoid the necessity of proving the date of publication, which is, it is said, in the case of a painting frequently impossible. There would be equal difficulty, it is reasonable to suppose, in proving the date of publication of sculpture, and we have already shown that it exists, to a minor degree, in the case of all literary works. We think it desirable as far as possible to get rid of this difficulty. By adopting as the term the life of the artist and a certain time after death, the result will be attained.

93. Sculpture, though a branch of the fine arts, is essentially different in many points from paintings, engravings, and works of that class; nevertheless we purpose to deal with them concurrently, so far as the subjects permit.

94. It will have been observed that wherever it is possible to place on the same footing the various subjects of copyright of which we have treated in the earlier part of this Report, we have recommended that the law should be assimilated; we propose that all the subjects of fine art shall be dealt with on the same principle so far as they are capable of that treatment.

95. We therefore propose that the term of copyright for all works of fine art, other than photographs, shall be the same as for books, music, and the drama, namely, the life of the artist and 30 years after his death.

96. We further recommend that it should be open equally to subjects of Your Majesty and aliens to obtain copyright in works of fine art, but aliens, unless domiciled in Your Majesty's dominions, should only be entitled to copyright for works first published in those dominions.

Sculpture.

97. As to sculpture we have had to consider by what acts the sculptor's copyright ought to be deemed to have been infringed. Sculpture may be copied in various ways, not only by sculpture and casting, but by engraving, drawing, and photography; and since the rise of photography, the copying of sculpture by that means has become a considerable business. The question has therefore been brought before us whether copying by other means than sculpture or casting ought not to be considered piracy.

98. A material item in the consideration of this question is the injury likely to be inflicted on the sculptor. The principal witness on this point, Mr. Woolner, R.A., though he thought that the photographing of sculpture would probably operate rather as an advertisement in the sculptor's favor than to his detriment, expressed a wish that the law should give a sculptor protection against copying by means of drawing or engraving; and he was of opinion that incorrect copying by drawing or engraving might be very prejudicial to the sculptor's reputation. But besides this, there is the question whether a sculptor ought not to be entitled to any profit to be made by allowing his works to be photographed or otherwise copied.

99. Upon the whole we are disposed to think that every form of copy, whether by sculpture, modeling, photography, drawing, engraving, or otherwise, should be included in the protection of copyright. It might be provided that the copying of a scene in which a piece of sculpture happened to form an object should not be deemed an infringement, unless the sculpture should be the principal object, or unless the chief purpose of the picture should be to exhibit the sculpture.

100. It was also suggested that copyists of antique works ought to be protected by copyright so far as their own copies are concerned. Many persons spend months in copying ancient statues, and the copies become as valuable to the sculptors as if they were original works. It may be doubted whether the case does not already fall within the Sculpture Act, but we recommend that such doubts should be removed, and, that sculptors who copy from statues in which no copyright exists should have copyright in their own copies. Such copyright should not, of course, extend to prevent other persons making copies of the original work.

Paintings.—Assignment of Copyright on Sale of Pictures.

101. The most difficult question with relation to fine arts which we have had to consider, is to whom the copyright should belong on sale of a painting; whether to the artist or to the purchaser of the picture.

102. The present law on the subject is as follows:—The author of every original painting, drawing, and photograph, and his assigns, have the sole right of copying, engraving, and reproducing it, unless it be sold or made for a good or valuable consideration, in which case the artist cannot retain the copyright, unless it be expressly

reserved to him by agreement in writing, signed by the vendee, or by the person for whom the work was executed ; but the copyright, in the absence of such agreement, belongs to the vendee or such other person ; but it is also provided that a vendee or assignee cannot get the copyright unless at the time of the sale an agreement in writing signed by the artist or person selling is made to that effect. The result is, that if an artist sells a picture without having the copyright reserved to him by written agreement he loses it, but it does not vest in the purchaser unless there is an agreement signed in his favor. If, therefore, there is no agreement in writing—a very frequent occurrence—the copyright is altogether lost on a sale, but if the picture is painted on commission, instead of being sold after being painted, the copyright in the absence of any agreement vests in the person for whom the picture is painted.

103. We have taken a good deal of evidence with regard to this matter. It appears that the provision as to pictures painted on commission was made to prevent the unauthorized copying of portraits. Some difficulty, however, is said to have arisen in determining whether an order or a purchase is a commission, so as to bring the picture within such provision.

104. With regard to the general question whether the copyright in a picture should in every case remain with the artist unless expressly sold, or whether it should follow the picture unless expressly retained, the artists as a body are unanimous in their desire to have the copyright reserved to them by law.

105. It is true that if under the present law an artist wishes to retain the copyright, he can do so by an express stipulation embodied in an agreement signed by the purchaser. Artists, however, say that this is practically useless, since the purchaser would look upon a proposal for such an agreement as intended to deprive him of part of the value of his purchase. They therefore seldom ask for agreements, preferring that the copyright shall drop. In that case any person who can gain access to a valuable picture may make and sell copies of it in defiance of both artist and owner.

106. It is clearly undesirable that copyrights, which are in many cases of great value, should be in this way left free to piracy. The law, therefore, should distinctly define to whom, in the absence of an agreement, the copyright should belong.

107. In dealing with these questions we have had regard not only to the artist's claims which have been strongly advocated before us,

but also to the interests of the public, and to the consideration whether any distinction should be made between pictures sold after being painted and pictures painted on commission, or between portraits and other pictures.

108. First, as to portraits as distinguished from other pictures. Although artists contend that the copyright in pictures should belong to them notwithstanding a sale, it is admitted by some that an exception to the general rule might be made in the case of portraits, and that copyright in them might properly belong to the purchaser or person giving a commission. The evidence appears to us to prove, first, that the reasons why the copyright in portraits should belong to the person ordering the painting apply equally to other pictures; and, secondly, that it is by no means easy to say what a portrait is. Thus it is open to question whether the word would include the portrait of an animal, a dog, for instance, and if so, whether it would include a number of dogs, or a pack of hounds; or a picture of a house or a room, or any object without life; and further whether it is to include pictures of persons taken in character, not so much for the sake of the portrait of the person, as for the sake of the scene; and, lastly, whether it is to include pictures of persons forming large groups, where the scene is the object of the work, though the pictures of the persons present are portraits.

109. These difficulties lead us on the whole to doubt the expediency of drawing any distinction between portraits and other pictures.

110. Secondly, as to making a distinction between pictures painted on commission and others. We are here met with the difficulty of defining what is a commission; and looking to the evidence upon this point we have arrived at the conclusion that no distinction can practically be made.

111. The only question that remains, therefore, on this branch of our inquiry is, whether the copyright in a picture when sold, should still be vested in the artist, independently of the property in the picture, or whether, unless expressly reserved, it should follow the ownership of the picture.

112. The evidence shows that persons buying pictures do not in general think about the copyright, but that if the subject happens to be mentioned, they are generally under the impression that the copyright is included in the purchase, and are astonished if they are told that it is not. It is said that owing to this fact an artist, however eminent, when he is selling a picture, shrinks from mentioning the

copyright and asking for an agreement to enable him to retain it; he usually prefers that the copyright should be absolutely lost to both parties, as in the absence of any written agreement it would be, under the first section of the Act which was passed in the 25th and 26th years of Your Majesty's reign (c. 68), than that the purchaser should think that he is losing a valuable part of his bargain, and consequently should decline to complete the purchase.

113. The principal reason why artists wish to retain the copyright is to keep control over the engraver and photographer. To artists no doubt this control is a matter of considerable pecuniary value, but they urge that they not only wish to control engraving in order to get the payment from the engraver, but chiefly to prevent inferior engraving, which they consider prejudicial to their reputation. It is admitted that if a picture is sold, the artist would have no power to get it engraved when it is in the possession of the purchaser, except by his consent, and artists are willing that this should continue to be the case; but if this power of preventing engraving is so valuable, it is not easy to see why they should hesitate to explain the law to the purchaser and offer to let him have the copyright if he will preserve the picture from inferior engraving, rather than let the copyright be lost both to artist and purchaser.

114. This difficulty does not, we may observe, arise in sales to publishers, who, as a rule, purchase for the purpose of engraving, and therefore buy the copyright.

115. Upon the whole, then, the majority of us have arrived at the conclusion, that, in the absence of a written agreement to the contrary, the copyright in a picture should belong to the purchaser, or the person for whom it is painted, and follow the ownership of the picture. We may observe that this conclusion, though differing from the Bill of 1862 as originally drawn, and from a draft Bill of 1864, is in accordance with the provisions of the Fine Arts Bill of 1869, which we learn from Mr. Blaine's report was "prepared by direction of the Council of the Society of Arts, Manufactures, and Commerce, in consequence of a memorial having been presented to the Council by a considerable number of the most eminent artists and publishers resident in London." It is further substantially the same as the first section of the existing Act of 1862, except as to the concluding provision in that section, which enacts that the vendee cannot have the copyright unless an agreement to that effect is made in writing. This proviso was apparently added

to the Bill without sufficient consideration, during its progress through Parliament.

116. Upon this part of the case we may here refer to a question that has been brought under our notice, namely, whether an artist who has sold a picture should be allowed, without the consent of the owner, to make replicas of it, or whether, as has been suggested, a distinction should be made between replicas made by the artist and copies made by others than the artist. We are not, however, inclined to recognize any distinction; nor indeed, so far at all events as replicas in the same material are concerned, does it appear to be supported by artists.

117. Though in the preceding paragraphs we have spoken only of paintings, the law is the same as to drawings and photographs; and we think that, whatever changes may be made in the law as to paintings, the same should be made with regard to drawings.

118. Photographs, however, present some difficulty. At the present time they are coupled by Act of Parliament with paintings and drawings, and are subject to the same law, but, as we have before pointed out, we believe this circumstance arose merely from the fact that before the year 1862, when the Act was passed, there was no copyright protection afforded by the law for either of these subjects, and it was then thought right that photographs should be protected as well as other works of art. On consideration, however, it will be seen that photographs are essentially different from paintings and drawings, inasmuch as they more nearly resemble engravings and works of a mechanical nature, by which copies of pictures are multiplied indefinitely.

119. We propose that the term of copyright in photographs should be 30 years from the date of publication, except when originally published as part of a book. In the latter case it should be for the term of copyright in the book.

120. But the point upon which we feel difficulty is, whether the copyright should be assimilated to that in paintings and pass to a purchaser, or whether it should remain with the photographer. When photographs are taken with a view to copies being sold in large numbers, it is practically impossible that the copyright in the negative should pass to each purchaser of a copy, and it must remain with the photographer, or cease to exist. On the other hand the same reasons exist for vesting the copyright of portraits in the purchaser or person for whom they are taken, as in the case of a paint-

ing. Indeed, considering the facility of multiplying copies, and the tendency among photographers to exhibit the portraits of distinguished persons in shop windows, it may be thought that there is even greater reason for giving the persons whose portraits are taken the control over the multiplication of copies than there is in the case of a painting. It therefore becomes a question whether it is not necessary to make that distinction between photographs that are portraits and those that are not, and between photographs taken on commission and those taken otherwise, which we have deprecated in the case of paintings.

121. We suggest that the copyright in a photograph should belong to the proprietor of the negative, but, in the case of photographs taken on commission, we recommend that no copies be sold or exhibited without the sanction of the person who ordered them.

122. The same questions arise with respect to engravings, lithographs, prints, and similar works. These arts, like photography, may be employed for the purpose of issuing a large number of copies of a picture, or merely for the purpose of executing a commission and printing a few copies, of a portrait for instance, for private distribution by the person giving a commission among his friends. We think, therefore, that so far as regards the transfer and vesting of the copyright these arts should be placed upon the same basis as photography.

123. Before leaving the subject of the fine arts, we wish to notice one other matter as to which artists say the law is disadvantageous to them. Before an artist paints a picture, he frequently finds it necessary to make a number of sketches or studies, which, grouped together, make up the picture in its finished state. These works may be studies expressly made for the picture about to be painted, or they may be sketches which have been made at various times, and kept as materials for future pictures. If, after a picture is so composed, the copyright is sold, the artists are afraid that they are prevented from again using or selling the same studies and sketches, as they have been advised that such user or sale would be an infringement of the copyright they have sold.

124. It may be doubted whether this fear is well founded, but as the use of such studies and sketches as we have described could not, in our opinion, result in any real injury to the copyright owner, who has copies of them in his picture in a more or less altered shape, and combined with other independent work, we think the doubt should

be removed, and that the author of any work of fine art, even though he may have parted with the copyright therein, should be allowed to sell or use again his *bonâ fide* sketches and studies for such works and compositions, provided that he does not repeat or colorably imitate the design of the original work. We may observe that a provision to this effect was inserted in the Copyright Bill which was introduced by Lord Westbury in 1869.

Architecture.

125. In the course of our inquiry we received an application from the Royal Institute of British Architects, that a representative of the Institute might bring before us a grievance under which architects considered themselves to suffer. Mr. Charles Barry, the president, attended, and after reading to us a copy of a petition on the subject, which had been presented to the House of Lords in the year 1869, and some other papers which will be found in the evidence, contended that architects were subjected to great injustice and injury through their designs not having the protection of copyright, so as to prevent them being used by other persons than the author for building purposes; and some instances of hardship were given.

126. He suggested that the right to reproduce a building should be reserved to the architect for 20 years, and this whether reproduction were desired on the same scale or a different one, or in whole or in part, and whether by the person who gave the commission or any other; and further that copyright in architectural designs should be reserved to the author from the date of erection of a building or the sale of the design.

127. We are satisfied, as regards the former suggestion, that it would be impracticable to reserve this right to reproduce a building. With regard to the latter suggestion, we may observe that though architectural designs have no protection as designs, they are, in our opinion, protected as drawings by the Fine Arts Act, passed in the 25th and 26th years of Your Majesty's reign, so that they may not be copied on paper; and we think that such protection should be preserved.

Registration of Copyright and Deposit of Copies.

128. In the early part of our Report we referred to the existing law respecting registration. It affords one of the most striking

instances of those anomalies and distinctions which have grown up in the law of copyright, because the various subjects of the copyright law have been dealt with by the legislature at different times, and because there has been no attempt made to bring them into harmony.

129. We would first draw attention to the deposit, or presentation of copies of books to various public libraries.

130. By the present law a copy of the first edition, and of every subsequent edition containing additions and alterations, of every book published in any part of Your Majesty's dominions, must be delivered at the British Museum gratuitously, within a certain time after publication; and in default of such delivery the publisher is subject to penalties. There are four other libraries which have a right, on demand, to receive copies of every edition of every book, but to these special cases we shall hereafter have occasion to refer. No such deposit or presentation is required in the case of musical compositions or dramatic pieces publicly performed, unless printed and published, or in the case of lectures publicly delivered unless printed and published, or in the case of engravings and similar works, or of paintings, drawings, or photographs.

131. In every case for which registration is provided, except that of sculpture, it is effected at the Hall of the Stationers' Company, by an officer of the company called the Registrar of Copyright. Sculpture is not registered at Stationers' Hall, but, under the Copyright in Designs Acts, was, until recently, registered, if at all, by the Registrar of Designs. Since the abolition of the office for registration of designs as a separate paid office, sculpture has been registered under arrangements made by the Commissioners of Patents. We ought here to mention that under the International Copyright Act, to which we shall hereafter more particularly allude, copyright in foreign works is in all cases, including sculpture, registered at Stationers' Hall, and that by the same Act registration is made compulsory for works of those classes which, if British, are not required to be registered, and for which no domestic provision for registration exists.

132. By the present law, registration of books and works included by Act of Parliament in that term, is optional, but no action can be maintained for infringement of copyright until they have been registered. After registration, however, actions will lie for antecedent infringement. The principle of the law, therefore, is, that copyright

attaches upon production and publication, and that registration is only a legal preliminary to the enforcement of the right against a wrongdoer. The law, as will hereafter be seen, differs in regard to other works; but at present we confine our remarks to books.

133. We do not consider this state of the law satisfactory. We find that, as a matter of fact, few books are registered until the copyright has been infringed, and though the words "Entered at Stationers' Hall" are frequently to be seen on the title-pages of books, or on the outer sheets of music, entries are not generally made.

134. Several objections have been urged to this state of things. One is, that if it be the object of registration to define the extent and the duration of a right, as well as to ascertain to whom the right belongs, a law which leaves it open to all concerned to avoid that very definiteness which the law seeks to impose, is clearly unsatisfactory. Under the present system it is impossible to ascertain when the term of copyright in a particular book commenced, and therefore to know when it ends. And lastly, it is rendered uncertain whether an author intends to insist upon his copyright at all.

135. The remedies which have been proposed to us are either the total abolition of registration, or that it should be made compulsory, systematic, and efficient.

136. Those persons who suggest the abolition of registration have argued that it is of no practical utility;—that it cannot, as in the case of shares, ships, or land, be conclusive evidence of title;—that it cannot prove that the book registered was written by the person who registers it, or that it is not a piracy;—and that the owner can assert and prove his right quite as well by extrinsic evidence as by means of a register. Those, on the other hand, who advocate registration, say that it is a useful system, because copyright is a species of incorporeal property, of which some visible evidence of existence is desirable;—that it may on occasions be a matter of public utility to know to whom certain books belong, and that by means of registration the public are enabled to ascertain the fact, and whether copyright in a book does exist. They argue further that another advantage which can and ought to be derived from registration is that the register might be made conclusive evidence of transfer or devolution of title;—and that it would afford to the country a complete list of all literary works brought out in this country. It is also said to be very probable that in the absence of registration

English authors might find it difficult to enforce their rights in other countries. It is admitted to be a convenience to an author to be able, under an international copyright convention, to produce as evidence a copy of the register, instead of being obliged to prove by witnesses his authorship and right.

137. We are satisfied that registration under the present system is practically useless, if not deceptive. Great annoyance is caused to persons who are obliged to resort to the register, whether for the purpose of registering works or of searching for entries, by the mode in which the register is kept. In stating this we do not desire to express any censure upon the gentleman who holds the office of registrar. Our censure is intended to apply to the system in force, and the law which orders, or at least sanctions it. Moreover, in our opinion the fees are unnecessarily high.

138. We have been satisfied by the arguments in favor of registration that it is advisable to insist upon it, and that it should be made more effective and complete. To this end it should be made compulsory.

139. Before we refer to the several modes by which it has been suggested to us that registration may be made compulsory, it will be convenient to call attention to the system of registration now in force.

140. The existing regulations as to registration at Stationers' Hall are contained in the Copyright Act which was passed in the 5th and 6th years of Your Majesty's reign. By that Act a book of registry, wherein may be registered 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, is to be kept at the Hall of the Stationers' Company by an officer appointed by the company for that purpose. The register is to be open at all convenient times for inspection on payment of 1*s.* for every entry searched for or inspected, and certified copies of entries may be obtained on payment of 5*s.*, such copies being made *primâ facie* evidence of certain specified matters in all courts. To make a false entry, or to tender in evidence a fictitious copy, is a misdemeanor. Any proprietor of copyright in a book may enter in the register, in a specified form the title of the book, the time of first publication, the names and places of abode of the publisher and proprietor of the copyright, or of any portion of the copyright: a fee of 5*s.* is payable on registering a book, and on payment of a

similar sum any copyright may be assigned by the proprietor by making an entry of the assignment in the register. In case of error in the register, power is vested in Your Majesty's High Court of Justice to order a correction to be made. With regard to the registrar, he, by the terms of the Act, is appointed by the Stationers' Company. There is no power of dismissal given, but possibly the Company have a power of dismissal for reasonable cause. It seems doubtful whether the appointment is for life, or whether it is annual, but renewed as a matter of course; but for all practical purposes the appointment may be regarded as a life appointment. The remuneration of the registrar is by means of the fees payable for entries, certificates, assignments, and searches for entries of copyrights in the register. These fees wholly belong to the registrar, and the Stationers' Company does not participate in them.

141. In the course of our inquiry we received many complaints of a serious character from a number of witnesses against the present system of registration, and the mode in which the register is managed and the business conducted at Stationers' Hall. Great dissatisfaction has also been expressed at the amount of the fees, but these it will be remembered are fixed by the Act of Parliament. With regard to the complaints relating to the conduct of the registration, we feel bound to say that the registrar (whom we invited to come before us a second time, if he desired to say anything in answer to the charges made by the other witnesses) was able to give satisfactory answers to many of the charges. Among others, complaints were made of the ignorance displayed in the office by the officials there, and their inability to answer questions put to them relating to copyright and registration. These questions, however, in many cases appeared to be of a legal and intricate character, and of such a kind that the registrar and clerks could scarcely be expected to answer them, even if it had been their duty to do so, upon which point we entertain considerable doubt.

142. Complaints were also made of the inconvenience of the Registration Office and the insufficiency of the space. After a careful examination into these points, and a personal inspection of the office by some of Your Majesty's Commissioners, we are satisfied that the building is very inadequate for the purpose of the business conducted there, and that it would become more so upon the introduction of compulsory registration. Nor can there be any doubt that the register itself is capable of considerable improvement.

143. With regard to the insufficiency of the office accommodation, we were informed by the clerk to the Stationers' Company, that should the legislature continue to intrust to them the duty of registration they would be willing in three or four years' time, when some of their property adjacent to the present office will be pulled down, to erect at their own expense suitable offices on an increased scale and with proper accommodation.

144. It is only fair to the Stationers' Company to point out that they have no power under the Act to make any regulations respecting registration. If, therefore, registration be continued at Stationers' Hall, it would appear to be right that some power of control should be vested in the Company by Parliament, and we believe that they are ready to accept that power.

145. In order to provide an improved system of registration in substitution for that now in use, it appears to us that the two acts of registration and deposit of the copy of a book at or for the British Museum should be combined; or, in other words, that, so far as the author is concerned, registration should be complete on the deposit of the copy and on obtaining an official receipt. One advantage of this would be a diminution of labor and expense, and the British Museum would probably receive all copyright books without the labor of hunting for them in booksellers' catalogues and advertisements, as we are informed the officials are obliged to do under the present system. Another advantage would be that the fees to be paid for registration might be materially diminished.

146. The registration should be effected by the registrar appointed for that purpose, whose duty it should be to receive the copy of the book, to register the official receipt, and to give a copy thereof, certified by him, to the person depositing the book. This certified copy should be a substitute for the certificate at present obtained, and it should be *primâ facie* evidence in courts of law of the publication and due registration of the work, and of the title to the copyright of the person named therein.

147. A fee of 1*s*. would in our opinion be ample, if registration be made compulsory, to render the office of registration self-supporting. This is shown by the statistics as to the number of books and other publications received at the British Museum, which will be found in the Appendix to the *Evidence* of Mr. J. Winter Jones. There might also be a fee of 1*s*. for searches. This, besides providing a large revenue, would enable authors to obtain for 1*s*. both registra-

tion and a certificate of registration of copyright, for each of which 5s. is now charged.

148. We regard it as a mistake that the appointment of an officer for so important a duty as that of registering rights affecting a vast number of persons, and the evidence of which ought to be under the control of the Government, should be vested in a private society. The registers ought to be placed in such keeping that they may at all times be treated as part of the public records, and the registrar ought to be a person amenable to a Government department. The necessity for this would be increased by the acceptance of our suggestion that registration should be made compulsory. In any case the registry and the registrar should be under Government direction and responsible to Government.

149. Considering that a copy of each book has to be deposited at the British Museum,—that at present the authorities of the Museum have to give receipts for the works deposited and to keep certain registers,—and that it is a part of our plan that the deposit of the book and registration of the copyright should be combined,—it appeared to us that the most appropriate place for the Registry Office would be the British Museum, and that the officers of the registry, whilst under the general control of the trustees of the Museum, should be answerable to Government for the proper discharge of their duties. We, therefore, put ourselves into communication with the trustees, with a view of ascertaining their opinion on the point, but they stated that they deemed it undesirable for the British Museum to undertake the duty, on the ground that registration of copyright is an executive function, and did not come within the sphere of their duties as trustees of the British Museum. A copy of the correspondence will be found in the Appendix and we cannot but express our regret that the trustees declined to accede to our request that one of their body should appear before us. It is probable that a full explanation of our views and a personal discussion might have removed the difficulties which they felt upon this point.

150. If registration of copyright should not be established at the British Museum, it might be either retained at Stationer's Hall, or removed to some Government office established for the purpose. It is proper to state that the Stationers' Company seem desirous of retaining the office, because their Hall has been the place for registration ever since registration was instituted; and further that it has been recognized as the place of registration in several international

conventions. In our opinion, however, the reasons in favo[illegible]ns-ferring registration to a Government office preponderate. [illegible]ther case arrangements will have to be made for transferring to the British Museum the works which are deposited and registered elsewhere.

151. It only remains for us to notice the means by which registration may be most easily rendered compulsory. Three ways have been suggested to us in which this may be done:—1. By making registration on the date of publication a condition of an effective copyright. 2. By inflicting a pecuniary penalty. 3. By giving the owner a direct interest in registering his copyright. With reference to the second suggestion, there is at present a pecu[illegible]for failure to present books to the library of the Briti[illegible]it is urged that it would be found sufficient for the[illegible]ling registration; but to this it is replied that[illegible]expected in such a case as registration of cop[illegible]pena'y; and also that a penalty would have to b[illegible]the medium of some Government office; and that, [illegible]y of the difficulty there would be in finding out books that had not been registered, no Government office would willingly execute the task of suing for penalties. With regard to the presentation of books to the British Museum, the Museum has an interest in procuring the books distinct from the matter of the penalty.

152. With the third suggestion we are inclined to agree; and although we are not disposed to advise the abolition of a penalty for not delivering for the use of the British Museum a copy of every book which has not been delivered and registered at Stationers' Hall, or some Government place of registration, we think that compulsory registration would be sufficiently secured by the third course that has been suggested, namely,—that a copyright owner should not be entitled to take or maintain any proceedings, or to recover any penalty in respect of his copyright until he has registered, and that he should in no case be able to proceed after registration for preceding acts of piracy. This is the present law in the case of paintings, drawings, and photographs, and we see no reason why the same law should not be applied to copyright in every other work that has to be registered.

153. If this plan should be adopted, it becomes a question what should happen after registration with regard to copies made before registration. Were the copyright owner entitled upon registration

to suppress all such copies, the compulsory provisions of the law would to a certain extent be neutralized, because it would be unnecessary for copyright owners to register until their works had been copied. It has been urged, on the other hand, that if an unscrupulous person should, after the expiration of the time allowed for registration, and before registration, publish a large number of copies, the copyright owner would practically lose all the benefit of his copyright if these copies were allowed to be sold and circulated after registration. We think, however, that in practice this would not occur. As a rule, registration would be effected immediately on publication, and before the work could be copied.

154. We therefore recommend that proprietors of copyright should not be entitled to maintain any proceedings in respect of anything made or done before registration, nor in respect of any dealings subsequent to registration with things so made or done before registration. But as this provision might in some cases operate harshly, we think it should not apply if registration is effected within a limited time, say one month, after publication.

155. In making these remarks on the subject of registration, we have referred only to books and works of a similar character, but we intend them equally to apply, with one exception, to dramatic pieces and musical compositions which are publicly performed but are not printed and published. We have suggested that the acts of registration and deposit of a copy of the book should be combined, and it is manifest that there could not conveniently be any deposit of a copy of a work not printed; we propose, therefore, that in these cases it should be sufficient that the title of every drama or musical composition, with the name of the author or composer, and the date and place of its first public performance, should be registered.

156. For the sake of uniformity we are of opinion that it is desirable that the law of registration should, as far as possible, be the same for works of fine art as for books, music, and the drama.

157. It has, however, been strongly urged upon us that compulsory registration in the case of paintings and drawings is practically impossible; and it would seem that the same arguments that are used against compulsory registration in the case of paintings and drawings apply equally to sculpture. There is no doubt a great difficulty in the way of compulsory registration of paintings and draw-

ings. This arises from the fact that the class of pictures to be registered cannot be limited, and that if copyright in an important work is only to be secured by registration, copyright in the smallest sketch or study could only be preserved by the same means. Some difficulty also arises from the fact that paintings, drawings, and sketches are so frequently subjected to alteration that it would be almost impossible to say when a work is finished so as to be capable of registration as a completed work.

158. On these grounds, therefore, we recommend that registration of paintings and drawings should not be insisted on so long as the property in the picture and the copyright are vested in the same person, but that if the copyright be separated by agreement from the property in the picture, there should be compulsory registration, and that the register should show,—

(*a.*) The date of the agreement.
(*b.*) The names of the parties thereto.
(*c.*) The names and places of abode of the artist and of the person in whom the copyright is vested.
(*d.*) A short description of the nature and subject of the work, and, if the person registering so desires, a sketch outline or photograph of the work in addition thereto.

159. With regard to such works as engravings, prints, and photographs, there would not be the same difficulty, and we think that they should be subject to compulsory registration in the same way as books.

Forfeiture of Copies.

160. Before proceeding farther we may notice a provision of the law which we consider of great value as a protection for owners of copyright, and which we consider it desirable to retain. By the Act which was passed in the 5th and 6th years of Your Majesty's reign it is provided that all copies of any book in which there is copyright, unlawfully printed or imported without the consent in writing under his hand of the registered proprietor of the copyright, are to be deemed to be the property of the registered proprietor of such copyright, and he may sue for and recover the same, with damages for the detention thereof, from any person who detains them after a demand thereof in writing. We recommend that this provision, *mutatis mutandis*, should be extended to works of fine art. We

think it would, however, be an improvement to provide that these copies and damages might be summarily recovered by application to a magistrate.

Public Libraries.

161. The subject which we have next to notice is the obligation that now exists to present gratuitously copies of every book published to certain public libraries. This obligation dates from the reign of his Majesty King Charles II., and since that date it has varied from time to time as regards the number of copies required to be presented and the libraries entitled to them, the number of the latter having at one time been as high as eleven. The Act by which the present obligation was imposed is that which was passed in the 5th and 6th years of Your Majesty's reign. By that Act one copy of every book published, and of every second or subsequent edition, if any alterations or additions are contained therein, has to be delivered gratuitously by the publisher at the British Museum, and if a demand be made in writing one copy has also to be delivered gratuitously for the Bodleian Library at Oxford, the public library at Cambridge, the library of the Faculty of Advocates at Edinburgh, and the library of Trinity College, Dublin. Thus authors and publishers have now generally to provide five copies of each work, as well as of second and subsequent editions, at their own cost for public use. A slight difference is made between the cases of the copies given to the British Museum and of those given to the other libraries. In the former the copies have to be of the best kind published. [illegible] in the latter the copies are to be upon the paper of which the l[illegible] number of copies of the book or edition is printed for sale; an[illegible] the former the delivery is obligatory in every instance, while i[illegible]e latter it is only required if a demand be made. As a matter [illegible] fact, however, copies of nearly every work of any importance are presented to all five libraries.

162. Many of the witnesses who have given evidence before us have complained of this obligation as a heavy and unjust tax. The weight of it, however, is hardly felt in the case of low-priced books, or books of large circulation, though the gratuitous presentation of a number of books of even small value involves a double loss to authors and publishers, assuming that the libraries would each buy a copy, were one not to be obtained without payment. The grievance is of course most felt in the case of expensive works. Publishers complain of the injustice of taxing them or the authors for the mainte-

nance of public libraries, and ask why the public, or the bodies to be benefited, should not pay for the books they require.

163. When this complaint was made to us we communicated with the authorities at the libraries other than the British Museum, in order to ascertain the number of books obtained by them under the Act, and the value they attached to their privilege. We obtained replies from which it appears that a large number of the books published are sent to these libraries, and that they are generally sent without any demand being made for their delivery; also that the authorities regard the privilege as one of considerable value, which they are not willing to part with. We have placed a copy of this correspondence in the Appendix to the *Evidence*.

164. Having to decide between the authors and publishers on the one hand, and the libraries on the other, we on the whole consider that the complaint of the authors and publishers is well founded, and we have come to the conclusion that so much of the existing law relative to gratuitous presentation of books to libraries, as requires copies of books to be given to libraries other than that of the British Museum, should be repealed. In making this recommendation we have taken into consideration the facts that the bodies to whom the libraries belong are possessed of considerable means and are well able to purchase any books which they may require; and also that the repeal of the clause giving the privilege, will not deprive the libraries of any property already acquired, but merely of a right to obtain property hereinafter to be created.

165. It will have been seen that we do not propose to interfere with the obligation to deliver at the library of the British Museum a copy of every book published, as it is a part of our scheme that registration should be effected and copyright secured by the deposit of a copy of the work for the public use. To this we think no reasonable objection can be made.

166. We will only add that the importance of securing a national collection of every literary work has been recognized in most of the countries where there are copyright laws. And with a view to make the collection in this country more perfect, we are disposed to think that it would be desirable to require the deposit at the British Museum of a copy of every newspaper published in the United Kingdom. As a matter of fact, such newspapers are, we believe, now deposited there, but a doubt has been raised whether that deposit could be enforced under the existing law.

Music and the Drama.—Penalties.

167. We have next to refer to a provision of the law which has of late occasioned some dissatisfaction, and which, in our opinion, needs revision.

168. By an Act of Parliament which was passed in the third year of the reign of His late Majesty King William IV. (c. 15), it was enacted, with reference to dramatic copyright, that if any person should, during the continuance of the sole liberty of representation and contrary to the right of the author, or his assignee, represent or cause to be represented, without the consent in writing of the proprietor of the copyright first had and obtained, at any place of dramatic entertainment within the British dominions, any dramatic piece, the offender should be liable, for each and every representation, to the payment of an amount not less than 40*s.*, or to the full amount of the benefit or advantage arising from the representation, or the injury or loss sustained by the proprietor of the copyright, whichever should be the greater damages; such sum to be recovered together with double costs of suit by the proprietor. In the 20th section of the Act, which was passed in the 5th and 6th years of Your Majesty's reign (c. 45), it was recited that it was expedient to extend to musical compositions the benefits of the earlier Act, and it was enacted that the provisions of the earlier Act should apply to musical compositions.

169. This provision for the 40*s.* penalty has lately been much abused. Copyrights in favorite songs from operas and in other works have been bought, and powers of attorney have been obtained to act apparently for the owners of the copyright in such works, and to claim immediate payment of 2*l.* for the performance of each song. These songs are frequently selected by ladies and others for singing at penny readings and village or charitable entertainments, and they sing them not for their own gain, but for benevolent objects. In such cases there is manifestly no intention to infringe the rights of any person; the performers are unconscious that they are infringing such rights; and no injury whatever can be inflicted on the proprietors of the copyrights. In many cases of this kind, and under a threat of legal proceedings in default of payment, the penalty has been demanded, and we have reason to believe that the money so demanded has been generally paid. Many instances of this proceeding have been brought to our notice from various parts of the country, and some will be found in the evidence.

170. We have inquired whether the abolition of the right to take proceedings for the performance of these single songs would inflict injury on composers. The opinion seemed to be that though public performance is generally advantageous to composers, since it operates as an advertisement of their works, it is necessary that copyright owners should retain sufficient control to enable them to save their music from inferior or unsuitable performance, which might give the public an unfavorable opinion of their compositions.

171. The amendment in the law which we propose as most likely to preserve control for the composers, and at the same time to check the existing abuse, is that every musical composition should bear on its title-page a note stating whether the right of public performance is reserved, and the name and address of the person to whom application for permission to perform is to be made. The owner of such composition should only be entitled to recover damages for public performance when such a statement has been made; and instead of the minimum penalty of not less than 40*s.* at present recoverable for any infringement of musical copyright by representation, the court should have power to award compensation according to the damage sustained.

172. This abuse of the powers given by the Act does not seem to have arisen in the case of dramatic copyright, nor does it seem likely to arise so long as the present law of licensing places of dramatic performance exists. We do not therefore suggest any alteration in the law so far as it applies to that copyright.

Fine Arts.—Infringement.

173. Two matters relating to infringement of copyright in works of fine art, but particularly of paintings, have been brought to our notice, in which, it is alleged, the law affords an inadequate remedy.

174. First, by the 6th section of the Act which was passed in the 25th and 26th years of Your Majesty's reign (c. 68) it was enacted that if any person should infringe copyright in any painting, drawing, or photograph, he should be liable to a penalty of 10*l.*, and all the piratical copies should be forfeited to the proprietor of the copyright. Artists and engravers, who are frequently proprietors of copyright in paintings and drawings, consider the provision enabling them to seize piratical copies to be of great value, but they say that it is rendered inefficient by the fact that no power is given to enter a house and search for copies. An instance was given to us where, a

conviction for selling piratical copies having been obtained, the magistrate had made an order that the copies should be delivered up, but it was found that the order could not be enforced.

175. The only remedy suggested to meet the evil, is that proposed in the Bill introduced into Parliament in the year 1869, but withdrawn before it became law, and which runs as follows:—

"Upon proof on the oath of one credible person before any justice of the peace, court, sheriff, or other person having jurisdiction in any proceeding under this Act that there is reasonable cause to suspect that any person has in his possession, or in any house, shop, or other place for sale, hire, distribution or public exhibition any copy, repetition or imitation of any work of fine art in which or in the design whereof there shall be subsisting and registered copyright under the Act, and that such copy, repetition, or imitation has been made without the consent in writing of the registered proprietor of such copyright, it shall be lawful for such justice, court, sheriff or other person as aforesaid before whom any such proceeding is taken, and he or they is and are hereby required to grant his or their warrant to search in the daytime such house, shop, or other place, and if any such copy, repetition, or imitation, or any work which may be reasonably suspected to be such shall be found therein, to cause the same to be brought before him or them, or before some other justice of the peace, court, sheriff, or person as aforesaid, and upon proof that any or every such copy, repetition, or imitation was unlawfully made, the same shall thereupon be forfeited and delivered up to the registered proprietor for the time being of the copyright as his property." Though we should be glad to see some remedy adopted, we entertain doubts whether that proposed is not of a more stringent character than the circumstances justify.

176. The other matter relative to copyright in the fine arts, with regard to which it is said the law is defective, arises out of the now very common practice of hawking about the country piratical copies, and particularly piratical photographs of copyright paintings and engravings. This is spoken of as a serious injury to the copyright proprietors, and a practice which the existing law is powerless to stop.

177. At present all penalties and all copies forfeited can be recovered in England and Ireland only by action or by summary proceedings before justices, that is, by summoning the offending person before the justices, and in Scotland by action before the Court of

Session, or by summary action before the sheriff. The complaint made to us is that there is no power to seize piratical copies where they are seen and when they might be taken. The power to proceed by summons is, it is said, generally ineffectual, because persons selling these copies go round from house to house and refuse to give either a name or address, and are altogether lost sight of before a summons can be procured.

178. A remedy by seizure was proposed in the Bill of 1869, and we think that the evil can best be met by the introduction in any future Act of a clause similar to the 15th of that Bill. The 15th clause was as follows :—

"If any person elsewhere than at his own house, shop, or place of business, shall hawk, carry about, offer, utter, distribute, or sell, or keep for sale, hire, or distribution, any unlawful copy, repetition, or colorable imitation of any work of fine art, in which, or in the design whereof, there shall be subsisting and registered copyright under this Act, all such unlawful articles may be seized without warrant by any peace officer, or the proprietor of the copyright, or any person authorized by him, and forthwith taken before any justice of the peace, court, sheriff, or other person having jurisdiction in any proceeding under this Act, and upon proof that such copies, repetitions, or imitations were unlawfully made, they shall be forfeited and delivered up to the registered proprietor for the time being of the copyright as his property."

We think, however, that the words "carry about" might be properly omitted, as the other words are sufficiently large ; and further, that it should not be in the power of the proprietor of the copyright, or any person authorized by him, to seize, but that the clause should run : "without warrant by any peace officer under the orders and responsibility of the proprietor of the copyright or of any person authorized," etc., or to that effect.

179. Besides providing penalties for various acts of infringement of copyright, and for fraudulently marking pictures with the names or marks of artists who are not the authors of them, which penalties we think are sufficient for the purpose, the present law prohibits the importation into the United Kingdom, except with the consent of the proprietor, of all repetitions, copies, or imitations of paintings, drawings or photographs in which there is copyright, which have been made in any foreign state or in any other part of the British dominions than the United Kingdom. We think it is desirable to retain this

prohibition, and that a somewhat similar prohibition might properly be extended to the exportation of unlawful repetitions, copies, and imitations.

180. Whatever powers may be given to search for and seize piratical copies of paintings, and whatever penalties may be established, the same should be extended to sculpture and other works of fine art.

Piracy of Lectures.

181. We have already suggested some alterations in the law with respect to lectures. In case of piracy either by publication or re-delivery without the author's consent, we think there should be penalties recoverable by summary process, and that the author should be capable of recovering damages by action in case of serious injury, and of obtaining an injunction to prevent printed publication or re-delivery. If the piracy is committed by printed publication, we think the author should also have power to seize copies.

COLONIAL COPYRIGHT.

182. We have already shown that in some important respects the state of the present copyright law, as regards the colonies, is anomalous and unsatisfactory, and we have suggested that a remedy may be found by providing that publication in any part of Your Majesty's dominions shall secure copyright throughout those dominions. It is unnecessary to recapitulate our reasons for making this suggestion, and we will only add that the difficulties which may arise in arranging the details of this change in the law, will not, we anticipate, be of a serious character.

183. There remain, however, other questions of some difficulty affecting the general body of readers in the colonies, with which we now proceed to deal.

184. It must be admitted that it is highly desirable that the literature of this country should be placed within easy reach of the colonies, and that with this view the Imperial Act should be modified, so as to meet the requirements of colonial readers.

185. In this country the disadvantage arising from the custom of publishing books in the first instance at a high price, is greatly lessened by the facilities afforded by means of clubs, book societies, and circulating libraries.

186. These means are not available, and indeed are impracticable, owing to the great distances and scattered population, in many of the

colonies, and until the cheaper English editions have been published the colonial reader can only obtain English copyright books by purchasing them at the high publishing prices, increased as those prices necessarily are by the expense of carriage and other charges incidental to the importation of the books from the United Kingdom.

187. Complaints of the operation of the Copyright Act of 1842 were heard soon after it was passed, and from the North American provinces urgent representations were made in favor of admitting into those provinces the cheap United States reprints of English works. In 1846 the Colonial Office and the Board of Trade admitted the justice and force of the considerations which had been pressed upon the Home Government, "as tending to show the injurious effects produced upon our more distant colonists by the operation of the Imperial law of copyright." And in 1847 an Act was passed "To amend the law relating to the protection in the colonies of works entitled to copyright in the United Kingdom."

188. The principle of this Act, commonly known as the Foreign Reprints Act, is to enable the colonies to take advantage of reprints of English copyright books made in foreign states, and at the same time to protect the interests of British authors.

189. It is provided, "that in case the legislature, or proper legislative authorities in any British possession, shall be disposed to make due provision for securing or protecting the rights of British authors in such possession, and shall pass an Act or make an ordinance for that purpose, and shall transmit the same in the proper manner to the Secretary of State, in order that it may be submitted to Her Majesty, and in case Her Majesty shall be of opinion that such Act or ordinance is sufficient for the purpose of securing to British authors reasonable protection within such possession, it shall be lawful for Her Majesty, if she think fit so to do, to express Her royal approval of such Act or ordinance, and thereupon to issue an Order in Council, declaring that so long as the provisions of such Act or ordinance continue in force within such colony, the prohibitions contained in the aforesaid Acts (*i.e.*, the Copyright Act of 1842, and a certain Customs Act), and hereinbefore recited, and any prohibitions contained in the said Acts, or in any other Acts, against the importing, selling, letting out to hire, exposing for sale or hire, or possessing foreign reprints of books first composed, written, printed, or published in the United Kingdom, and entitled to copyright therein shall be suspended so far as regards such colony."

190. Although the Act is general in its terms, the British possessions in North America were specially in view when it was passed, and for the following reason:—Between this country and the United States there was no existing copyright treaty, and it was the practice of the United States publishers to reprint in their own country English works at very cheap rates. These cheap copies, owing to various difficulties in giving practical effect to the provisions of the law prohibiting the importation, were largely introduced into Your Majesty's North American possessions.

191. Certain colonies, among others Canada, made what was at the time accepted by Your Majesty in Council as sufficient provision for securing the rights of British authors, and thus brought themselves under the Act.

192. The provision made by the Canadian legislature was, that American reprints of English copyright works might be imported into the colony on payment of a customs duty of 12½ per cent., which was to be collected by the Canadian Government and paid to the British Government for the benefit of the authors interested. Like provisions were made in other colonies.

193. So far as British authors and owners of copyright are concerned, the Act has proved a complete failure. Foreign reprints of copyright works have been largely introduced into the colonies, and notably American reprints into the Dominion of Canada, but no returns, or returns of an absurdly small amount, have been made to the authors and owners. It appears from official reports that during the ten years ending in 1876, the amount received from the whole of the ninteeen colonies which have taken advantage of the Act was only 1,155*l.* 13*s.* 2½*d.*, of which 1,084*l.* 13*s.* 3½*d.* was received from Canada; and that of these colonies, seven paid nothing whatever to the authors, while six now and then paid small sums amounting to a few shillings.

194. These very unsatisfactory results of the Foreign Reprints Act, and the knowledge that the works of British authors, in which there was copyright not only in the United Kingdom but also in the colonies, were openly reprinted in the United States, and imported into Canada without payment of duty, led to complaints from British authors and publishers; and strong efforts were made to obtain the repeal of the Act.

195. A counter-complaint was advanced by the Canadians. They contended that although they might import and sell American re-

prints on paying the duty, they were not allowed to republish British works, and to have the advantage of the trade, the sole benefit of which was, in effect, secured for the Americans. In defence of themselves against the charge of negligence in collecting the duty, they alleged that owing to the vast extent of frontier and other local causes, and also from the neglect of English owners of copyright to give timely notice of copyright works to the local authorities, they had been unable to prevent the introduction of American reprints into the Dominion.

196. The Canadians proposed that they should be allowed to republish the books themselves under licenses from the Governor-General, and that the publishers so licensed should pay an excise duty of 12½ per cent. for the benefit of the authors. It was alleged that by these means the Canadians would be able to undersell the Americans, and so effectually to check smuggling; and further that the British author would be secured his remuneration, as the money would be certain to be collected in the form of an excise duty, though it could not be collected by means of the customs. Objections, however, were made to the proposal, and it was not carried out.

197. These considerations led to the suggestion that republication should be allowed in Canada under the authors' sanction, and copyright granted to the authors in the Dominion; and upon this a question arose whether Canadian editions, which would be probably much cheaper than the English, should be allowed to be imported into the United Kingdom and the other colonies.

198. Matters were in this state when "The Copyright Act of 1875" was passed by the Dominion legislature. The Act was sent over in the form of a Bill reserved for Your Majesty's assent; but as doubts were entertained whether the Act was not repugnant to Imperial legislation, and to the Order in Council made in 1868, by which the prohibitions against importing foreign reprints into the Dominion of Canada had been suspended, power was given to Your Majesty by an Imperial Act passed in 1875 to assent to the Canadian Bill, and thus make it law. Your Majesty's assent was subsequently given.

199. It is in this Imperial Act that a clause will be found, which has been strongly objected to by Mr. Farrer in his evidence before us, prohibiting the importation into the United Kingdom of Canadian reprints.

200. The Canadian Act gave to any person domiciled in Canada, or in any part of the British possessions, or being a citizen of any

country having an international copyright treaty with the United Kingdom, being the author of any literary or artistic work, power to obtain copyright in Canada for 28 years, by printing, and publishing, or reprinting, or republishing, or, in the case of works of art, by producing or reproducing his work in Canada, and fulfilling certain specified conditions. The copyright thus capable of being secured by British copyright owners is in addition to and concurrent with the copyright they have throughout the British dominions under the Imperial Act.

201. The Dominion Act has been in force for so short a time that it is difficult to ascertain its full effect; but from a return obtained from Canada by the Secretary of State for the Colonies in November 1876, it appears that 31 works of British authors had been published in Canada under the Act up to that date. A comparison of the prices of these works shows that if the English editions were sold in Canada at any price over about half a dollar, or 2*s*., there was a reduction more or less considerable in the price of the Canadian edition, the reduction in one instance being as great as from $12.60 or 2*l*. 11*s*. 8½*d*. to $1.50 or 6*s*. 1¾*d*. It also appears that of many of the books republished in Canada under the Act the American reprints were, as a rule, kept out of the Dominion; and that the prices of American reprints sold in the Dominion were higher than those of the Canadian reprints.

202. We have thought it desirable to give this brief sketch of the law of colonial copyright, as it enables us to explain more clearly the questions we have had to consider. The remedies we propose are intended to meet the grievance put forward by the colonial readers.

203. The main grievance, as we have already pointed out, lies in the difficulty experienced by the colonists in procuring, at a sufficiently cheap price, a supply of English copyright books.

204. The Canadian Copyright Act of 1875 may have the effect in time of securing cheap editions of British works in the Dominion. But, in the first place it is too soon to judge of this, and no similar Act has, as yet, been passed in other colonies; and in the second place, it is questionable whether such an Act would work at all in small colonies.

205. We may at once state that we do not propose to interfere with the Canadian Copyright Act, 1875, or with the principle of that law.

206. We recommend that the difficulty of securing a supply of English literature at cheap prices for colonial readers be met in two ways: 1st. By the introduction of a licensing system in the colonies;

and 2d. By continuing, though with alterations, the provisions of the Foreign Reprints Act.

207. In proposing the introduction of a licensing system, it is not intended to interfere with the power now possessed by the Colonial Legislatures of dealing with the subject of copyright, so far as their own colonies are concerned. We recommend that in case the owner of a copyright work should not avail himself of the provisions of the copyright law (if any) in a colony, and in case no adequate provision be made by republication in the colony or otherwise, within a reasonable time after publication elsewhere, for a supply of the work sufficient for general sale and circulation in the colony, a license may, upon an application, be granted to republish the work in the colony, subject to a royalty in favor of the copyright owner of not less than a specified sum per cent. on the retail price, as may be settled by any local law. Effective provision for the due collection and transmission to the copyright owner of such royalty should be made by such law.

208. We do not feel that we can be more definite in our recommendation than this, nor indeed do we think that the details of such a law could be settled by the Imperial Legislature. We should prefer to leave the settlement of such details to special legislation in each colony.

209. With regard to the continuance of the Foreign Reprints Act, we have already stated that strong efforts have been made to procure its repeal. In March 1870, at a meeting of the leading authors and publishers over which the late Earl Stanhope presided, the following resolution was passed: "That a representation be made to the Right Honorable the First Lord of the Treasury, pointing out the great hardship sustained by British authors and publishers from the operation of the Imperial Copyright Act of 1847, and stating the earnest desire they feel that Her Majesty's Government may deem it right to propose its prompt repeal."

210. We are fully sensible of the weight that must attach to the opinion of persons so qualified to form a judgment on this matter, but upon careful consideration of the subject and of the peculiar position of many of Your Majesty's colonies—and upon this point we would refer to the answers returned by the colonies to Lord Kimberley's Circular Dispatch of the 29th July 1873—we are not prepared to recommend the simple repeal of the Act of 1847, and the consequent determination of the power now vested in Your Majesty, of allowing the introduction of foreign reprints into colonies which have made due provision for securing the rights of British authors.

211. We believe that although the system of republication under a license may be well adapted to some of the larger colonies, which have printing and publishing firms of their own, and which could reprint and republish for themselves with every prospect of fair remuneration, it would be practically inapplicable in the case of many of the smaller colonies. These latter now depend almost wholly on foreign reprints for a supply of literature; and to sweep away the Foreign Reprints Act without establishing some other system of supply would be to deprive them in a great measure of English books.

212. But we are of opinion that it has been proved necessary to amend the existing law, for the purpose of more effectually protecting the rights of owners of copyright, whilst affording to colonial readers the means of making themselves acquainted with the literature of the day.

213. As the provisions hitherto made in the different colonies to which Orders in Council have been applied, have failed to secure remuneration to proprietors of copyright, we recommend that power should be given to Your Majesty to repeal the existing Orders in Council; and that no future Order in Council should be made under that Act until sufficient provision has been made by local law for better securing the payment of the duty upon foreign reprints to the owners of copyright works.

214. Probably it will be desirable to grant a certain period to the colonies, for the purpose of enabling them to propose further and better provisions, before such revocation actually takes place. In that case, however, it should be clearly understood that Your Majesty is in no way pledged, by the grant of such delay, to issue any fresh Order in Council; and power should be given to Your Majesty in Council to revoke, at any time, any future Order in Council, should the provisions of the colonial law prove practically insufficient.

215. It is perhaps hardly within the scope of this Commission to suggest what provisions Your Majesty should be advised to consider sufficient, within the meaning of the Act, to secure the rights of the proprietors of copyright. But it appears to us that possibly some arrangement might be effected, by which all foreign reprints should be sent to certain specified places in the colony, and should be there stamped with date of admission upon payment of the duty, which could then be transmitted here to the Treasury or Board of Trade for the author. All copies of foreign reprints not so stamped should be liable to seizure, and it is worthy of consideration whether some

penalty might not also be affixed to the dealing with unstamped copies.

216. And, having regard to the power which we have contemplated, for authors to obtain colonial copyright by republication in the colonies, and to the licensing system which we have suggested, we recommend that where an Order in Council for the admission of foreign reprints has been made, such reprints should not, unless with the consent of the owner of the copyright, be imported into a colony—

1. Where the owner has availed himself of the local copyright law, if any;
2. Where an adequate provision, as pointed out in paragraph 207, has been made; or,
3. After there has been a republication under the licensing system.

217. A subject of great moment with reference to colonial copyright, is the propriety of permitting the introduction of colonial reprints into the United Kingdom. This question has given rise to much discussion, as may be seen by reference to the correspondence, which, at the time The Canadian Copyright Act, 1875, was under consideration, passed between the Colonial Office and the Board of Trade. Ultimately the 4th section of that Act was passed by which it is enacted, that, where any British copyright work has acquired copyright in Canada under the colonial Act by republication, it is unlawful for any person other than the owner to import Canadian reprints into the United Kingdom. This provision is analogous to that in force in the case of books reprinted in foreign countries.

218. We have been urged to recommend the repeal of that section, so far at all events as to admit the importation into the United Kingdom of copies published with the consent of the copyright owner.

219. We may state generally that authors and publishers, who are the persons most interested in copyrights, are strongly opposed to the introduction of colonial reprints into the United Kingdom, on the following grounds:—That the cheaper price of those reprints would cause great pecuniary loss to the owners of copyrights:—that the present system of trade, which has been found most remunerative to authors and publishers, would be disarranged:—and that publishers would not be willing or able to offer so much to authors for their works.

220. It is argued that, if importation is allowed, no copyright owner will consent to republication in the colonies by himself or others, because all such republications, being made with his consent,

would be liable to be introduced here, and that the colonial readers would therefore suffer to a certain extent by the alteration in the law. This last argument will, however, lose its force, if effect is given to our suggestion of permitting republication in the Colonies under a licensing system.

221. The arguments in favor of admission of colonial reprints are based on consideration of the public interest, which is alleged to be greatly injured by the high prices at which books are now published —prices that are altogether prohibitory to the great mass of the reading public; and it is said that if the cheaper colonial editions were to be allowed in this country, the necessary effect would be that prices generally would be greatly reduced.

222. It is also urged that if the law gives British copyright owners the benefit of copyright throughout the empire, and the exclusive command of the colonial market, it is unfair to the British public that they should be deprived of the advantage they might derive from that extended copyright, and that they should be the only section of Your Majesty's subjects who are debarred from participating in the advantages of cheap colonial editions.

223. It is also said that it is a mistake to suppose that authors would really be injured by the introduction into the United Kingdom of the colonial editions, for that the profit which would be derived from the extended market would more than compensate for the loss resulting from publication at lower prices. Thus the public would derive the benefit of cheap literature, while authors would reap profit equal to or greater than that they now enjoy.

224. The witness who principally advocated the introduction of these reprints was Mr. Farrer, the Permanent Secretary to the Board of Trade, which is the department specially charged with legislation affecting copyright. Having regard to the great attention he has devoted to the subject and to his official position, we desire to state that we think his opinions are entitled to much consideration. The arguments adduced by him will be found fully stated in his evidence.

225. We have carefully weighed this evidence with the views of other persons who are opposed to the introduction of colonial reprints into the United Kingdom; and on the whole we think that the admission of such reprints would probably operate injuriously towards British authors and publishers, and that it is doubtful if it would be attended in many cases with the result anticipated by Mr. Farrer, that is to say, the cheapening of books for home consumption. We

think the almost certain result would be, that it would operate as a preventive to republication in the colonies by authors themselves, so that, if no publisher republished under the licensing system, the colonial reader would be in no better condition than he is now.

226. We therefore think that colonial reprints of copyright works first published in the United Kingdom should not be admitted into the United Kingdom without the consent of the copyright owners; and, conversely, that reprints in the United Kingdom of copyright works first published in any colony should not be admitted into such colony without the consent of the copyright owners.

227. It will have been observed that in suggesting the above alterations in the existing law of copyright, we have not proposed to interfere with the existing powers of colonial legislatures to deal with this subject. An author who first publishes in a colony should only be entitled to secure copyright throughout the British dominions, if he complies with the requirements of the copyright law for the time being of that colony. It will rest, therefore, with each colonial legislature to determine the nature of those requirements, such as registration, deposit of copy, and so forth; and we cannot doubt that they will be alive to the expediency of adopting for the colony, so far as it is practicable, the principal provisions of the Imperial Act, which, if effect be given to our suggestions, will, as to all such matters of detail, be hereafter limited to the United Kingdom. By this means uniformity of practice will be secured throughout Your Majesty's dominions, and certain difficulties will be avoided, which might arise if, for example, registration were in some colonies compulsory, and in others voluntary.

228. But important as uniformity is in matters of detail, it becomes still more important in respect to the term to be fixed for the duration of copyright. As the law now stands, we apprehend that each colony has a right to decide what shall be the term during which an author who publishes in the colony shall have copyright therein. The exercise of this power does not, it is true, override the provisions of the Imperial Act, which gives copyright in such colony to a work first published in the United Kingdom, but the existence of this double term is inconvenient. If, as we recommend, publication in any colony shall for the future secure copyright throughout all Your Majesty's dominions, in the same way and for the same term as if the work had been first published in this country, the necessity for fixing a term for duration of a copyright in a colony

will practically cease. In truth the difference between colonial and imperial copyright will disappear, as colonial copyright will merge into imperial copyright; and we may fairly assume that where, as in Canada and at the Cape, a term has been fixed for copyright in the colony different from that fixed by the Imperial Act, the colonial legislature will be ready to repeal *pro tanto* the colonial law, and to confine legislation to matters of detail.

229. Should, however, our anticipations on this point be incorrect, it will become a question whether, with a view to secure uniformity, the concession to any colony might not be made conditional upon the adoption by the legislature of such colony of the same term as that fixed for the time being by the Imperial Act.

230. In concluding our remarks upon this part of the subject, we recommend that the production of a copy of the colonial register (if any), certified by some duly authorized officer in that behalf, shall be *primâ facie* evidence in Your Majesty's Courts of compliance with the requirements of the local law, and of the title to copyright of the person named therein. A provision to this effect would have to be made by the different colonial legislatures for the guidance of colonial courts.

231. It has been suggested to us that some re-registration, or notice of the original registration, should be made in England of a work published in a colony, and that a copy of every work published in the colonies should be deposited at the British Museum, within a certain time after publication. Upon the whole we are not disposed to recommend the adoption of either of these suggestions. Publication in a colony will give copyright throughout the British dominions, and if re-registration of the work is desirable in England, it is equally so in all the other British possessions in which the work obtains copyright. But to require such a general re-registration would throw a considerable burden upon the owners of colonial copyright, and it appears to us not unreasonable to call upon a person who desires to reprint a work which has already been published to take the necessary steps to ascertain whether the work has been duly published and, if necessary, registered in the place of publication, and whether the term of copyright has expired. Should, however, a notice of registration be thought desirable, we suggest that it should be officially given by the registering department in the United Kingdom or colony; and the fee for original registration might be made to cover the expenses of giving such notice.

232. As regards the second suggestion, we are of opinion that the Trustees of the British Museum may fairly be expected to purchase such colonial works as they want, considering that the author or owner of the copyright will doubtless be required by local law to deposit a copy in the place of publication. Indeed it was stated to us by officers of the British Museum that many such works are now purchased.

INTERNATIONAL COPYRIGHT.

The American Question.

233. As to continental nations, few questions have, in the course of our inquiry, been raised with regard to the general regulations of international copyright; but we find it to be impossible to exclude from examination the present condition of the copyright question between Great Britain and the United States. There is no international protection of copyright as between ourselves and the Americans, although, owing to causes to be presently referred to, the United States is of all nations the one in which British authors are most concerned,—the nation in regard to which the absence of a copyright convention gives rise to the greatest hardships.

234. When deciding upon the terms in which we should report upon this subject, we have felt the extreme delicacy of our position in expressing an opinion upon the policy and laws of a friendly nation, with regard to which a keen sense of injury is entertained by British authors. Nevertheless, we have deemed it our duty to state the facts brought to our knowledge, and frankly to draw the conclusions to which they lead.

235. Although with most of the nations of the continent treaties have been made, whereby reciprocal protection has been secured for the authors of those countries and Your Majesty's subjects, it has hitherto been found impracticable to arrange any terms with the American people. We proceed to indicate what in our view are the difficulties which have impeded a settlement.

236. The main difficulty undoubtedly arises from the fact that, although the language of the two countries is identical, the original works published in America are, as yet, less numerous than those published in Great Britain. This naturally affords a temptation to the Americans to take advantage of the works of the older country, and at the same time tends to diminish the inducement to publish

original works. It is the opinion of some of those who gave evidence on this subject, and it appears to be plain, that the effect of the existing state of things is to check the growth of American literature, since it is impossible for American authors to contend at a profit with a constant supply of works, the use of which costs the American publisher little or nothing.

237. Were there in American law no recognition of the rights of authors, no copyright legislation, the position of the United States would be logical. But they have copyright laws; they afford protection to citizen or resident authors, while they exclude all others from the benefit of that protection. The position of the American people in this respect is the more striking, from the circumstance that, with regard to the analogous right of patents for inventions, they have entered into a treaty with this country for the reciprocal protection of inventors.

238. Great Britain is the nation which naturally suffers the most from this policy. The works of her authors and artists may be and generally are taken without leave by American publishers, sometimes mutilated, issued at cheap rates to a population of forty millions, perhaps the most active readers in the world, and not seldom in forms objectionable to the feelings of the original author or artist.

239. Incidentally, moreover, the injury is intensified. The circulation of such reprints is not confined to the United States. They are exported to British colonies, and particularly to Canada, in all of which the authors are theoretically protected by the Imperial law. The attempts which were made, by legalizing the introduction of these reprints into Canada, to secure a fair remuneration to British copyright owners have, as we have shown, completely failed.

240. This system of reproduction is not confined to books, but extends to music and the drama, and we have been told that it is not an uncommon thing when a new play by an author of eminence is produced in London, for shorthand writers to attend and take down the words of the play for transmission to the United States.

241. But though there is no law in the United States to protect a foreign work from republication by any number of publishers, the natural result of general publication and rivalry was to make the competition which arose disastrous to those engaged in it. Firms of eminence and respectability rivaled each other in the efforts of their agents in England to secure early sheets of important works, but when the sheets were obtained, and an edition issued at a moderate price, some other firm would undertake to supply the public with

the same article at a lesser rate. American publishers were thus obliged to take steps for their own protection. This was effected by an arrangement among themselves. The terms of this understanding are, that the trade generally will recognize the priority of right to republication of a British work as existing in the American publisher who can secure priority of issue in the United States. This priority may be secured either by an arrangement with the author, or in any other way. The understanding, however, is not legally binding, and is rather a result of convenience and of a growing disposition to recognize the claims of British authors, than of actual agreement.

242. The effect of this trade understanding has no doubt been profitable to a certain number of British copyright owners, since, now that American publishers are practically secured from competition at home, it is worth while for them to rival each other abroad in their offers for early sheets of important works. We are assured that there are cases in which authors reap substantial results from these arrangements, and instances are even known in which an English author's returns from the United States exceed the profits of his British sale, but in the case of a successful book by a new author it would appear that this understanding affords no protection. Even in the case of eminent men, we have no reason to believe that the arrangements possible under the existing conditions are at all equivalent to the returns which they would secure under a copyright convention between Your Majesty and the United States.

243. We may remark in this place that as authors of books in some cases obtain payment for early sheets from American publishers, so also dramatic authors of note sometimes obtain remuneration for the right to perform their plays. There appears, however, to be a difference in the law relating to books and plays in the United States; for although the English author of a book can give no copyright to an American publisher, yet it is stated that the author of an English play can give an American theatrical manager a right of representation, if the play has not been published anywhere as a book, and for this purpose a distinction is made between such publication and public performance.

244. It is, without doubt, a general opinion that a copyright convention with the United States is most desirable. We have, therefore, endeavored during our inquiry to ascertain the feeling of Americans on the subject, and wherein, if at all, their interests would be prejudiced. We have also endeavored to find out what practical difficulty there is in the way of such a convention, and if by any means such difficulty can be surmounted.

245. It may be stated that American authors have not the same need of a convention as those of Great Britain, since our law affords copyright protection throughout the British dominions to foreigners as well as to Your Majesty's subjects, provided they publish their books in the United Kingdom before bringing them out elsewhere, while the American law, unlike ours, does not make first publication at home a condition for obtaining copyright. It is consequently the practice of some American authors to publish their books first in England, and so to obtain British copyright, and then to republish them in the United States and obtain American copyright, or to publish in the two countries almost simultaneously.

246. We have it in evidence from Mr. Putham, a member of a large American publishing firm, that American authors are unanimous as to the advantage of international copyright between the United States and this country. We have also been told by another American witness that as publishers can bring out reprints of English books without paying the authors, it is so much more to their interest to do so than to pay American authors, that they frequently refuse to publish American works unless at a low rate of payment. Hence it appears that, in the opinion of many Americans, international copyright is desirable for American authors.

247. This question has been before the United States legislature on more than one occasion, and the Senate has twice agreed in a recommendation made to them by the Government on the subject.

248. We are therefore satisfied that, though there are other obstacles, the most active opposition in the United States arises from the publishing and printing interests. It is feared that if there were international copyright, British authors would be able to select their own mode of manufacturing their books, and to choose their own publishers, and that they would in many cases have their books printed in this country, and perhaps prepared for sale, so as to avoid the expense of producing them in America. Moreover, the American publisher fears the competition of the English publisher, because at the present time books cannot be as cheaply manufactured in the United States as in Great Britain; and, but for the protective tariff, there would no doubt be a great inducement to British publishers to compete with those of America in the large and important market of the United States.

249. These fears have indeed been urged with a discouraging effect upon the negotiations and proposals for international copyright, and have induced the Americans to claim that the privilege of

copyright in the United States should only be granted on condition that the book is wholly re-manufactured and republished in America. On the other hand the British copyright owner feels that such conditions would lead, in many cases, to a useless outlay for the re-manufacture of stereotype plates and the reproduction of illustrations, practically at his expense and to his loss, because this outlay would have to be taken into account by the publisher in considering the sum he could afford to pay for authorship. While the English author desires not to be restricted in the selection of a publisher, he apparently does not care much whether the publisher be an American or an Englishman.

250. Although it has hitherto been the practice, we believe, of Your Majesty's Government to make international copyright treaties only with countries which are willing to give British subjects the full advantage of their domestic copyright laws, untrammeled by commercial restrictions, in exchange for the protection afforded to their subjects by our own copyright laws, yet we think it not unreasonable for the American people to wish to insure the publication of editions suited to their large and peculiar market, if they enter into a copyright treaty with this country. On the whole, therefore, we are of opinion that an arrangement by which British copyright owners could acquire United States copyright by reprinting and republishing their books in America, but without being put under the condition of reproducing the illustrations or re-manufacturing the stereotype plates there, would not be unsatisfactory to Your Majesty's subjects, and that it would be looked upon more favorably in the United States than any other plan now before us.

251. It has been suggested to us that this country would be justified in taking steps of a retaliatory character, with a view of enforcing, incidentally, that protection from the United States which we accord to them. This might be done by withdrawing from the Americans the privilege of copyright on first publication in this country. We have, however, come to the conclusion that, on the highest public grounds of policy and expediency, it is advisable that our law should be based on correct principles, irrespective of the opinions or the policy of other nations. We admit the propriety of protecting copyright, and it appears to us that the principle of copyright, if admitted, is one of universal application. We therefore recommend that this country should pursue the policy of recognizing the author's rights, irrespective of nationality.

* * * * * *

294. In concluding our labors we beg leave to express our hope

that we have duly considered and made our report upon all the matters intended to be referred to us by Your Majesty's Commission. We are conscious that there may be points of detail upon which we have not touched, but these, if noticed by us, would have lengthened our Report, without, as we think, affording any substantial assistance to those upon whom the duty of legislating may hereafter devolve.

All which is humbly submitted to Your Majesty's gracious consideration.

Dated the 24th day of May 1878.

JOHN MANNERS.
Subject to my Dissent from a part of paragraph 150.
DEVON.
CHARLES LAWRENCE YOUNG.
Subject to my Note appended hereto.
H. T. HOLLAND.
JOHN ROSE.
Subject to Dissent and Separate Report.
H. DRUMMOND WOLFF.
Subject to my Separate Report and Dissent from part of paragraph 150.
J. F. STEPHEN.
Subject to a Note appended hereto.
JULIUS BENEDICT.
F. HERSCHELL.
EDWARD JENKINS.
Subject to my Separate Report.
WM. SMITH.
Subject to my Dissent from a part of paragraph 150.
J. A. FROUDE.
ANTHONY TROLLOPE.
Subject to my Note of Dissent as to paragraphs 153 and 154.
FREDERICK RICHARD DALDY.
Subject to my Note of Dissent as to paragraphs 147 and 154.

For the Notes of Dissent referred to by certain of the signers, space for which could not conveniently be found in this volume, the reader is referred to the Report of the Commission contained in the Blue Book, No. 2036, series of 1878.—Editor.

XV.

THE COPYRIGHT BILL OF THE BRITISH SOCIETY OF AUTHORS, INTRODUCED INTO THE HOUSE OF LORDS, NOVEMBER 26TH, 1890. BY LORD MONKSWELL.[1]

GENERAL PROVISIONS AND LITERARY COPYRIGHT.

6. THIS Act shall, except when expressly provided to the contrary, apply only to copyright works other than paintings and sculpture first published after, and to paintings and sculpture which shall be or shall have been made, and which shall not have been sold or disposed of before the passing of this Act, and not to copyrights existing at the commencement, nor to such works published, sold, or disposed of respectively before the commencement of this Act, nor to any copyright to which a person may be entitled under any law of a British possession; and all expressions in this Act referring to copyright shall, unless the context otherwise requires, be construed as referring to copyright under this Act only, and all rights and remedies to which a person may be entitled under this Act shall be in addition to and not in derogation of any rights and remedies to which he may be entitled in any British possession under the law of that possession.

7.—(1.) The copyright or performing right which at the time of the passing of this Act shall be subsisting in any book or other subject of copyright or performing right theretofore published, sold, or disposed of (as the case may be), shall endure for the term limited by the existing enactments, or for the term fixed by this Act, whichever is the longer, and shall be the property of the person who at the time of passing this Act shall be the proprietor of such copyright or performing right.

[1] Space is found here only for a summary of the more important provisions.

(2.) Provided always, that in all cases in which such copyright or performing right 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 or performing right shall not be extended by this Act, but shall endure for the term which shall subsist therein at the time of passing this Act, and no longer, unless the original copyright owner, if he shall be living, or his personal representative if he shall be dead, and the proprietor of such copyright or performing right shall, before the expiration of such term, agree to accept the benefits of this Act in respect of such book or other subject of copyright or performing right, and shall cause a minute of such consent in the form in that behalf given in Schedule Three to this Act to be entered in the proper register, in which case such copyright or performing right shall endure for the term fixed by this Act, and shall be the property of such person or persons as in such minute shall be expressed.

8. The Acts or parts of Acts specified in the First Schedule to this Act are hereby repealed as from the commencement of this Act, except with relation to copyrights already existing, and works other than paintings and sculpture already published at, and paintings and sculpture sold or disposed of before the commencement of this Act, but the said Acts shall remain in as full force and effect for the purpose of and with relation to such copyrights and works as if this Act had not been passed.

9. Copyright and performing right shall respectively be deemed to be personal property in England, and personal and movable estate in Scotland, and subject to the provisions of this Act, shall be capable of assignment and transmission by operation of law as such.

10. The copyright and performing right in a posthumous work shall belong in the case of a book, musical composition, dramatic work, lecture, piece for recitation, address or sermon, to the owner of the manuscript; in the case of a print to the owner of the plate, stone or other thing on which the design is engraved; and, in the case of a photograph, to the owner of the negative.

11.—(1.) Every assignment of copyright or performing right other than an assignment by operation of law or testamentary disposition, shall be in writing, signed by the assignor or his agent, duly authorized in writing.

(2.) No assignment of or other dealing with any subject of copyright or performing right (other than an assignment by operation of

law or testamentary disposition) shall pass the copyright or performing right therein unless the intention to assign the same shall be expressly evidenced in writing, signed as aforesaid.

12. If the owner of the copyright or performing right in any work shall give permission to another person to copy, imitate, perform or otherwise repeat such work, such permission shall not, in the absence of an express agreement to the contrary, disentitle such owner from giving a similar or any other permission with respect to the same work, even though the first person to whom such permission was given has acquired copyright or performing right in his work.

13. It shall be lawful for Her Majesty in Council, on complaint that the owner of copyright in any book, musical composition, or dramatic work, after the death of its author or composer, has refused to republish or allow republication or public performance of the same, and that by reason of such refusal such book, musical composition or dramatic work is withheld from the public, to grant a license to the complainant to republish such book, musical composition or dramatic work, or to publicly perform or procure public performances of the same in such manner and subject to such conditions as She may think fit.

14. After the commencement of this Act the following persons and their assigns, whether British subjects or aliens, shall, subject to the provisions of this Act, be entitled to copyright therein, throughout the British dominions, provided such works shall have been first published in some part of the British dominions; that is to say—

(*a.*) In the case of books, the author of any original work:

(*b.*) In the case of lectures, pieces for recitation, addresses or sermons, the author of any original lecture, piece for recitation, address or sermon:

(*c.*) Provided always that if a British subject who, under the provisions of this section, would otherwise be entitled to copyright in any work shall first publish such work in some state, the subjects whereof shall not, at the date of such publication, be entitled to copyright in the British dominions, under the provisions of this Act or of the Acts mentioned in the Second Schedule hereto, he shall, on republishing such work in the British dominions within *three* years of such first publication, be entitled to copyright therein as fully as if he had first published such work in the British dominions.

15. Copyright in books, lectures, pieces for recitation, addresses and sermons shall endure for the following terms:—

(1.) If the work is published in the lifetime and in the true name of the original copyright owner, for the life of the original copyright owner, and thirty years after the end of the year in which his death shall take place:

(2.) If the work is written or composed by two or more persons jointly, for the life of the longest liver, and thirty years after the end of the year in which his death shall take place:

(3.) In the case of posthumous works, for thirty years from the end of the year in which the same shall have been first published;

(4.) In the case of an anonymous or pseudonymous work for thirty years from the end of the year in which the same shall have been first published: Provided always that upon the original copyright owner thereof or his personal representative, during the continuance of the said term of thirty years, with the consent of the registered copyright owner, making a declaration of the true name of the "original copyright owner" and the insertion thereof, in the form set forth in the Schedule Three of this Act in the Register, the copyright shall, subject to the provisions of this Act, be extended to the full term of copyright under this Act.

16.—(1.) In the case of any article, essay, or other work whatsoever, being the subject of copyright, first published in and forming part of a collective work for the writing, composition, or making of which the original copyright owner shall have been paid or shall be entitled to be paid by the proprietor of the collective work, the copyright therein shall, subject as is herein-after mentioned, and in the absence of any agreement to the contrary, belong to such proprietor for the term of thirty years next after the end of the year in which such work shall have been first published:

(2.) Except in the case where such article, essay, or other work is first published in an encyclopædia, the original copyright owner thereof and his assigns shall, after the term of three years from the first publication thereof, have the exclusive right to publish the same in a separate form, and shall have copyright therein as a separate publication for the term provided by section fifteen of this Act, and, notwithstanding anything herein-before contained, the proprietor of the collective work shall not, either during the said term of three years, nor afterwards during the continuance of copyright therein, be entitled to publish such article, essay, or other work, or any part thereof, in a separate form, without the consent in writing of the original copyright owner or his assigns.

17. The original copyright owner of any article, essay, or other work first published in and forming part of a collective work, may register the same as a separate book in the manner herein-after provided (but without the deposit or delivery of any copy thereof at, or for the use of, the British Museum or other libraries), and shall thereupon be entitled to prevent and obtain damages for the publication of, or other infringement of the copyright in such article, essay, or other work as if it were a separate book, notwithstanding that the said term of three years has not elapsed.

18.—(1.) The copyright in a joint work being a book, lecture, piece for recitation, address or sermon shall, in the absence of any agreement to the contrary, belong to the persons by whom the same is written or composed jointly, and no one of such persons shall be deemed to be the owner of the copyright in any particular part of the work to the exclusion of the other or others.

(2.) In the event of the death of any one of such joint owners, his interest shall, in the absence of any testamentary or other disposition to the contrary, vest in the person or persons who would be entitled to the copyright in any work of which he had been the sole writer or composer.

19. The copyright given by this Act in respect of newspapers shall extend only to articles, paragraphs, communications, and other parts which are compositions of a literary character, and not to any articles, paragraphs, communications, or other parts which are designed only for the publication of news, or to advertisements.

20. Whereas by an Act passed in the fifteenth year of King George the Third, certain copyrights in books are now, or might hereafter become, vested in the Universities of Oxford and Cambridge, in the colleges or houses of learning within the same, the four universities of Scotland, or the several colleges of Eton, Westminster, and Winchester, in perpetuity, and certain special and peculiar penalties are provided against persons who infringe such copyright: And whereas the said Act is repealed by this Act, but it is not desirable or just that the said universities and colleges should be deprived of the copyrights they already possess, by virtue of the said Act; be it enacted, that the repeal of the said Act shall not operate to deprive the said universities and colleges of any copyrights they already possess in perpetuity under the said Act, and that instead of the special and peculiar penalties provided by the said Act the said universities and colleges respectively shall, in case

of infringement of their said copyrights, be entitled to the remedies and to enforce the forfeitures and penalties provided for infringement of copyright in books by this Act.

21. The following acts by any person other than the copyright owner, and without his consent in writing, shall be deemed to be infringements of copyright, unless such acts shall be specially permitted by the terms of this or some other Act not hereby repealed:

(1.) In the case of books, printing or otherwise multiplying, or causing to be printed or otherwise multiplied, for distribution, sale, hire, or exportation, copies, abridgments, or translations of any copyright book or any part thereof; exporting for sale or hire any such copies, abridgments, or translations, printed unlawfully in any part of the British dominions; importing any such copies, abridgments, or translations, whether printed unlawfully in any other part of the British dominions or printed without the consent of the copyright owner in any foreign state; or knowing such copies to have been so printed or imported, distributing, selling, publishing, or exposing them for sale or hire, or causing or permitting them to be distributed, sold, published, or exposed for sale or hire:

(2.) In the case of a book which is a work of fiction it shall also be an infringement of the copyright therein if any person shall, without the consent of the owner of the copyright, take the dialogue, plot, or incidents related in the book, and use them for or convert them into or adapt them for a dramatic work, or knowing such dramatic work to have been so made, shall permit or cause public performance of the same:

(3.) In the case of lectures, pieces for recitation, addresses, or sermons, whether before or after they are published in print by the owner of the copyright, the same acts as herein-before declared to be infringements in the case of books, and if they be not published in print, by the owner of the copyright, re-delivering them or causing them to be re-delivered in public.

22. Notwithstanding anything in this Act contained, the making of fair and moderate extracts from a book in which there is subsisting copyright, and the publication thereof in any other work, shall not be deemed to be infringement of copyright if the source from which the extracts have been taken is acknowledged.

23. It shall not be deemed an infringement of copyright in a lecture, piece for recitation, address, or sermon to report the same in a

newspaper, unless the person delivering the same shall have previously given notice that he prohibits the same being reported.

24. For the purposes of this Act any second or subsequent edition of a book which is published with any additions or alterations, whether in the letterpress or in the maps or illustrations belonging thereto, shall be deemed to be a new book.

25.—(1.) The publisher of every book first published in the United Kingdom shall within one month after publication deliver, at his own expense, a copy of the book to the trustees of the British Museum.

(2.) He shall also within the same time deliver at his own expense a copy of the book to, or in accordance with the directions of, the authority having the control of each of the following libraries, namely: the Bodleian Library at Oxford, the Public Library at Cambridge, the Library of the Faculty of Advocates at Edinburgh, and the Library of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, or, at the option of the publisher, to the registrar under this Act, to be by him so delivered.

(3.) The copy delivered to the trustees of the British Museum shall be a copy of the whole book with all maps and illustrations belonging thereto, finished and colored in the same manner as the best copies of the book are published, and shall be bound, sewed, or stitched together, and on the best paper on which the book is printed.

(4.) The copy delivered to the other authorities mentioned in this section shall be on the paper on which the largest number of copies of the book is printed for sale, and shall be in the like condition as the books prepared for sale.

(5.) Delivery of a copy to the registrar on registration under this Act shall, for the purposes of this section, be deemed delivery to the trustees of the British Museum.

(6.) If a publisher fails to comply with this section, he shall incur a fine not exceeding *five pounds* and the value of the book, and this fine shall be paid to the trustees or authority to whom the book ought to be delivered.

26.—(1.) There shall continue to be charged on and paid out of the Consolidated Fund of the United Kingdom such annual compensation as is at the passing of this Act payable in pursuance of any Act as compensation to a library for the loss of the right to receive gratuitous copies of books.

(2.) Such compensation shall not be paid to a library in any year unless the Treasury shall be satisfied that the compensation for the previous year has been applied in the purchase of books for the use of and to be preserved in the library.

ANALYSIS OF THE BILL.

By Sir Frederick Pollock.

THE following Memorandum sets out its contents, and shows the various authorities for the changes in present legislation suggested by the Bill.

Memorandum.

This Bill is intended to consolidate and amend the Law of Copyright other than copyright in designs.

The existing law on the subject consists of no less than 18 Acts of Parliament, besides common law principles, which are to be found only by searching the Law Reports. Owing to the manner in which these Acts have been drawn, the law is in many cases hardly intelligible, and is full of arbitrary distinctions for which it is impossible to find a reason. (See paragraphs 9 to 13 of the Report of the Royal Commission on Copyright of 1878.)

For instance, the term of copyright in books is the life of the author and 7 years, or 42 years from publication, whichever period is the longer; in lectures, when printed and published, the term is probably the life of the author or 28 years; in engravings, 28 years; and in sculpture, 14 years, with a possible further extension for another 14 years; while the term of copyright in music and lectures which have been publicly performed or delivered but not printed is wholly uncertain.

Again the necessity for and effect of registration is entirely different with regard to (1) books, (2) paintings, (3) dramatic works.

In consolidating these enactments (all of which it is proposed to repeal) it has been thought advisable to deal separately with the various subjects of copyright, viz., (1) Literature, (2) Music and Dramatic Works, and (3) Works of Art, and to make the part of the Bill deal-

ing with each of these as far as possible complete in itself. This will account for certain repetitions which might otherwise seem unnecessary.

The alterations proposed to be made in the law are for the most part those suggested in the Report of the Royal Commission on Copyright of 1878, and embodied in a Bill introduced at the end of the Session of 1879 by Lord John Manners, Viscount Sandon, and the Attorney-General on behalf of the then Government. References will be found in the margin of the present Bill both to the Report of the Commission and the Bill of 1879.

The most important of these alterations may be summarized as follows :—

1. A uniform term of copyright is introduced for all classes of work, consisting of the life of the author and 30 years after his death. The only exceptions are in the cases of engravings and photographs, and anonymous and pseudonymous works for which, owing to the difficulty or impossibility of identifying the author, the term is to be 30 years only, with power for the author of an anonymous or pseudonymous work at any time during such 30 years to declare his true name and acquire the full term of copyright.

2. The period after which the author of an article or essay in a collective work (other than an encyclopædia) is to be entitled to the right of separate publication, is reduced from 28 years to 3 years.

3. The right to make an abridgment of a work is for the first time expressly recognized as part of the copyright, and an abridgment by a person other than the copyright owner is made an infringement of copyright.

4. The authors of works of fiction are given the exclusive right of dramatizing the same as part of their copyright, and the converse right is conferred on authors of dramatic works.

5. The exhibition of photographs taken on commission, except with the consent of the person for whom they are taken, is rendered illegal.[1]

6. Registration is made compulsory for all classes of work in which copyright exists, except painting and sculpture: that is to say, no proceedings for infringement or otherwise can be taken before registration, nor can any proceedings be taken after registration in respect

[1] At present it seems to be merely a matter of implied contract (see Pollard *vs.* The Photographic Co., 40 *Ch. D.*, 345).

of anything done before the date of registration, except on payment of a penalty. This penalty, it should be mentioned, was not recommended by the Royal Commission, but is introduced in order that an accidental omission to register may not entirely deprive the copyright owner of his remedies. Registration of paintings and sculpture is made optional owing to their being so frequently subject to alteration that it is practically impossible to say when they are completed, so as to be capable of registration.

7. Provision is made (in Clause 89) for the seizure of piratical copies of copyright works which are being hawked about or offered for sale. Some such provision is required particularly for the protection of works of Art, and was recommended by the Royal Commission.

The part of the Bill which relates to the fine arts and photography is taken, almost without alteration, from the Copyright (Works of Fine Art) Bill which was introduced into the House of Commons in the session of 1886 by Mr. Hastings, Mr. Gregory, and Mr. Agnew. That Bill received the general approval of those interested in the fine arts; and although it does not altogether follow the recommendations of the Royal Commission, there does not appear to be any serious reason against adopting its provisions.

The part of the Bill which relates to Foreign and Colonial Copyright is practically a re-enactment of the provisions of the International Copyright Act, 1886, which was passed in order to carry into effect the "Berne Convention" for giving to authors of literary and artistic works first published in one of the countries parties to the Convention, copyright in such works throughout the other countries parties to the Convention.

By the earlier parts of the Bill, the same rights are given to Colonial as to British authors; while the right of the Colonial Legislatures to deal with the subject is expressly recognized and preserved. The Foreign Reprints Act of 1847 (10 and 11 Vict. c. 95) is re-enacted in the form adopted in the Bill of 1879, but it has not been found possible to frame provisions for the introduction of any such licensing system of republication in the Colonies as that suggested by the Royal Commission. There appear to be great difficulties in providing for the practical working of any such system, and even if they could be overcome, it is felt that while it is more than doubtful whether the colonial reader would benefit to any great extent, the British copyright owner must suffer considerable loss.

With regard to registration, the Bill (as was recommended by the Royal Commission) provides for the establishment of a Copyright Registration Office, under the control of Government, in lieu of the present office at Stationers' Hall, established under 5 and 6 Vict. c. 45. This office has even under the present law been found inadequate, and would be still more so upon the introduction of compulsory registration in all cases.

It is felt, however, that the details and formalities of any scheme of registration can only be satisfactorily settled by Government officials, and the provisions of Part V. of the Bill are put forward rather by way of suggestion than as a definitely settled scheme. It will probably be found desirable either now or hereafter to combine the Copyright Registration Office with the Registry of Designs and Trade Marks, and this part of the Bill has, therefore, as far as possible, been modeled on the corresponding provisions of the Patents Designs and Trade Marks Act, 1883.

The chief points on which the recommendations of the Royal Commission are departed from in the present Bill are as follows :—

1. The Commissioners recommended that the universities and libraries (other than the British Museum) which are now entitled to receive a copy of every book published in the United Kingdom, should be left to purchase the books they required in the market, and that their present privilege should be taken away. But from communications which have been received from the librarians, it appears that they are most anxious to retain their present privilege ; that the libraries could not be properly supplied if it was abolished, and that the cases in which it can cause any real hardship are very few. The Bill, therefore, provides for the continuance of the supply to these institutions.

2. With regard to the Fine Arts, the Commissioners were of opinion that the copyright in paintings, etc., should pass to the purchaser unless specially reserved to the artist. Under the Bill, however, the copyright will remain in the artist, unless expressly assigned to the purchaser. This, it is believed, is in accordance with the general wish of artists, and as no replica can be produced without the consent of the owner of the original painting, no injury will be inflicted on purchasers, who will moreover have the right (under section 46) of pre-

venting unauthorized reproductions, even though they have not (as of course it will be open to them to do) taken an express assignment of the copyright. Practically the only effect of the artist retaining the copyright after parting with the picture, will be to give him a control over its reproduction by engraving or otherwise, and this control it seems proper that he should have.

3. The exception made in the Act, 5 and 6 Will. IV. c. 65, with respect to lectures delivered in universities and elsewhere, is not proposed to be re-enacted in the present Bill. What the exact meaning and effect of that exception may be seems to be far from clear (*see* the observations of the Lords in Caird *vs.* Sime, *L.R.* 12 *App. Ca.* 326), and moreover, it does not by any means seem to follow that because a lecture is delivered in a university, or in virtue of an endowment or foundation, the lecturer should be deprived of rights conferred on all other lecturers whether they are paid for their services or not.
4. The omission of any provisions for the introduction of a licensing system into the Colonies; and
5. The right given to a copyright owner of taking proceedings in respect of infringements, committed before he registers his title on payment of a penalty, have been already noticed and explained.

LONDON, *January*, 1891.

XVI.

CONVENTION CONCERNING THE CREATION OF AN INTERNATIONAL UNION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS.

Ratified at Berne, Switzerland, Sept. 5th, 1887.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the German Emperor, King of Prussia; His Majesty the King of the Belgians; Her Majesty the Queen Regent of Spain, in the name of His Catholic Majesty the King of Spain; the President of the French Republic; the President of the Republic of Hayti; His Majesty the King of Italy; the President of the Republic of Liberia; the Federal Council of the Swiss Confederation; His Highness the Bey of Tunis,

Being equally animated by the desire to protect effectively, and in as uniform a manner as possible, the rights of authors over their literary and artistic works,

Have resolved to conclude a convention to that effect, and have named for their Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, Sir Francis Ottiwell Adams, Knight Commander of the Most Distinguished Order of St. Michael and St. George, Companion of the Most Honorable Order of the Bath, her Envoy Extraordinary and Minister Plenipotentiary at Berne; and John Henry Gibbs Bergne, Esquire, Companion of the Most Distinguished Order of St. Michael and St. George, Director of a Department in the Foreign Office at London.

His Majesty the German Emperor, King of Prussia, M. Otto von Bülow, Privy Councilor of Legation, and Chamberlain of His Majesty, his Envoy Extraordinary and Minister Plenipotentiary to the Swiss Confederation.

His Majesty the King of the Belgians, M. Maurice Delfosse, his Envoy Extraordinary and Minister Plenipotentiary to the Swiss Confederation.

Her Majesty the Queen Regent of Spain, in the name of His Catholic Majesty the King of Spain; the Count de la Almina y Castro, Senator, Envoy Extraordinary and Minister Plenipotentiary to the Swiss Confederation; M. Don José Villa-Amil, Chief of the Section of Intellectual Property in the Ministry of Public Instruction, Doctor of Civil and Canon Law, Member of the Facultative Corps of Archivists, Librarians, and Archæologists, and of the Academies of History, of the Fine Arts of St. Ferdinand, and of the Academy of Sciences at Lisbon.

The President of the French Republic, M. François Victor-Emmanuel Arago, Senator, Ambassador from the French Republic to the Swiss Confederation.

The President of the Republic of Hayti, M. Louis Joseph Janvier, Doctor of Medicine of the Faculty of Paris, Prize-man of the Faculty of Medicine of Paris, bearing Diplomas from the School of Political Sciences of Paris (Administrative and Diplomatic Sections), decorated with the Haytian Medal of the third class.

His Majesty the King of Italy, M. Charles Emmanuel Beccaria des Marquis d'Incisa, Chevalier of the Orders of Saints Maurice and Lazarus, and of the Crown of Italy, his Chargé d'Affaires to the Swiss Confederation.

The President of the Republic of Liberia, M. William Kœntzer, Imperial Councilor, Consul-General, Member of the Chamber of Commerce of Vienna.

The Federal Council of the Swiss Confederation, M. Numa Droz, Vice-President of the Federal Council, Head of the Department of Commerce and Agriculture; M. Louis Ruchonnet, Federal Councilor, Chief of the Department of Justice and Police; M. A. d'Orelli, Professor of Law at the University of Zurich.

His Highness the Bey of Tunis, M. Louis Renault, Professor to the Faculty of Law of Paris, and to the Free School of Political Sciences, Chevalier of the Order of the Legion of Honor, and Chevalier of the Order of the Crown of Italy.

Who, having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

The Contracting States are constituted into an Union for the protection of the rights of authors over their literary and artistic works.

ARTICLE II.

Authors of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries for their works, whether published in one of those countries or unpublished, the rights which the respective laws do now or may hereafter grant to natives.

The enjoyment of these rights is subject to the accomplishment of the conditions and formalities prescribed by law in the country of origin of the work, and cannot exceed in the other countries the term of protection granted in the said country of origin.

The country of origin of the work is that in which the work is first published, or if such publication takes place simultaneously in several countries of the Union, that one of them in which the shortest term of protection is granted by law.

For unpublished works the country to which the author belongs is considered the country of origin of the work.

ARTICLE III.

The stipulations of the present Convention apply equally to the publishers of literary and artistic works published in one of the countries of the Union, but of which the authors belong to a country which is not a party to the Union.

ARTICLE IV.

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

ARTICLE V.

Authors of any of the countries of the Union, or their lawful representatives, shall enjoy in the other countries the exclusive right of

making or authorizing the translation of their works until the expiration of ten years from the publication of the original work in one of the countries of the Union.

For works published in incomplete parts ("livraisons") the period of ten years commences from the date of publication of the last part of the original work.

For works composed of several volumes published at intervals, as well as for bulletins or collections ("cahiers") published by literary or scientific Societies, or by private persons, each volume, bulletin, or collection is, with regard to the period of ten years, considered as a separate work.

In the cases provided for by the present Article, and for the calculation of the period of protection, the 31st December of the year in which the work was published is admitted as the date of publication.

ARTICLE VI.

Authorized translations are protected as original works. They consequently enjoy the protection stipulated in Articles II. and III. as regards their unauthorized reproduction in the countries of the Union.

It is understood that, in the case of a work for which the translating right has fallen into the public domain, the translator cannot oppose the translation of the same work by other writers.

ARTICLE VII.

Articles from newspapers or periodicals published in any of the countries of the Union may be reproduced in original or in translation in the other countries of the Union, unless the authors or publishers have expressly forbidden it. For periodicals it is sufficient if the prohibition is made in a general manner at the beginning of each number of the periodical.

This prohibition cannot in any case apply to articles of political discussion, or to the reproduction of news of the day or *current topics*.

ARTICLE VIII.

As regards the liberty of extracting portions from literary or artistic works for use in publications destined for educational or scientific purposes, or for chrestomathies, the matter is to be decided by the legislation of the different countries of the Union, or by special arrangements existing or to be concluded between them.

Article IX.

The stipulations of Article II. apply to the public representation of dramatic or dramatico-musical works, whether such works be published or not.

Authors of dramatic or dramatico-musical works, or their lawful representatives, are, during the existence of their exclusive right of translation, equally protected against the unauthorized public representation of translations of their works.

The stipulations of Article II. apply equally to the public performance of unpublished musical works, or of published works in which the author has expressly declared on the title-page or commencement of the work that he forbids the public performance.

Article X.

Unauthorized indirect appropriations of a literary or artistic work, of various kinds, such as *adaptations*, *arrangements of music*, etc., are specially included amongst the illicit reproductions to which the present Convention applies, when they are only the reproduction of a particular work, in the same form, or in another form, with non-essential alterations, additions, or abridgments, so made as not to confer the character of a new original work.

It is agreed that, in the application of the present Article, the Tribunals of the various countries of the Union will, if there is occasion, conform themselves to the provisions of their respective laws.

Article XI.

In order that the authors of works protected by the present Convention shall, in the absence of proof to the contrary, be considered as such, and be consequently admitted to institute proceedings against pirates before the Courts of the various countries of the Union, it will be sufficient that their name be indicated on the work in the accustomed manner.

For anonymous or pseudonymous works, the publisher whose name is indicated on the work is entitled to protect the rights belonging to the author. He is, without other proof, reputed the lawful representative of the anonymous or pseudonymous author.

It is, nevertheless, agreed that the Tribunals may, if necessary, require the production of a certificate from the competent authority to the effect that the formalities prescribed by law in the country of origin have been accomplished, as contemplated in Article II.

ARTICLE XII.

Pirated works may be seized on importation into those countries of the Union where the original work enjoys legal protection.

The seizure shall take place conformably to the domestic law of each State.

ARTICLE XIII.

It is understood that the provisions of the present Convention cannot in any way derogate from the right belonging to the Government of each country of the Union to permit, to control, or to prohibit, by measures of domestic legislation or police, the circulation, representation, or exhibition of any works or productions in regard to which the competent authority may find it necessary to exercise that right.

ARTICLE XIV.

Under the reserves and conditions to be determined by common agreement,[1] the present Convention applies to all works which at the moment of its coming into force have not yet fallen into the public domain in the country of origin.

ARTICLE XV.

It is understood that the Governments of the countries of the Union reserve to themselves respectively the right to enter into separate and particular arrangements between each other, provided always that such arrangements confer upon authors or their lawful representatives more extended rights than those granted by the Union, or embody other stipulations not contrary to the present Convention.

ARTICLE XVI.

An international office is established, under the name of "Office of the International Union for the Protection of Literary and Artistic Works."

This office, of which the expenses will be borne by the Administrations of all the countries of the Union, is placed under the high authority of the Superior Administration of the Swiss Confedera-

[1] See paragraph 4 of Final Protocol.

tion, and works under its direction. The functions of this Office are determined by common accord between the countries of the Union.

ARTICLE XVII.

The present Convention may be submitted to revisions in order to introduce therein amendments calculated to perfect the system of the Union.

Questions of this kind, as well as those which are of interest to the Union in other respects, will be considered in Conferences to be held successively in the countries of the Union by Delegates of the said countries.

It is understood that no alteration in the present Convention shall be binding on the Union except by the unanimous consent of the countries composing it.

ARTICLE XVIII.

Countries which have not become parties to the present Convention, and which grant by their domestic law the protection of rights secured by this Convention, shall be admitted to accede thereto on request to that effect.

Such accession shall be notified in writing to the Government of the Swiss Confederation, which will communicate it to all the other countries of the Union.

Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention.

ARTICLE XIX.

Countries acceding to the present Convention shall also have the right to accede thereto at any time for their Colonies or foreign possessions.

They may do this either by a general declaration comprehending all their Colonies or possessions within the accession, or by specially naming those comprised therein, or by simply indicating those which are excluded.

ARTICLE XX.

The present Convention shall be put in force three months after the exchange of the ratifications, and shall remain in effect for an

indefinite period until the termination of a year from the day on which it may have been denounced.

Such denunciation shall be made to the Government authorized to receive accessions, and shall only be effective as regards the country making it, the Convention remaining in full force and effect for the other countries of the Union.

ARTICLE XXI.

The present Convention shall be ratified, and the ratifications exchanged at Berne, within the space of one year at the latest.

In witness whereof, the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Berne, the 9th day of September, 1886.

F. O. ADAMS.
J. H. G. BERGNE.
OTTO VON BÜLOW.
MAURICE DELFOSSE.
COMTE DE LA ALMINA Y CASTRO.
JOSÉ VILLA-AMIL.
EMMANUEL ARAGO.
LOUIS-JOSEPH JANVIER.
E. DI BECCARIA.
KŒNTZER.
DROZ.
L. RUCHONNET.
A. D'ORELLI.
L. RENAULT.

Additional Article.

The Plenipotentiaries assembled to sign the Convention concerning the creation of an International Union for the protection of literary and artistic works have agreed upon the following Additional Article, which shall be ratified together with the Convention to which it relates :—

The Convention concluded this day in nowise affects the maintenance of existing Conventions between the Contracting States, provided always that such Conventions confer on authors, or their lawful representatives, rights more extended than those secured by

the Union, or contain other stipulations which are not contrary to the said Convention.

In witness whereof, the respective Plenipotentiaries have signed the present Additional Article.

Done at Berne, the 9th day of September, 1886.

(Signed) F. O. ADAMS.
J. H. G. BERGNE.
OTTO VON BÜLOW.
MAURICE DELFOSSE.
ALMINA.
VILLA-AMIL.
EMMANUEL ARAGO.
LOUIS-JOSEPH JANVIER.
E. DI BECCARIA.
KŒNTZER.
DROZ.
L. RUCHONNET.
A. D'ORELLI.
L. RENAULT.

Final Protocol.

In proceeding to the signature of the Convention concluded this day, the undersigned Plenipotentiaries have declared and stipulated as follows :

1. As regards Article IV., it is agreed that those countries of the Union where the character of artistic works is not refused to photographs, engage to admit them to the benefits of the Convention concluded to-day, from the date of its coming into effect. They are, however, not bound to protect the authors of such works further than is permitted by their own legislation, except in the case of international engagements already existing, or which may hereafter be entered into by them.

It is understood that an authorized photograph of a protected work of art shall enjoy legal protection in all the countries of the Union, as contemplated by the said Convention, for the same period as the principal right of reproduction of the work itself subsists, and within the limits of private arrangements between those who have legal rights.

2. As regards Article IX., it is agreed that those countries of the

Union whose legislation implicitly includes choregraphic works amongst dramatico-musical works, expressly admit the former works to the benefits of the Convention concluded this day.

It is, however, understood that questions which may arise on the application of this clause shall rest within the competence of the respective Tribunals to decide.

3. It is understood that the manufacture and sale of instruments for the mechanical reproduction of musical airs which are copyright, shall not be considered as constituting an infringement of musical copyright.

4. The common agreement alluded to in Article XIV. of the Convention is established as follows :

The application of the Convention to works which have not fallen into the public domain at the time when it comes into force, shall operate according to the stipulations on this head which may be contained in special Conventions either existing or to be concluded.

In the absence of such stipulations between any countries of the Union, the respective countries shall regulate, each for itself by its domestic legislation, the manner in which the principle contained in Article XIV. is to be applied.

5. The organization of the International Office established in virtue of Article XVI. of the Convention shall be fixed by a Regulation which will be drawn up by the Government of the Swiss Confederation.

The official language of the International Office will be French.

The International Office will collect all kinds of information relative to the protection of the rights of authors over their literary and artistic works. It will arrange and publish such information. It will study questions of general utility likely to be of interest to the Union, and, by the aid of documents placed at its disposal by the different Administrations, will edit a periodical publication in the French language treating questions which concern the Union. The Governments of the countries of the Union reserve to themselves the faculty of authorizing, by common accord, the publication by the Office of an edition in one or more other languages if experience should show this to be requisite.

The International Office will always hold itself at the disposal of members of the Union, with the view to furnish them with any special information they may require relative to the protection of literary and artistic works.

The Administration of the country where a Conference is about to be held, will prepare the programme of the Conference with the assistance of the International Office.

The Director of the International Office will attend the sittings of the Conferences, and will take part in the discussions without a deliberative voice. He will make an annual Report on his administration, which shall be communicated to all the members of the Union.

The expenses of the Office of the International Union shall be shared by the Contracting States. Unless a fresh arrangement be made, they cannot exceed a sum of 60,000 fr. a year. This sum may be increased by the decision of one of the Conferences provided for in Article XVII.

The share of the total expense to be paid by each country shall be determined by the division of the contracting and acceding States into six classes, each of which shall contribute in the proportion of a certain number of units, viz.:—

First Class	.. .. ..	25 units.
Second "	.. .. ..	20 "
Third "	.. .. ..	15 "
Fourth "	.. .. ..	10 "
Fifth "	.. .. ..	5 "
Sixth "	.. .. ..	3 "

These co-efficients will be multiplied by the number of States of each class, and the total product thus obtained will give the number of units by which the total expense is to be divided. The quotient will give the amount of the unity of expense.

Each State will declare at the time of its accession, in which of the said classes it desires to be placed.

The Swiss Administration will prepare the Budget of the Office, superintend its expenditure, make the necessary advances, and draw up the annual account, which shall be communicated to all the other Administrations.

6. The next Conference shall be held at Paris, between four and six years from the date of the coming into force of the Convention.

The French Government will fix the date within these limits after having consulted the International Office.

7. It is agreed that, as regards the exchange of ratifications con-

templated in Article XXI., each Contracting Party shall give a single instrument, which shall be deposited, with those of the other States, in the Government archives of the Swiss Confederation. Each party shall receive in exchange a copy of the *procès-verbal* of the exchange of ratifications, signed by the Plenipotentiaries present.

The present Final Protocol, which shall be ratified with the Convention concluded this day, shall be considered as forming an integral part of the said Convention, and shall have the same force, effect, and duration.

In witness whereof the respective Plenipotentiaries have signed the same.

Done at Berne, the 9th day of September, 1886.

(Signed) F. O. ADAMS.
J. H. G. BERGNE.
OTTO von BÜLOW.
MAURICE DELFOSSE.
ALMINA.
VILLA-AMIL.
EMMANUEL ARAGO.
LOUIS-JOSEPH JANVIER.
E. DI BECCARIA.
KŒNTZER.
DROZ.
L. RUCHONNET.
A. D'ORELLI.
L. RENAULT.

Procès-verbal of Signature.

The undersigned Plenipotentiaries, assembled this day to proceed with the signature of the Convention with reference to the creation of an International Union for the protection of literary and artistic works, have exchanged the following declarations :—

1. With reference to the accession of the Colonies or foreign possessions provided for by Article XIX. of the Convention :

The Plenipotentiaries of His Catholic Majesty the King of Spain reserve to the Government the power of making known His Majesty's decision at the time of the exchange of ratifications.

The Plenipotentiary of the French Republic states that the accession of his country carries with it that of all the French Colonies.

The Plenipotentiaries of Her Britannic Majesty state that the accession of Great Britain to the Convention for the protection of literary and artistic works comprises the United Kingdom of Great Britain and Ireland, and all the Colonies and foreign possessions of Her Britannic Majesty.

At the same time they reserve to the Government of Her Britannic Majesty the power of announcing at any time the separate denunciation of the Convention by one or several of the following Colonies or possessions, in the manner provided for by Article XX. of the Convention, namely :—

India, the Dominion of Canada, Newfoundland, the Cape, Natal, New South Wales, Victoria, Queensland, Tasmania, South Australia, Western Australia, and New Zealand.

2. With respect to the classification of the countries of the Union having regard to their contributory part to the expenses of the International Bureau (No. 5 of the Final Protocol) :

The Plenipotentiaries declare that their respective countries should be ranked in the following classes, namely :—

Germany in the first class.
Belgium in the third class.
Spain in the second class.
France in the first class.
Hayti in the fifth class.
Italy in the first class.
Switzerland in the third class.
Tunis in the sixth class.

Great Britain in the first class.

The Plenipotentiary of the Republic of Liberia states that the powers which he has received from his Government authorize him to sign the Convention, but that he has not received instructions as to the class in which his country proposes to place itself with respect to the contribution to the expenses of the International Bureau. He therefore reserves that question to be determined by his Government, which will make known its intention on the exchange of ratifications.

In witness whereof, the respective Plenipotentiaries have signed the present *procès-verbal.*

Done at Berne, the 9th day of September, 1886.

(Signed) For Great Britain .. F. O. ADAMS.
J. H. G. BERGNE.
For Germany .. .. OTTO von BÜLOW.
For Belgium .. .. MAURICE DELFOSSE.
For Spain .. .. .. ALMINA.
VILLA-AMIL.
For France .. .. EMMANUEL ARAGO.
For Hayti.. .. .. LOUIS-JOSEPH JANVIER.
For Italy .. .. .. E. DI BECCARIA.
For Liberia .. .. KŒNTZER.
For Switzerland .. DROZ.
L. RUCHONNET.
A. D'ORELLI.
For Tunis .. .. .. L. RENAULT.

Procès-verbal recording Deposit of Ratifications.

In accordance with the stipulations of Article XXI., paragraph 1, of the Convention for the creation of an International Union for the protection of literary and artistic works, concluded at Berne on 9th September, 1886, and in consequence of the invitation addressed to that effect by the Swiss Federal Council to the Governments of the High Contracting Parties, the Undersigned assembled this day in the Federal Palace at Berne for the purpose of examining and depositing the ratifications of :—

Her Majesty the Queen of Great Britain and Ireland, Empress of India,

His Majesty the Emperor of Germany, King of Prussia,

His Majesty the King of the Belgians,

Her Majesty the Queen Regent of Spain, in the name of His Catholic Majesty the King of Spain,

The President of the French Republic,

The President of the Republic of Hayti,

His Majesty the King of Italy,

The Council of the Swiss Confederation,
His Highness the Bey of Tunis,

to the said International Convention, followed by an Additional Article and Final Protocol.

The instruments of these acts of ratification having been produced and found in good and due form, they have been delivered into the hands of the President of the Swiss Confederation, to be deposited in the archives of the Government of that country, in accordance with clause No. 7 of the Final Protocol of the International Convention.

In witness whereof the Undersigned have drawn up the present *procès-verbal*, to which they have affixed their signatures and the seals of their arms.

Done at Berne, the 5th September, 1887, in nine copies, one of which shall be deposited in the archives of the Swiss Confederation with the instruments of ratification.

For Great Britain	..	F. O. ADAMS.
For Germany	.. ..	ALFRED von BÜLOW.
For Belgium	.. ..	HENRY LOUMYER.
For Spain	.. .. ..	COMTE DE LA ALMINA.
For France	.. ..	EMMANUEL ARAGO.
For Hayti	.. .. ..	LOUIS-JOSEPH JANVIER.
For Italy	.. . ..	FÈ.
For Switzerland	..	DROZ.
For Tunis	.. .. ..	H. MARCHAND.

Protocol.

On proceeding to the signature of the *procès-verbal* recording the deposit of the acts of ratification given by the High Parties Signatory to the Convention of the 9th September, 1886, for the creation of an International Union for the protection of literary and artistic works, the Minister of Spain renewed, in the name of his Government, the declaration recorded in the *procès-verbal* of the Conference of the 9th September, 1886, according to which the accession of Spain to the Convention includes that of all the territories dependent upon the Spanish Crown.

The Undersigned have taken note of this declaration.

In witness whereof they have signed the present Protocol, done at Berne, in nine copies. the 5th September, 1887.

For Great Britain .. F. O. ADAMS.
For Germany .. .. ALFRED von BÜLOW.
For Belgium .. .. HENRY LOUMYER.
For Spain .. .. .. COMTE DE LA ALMINA.
For France .. .. EMMANUEL ARAGO.
For Hayti .. .. .. LOUIS-JOSEPH JANVIER.
For Italy .. .. .. FÈ.
For Switzerland .. DROZ.
For Tunis .. .. .. H. MARCHAND.

THE INTERNATIONAL COPYRIGHT ACT, 1886.

[49 & 50 Vict., c. 33.]

Arrangement of Sections.

Section.

An act to amend the Law respecting International and Colonial Copyright. [25th June, 1886.]

Whereas, by the International Copyright Acts Her Majesty is authorized by Order in Council to direct that as regards literary and artistic works first published in a foreign country the author shall have copyright therein during the period specified in the order, not exceeding the period during which authors of the like works first published in the United Kingdom have copyright :

And whereas, at an international conference held at Berne in the month of September one thousand eight hundred and eighty-five a draft of a convention was agreed to for giving to authors of literary and artistic works first published in one of the countries parties to the convention copyright in such works throughout the other countries parties to the convention :

And whereas, without the authority of Parliament such convention cannot be carried into effect in Her Majesty's dominions and consequently Her Majesty cannot become a party thereto, and it is expedient to enable Her Majesty to accede to the convention :

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.—(1.) This Act may be cited as the International Copyright Act, 1886.

(2.) The Acts specified in the first part of the First Schedule to this Act are in this Act referred to and may be cited by the short titles in that schedule mentioned, and those Acts, together with the enactment specified in the second part of the said schedule, are in this Act collectively referred to as the International Copyright Acts.

The Acts specified in the Second Schedule to this Act may be cited by the short titles in that schedule mentioned, and those Acts are in this Act referred to, and may be cited collectively as the Copyright Acts.

(3.) This Act and the International Copyright Acts shall be construed together, and may be cited together as the International Copyright Acts, 1844 to 1886.

2. The following provisions shall apply to an Order in Council under the International Copyright Acts :—

(1.) The order may extend to all the several foreign countries named or described therein ;

(2.) The order may exclude or limit the rights conferred by the International Copyright Acts in the case of authors who are not subjects or citizens of the foreign countries named or described in that or any other order, and if the order contains such limitation and the author of a literary or artistic work first produced in one of those foreign countries is not a British subject, nor a subject or citizen of any of the foreign countries so named or described, the publisher of such work, unless the order otherwise provides, shall, for

the purpose of any legal proceedings in the United Kingdom for protecting any copyright in such work, be deemed to be entitled to such copyright as if he were the author, but this enactment shall not prejudice the rights of such author and publisher as between themselves :

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

3.—(1.) An Order in Council under the International Copyright Acts may provide for determining the country in which a literary or artistic work, first produced simultaneously in two or more countries, is to be deemed, for the purpose of copyright, to have been first produced, and for the purposes of this section "country" means the United Kingdom and a country to which an order under the said Acts applies.

(2.) Where a work produced simultaneously in the United Kingdom, and in some foreign country or countries, is by virtue of an Order in Council under the International Copyright Acts deemed for the purpose of copyright to be first produced in one of the said foreign countries, and not in the United Kingdom, the copyright in the United Kingdom shall be such only as exists by virtue of production in the said foreign country, and shall not be such as would have been acquired if the work had been first produced in the United Kingdom.

4.—(1.) Where an order respecting any foreign country is made under the International Copyright Acts the provisions of those Acts with respect to the registry and delivery of copies of works shall not apply to works produced in such country except so far as provided by the order.

(2.) Before making an Order in Council under the International Copyright Acts in respect of any foreign country, Her Majesty in Council shall be satisfied that that foreign country has made such provisions (if any) as it appears to Her Majesty expedient to require for the protection of authors of works first produced in the United Kingdom.

5.—(1.) Where a work being a book or dramatic piece is first produced in a foreign country to which an Order in Council under the International Copyright Acts applies, the author or publisher, as the case may be, shall, unless otherwise directed by the Order, have

the same right of preventing the production in and importation into the United Kingdom of any translation not authorized by him of the said work as he has of preventing the production and importation of the original work.

(2.) Provided that if after the expiration of ten years, or any other term prescribed by the order, next after the end of the year in which the work, or in the case of a book published in numbers each number of the book, was first produced, an authorized translation in the English language of such work or number has not been produced, the said right to prevent the production in and importation into the United Kingdom of an unauthorized translation of such work shall cease.

(3.) The law relating to copyright, including this Act, shall apply to a lawfully produced translation of a work in like manner as if it were an original work.

(4.) Such of the provisions of the International Copyright Act, 1852, relating to translations, as are unrepealed by this Act shall apply in like manner as if they were re-enacted in this section.

6. Where an Order in Council is made under the International Copyright Acts with respect to any foreign country, the author and publisher of any literary or artistic work first produced before the date at which such order comes into operation shall be entitled to the same rights and remedies as if the said Acts and this Act and the said order had applied to the said foreign country at the date of the said production: Provided that where any person has before the date of the publication of an Order in Council lawfully produced any work in the United Kingdom, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such production which are subsisting and valuable at the said date.

7. Where it is necessary to prove the existence or proprietorship of the copyright of any work first produced in a foreign country to which an Order in Council under the International Copyright Acts applies, an extract from a register, or a certificate, or other document stating the existence of the copyright, or the person who is the proprietor of such copyright, or is for the purpose of any legal proceedings in the United Kingdom deemed to be entitled to such copyright, if authenticated by the official seal of a Minister of State of the said foreign country, or by the official seal or the signature of a British diplomatic or consular officer acting in such country, shall be

admissible as evidence of the facts named therein, and all courts shall take judicial notice of every such official seal and signature as is in this section mentioned, and shall admit in evidence, without proof, the documents authenticated by it.

8.—(1.) The Copyright Acts shall, subject to the provisions of this Act, apply to a literary or artistic work first produced in a British possession in like manner as they apply to a work first produced in the United Kingdom:

Provided that—

(*a*) the enactments respecting the registry of the copyright in such work shall not apply if the law of such possession provides for the registration of such copyright; and

(*b*) where such work is a book the delivery to any persons or body of persons of a copy of any such work shall not be required.

(2.) Where a register of copyright in books is kept under the authority of the government of a British possession, an extract from that register purporting to be certified as a true copy by the officer keeping it, and authenticated by the public seal of the British possession, or by the official seal or the signature of the governor of a British possession, or of a colonial secretary, or of some secretary or minister administering a department of the government of a British possession, shall be admissible in evidence of the contents of that register, and all courts shall take judicial notice of every such seal and signature, and shall admit in evidence, without further proof, all documents authenticated by it.

(3.) Where before the passing of this Act an Act or ordinance has been passed in any British possession respecting copyright in any literary or artistic works, Her Majesty in Council may make an Order modifying the Copyright Acts and this Act, so far as they apply to such British possession, and to literary and artistic works first produced therein, in such manner as to Her Majesty in Council seems expedient.

(4.) Nothing in the copyright Acts or this Act shall prevent the passing in a British possession of any Act or ordinance respecting the copyright within the limits of such possession of works first produced in that possession.

9. Where it appears to Her Majesty expedient that an Order in Council under the International Copyright Acts made after the passing of this Act as respects any foreign country, should not apply to any British possession, it shall be lawful for Her Majesty by the

same or any other Order in Council to declare that such Order and the International Copyright Acts and this Act shall not, and the same shall not, apply to such British possession, except so far as is necessary for preventing any prejudice to any rights acquired previously to the date of such Order; and the expressions in the said Acts relating to Her Majesty's dominions shall be construed accordingly; but save as provided by such declaration the said Acts and this Act shall apply to every British possession as if it were part of the United Kingdom.

10.—(1.) It shall be lawful for Her Majesty from time to time to make Orders in Council for the purpose of the International Copyright Acts and this Act, for revoking or altering any Order in Council previously made in pursuance of the said Acts, or any of them.

(2.) Any such Order in Council shall not affect prejudicially any rights acquired or accrued at the date of such Order coming into operation, and shall provide for the protection of such rights.

11. In this Act, unless the context otherwise requires—

The expression "literary and artistic work" means every book, print, lithograph, article of sculpture, dramatic piece, musical composition, painting, drawing, photograph, and other work of literature and art to which the Copyright Acts or the International Copyright Acts, as the case requires, extend.

The expression "author" means the author, inventor, designer, engraver, or maker of any literary or artistic work, and includes any person claiming through the author; and in the case of a posthumous work means the proprietor of the manuscript of such work and any person claiming through him; and in the case of an encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, includes the proprietor, projector, publisher, or conductor.

The expressions "performed" and "performance" and similar words include representation and similar words.

The expression "produced" means, as the case requires, published or made, or, performed or represented, and the expression "production" is to be construed accordingly.

The expression "book published in numbers" includes any review, magazine, periodical work, work published in a series of books or parts, transactions of a society or body, and other books of which different volumes or parts are published at different times.

The expression "treaty" includes any convention or arrangement.

The expression "British possession" includes any part of Her Majesty's dominions exclusive of the United Kingdom; and where parts of such dominions are under both a central and a local legislature, all parts under one central legislature are for the purposes of this definition deemed to be one British possession.

12. The Acts specified in the Third Schedule to this Act are hereby repealed as from the passing of this Act to the extent in the third column of that schedule mentioned:

Provided as follows:

(*a.*) Where an Order in Council has been made before the passing of this Act under the said Acts as respects any foreign country the enactments hereby repealed shall continue in full force as respects that country until the said Order is revoked.

(*b.*) The said repeal and revocation shall not prejudice any rights acquired previously to such repeal or revocation, and such rights shall continue and may be enforced in like manner as if the said repeal or revocation had not been enacted or made.

FIRST SCHEDULE.

INTERNATIONAL COPYRIGHT ACTS.

PART I.

Session and Chapter	Title.	Short Title.
7 & 8 Vict. c. 12.	An Act to amend the law relating to International Copyright.	The International Copyright Act, 1844.
15 & 16 Vict. c. 12	An Act to enable Her Majesty to carry into effect a convention with France on the subject of copyright, to extend and explain the International Copyright Acts, and to explain the Acts relating to copyright in engravings.	The International Copyright Act, 1852.
38 & 39 Vict. c. 12	An Act to amend the law relating to International Copyright.	The International Copyright Act, 1875.

FIRST SCHEDULE.

Part II.

Session and Chapter	Title.	Enactment referred to.
25 & 26 Vict. c. 68	An Act for amending the law relating to copyright in works of the fine arts, and for repressing the commission of fraud in the production and sale of such works.	Section twelve.

SECOND SCHEDULE.

Copyright Acts.

Session and Chapter	Title.	Short Title.
8 Geo. 2. c. 13	An Act for the encouragement of the arts of designing, engraving, and etching, historical, and other prints by vesting the properties thereof in the inventors and engravers during the time therein-mentioned.	The Engraving Copyright Act, 1734.
7 Geo. 3. c. 38	An Act to amend and render more effectual an Act made in the eighth year of the reign of King George the Second, for encouragement of the arts of designing, engraving, and etching, historical and other prints, and for vesting in and securing to Jane Hogarth, widow, the property in certain prints.	The Engraving Copyright Act, 1766.
15 Geo. 3. c. 53	An Act for enabling the two Universities in England, the four Universities in Scotland, and the several Colleges of Eton, Westminster, and Winchester, to hold in perpetuity their copyright in books given or bequeathed to the said universities and colleges for the advancement of useful learning and other purposes of education; and for amending so much of an Act of the eighth year of the reign of Queen Anne, as relates to the delivery of books to the warehouse-keeper of the Stationers' Company for the use of the several libraries therein mentioned.	The Copyright Act, 1775.

SECOND SCHEDULE—*Continued.*

Session and Chapter	Title.	Short Title.
17 Geo. 3. c. 57 -	An Act for more effectually securing the property of prints to inventors and engravers by enabling them to sue for and recover penalties in certain cases.	The Prints Copyright Act, 1777.
54 Geo. 3. c. 56 -	An Act to amend and render more effectual an Act of His present Majesty for encouraging the art of making new models and casts of busts and other things therein mentioned, and for giving further encouragement to such arts.	The Sculpture Copyright Act, 1814.
3 Will. 4. c. 15 -	An Act to amend the laws relating to Dramatic Literary Property.	The Dramatic Copyright Act, 1833.
5 & 6 Will. 4. c. 65	An Act for preventing the publication of Lectures without consent.	The Lectures Copyright Act, 1835.
6 & 7 Will. 4. c. 69	An Act to extend the protection of copyright in prints and engravings to Ireland.	The Prints and Engravings Copyright Act, 1836.
6 & 7 Will. 4. c. 110	An Act to repeal so much of an Act of the fifty-fourth year of King George the Third, respecting copyrights, as requires the delivery of a copy of every published book to the libraries of Sion College, the four Universities of Scotland, and of the King's Inns in Dublin.	The Copyright Act, 1836.
5 & 6 Vict. c. 45 -	An Act to amend the law of copyright.	The Copyright Act, 1842.
10 & 11 Vict. c. 95	An Act to amend the law relating to the protection in the Colonies of works entitled to copyright in the United Kingdom.	The Colonial Copyright Act, 1847.
25 & 26 Vict. c. 68	An Act for amending the law relating to copyright in works of the fine arts, and for repressing the commission of fraud in the production and sale of such works.	The Fine Arts Copyright Act, 1862.

THIRD SCHEDULE.

ACTS REPEALED.

Session and Chapter	Title.	Extent of Repeal.
7 & 8 Vict. c. 12	An Act to amend the law relating to international copyright.	Sections fourteen, seventeen, and eighteen.
15 & 16 Vict. c. 12	An Act to enable Her Majesty to carry into effect a convention with France on the subject of copyright, to extend and explain the International Copyright Acts, and to explain the Acts relating to copyright engravings.	Sections one to five, both inclusive, and sections eight and eleven.
25 & 26 Vict. c. 68	An Act for amending the law relating to copyright in works of the fine arts, and for repressing the commission of fraud in the production and sale of such works.	So much of section twelve as incorporates any enactment repealed by this Act.

ORDER IN COUNCIL.

At the Court at Windsor, the 28th day of November, 1887.

PRESENT,

The QUEEN'S Most Excellent Majesty,
Lord President,
Lord Stanley of Preston,
Secretary Sir Henry Holland, Bart.

WHEREAS the Convention of which an English translation is set out in the First Schedule to this Order has been concluded between her Majesty the Queen of the United Kingdom of Great Britain and Ireland and the foreign countries named in this Order, with respect to the protection to be given by way of copyright to the authors of literary and artistic works :

And whereas the ratifications of the said Convention were exchanged on the fifth day of September one thousand eight hundred and eighty-seven, between Her Majesty the Queen and the Governments of the foreign countries following, that is to say ;

Belgium ; France ; Germany ; Hayti ; Italy ; Spain ; Switzerland ; Tunis :

And whereas Her Majesty in Council is satisfied that the foreign countries named in this Order have made such provisions as it appears to Her Majesty expedient to require for the protection of authors of works first produced in Her Majesty's dominions :

Now, therefore, Her Majesty, by and with the advice of her Privy Council, and by virtue of the authority committed to Her by the International Copyright Acts, 1844 to 1886, doth order ; and it is hereby ordered, as follows :

1. The Convention as set forth in the First Schedule to this Order, shall, as from the commencement of this Order, have full effect throughout Her Majesty's dominions, and all persons are enjoined to observe the same.

2. This Order shall extend to the foreign countries following, that is to say : Belgium ; France ; Germany ; Hayti ; Italy ; Spain ; Switzerland ; Tunis ; and the above countries are in this Order referred to as the foreign countries of the Copyright Union, and those foreign countries, together with Her Majesty's dominions, are in this Order referred to as the countries of the Copyright Union.

3. The author of a literary or artistic work which, on or after the commencement of this Order, is first produced in one of the foreign countries of the Copyright Union shall, subject as in this Order and in the International Copyright Acts, 1844 to 1886, mentioned, have as respects that work throughout Her Majesty's dominions, the same right of copyright, including any right capable of being conferred by an Order in Council under section two or section five of the International Copyright Act, 1844, or under any other enactment, as if the work had been first produced in the United Kingdom, and shall have such right during the same period ;

Provided, that the author of a literary or artistic work shall not have any greater right or longer term of copyright therein, than that which he enjoys in the country in which the work is first produced.

The author of any literary or artistic work first produced before the commencement of this Order shall have the rights and remedies to which he is entitled under section six of the International Copyright Act, 1886.

4. The rights conferred by the International Copyright Acts, 1844 to 1886, shall, in the case of a literary or artistic work first produced in one of the foreign countries of the Copyright Union by an author who is not a subject or citizen of any of the said foreign countries, be limited as follows, that is to say, the author shall not

be entitled to take legal proceedings in Her Majesty's dominions for protecting any copyright in such work, but the publisher of such work shall, for the purpose of any legal proceedings in Her Majesty's dominions for protecting any copyright in such work, be deemed to be entitled to such copyright as if he were the author, but without prejudice to the rights of such author and publisher as between themselves.

5. A literary or artistic work first produced simultaneously in two or more countries of the Copyright Union shall be deemed for the purpose of copyright to have been first produced in that one of those countries in which the term of copyright in the work is shortest.

6. Section six of the International Copyright Act, 1852, shall not apply to any dramatic piece to which protection is extended by virtue of this Order.

7. The Orders mentioned in the Second Schedule to this Order are hereby revoked ;

Provided that neither such revocation, nor anything else in this Order, shall prejudicially affect any right acquired or accrued before the commencement of this Order, by virtue of any Order hereby revoked, and any person entitled to such right shall continue entitled thereto, and to the remedies for the same, in like manner as if this Order had not been made.

8. This Order shall be construed as if it formed part of the International Copyright Act, 1886.

9. This Order shall come into operation on the sixth day of December, one thousand eight hundred and eighty-seven, which day is in this Order referred to as the commencement of this Order.

And the Lords Commissioners of Her Majesty's Treasury are to give the necessary orders herein accordingly.

C. L. PEEL.

XVII.

SUMMARY OF THE REPORT OF THE INTERNATIONAL COPYRIGHT CONVENTION OF SOUTH AMERICA, HELD AT MONTEVIDEO, JANUARY 11, 1889.

THE Congress held at Montevideo for the revision of international laws came to some important decisions regarding international copyright. The seven states represented were the Argentine Republic, Bolivia, Brazil, Chili, Paraguay, Peru, and Uruguay. In the main the articles of agreement closely followed the provisions of the Berne Conference of 1886. We briefly summarize a few important differences:

1. The South American treaty secures its benefits to all authors who have published a work in one of the contracting states, without regard to his nationality. The Convention of Berne only protects authors born in one of the contracting countries. It modifies this rule by protecting the publisher of a work issued in one of the countries of the Union, although the author is an alien. The protection to the work is the same, but it is the publisher who profits by it.

2. In South America the rights for translations are exactly the same as the right of the author in the original work, whereas the Berne Conference only assures the exclusive right of translation up to the expiration of ten years from the date of publication of the original work in one of the countries of the Union.

3. In the enumeration of what is understood under the expression

"literary and artistic works," photographs and choregraphic works are specifically mentioned, whereas the Berne Conference merely makes a general mention of processes of reproduction.

4. The treaty of South America contains no clause relating to public performances or representations of protected works, whereas the Berne Conference decrees that such works shall not be publicly performed or reprinted if the author has declared on the title-page that he forbids public performances, which declaration makes such performances a violation of original copyright.

5. The South American treaty may be extended to other nations which did not take part in the Congress. The Berne Convention guarantees admission to such countries as shall assure within their jurisdiction the protection which is the object of the Convention.

6. The South American treaty says nothing of the formalities of registering and depositing works to be protected. According to the Berne Convention these formalities can only be exacted in the country of origin and according to the laws enacted by that country.

7. The South American treaty makes no mention of works published before its going into force, whereas the Berne Convention has made provision in a special protocol for works published before its decisions went into force.

It may be of interest to note that these contracting South American countries represent a total population of 24,800,000.

The treaty embodying these points was signed by the delegates of the seven states, and it is to go into operation between such states as may ratify it as soon as ratified by them, no time being specified for such ratification.[1]

[1] The above summary is based upon the report of the *Publishers' Weekly* —EDITOR.

XVIII.

STATES WHICH HAVE BECOME PARTIES TO THE CONVENTION OF BERNE, JANUARY, 1896.

Germany.
France, with Algeria and Colonies.
Great Britain, with Colonies.
Hayti.
Italy.
Belgium.
Spain, with Colonies.
Luxembourg.
Morocco.
Montenegro.
Switzerland.
Tunis.

XIX.

THE NATURE AND ORIGIN OF COPYRIGHT.

By R. R. Bowker.

COPYRIGHT (from the Latin *copia*, plenty) means, in general, the right to copy, to make plenty. In its specific application it means the right to multiply copies of those products of the human brain known as literature and art.

There is another legal sense of the word "copyright" much emphasized by several English justices. Through the low Latin use of the word *copia*, our word "copy" has a secondary and reversed meaning, as the pattern to be copied or made plenty, in which sense the schoolboy copies from the "copy" set in his copy-book, and the modern printer calls for the author's "copy." Copyright, accordingly, may also mean the right in copy made (whether the original work or a duplication of it), as well as the right to make copies, which by no means goes with the work or any duplicate of it. Said Lord St. Leonards: "When we are talking of the right of an author we must distinguish between the mere right

to his manuscript, and to any copy which he may choose to make of it, as his property, just like any other personal chattel, and the right to multiply copies to the exclusion of every other person. Nothing can be more distinct than these two things. The common law does give a man who has composed a work a right to it as composition, just as he has a right to any other part of his personal property; but the question of the right of excluding all the world from copying, and of himself claiming the exclusive right of forever copying his own composition after he has published it to the world, is a totally different thing." Baron Parks, in the same case, pointed out expressly these two different legal senses of the word copyright, the right *in* copy, a right of possession, always fully protected by the common law, and the right *to* copy, a right of multiplication, which alone has been the subject of special statutory protection.

There is nothing which may more properly be called property than the creation of the individual brain. For property means a man's very *own*, and there is nothing more his own than the thought, created, made out of no material thing (unless the nerve-food which the brain consumes in the act of thinking be so counted), which uses material things only for its record or manifestation. The best proof of *own*-ership is that, if this individual man or woman had not thought this individual thought, realized in writing or in music or in marble, it would not exist. Or if the individual, thinking it, had put it aside without such record, it would not, in any

practical sense, exist. We cannot know what "might have beens" of untold value have been lost to the world where thinkers, such as inventors, have had no inducement or opportunity to so materialize their thoughts.

It is sometimes said, as a bar to this idea of property, that no thought is new—that every thinker is dependent upon the gifts of nature and the thoughts of other thinkers before him, as every tiller of the soil is dependent upon the land as given by nature and improved by the men who have toiled and tilled before him—a view of which Henry C. Carey has been the chief exponent in this country. But there is no real analogy—aside from the question whether the denial of individual property in land would not be setting back the hands of progress. If Farmer Jones does not raise potatoes from a piece of land, Farmer Smith can; but Shakespeare cannot write *Paradise Lost* nor Milton *Much Ado*, though before both Dante dreamed and Boccaccio told his tales. It was because of Milton and Shakespeare writing, not because of Dante and Boccaccio, who had written, that these immortal works are treasures of the English tongue. It was the very self of each, *in propria persona*, that gave these form and worth, though they used words that had come down from generations as the common heritage of English-speaking men. Property in a stream of water, as has been pointed out, is not in the atoms of the water but in the flow of the stream.

Property right in unpublished works has never been effectively questioned—a fact which in itself

confirms the view that intellectual property is a natural inherent right. The author has "supreme control" over an unpublished work, and his manuscript cannot be utilized by creditors as assets without his consent. "If he lends a copy to another," says Baron Parkes, "his right is not gone; if he sends it to another under an implied undertaking that he is not to part with it or publish it he has a right to enforce that undertaking." The receiver of a letter, to whom the paper containing the writing has undoubtedly been given, has no right to publish or otherwise use the letter without the writer's consent. The theory that, by permitting copies to be made, an author dedicates his writing to the public, as an owner of land dedicates a road to the public by permitting public use of it for twenty-one years, overlooks the fact that in so doing the author only conveys to each holder of his book the right to individual use, and not the right to multiply copies; as though the landowner should not give, but sell, permission to individuals to pass over his road, without any permission to them to sell tickets for the same privilege to other people. The owner of a right does not forfeit a right by selling a privilege.

It is at the moment of publication that the undisputed possessory right passes over into the much-disputed right to multiply copies, and that the vexed question of the true theory of copyright property arises. The broad view of literary property holds that the one kind of copyright is involved in the other. The right to have is the right to use. An author cannot use—that is, get beneficial results

from—his work, without offering copies for sale. He would be otherwise like the owner of a loaf of bread who was told that the bread was his until he wanted to eat it. That sale would seem to contain "an implied undertaking" that the buyer has liberty to use his copy but not to multiply it. Peculiarly in this kind of property the right of ownership consists in the right to prevent use of one's property by others without the owner's consent. The right of exclusion seems to be, indeed, a part of ownership. In the case of land the owner is entitled to prevent trespass to the extent of a shot-gun, and in the same way, the law recognizes the right to use violence, even to the extreme, in preventing others from possession of one's own property of any kind. The owner of a literary property has, however, no physical means of defence or redress; the very act of publication by which he gets a market for his productions opens him to the danger of wider multiplication and publication without his consent. There is, therefore, no kind of property which is so dependent on the help of the law for the protection of the real owner.

The inherent right of authors is a right at what is called common law—that is, natural or customary law. So far as concerns the undisputed rights before publication, the copyright laws are auxiliary merely to common law. Rights exist before remedies; remedies are merely invented to enforce rights. "The seeking for the law of the right of property in the law of procedure relating to the remedies," says Copinger, "is a mistake similar to supposing that the mark on the ear of an animal is the cause, instead

of the consequence, of property therein." After the invention of printing it became evident that new methods of procedure must be devised to enforce common law rights. Copyright became, therefore, the subject of statute law, by the passage of laws imposing penalties for a theft which, without such laws, could not be punished.

These laws, covering, naturally enough, only the country of the author, and specifying a time during which the penalties could be enforced, and providing means of registration by which authors could register their property rights, as the title to a house is registered when it is sold, had an unexpected result. The statute of Anne, which is the foundation of present English copyright law, intended to protect authors' rights by providing penalties against their violation, had the effect of limiting those rights. It was doubtless the intention of those who framed the statute of Anne to establish, for the benefit of authors, specific means of redress. Overlooking, apparently, the fact that law and equity, as their principles were then established, enabled authors to use the same means of redress, so far as they held good, which persons suffering wrongs as to other property had, the law was so drawn that, in 1774, the English House of Lords (against, however, the weight of one half of English judicial opinion) decided that, instead of giving additional sanction to a formerly existing right, the statute of Anne had substituted a new and lesser right, to the exclusion of what the majority of English judges held to have been an old and greater right. Literary and like

property to this extent lost the character of copy-*right*, and became the subject of copy-*privilege*, depending on legal enactment for the security of the private owner. American courts, wont to follow English precedent, have rather taken for granted this view of the law of literary property, and our Constitution, in authorizing Congress to secure "for limited terms to authors and inventors the exclusive right to their respective writings and discoveries," was evidently drawn from the same point of view, though it does not in itself deny or withdraw the natural rights of the author at common law.

XX.

THE EVOLUTION OF COPYRIGHT.

By Brander Matthews.

(Reprinted from the *Political Science Quarterly.*)

"The only thing that divides us on the question of copyright seems to be a question as to how much property there is in books," said James Russell Lowell, two or three years ago; and he continued,

"but that is a question we may be well content to waive till we have decided that there is any property at all in them. I think that, in order that the two sides should come together, nothing more is necessary than that both should understand clearly that property, whether in books or in land or in anything else, is artificial; that it is purely a creature of law; and, more than that, of local and municipal law. When we have come to an agreement of this sort, I think we shall not find it difficult to come to an agreement that it will be best for us to get whatever acknowledgment of property we can, in books, to start with."

"An author has no natural right to a property in his production," said the late Matthew Arnold, in his acute and suggestive essay on copyright,

"but then neither has he a natural right to anything whatever which he may produce or acquire. What is true is that a man has a strong instinct making him seek to possess what he has produced or acquired, to have it at his own disposal; that he finds pleasure in so having it, and finds profit. The instinct is natural and salutary, although it may be over-stimulated and indulged to excess. One of

the first objects of men, in combining themselves in society, has been to afford to the individual, in his pursuit of this instinct, the sanction and assistance of the laws, so far as may be consistent with the general advantage of the community. The author, like other people, seeks the pleasure and the profit of having at his own disposal what he produces. Literary production, wherever it is sound, is its own exceeding great reward; but that does not destroy or diminish the author's desire and claim to be allowed to have at his disposal, like other people, that which he produces, and to be free to turn it to account. It happens that the thing which he produces is a thing hard for him to keep at his own disposal, easy for other people to appropriate; but then, on the other hand, he is an interesting producer, giving often a great deal of pleasure by what he produces, and not provoking Nemesis by any huge and immoderate profits on his production, even when it is suffered to be at his own disposal. So society has taken him under its protection, and has sanctioned his property in his work, and enabled him to have it at his own disposal."

Perhaps a consideration of the evolution of copyright in the past will conduce to a closer understanding of its condition at present, and to a clearer appreciation of its probable development in the future. It is instructive as well as entertaining to trace the steps by which men, combining themselves in society, in Arnold's phrase, have afforded to the individual author the sanction of the law in possessing what he has produced; and it is no less instructive to note the successive enlargements of jurisprudence by which property in books—which is, as Lowell says, the creature of local municipal law—has slowly developed until it demands and receives international recognition.

I.

The maxim that "there is no wrong without a remedy," indicates the line of legal development.

The instinct of possession is strong; and in the early communities, where most things were in common, it tended more and more to assert itself. When anything which a man claimed as his own was taken from him, he had a sense of wrong, and his first movement was to seek vengeance—much as a dog defends his bone, growling when it is taken from him, or even biting. If public opinion supported the claim of possession, the claimant would be sustained in his effort to get revenge. So, from the admission of a wrong, would grow up the recognition of a right. The moral right became a legal right as soon as it received the sanction of the State. The State first commuted the right of vengeance, and awarded damages, and the action of tort was born. For a long period property was protected only by the action for damages for disseizin; but this action steadily widened in scope until it became an action for recovery; and the idea of possession or seizin broadened into the idea of ownership. This development went on slowly, bit by bit and day by day, under the influence of individual self-assertion and the resulting pressure of public opinion, which, as Lowell once tersely put it, is like that of the atmosphere: "You can't see it, but it is fifteen pounds to the square inch all the same."

The individual sense of wrong stimulates the moral growth of society at large; and in due course of time, after a strenuous struggle with those who profit by the denial of justice, there comes a calm at last, and ethics crystallize into law. In more modern periods of development, the recognition of new

forms of property generally passes through three stages. First, there is a mere moral right, asserted by the individual and admitted by most other individuals, but not acknowledged by society as a whole. Second, there is a desire on the part of those in authority to find some means of protection for this admitted moral right, and the action in equity is allowed—this being an effort to command the conscience of those whom the ordinary policeman is incompetent to deal with. And thirdly, in the fullness of time, there is declared a law setting forth clearly the privileges of the producer and the means whereby he can defend his property and recover damages for an attack on it. This process of legislative declaration of rights is still going on all about us and in all departments of law, as modern life develops and spreads out and becomes more and more complex; and we have come to a point where we can accept Jhering's definition of a legal right as "a legally protected interest."

As it happens, this growth of a self-asserted claim into a legally protected interest can be traced with unusual ease in the evolution of copyright, because copyright itself is comparatively a new thing. The idea of property was probably first recognized in the tools which early man made for himself, and in the animals or men whom he subdued; later, in the soil which he cultivated. In the beginning the idea attached only to tangible things—to actual physical possession—to that which a man might pass from hand to hand. Now, in the dawn of history nothing was less a physical possession than literature; it was

not only intangible, it was invisible even. There was literature before there was any writing, before an author could set down his lines in black and white. Homer and the rhapsodists published their poems by word of mouth. *Litera scripta manet*; but the spoken poem flew away with the voice of the speaker and lingered only in the memory. Even after writing was invented, and after parchment and papyrus made it possible to preserve the labors of the poet and the historian, these authors had not, for many a century yet, any thought of making money by multiplying copies of their works.

The Greek dramatists, like the dramatists of to-day, relied for their pecuniary reward on the public performance of their plays. There is a tradition that Herodotus, when an old man, read his *History* to an Athenian audience at the Panathenaic festival, and so delighted them that they gave him as a recompense ten talents—more than twelve thousand dollars of our money. In Rome, where there were booksellers having scores of trained slaves to transcribe manuscripts for sale, perhaps the successful author was paid for a poem, but we find no trace of copyright or of anything like it. Horace (*Ars Poetica*, 345) speaks of a certain book as likely to make money for a certain firm of booksellers. In the other Latin poets, and even in the prose writers of Rome, we read more than one cry of suffering over the blunders of the copyists, and more than one protest in anger against the mangled manuscripts of the hurried, servile transcribers. But nowhere do we find any complaint that the author's

rights have been infringed; and this, no doubt, was because the author did not yet know that he had any wrongs. Indeed, it was only after the invention of printing that an author had an awakened sense of the injury done him in depriving him of the profit of vending his own writings; because it was only after Gutenberg had set up as a printer that the possibility of definite profit from the sale of his works became visible to the author. Before then he had felt no sense of wrong; he had thought mainly of the honor of a wide circulation of his writings; and he had been solicitous chiefly about the exactness of the copies. With the invention of printing there was a chance of profit; and as soon as the author saw this profit diminished by an unauthorized reprint, he was conscious of injury, and he protested with all the strength that in him lay. He has continued to protest from that day to this; and public opinion has been aroused, until by slow steps the author is gaining the protection he claims.

It is after the invention of printing that we must seek the origin of copyright. Mr. De Vinne shows that Gutenberg printed a book with movable types, at Mentz, in 1451. Fourteen years later, in 1465, two Germans began to print in a monastery near Rome, and removed to Rome itself in 1467; and in 1469 John of Spira began printing in Venice. Louis XI. sent to Mentz Nicholas Jenson, who introduced the art into France in 1469. Caxton set up the first press in England in 1474.

In the beginning these printers were p
most of their first books were Bibles

and the like; but in 1465, probably not more than fifteen years after the first use of movable types, Fust and Schoeffer put forth an edition of Cicero's *Offices*—"the first tribute of the new art to polite literature," Hallam calls it. The original editing of the works of a classic author, the comparison of manuscripts, the supplying of *lacunæ*, the revision of the text, called for scholarship of a high order; this scholarship was sometimes possessed by the printer-publisher himself; but more often than not he engaged learned men to prepare the work for him and to see it through the press. This first edition was a true pioneer's task; it was a blazing of the path and a clearing of the field. Once done, the labor of printing again that author's writings in a condition acceptable to students would be easy. Therefore the printer-publisher who had given time and money and hard work to the proper presentation of a Greek or Latin book was outraged when a rival press sent forth a copy of his edition, and sold the volume at a lower price, possibly, because there had been no need to pay for the scholarship which the first edition had demanded. That the earliest person to feel the need of copyright production should have been a printer-publisher is worthy of remark; obviously, in this case, the printer-publisher stood for the author and was exactly in his position. He was prompt to protest against this disseizin[1]

[1] If any lawyer objects to the use of the word "disseizin" in connection with other than real property, he is referred to Prof. J. B. Ames's articles on Disseizin of Chattels, in the *Harvard Law Review*, Jan.—March, 1890.

of the fruit of his labors; and the earliest legal recognition of his rights was granted less than a score of years after the invention of printing had made the injury possible. It is pleasant for us Americans to know that this first feeble acknowledgment of copyright was made by a republic. The Senate of Venice issued an order, in 1469, that John of Spira should have the exclusive right for five years to print the epistles of Cicero and of Pliny.[1]

This privilege was plainly an exceptional exercise of the power of the sovereign state to protect the exceptional merit of a worthy citizen; it gave but a limited protection; it guarded but two books, for a brief period only, and only within the narrow limits of one commonwealth. But, at least, it established a precedent—a precedent which has broadened down the centuries until now, four hundred years later, any book published in Venice is, by international conventions, protected from pillage for a period of at least fifty years, through a territory which includes almost every important country of continental Europe. If John of Spira were to issue to-day his edition of Tully's *Letters*, he need not fear an unauthorized reprint anywhere in the kingdom of which Venice now forms a part, or in his native land, Germany, or in France, Belgium, or Spain, or even in Tunis, Liberia, or Hayti.

The habit of asking for a special privilege from the authorities of the State wherein the book was printed spread rapidly. In 1491 Venice gave the pub-

[1] Sanuto, *Script. Rerum. Italic.*, t xxii., p. 1189: cited by Hallam, *History of Middle Ages*, chap. ix., part ii.

licist, Peter of Ravenna, and the publisher of his choice the exclusive right to print and sell his *Phœnix*[1] —the first recorded instance of a copyright awarded directly to an author. Other Italian states "encouraged printing by granting to different printers exclusive rights for fourteen years, more or less, of printing specified classics," and thus the time of the protection accorded to John of Spira was doubled. In Germany the first privilege was issued at Nuremberg, in 1501. In France the privilege covered but one edition of a book; and if the work went to press again, the publisher had to seek a second patent.

In England, in 1518, Richard Pynson, the King's Printer, issued the first book *cum privilegio;* the title-page declaring that no one else should print or import in England any other copies for two years; and in 1530 a privilege for seven years was granted to John Palsgrave "in the consideration of the value of his work and the time spent on it; this being the first recognition of the nature of copyright as furnishing a reward to the author for his labor."[2] In 1533 Wynkyn de Worde obtained the king's privilege for his second edition of Witinton's *Grammar.* The first edition of this book had been issued ten years before, and during the decade it had been reprinted by Peter Trevers without leave—a despoilment against which Wynkyn de Worde protested vigorously in the preface to the later edition, and on account of which he applied for and secured pro-

[1] Bowker, *Copyright*, p. 5.
[2] T. E. Scrutton, *Laws of Copyright*, p. 72.

tection. Here again is evidence that a man does not think of his rights until he feels a wrong. Jhering bases the struggle for law on the instinct of ownership as something personal, and the feeling that the person is attacked whenever a man is deprived of his property; and, as Walter Savage Landor wrote: "No property is so entirely and purely and religiously a man's own as what comes to him immediately from God, without intervention or participation." The development of copyright, and especially its rapid growth within the past century, is due to the loud protests of authors deprived of the results of their labors, and therefore smarting as acutely as under a personal insult.'

The invention of printing was almost simultaneous with the Reformation, with the discovery of America, and with the first voyage around the Cape of Good Hope. There was in those days a ferment throughout Europe, and men's minds were making ready for a great outbreak. Of this movement, intellectual on one side and religious on the other, the governments of the time were afraid; they saw that the press was spreading broadcast new ideas which might take root in the most inconvenient places, and spring up at the most inopportune moments; so they sought at once to control the printing of books. In less than a century after Gutenberg had cast the first type, the privileges granted for the encouragement and reward of the printer-publisher and of the author were utilized to enable those in authority to prevent the sending forth of such works

[1] Jhering, *The Struggle for Law* (translated by J. J. Lalor).

as they might choose to consider treasonable or heretical. For a while, therefore, the history of the development of copyright is inextricably mixed with the story of press-censorship. In France, for example, the edict of Moulins, in 1566, forbade "any person whatsoever printing or causing to be printed any book or treatise without leave and permission of the king, and letters of privilege."[1] Of course, no privilege was granted to publisher or to author if the royal censors did not approve of the book.

In England the "declared purpose of the Stationers' Company, chartered by Philip and Mary in 1556, was to prevent the propagation of the Protestant Reformation."[2] The famous "Decree of Star Chamber concerning printing," issued in 1637, set forth,

> "that no person or persons whatsoever shall at any time print or cause to be imprinted any book or pamphlet whatsoever, unless the same book or pamphlet, and also all and every the titles, epistles, prefaces, proems, preambles, introductions, tables, dedications, and other matters and things whatsoever thereunto annexed, or therewith imprinted, shall be first lawfully licensed."

In his learned introduction to the beautiful edition of this decree, made by him for the Grolier Club, Mr. De Vinne remarks that at this time the people of England were boiling with discontent; and, "annoyed by a little hissing of steam," the ministers of Charles I. "closed all the valves and outlets, but did not draw or deaden the fires which made the steam;"

[1] Alcide Darras, *Du Droit des Auteurs*, p. 169.

[2] E. S. Drone, *A Treatise on the Law of Property in Intellectual Productions*, p. 56.

then "they sat down in peace, gratified with their work, just before the explosion which destroyed them." This decree was made the eleventh day of July, 1637; and in 1641 the Star Chamber was abolished; and eight years later the king was beheaded at Whitehall.

The slow growth of a protection, which was in the beginning only a privilege granted at the caprice of the officials, into a legal right, to be obtained by the author by observing the simple formalities of registration and deposit, is shown in a table given in the appendix (page 370) to the *Report of the Copyright Commission* (London, 1878). The salient dates in this table are these:

"1637.—Star Chamber Decree supporting copyright.

1643.—Ordinance of the Commonwealth concerning licensing. Copyright maintained, but subordinate to political objects.

1662.—13 and 14 Car. II., c. 33.—Licensing Act continued by successive Parliaments; gives copyright coupled with license.

1710.—8 Anne, c. 19.—First Copyright Act. Copyright to be for fourteen years, and if author then alive, for fourteen years more. Power to regulate price.

1814.—54 Geo. III., c. 156.—Copyright to be for twenty-eight years absolutely, and further for the life of the author, if then living.

1842.—5 and 6 Vict., c. 45.—Copyright to be for the life of the author and seven years longer, or for forty-two years, whichever term last expires."

From Mr. Bowker's chapter on the *History of Copyright in the United States*, it is easy to draw up a similar table showing the development in this country:

"1793.—Connecticut, in January, and Massachusetts, in March, passed acts granting copyrights for twenty-one years. In May

Congress recommended the States to pass acts granting copyright for fourteen years—seemingly a step backward from the Connecticut and Massachusetts statutes.

1785 and 1786.—Copyright Acts passed in Virginia, New York, and New Jersey.

1786.—Adoption of the Constitution of the United States, authorizing Congress 'to promote the progress of science and useful arts by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.'

1790.—First United States Copyright Act. Copyright to citizens or residents for fourteen years, with a renewal for fourteen years more if the author were living at the expiration of the first term.

1831.—Copyright to be for twenty-eight years, with a renewal for fourteen years more, if the author, his widow, or his children are living at the expiration of the first term.

1856.—Act securing to dramatists stage-right; that is, the sole right to license the performance of a play.

1873-4.—The Copyright Laws were included in the Revised Statutes (sections 4948 to 4971)."

From the exhaustive and excellent work of M. Lyon-Caen and M. Paul Delalain on *Literary and Artistic Property*[1] we see that France, now, perhaps, the foremost of all nations in the protection it accords to literary property, lagged behind Great Britain and the United States in taking the second step in the evolution of copyright. It was in 1710 that the act of Anne gave the British author a legal right independent of the caprice of any official; and as soon as the United States came into being, the same right was promptly confirmed to our citizens; but it was not until the fall of the ancient *régime* that a Frenchman was enabled to take out a copy-

[1] *La Propriété Littéraire et Artistique: Lois Françaises et Étrangères* (Paris, Pichon, 1889, 2 vols.).

right at will. Up to the eve of the Revolution of 1789, French authors could do no more, say MM. Lyon-Caen and Delalain, "than ask for a privilege which might always be refused them" (page 8). As was becoming in a country where the drama has ever been the most important department of literature, the first step taken was a recognition of the stage-right of the dramatist, in a law passed in 1791. Before that, a printed play could have been acted in France by any one, but thereafter the exclusive right of performance was reserved to the playwright; and at one bound the French went far beyond the limit of time for which any copyright was then granted either in England or America, as the duration of stage-right was to be for the author's life and for five years more. It is to be noted, also, that stage-right was not acquired by British and American authors for many years after 1791.

Two years after the French law protecting stage-right, in the dark and bloody year of 1793, an act was passed in France granting copyright for the life of the author and for ten years after his death. It is worthy of remark that, as soon as the privileges and monopolies of the monarchy were abolished, the strong respect the French people have always felt for literature and art was shown by the extension of the term of copyright far beyond that then accorded in Great Britain and the United States; and although both the British and the American term of copyright has been prolonged since 1793, so also has the French, and it is now

for life of the author and for fifty years after his death.

The rapid development of law within the past century and the effort it makes to keep pace with the moral sense of society—a sense that becomes finer as society becomes more complicated and as the perception of personal wrong is sharpened—can be seen in this brief summary of copyright development in France, where, but a hundred years ago, an author had only the power of asking for a privilege which might be refused him. The other countries of Europe, following the lead of France as they have been wont to do, have formulated copyright laws not unlike hers. In prolonging the duration of the term of copyright, one country has been even more liberal. Spain extends it for eighty years after the author's death. Hungary, Belgium, and Russia accept the French term of the author's life and half a century more. Germany, Austria, and Switzerland grant only thirty years after the author dies. Italy gives the author copyright for his life, with exclusive control to his heirs for forty years after his death; after that period the exclusive rights cease, but a royalty of five per cent. on the retail price of every copy of every edition, by whomsoever issued, must be paid to the author's heirs for a further term of forty years: thus a quasi-copyright is granted for a period extending to eighty years after the author's death, and the Italian term is approximated to the Spanish. Certain of the Spanish-American nations have exceeded the liberality of the mother-country: in Mexico, in

Guatemala, and in Venezuela the author's rights are not terminated by the lapse of time, and copyright is perpetual.[1]

To set down with precision what has been done in various countries will help us to see more clearly what remains to be done in our own. It is only by considering the trend of legal development that we can make sure of the direction in which efforts toward improvement can be guided most effectively. For example: the facts contained in the preceding paragraphs show that no one of the great nations of continental Europe grants copyright for a less term than the life of the author and a subsequent period varying from thirty to eighty years. A comparison also of the laws of the various countries, as contained in the invaluable volumes of MM. Lyon-Caen and Delalain, reveals to us the fact that there is a steady tendency to lengthen this term of years, and that the more recent the legislation the more likely is the term to be long. In Austria, for instance, where the term was fixed in 1846, it is for thirty years after the author's death; while in the twin-kingdom of Hungary, where the term was fixed in 1884, it is for fifty years.

On a contrast of the terms of copyright granted by the chief nations of continental Europe with those granted by Great Britain and the United

[1] Here again it may be noted that certain decisions in the United States courts, to the effect that the performance of a play is not publication, and that therefore an unpublished play is protected by the common law and not by the copyright acts, recognize the perpetual stage-right of any dramatist who will forego the doubtful profit of appearing in print.

States, it will be seen that the English-speaking race, which was first to make the change from privilege to copyright, and was thus the foremost in the protection of the author, now lags sadly behind. The British law declares that the term of copyright shall be for the life of the author and only seven years thereafter, or for forty-two years, whichever term last expires. The American law does not even give an author copyright for the whole of his life, if he should be so unlucky as to survive forty-two years after the publication of his earlier books; it grants copyright for twenty-eight years only, with a permission to the author himself, his widow, or his children to renew for fourteen years more. This is niggardly when set beside the liberality of France, to say nothing of that of Italy and Spain. Those who are unwilling to concede that the ethical development of France, Italy, and Spain is more advanced than that of Great Britain and the United States, at least as far as literary property is concerned, may find some comfort in recalling the fact that the British act was passed in 1842 and the American in 1831—and in threescore years the world moves.

There is no need to dwell on the disadvantages of the existing American law, and on the injustice which it works. It may take from an author the control of his book at the very moment when he is at the height of his fame and when the infirmities of age make the revenue from his copyrights most necessary. An example or two from contemporary American literature will serve to show the demerits of the existing law. The first part of Bancroft's

History of the United States, the history of the colonization, was published in three successive volumes in 1834, 1837, and 1840; and although the author, before his death, revised and amended this part of his work, it has been lawful, since 1882, for any man to take the unrevised and incorrect first edition and to reprint it, despite the protests of the author, and in competition with the improved version which contains the results of the author's increased knowledge and keener taste.

At this time of writing (1890) all books published in the United States prior to 1848 are open to any reprinter; and the reprinter has not been slow to avail himself of this permission. The children of Fenimore Cooper are alive, and so are the nieces of Washington Irving; but they derive no income from the rival reprints of the *Leatherstocking Tales* or of the *Sketch Book*, reproduced from the earliest editions without any of the authors' later emendations.[1] Though the family of Cooper and the family of Irving survive, Cooper and Irving are dead themselves, and cannot protest. But there are living American authors besides Bancroft who are despoiled in like manner. Half a dozen volumes were published by Mr. Whittier and by Dr. Holmes before 1848, and these early, immature, uncorrected verses are now reprinted and offered to the public as "*Whittier's Poems*" and "*Holmes's Poems*." Sometimes the tree of poesy flowers early and bears fruit late. So it is with Lowell, whose

[1] The emendations, having been made within forty-two years, are, of course, still guarded by copyright.

Heartsease and Rue we received with delight only a year or two ago, but whose *Legend of Brittany*, *Vision of Sir Launfal*, *Fable for Critics* and first series of *Bigelow Papers* were all published forty-two years ago or more, and are therefore no longer the property of their author, but have passed from his control absolutely and forever.

Besides the broadening of a capricious privilege into a legal right, and besides the lengthening of the time during which this right is enforced, a steady progress of the idea that the literary laborer is worthy of his hire is to be seen in various newer and subsidiary developments. With the evolution of copyright, the author can now reserve certain secondary rights of abridgment, of adaptation, and of translation. In all the leading countries of the world the dramatist can now secure stage-right,[1] *i.e.*, the sole right to authorize the performance of a play on a stage. Copyright and stage-right are wholly different; and a dramatist is entitled to both. The author of a play has made something which may be capable of a double use, and it seems proper that he should derive profit from both uses. His play may be read only and not acted, like Lord Tennyson's *Harold* and Longfellow's *Spanish Student*, in which case the copyright is more valuable than the stage-right. Or the play may be acted only, like the imported British melodramas, and of so slight a literary merit that no one would care

[1] Mr. Drone uses the word "playright," but this is identical in sound with "playwright," and it seems better to adopt the word "stage-right," first employed by Charles Reade.

to read it, in which case the stage-right would be more valuable than the copyright. Or the drama may be both readable and actable, like Shakespeare's and Sheridan's plays, like Augier's and Labiche's, in which case the author derives a double profit, controlling the publication by copyright and controlling performance by stage-right. It was in 1791, as we have seen, that France granted stage-right. In England, "the first statute giving to dramatists the exclusive right of performing their plays was the 3 and 4 William IV., c. 15, passed in 1833," says Mr. Daly. In the United States, stage-right was granted in 1851 to dramatists who had copyrights here.

Closely allied to the stage-right accorded to the dramatist is the sole right of dramatization accorded to the novelist. Indeed, the latter is an obvious outgrowth of the former. Until the enormous increase of the reading public in this century, consequent upon the spread of education, the novel was an inferior form to the drama and far less profitable pecuniarily. It is only within the past hundred years—one might say, fairly enough, that it is only since the Waverley novels took the world by storm—that the romance has claimed equality with the play. Until it did so, no novelist felt wronged when his tale was turned to account on the stage, and no novelist ever thought of claiming a sole right to the theatrical use of his own story. Lodge, the author of *Rosalynde*, would have been greatly surprised if any one had told him that Shakespeare had made an improper use of his story in founding on it *As You*

Like It. On the contrary, in fact, literary history would furnish many an instance to prove that the writer of fiction felt that a pleasant compliment had been paid him when his material was made over by a writer for the stage. Scott, for example, aided Terry in adapting his novels for theatrical performance; and he did this without any thought of reward. But by the time that Dickens succeeded Scott as the most popular of English novelists the sentiment was changing. In *Nicholas Nickleby* the author protested with acerbity against the hack playwrights who made haste to put a story on the stage even before its serial publication was finished. His sense of injury was sharpened by the clumsy disfiguring of his work. Perhaps the injustice was never so apparent as when a British playwright, one Fitzball, captured Fenimore Cooper's *Pilot* in 1826 and turned Long Tom Coffin into a British sailor! —an act of piracy which a recent historian of the London theatres, Mr. H. B. Baker, records with hearty approval. The possibility of an outrage like this still exists in England. In France, of course, the novelist has long had the exclusive right to adapt his own story to the stage; and in the United States, also, he has it, if he gives notice formally on every copy of the book itself that he desires to reserve to himself the right of dramatization. But England has not as yet advanced thus far; and no English author can make sure that he may not see a play ill-made out of his disfigured novel. Charles Reade protested in vain against unauthorized dramatization of his novels, and then, with character-

istic inconsistency, made plays out of novels by Anthony Trollope and Mrs. Hodgson Burnett without asking their consent. But the unauthorized British adapter may not lawfully print the play he has compounded from a copyright novel, as any multiplication of copies would be an infringement of the copyright; and Mrs. Hodgson Burnett succeeded in getting an injunction against an unauthorized dramatization of *Little Lord Fauntleroy* on proof that more than one copy of the unauthorized play had been made for use in the theatre. It is likely that one of the forthcoming modifications of the British law will be the extension to the novelist of the sole right to dramatize his own novel.

II.

From a consideration of the lengthening of the term of copyright and the development of certain subsidiary rights now acquired by an author, we come to a consideration of the next step in the process of evolution. This is the extension of an author's rights beyond the boundaries of the country of which he is a citizen, so that a book formally registered in one country shall by that single act and without further formality be protected from piracy[1] throughout the world. This great and needful improvement is now in course of accom-

[1] "Piracy" is a term available for popular appeal but perhaps lacking in scientific precision. The present writer used it in a little pamphlet on *American Authors and British Pirates* rather by way of retort to English taunts. Yet the inexact use of the word indicates the tendency of public opinion.

plishment; it is still far from complete, but year by year it advances farther and farther.

In the beginning the sovereign who granted a privilege, or at his caprice withheld it, could not, however strong his good-will, protect his subject's book beyond the borders of his realm; and even when privilege broadened into copyright, a book duly registered was protected only within the State wherein the certificate was taken out. Very soon after Venice accorded the first privilege to John of Spira, the extension of the protection to the limits of a single State only was found to be a great disadvantage. Printing was invented when central Europe was divided and subdivided into countless little states almost independent, but nominally bound together in the Holy Roman Empire. What is now the kingdom of Italy was cut up into more than a score of separate states, each with its own laws and its own executive. What is now the German Empire was then a disconnected medley of electorates, margravates, duchies, and grand-duchies, bishopries and principalities, free towns and knight-fees, with no centre, no head, and no unity of thought or of feeling or of action. The printer-publisher made an obvious effort for wider protection when he begged and obtained a privilege not only from the authorities of the State in which he was working but also from other sovereigns. Thus, when the Florentine edition of the *Pandects* was issued in 1553, the publisher secured privileges in Florence first, and also in Spain, in the Two Sicilies, and in France. But privileges of this sort granted to non-residents were

very infrequent, and no really efficacious protection for the books printed in another State was practically attainable in this way. Such protection, indeed, was wholly contrary to the spirit of the times, which held that an alien had no rights. In France, for example, a ship wrecked on the coasts was seized by the feudal lord and retained as his, subject only to the salvage claim.[1] In England a wreck belonged to the king unless a living being (man, dog, or cat) escaped alive from it; and this claim of the crown to all the property of the unfortunate foreign owner of the lost ship was raised as late as 1771, when Lord Mansfield decided against it. When aliens were thus rudely robbed of their tangible possessions, without public protest, there was not likely to be felt any keen sense of wrong at the appropriation of a possession so intangible as copyright.

What was needed was, first of all, an amelioration of the feeling toward aliens as such; and second, such a federation of the petty states as would make a single copyright effective throughout a nation, and as would also make possible an international agreement for the reciprocal protection of literary property. Only within the past hundred years or so, has this consolidation into compact and homogeneous nationalities taken place. In the last century, for example, Ireland had its own laws, and Irish pirates reprinted at will books covered by English copyright. In the preface to *Sir Charles Grandison*, published in 1753, Richardson, novelist and printer, inveighed against

[1] A. C. Bernheim, *History of the Law of Aliens* (N. Y., 1885), p. 58.

the piratical customs of the Hibernian publishers. In Italy, what was published in Rome had no protection in Naples or Florence. In Germany, where Luther in his day had protested in vain against the reprinters, Goethe and Schiller were able to make but little money from their writings, as these were constantly pirated in the other German states, and even imported into that in which they were protected, to compete with the author's edition. In 1826, Goethe announced a complete edition of his works, and, as a special honor to the poet in his old age, "the *Bundestag* undertook to secure him from piracy in German cities."[1] With the union of Ireland and Great Britain, with the accretion about the kingdom of Sardinia of the other provinces of Italy, with the compacting of Germany under the hegemony of Prussia, this inter-provincial piracy has wholly disappeared within the limits of these national states.

The suppression of international piracy passes through three phases. First, the nation whose citizens are most often despoiled—and this nation has nearly always been France—endeavors to negotiate reciprocity treaties, by which the writers of each of the contracting countries may be enabled to take out copyrights in the other. Thus France had, prior to 1852, special treaties with Holland, Sardinia, Portugal, Hanover, and Great Britain. Secondly, a certain number of nations join in an international convention, extending to the citizens of all the copyright advantages that the citizens of each

[1] G. H. Lewes, *Life and Works of Goethe*, p. 545.

enjoy at home. Third, a State modifies its own local copyright law so as to remove the disability of the alien. This last step was taken by France in 1852; and in 1886 Belgium followed her example.

The French, seeking equity, are willing to do equity; they ask no questions as to the nationality or residence of an author who offers a book for copyright; and they do not demand reciprocity as a condition precedent. Time was when the chief complaint of French authors was against the Belgian reprinters; but the Belgians, believing that the ship of state was ill-manned when she carried pirates in her crew, first made a treaty with France and then modified their local law into conformity with the French. These two nations, one of which was long the headquarters of piracy, now stand forward most honorably as the only two which really protect the full rights of an author.

Most of the states which had special copyright treaties one with another have adhered to the convention of Berne, finally ratified in 1887. Among them are France, Belgium, Germany, Spain, Italy, Great Britain, and Switzerland. The adhesion of Austro-Hungary, Holland, Norway, and Sweden is likely not long to be delayed. The result of this convention is substantially to abolish the distinction between the subjects of the adhering powers and to give to the authors of each country the same faculty of copyright and of stage-right that they enjoy at home, without any annoying and expensive formalities of registration or deposit in the foreign State.

The United States of America is now the only

one of the great powers of the world which absolutely refuses the protection of its laws to the books of a friendly alien.[1] From having been one of the foremost states of the world in the evolution of copyright, the United States has now become one of the most backward. Nothing could be more striking than a contrast of the liberality with which the American law treats the foreign inventor and the niggardliness with which it treats the foreign author. In his *Popular Government* (page 247) the late Sir Henry Sumner Maine declared that "the power to grant patents by federal authority has . . . made the American people the first in the world for the number and ingenuity of the inventions by which it has promoted the 'useful arts;' while, on the other hand, the neglect to exercise this power for the advantage of foreign writers has condemned the whole American community to a literary servitude unparalleled in the history of thought."

[1] If a foreign dramatist chooses to keep his play in manuscript, then the American courts will defend his stage-right; but the foreign dramatist is the only alien author whose literary property is assured to him by our courts.

November, 1890.

XXI.

LITERARY PROPERTY.

AN HISTORICAL SKETCH.

BY GEO. HAVEN PUTNAM.

(Originally published in 1884, in Mason and Lalor's *Cyclopædia of Political Science.*)

DURING the past twenty years there has been a very considerable increase in the extent of international literary exchanges, and a fuller recognition, at least in Europe, of the propriety and necessity of bringing these under the control of international law. Americans also are beginning to appreciate how largely the intellectual development of their nation must be affected by all that influences the development of the national literature, and to recognize the extent to which such development must depend upon the inducements extended to literary producers, as well as upon the character of the competition with which these producers have to contend.

Literary property is defined by Drone as "the exclusive right of the owner to possess, use, and dispose of intellectual productions," and copyright as "the exclusive right of the owner to multiply and to dispose of copies of an intellectual production."

The English statute (5 and 6 Vict.) defines copy-

right to mean "the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the word is herein applied."

The American statute (U. S. Rev. Stat., § 4952) speaks of copyright in a book as "the sole liberty of printing, reprinting, publishing, . . . and vending the same."

The French Constitutional Convention adopted, in January, 1791, a report prepared by Chopelin, which declares that: *La plus sacré, la plus inattaquable, et, si je puis, parler ainsi, la plus personelle de toutes les propriétés, est l'ouvrage, fruit de la pensée d'un écrivain.* And in the decree rendered by the convention, July 10, 1793, the preamble (written by Lakanal) declares that *de toutes les propriétés, la moins susceptible de contestation, c'est, sans contrédit, celle des productions du génie: et si quelque chose peut étonner, c'est qu'il ait fallu reconnaitre cette propriété, assurer son libre exercice par une loi positive; c'est qu'une aussi grande revolution que la notre ait été nécessaire pour nous ramener sur ce point, comme sur tout d'autres, aux simples éléments de la justice la plus commune.*

The act relating to copyright, adopted by the Reichstag of Germany, in April, 1871, declares that *Das Recht, ein Schriftwerk auf mechanischem Wege zu vervielfältigen, steht dem Urheber desselben ausschliesslich zu.*

Copinger defines copyright as "the sole and exclusive right of multiplying copies of an original work or composition," and says that the right of an author "to the productions of his mental exertions

may be classed among the species of property acquired by occupancy; being founded on labor and invention."

Francis Lieber says (in an address delivered April 6, 1868): "The main roots of all property whatsoever are appropriation and production. . . . Property . . . precedes government. If a man appropriates what belongs to no one (for instance, the trunk of a tree), and if he produces a new thing (for instance, a canoe) out of that tree, this product is verily his own, . . . and any one who in turn attempts to appropriate it without the process of exchange, is an intruder, a robber. . . . The whole right of property . . . rests on appropriation and production: and I appeal to the intuitive conviction of every thinking man to say whether a literary work, such as Baker's description of his toilsome journeys, or Goethe's *Faust*, is not a *production* in the fullest sense of the word, even more so than a barrel of herrings, which have been appropriated in the North Sea, and pickled and barreled by the fishermen; and whether any one has a right to meddle with this property by production, any more than you or I with the barrel of herrings."

Drone says: "There can be no property in a production of the mind unless it is expressed in a definite form of words. But the property is not in the words alone; it is in the intellectual creation, which language is merely a means of expressing and communicating." It is evident that copyright is in its nature akin to patent right, which also represents the legal recognition of the existence of property in

an idea or a group of ideas, or the form of expression of an idea.

International patent rights have, however, been recognized and carried into effect more generally than have copyrights. The patentee of an improved toothpick would be able to secure to-day a wider recognition of his right than has been accorded to the author of *Uncle Tom's Cabin* or of *Adam Bede*.

Almost the sole exception to this consensus of civilized opinion on the status of literary property is presented by Henry C. Carey. He took the position that "Ideas are the common property of mankind. Facts are everybody's facts. Words are free to all men. . . . Examine Macaulay's *History of England*, and you will find that the body is composed of what is common property." Of Prescott, Bancroft, and Webster he says: "They did nothing but reproduce ideas that were common property." Of Scott and Irving, "They made no contribution to knowledge." (*Letters on Copyright*, Phila., 1854.) Therefore, the author of a work has no right of property in the book he has made. He took the common stock and worked it over; and one man has just as good a right to it as another. If the author is allowed to be the *owner* of his works, the public are deprived of their rights. Property in books is robbery. But this is simply a partial or specific application of the well-known formula of Proudhon: "Property is robbery," a theory which it is not necessary to discuss in this paper.

The conception of literary property was known

to the ancients. A recompense of some sort to the author was regarded as a natural right, and any one contravening it as little better than a robber. Klostermann says: "The first germs of a recognition of a property in thought are to be found in the agreements which authors entered into with the booksellers for the multiplication and sale of copies of their works, and in the custom to treat as unlawful any infringement upon the bookseller's right in a work which had been so transferred to him. The booksellers among the Romans succeeded, through the use of slave labor, in producing duplicates of their manuscripts at so low a cost that the use and productions, centuries later, of the first printing presses, were hardly cheaper." Martial records, in one of his epigrams that the edition of his *Xenii* could be bought from the bookseller Tryphon for four sesterces, the equivalent of about twelve and a half cents. He grumbles at this price as being too high, and claims that the bookseller would have been able to get a profit from a charge of half that amount. This poet appears to have had not less than four publishers in charge of the sale of his works, one of whom was a freedman of the second Lucensis. The latter issued a special pocket edition of the *Epigrams*. The poet prepared the advertisements for the booksellers, putting these in the form of epigrams, but not neglecting to specify the form and price of each book, as well as the place where it was offered for sale.[1] Horace refers to the brothers Sosius as his

[1] Omnis in hoc gracili xeniorum turba libello
Constabit nummis quatuor empta tibi.

publishers, but complains that while his works brought gold to them, for their author they earned only fame in distant lands and with posterity.[1] Terence sold his *Eunuchus* to the ædiles, and his *Hecyra* to the player Roscius; while Juvenal reports that Statius would have starved if he had not succeeded in selling to the actor Paris his tragedy of *Agave*. "Such sales," says Coppinger, "were considered as founded upon natural justice. No man could possibly have a right to make a profit by the sale of the works of another without the author's consent. It would be converting to his own emolument the fruits of another's labor."

It is apparent from these and from similar references, that under the Roman Empire authors were in the habit of transferring to booksellers, for such consideration as they could obtain, the right to duplicate and to sell their works, and that, under the trade usages, they were protected in so doing. There

Quatuor est nimium, poterit constare duobus.
Et faciet lucrum bibliopola Tryphon.

(*Epigrammata*, lib. xiii., ep. 3.)

Qui tecum cupis esse meos ubicunque libellos.
Et comites longæ quæris habere viæ,
Hos eme quos arcet brevibus membrana tabellis:
Scrinia da magnis, me manus una capit.

* * * * *

Libertum docti Lucensis quare secundi
Limina post Pacis, Palladiumque Forum.

Epigrammata, lib. i., ep. 3.)

[1] Hic meret æra liber Sosiis, hic et mare transit,
Et longum noto scriptori prorogat alvum.

(*Art. Poet.*, 345.)

was no imperial act covering such transfers, and it does not appear that in any division of the Roman law was there provision for the exclusive right in the "copy" of literary material.

It is nevertheless the case that the Roman jurists interested themselves in the question of immaterial property, but it was apparently rather as a theoretical speculation than as a study in practical law. Some of the earlier discussions as to the nature of property in ideas appear to have turned upon the question as to whether such property should take precedence over that in the material which happened to be made use of for the expression of the ideas. The disciples of Proculus maintained that the occupation of alien material, so as to make of it a new thing, gave a property right to him who had so reworked or reshaped it; while the school of Sabinus insisted that the ownership in the material must carry with it the title to whatever was produced upon the material. Justinian, following the opinion of Gaius, took a middle ground, pointing out that the decision must be influenced by the possibility of restoring the material to its original form, and more particularly by the question as to whether the material, or that which had been produced upon it, was the more essential. This opinion of Gaius appears to have had reference to the ownership of a certain table upon which a picture had been painted, and the decision was in favor of the artist. This decision contains an unmistakable recognition of immaterial property, not, to be sure, in the sense of a right to exclusive reproduction, but in the par-

ticular application that, while material property depends upon the substance, immaterial property, that is to say, property in ideas, depends upon the form.

For the centuries following the destruction of the Roman Empire, during which literary undertakings were confined almost entirely to the monasteries, the Roman usage, under which authors could dispose of their works to booksellers, and the latter could be secured control of the property purchases, was entirely forgotten. No limitation was placed on the duplication of works of literature. According to Wächter (*Das Verlagsrecht*, 1857), it was even the case that by a statute of the University of Paris, issued in 1223, the Parisian booksellers (who were in large part dependent upon the university) were enjoined to extend, as far as practicable, the duplication of works of a certain class. The business of bookseller at that time consisted as much in the renting out for reading and copying of authentic manuscript versions as in the sale of manuscript copies. In the University of Paris, as well as in that of Bologna, a statute specified the least number of copies, usually 120, of a manuscript that a bookseller must keep in stock, and the prices for loaning manuscripts were also fixed by statute. The difficulty and expense attending the reproduction of manuscripts was in every case considerable (much greater than in the early days of the Roman Empire), and when, therefore, an author desired to secure a wide circulation for his work, he came to regard the reproduction of copies not as a reserved right and source of

income, but as a service to himself, which he was very ready to facilitate, and even to compensate.

Throughout the middle ages, whatever immaterial property in the realms of science, art, or technics obtained recognition and protection, was held in ownership, not by individuals, but by churches, monasteries, or universities. Before the invention of printing, the writers of the middle ages were fortunate if, without a ruinous expenditure, they could succeed in getting their productions before the public. The printing-press brought with it the possibility of a compensation for literary labor. Very speedily, however, the unrestricted rivalry of printers brought into existence competing and unauthorized editions, which diminished the prospects of profit, or entailed loss for the authors, editors, and printers of the original issue, and thus discouraged further similar undertakings.

As there was no general enactment under which the difficulty could be met, protection for the authors and their representatives was sought through special "privileges," obtained for separate works as issued. The earliest privilege of the kind was, according to Putter (*Beiträge zum deutschen Staats- und Fürstenrecht*), that conceded by the republic of Venice, January 3, 1491, to the jurist Peter of Ravenna, securing to him, and to the publishers selected by him, the exclusive right for the printing and sale of his work, *Phœnix*. No term of years appears to have been named in this "privilege." It appears, however, that most of the early Italian enactments in regard to literature were framed, not

so much with reference to the protection of authors, as for the purpose of inducing printers (acting also as publishers) to undertake certain literary enterprises which were believed to be of importance to the community.

The republic of Venice, the dukes of Florence, and Leo X. and other popes conceded at different times to certain printers the exclusive privilege of printing, for specified terms—rarely, apparently, exceeding fourteen years—editions of certain classic authors. At this time, when the business of the production and the distribution of books was in its infancy, such undertakings must have been attended with exceptional risk, and have called for no little enlightened enterprise on the part of the printers. It is fair to assume that the princes conceding these privileges were not interested in securing profits for the printers, but had in mind simply the encouragement, for the benefit of the community, of literary ventures on the part of the editors and printers.

After Italy, it is in France that we find the next formal recognition, on the part of the government, of the rights of property in literature. From the reign of Louis XII. to the beginning of the sixteenth century it became usage for the publisher (at that time identical with the printer), before undertaking the publication of a work, to obtain from the king an authorization, or letters patent, the term of which appears to have varied according to the nature of the work and the mood of the monarch or of the advising ministers. At the close of nearly

all of the volumes issued previous to the Revolution will be found printed: *Les Lettres du Roi*, addressed, *A nos ames et feaux conseillers, les gens tenons nos cours de Parlement . . . et autres nos justiciers, et qui font defenses à tous libraires et imprimeurs et autres personnes de quelque qualité et condition qu'elles soient, d'introduire aucun impression étrangère* (that is to say, any unauthorized reprint) *dans aucun lieu de notre obeissance.*

These letters were in the first place obtained, as in Italy, for the protection of special editions of the classics, but very speedily the native literature increased in importance, and the list of original works came to outnumber that of the reprints of ancient authors. The rights specified in the letters were, in the first place, nearly always vested in the printers, but it is evident that the longer the terms of the royal concessions the larger the remuneration that could be looked for from the work, and the greater the price that the printer would be in a position to pay to author or writer. It is also to be noted that the terms granted to original French works were usually longer than those for the new editions of the classics or of reprints of devotional works.

According to Lowndes, the penalties for infringing copyright were, until the Revolution, heavier in France than anywhere else in Europe. It was argued that such infringement constituted a worse crime than the stealing of goods from the house of a neighbor, for in the latter case some negligence might possibly be imputed to the owner,

while in the former it was stealing what had been confided to the public honor.

The status of literary property was further recognized and defined by the so-called *Ordinances de Moulins* of Henry II., in 1556, the declaration of Charles IX., in 1571, and the letters patent of Henry III., in 1576, but the character of the methods of granting and defending copyrights was not changed in any material respects.

By the decree of the National Assembly of August 4, 1789, all the privileges afforded to authors and owners of literary property by the various royal edicts were repealed. In July, 1793, the first general Copyright Act was passed, under which protection was conceded to the author for his life, and to his heirs and assigns for ten years thereafter.

The imperial Act of 1810 extended the term to twenty years after the author's death, for widow or children, the term remaining at ten years if the heirs were further removed. In 1872 the act now (1883) in force was passed. Under this the term was extended to fifty years from the death of the author. The provisions of the act were also extended to the colonies. Foreigners and Frenchmen enjoy the right equally, and no restriction is made as to the authors being residents at the time the copyright is taken out. It is, further, not necessary that the first publication of the work should be made in France. In case the work be first published abroad, French copyright may subsequently be secured by depositing two copies at the Ministry of the Interior in Paris, or with the secre-

tary of the prefecture in the departments. The provisions of the statute affecting foreigners may be modified by any convention concluded between France and a foreign country.

The earliest German enactment in regard to literary property was the "privilege" accorded in Nuremberg, in 1501, to the poet Conrad Celtes, for the works of the poet Hroswista (Helena von Rossow, a nun of the Benedictine cloister of Gardersheim). As this author had been dead for 600 years, the privilege was evidently not issued for her protection, but must rather have been based upon the idea of encouraging Celtes in a praiseworthy (and probably unremunerative) undertaking. Between the years 1510 and 1514 we find record of "privileges" issued by the Emperor Maximilian in favor of the sermons of Geiler of Kaisersberg, and the writings of Schottius, Stabius, and others. In 1534 Luther's translation of the Bible was issued in Wittenberg under the protection of the "privilege" of the Elector of Saxony.

Penalties for piratical reprints were sometimes specified in the special "privileges," but from 1660 we find certain general acts under which privileged works could obtain protection, and their owners could secure against reprinters uniform penalties. Decrees of this class were issued by the city of Frankfort in 1657, 1660, and 1775, by Nuremberg in 1623, by the electorate of Saxony in 1661, and by the imperial government in 1646. There were also enactments in Hanover in 1778, and in Austria in 1795. All of the above specified acts expressly per-

mitted the reprinting of "foreigr works, that is, of works issued outside of the do.nain covered by the enactment. Piratical reprinting between the different German states increased, therefore, with the growth of the literature, and although the injury and injustice caused by it were recognized, and measures for its suppression were promised by the emperors Leopold II. and Francis II. (1790 and 1792), nothing in this direction could be accom. plished by the unwieldy imperial machinery.

In 1794 legislation was inaugurated in the Prus. sian parliament, which was accepted by the other states of Germany (excepting Wurtemberg and Mecklenburg), under which all German authors and foreign authors whose works were represented by publishers taking part in the book fairs in Frankfort and Leipzig were protected throughout the states of Germany against unauthorized reprints.

According to Klostermann, these enactments were only in small part effective, and it was not until forty years later that, under the later acts of the new German confederacy, German authors were able to secure throughout Germany a satisfactory protection. It is, nevertheless, the case that to those who framed the Berlin enactment of 1794 must be given the credit of the first steps toward the practical recognition of international copyright.

The copyright statute now in force in Germany, including Elsass and Lothringen, dates from 1871. The term is for the life of the author and for thirty years thereafter. The copyright registry for the empire is kept at Leipzig. The protection of the

law is afforded to the works of citizens, whether published inside or outside of the empire, and also to works of aliens, if these are published by a firm doing business within the empire.

In Italy, literary copyright rests upon the statute of 1865. The term is for the life of the author and for forty years after his death, or for eighty years from the publication of the work. After the expiration of the first forty years, however, or after the death of the author, in case this does not take place until more than forty years have elapsed since the publication, the work is open to publication by any one who will pay to the author of the copyright a royalty of five per cent. of the published price. It is necessary to deposit two copies of the work, together with a declaration in duplicate, at the prefecture of the province. No distinction is made between citizens and aliens, and the provisions of the law are applicable to the authors of works first published in any foreign country, between which and Italy there is no copyright treaty.

In Austria, the term of literary copyright is for thirty years after the author's death, and the other provisions of the act in force are similar to those of the German statute.

In Holland and Belgium, copyright, formerly perpetual, is now limited to the life of the author and twenty years thereafter.

In Denmark, copyright, formerly perpetual, is now limited to thirty years from the date of publication.

In Sweden, copyright was also, until recently, perpetual. By the Act of 1877, however, it now en-

dures for the life of the author, and for fifty years thereafter. The provisions of the law are made applicable to the works of foreign authors only on condition of reciprocity.

In Spain, copyright rests on the Act of 1878, and endures during the life of the author and for eighty years thereafter. If the right be assigned by the author and the author leave no heirs, it belongs to the assignecs for eighty years from the author's death. In the case, however, of heirs being left by the author, the assignment holds good for but twenty-five years, after which the ownership reverts to the heirs for the remaining fifty-five years of the term. Owners of foreign works will retain their rights in Spain, provided they adhere to the law of their own country. The copyright registry is kept at the Ministry of the Interior, and, to perfect the registry, a deposit of three copies of the work is required. The Spanish government is authorized to conclude copyright treaties with foreign countries on the condition of complete reciprocity between the contracting parties. Under such an arrangement any author, or his representative, who has legally secured copyright in the one country, would be, without further formalities, entitled to enjoy it in the other.

In Russia, copyright endures for the life of the author and for fifty years thereafter.

In Greece, the term is fifteen years from publication.

In Japan the law of copyright dates from 1874. Manuscript must be examined by the Department of the Interior, and if found free from disloyal

opinions or any matter calculated to injure public morals, a certificate of protection is promptly issued. Three copies of the work must be deposited in the department, and the fees amount to the value of six more copies.

In China, notwithstanding the large body of national literature, no laws have been enacted for the protection of literary property.

In Great Britain, the Act of 1842, now (1883) in force, provides as follows: Copyright in a book endures for forty-two years from the date of publication, or for the author's life, and for seven years after, whichever of these two terms may be the longer. The first publication of the work must be in Great Britain. The copy can be taken out by any author or owner who is a British citizen, or by an alien who may at the time of the first publication be within the British dominions (in any portion of the British Empire). The work must be registered in the records of the Stationers' Company, and five copies must be delivered to certain institutions specified. A bill is now, however, before Parliament, framed mainly upon the recommendations of the Copyright Commission of 1878, which provides that the term of copyright for books shall be fifty years; that in the case of British subjects copyright extends to all the British dominions; that aliens, wherever resident, shall be entitled to British copyright on registering their work in that part of the British dominions where it was first published.

The history of the status of literary property in England prior to 1863 is given in detail in the ar-

ticle of Mr. Macleod (vol. i., p. 642). It is in England that the nature and basis of copyright have received the most thorough consideration, and the English opinions (although representing very wide differences among themselves) have been the most important contributions to the discussion of the subject. It is sufficient to note here that the first record of the recognition of property in literature appears in 1558 (that is, half a century later than in France or Germany), when the earliest entry of titles was made on the register of the Company of Stationers in London. As early as 1534, however, Henry VIII. granted to the University of Cambridge the exclusive right of printing certain books in which the crown claimed a prerogative. Afterward, patents *cum privilegio* were granted to individuals. Prior to 1710 there was no legislation creating literary property or confining ownership, nor any abridging its perpetuity or restricting its enjoyment. It was understood, therefore, to owe its existence to common law, and this conclusion, arrived at by the weightiest authorities, remained practically unquestioned until 1774. For the provisions of the Act of 1710 (8 Anne), the details of the cases of Miller *vs.* Taylor (1769), and Donaldson *vs.* Becket (1774), the discussions concerning these cases, with the opinions of Lord Mansfield, Lord Camden, and Justice Yates, and also for the debate attending the framing of the Act of 1842, with the arguments of Talfourd, Lord Campbell, Justice Coleridge, Lord Macaulay, and Thomas Hood, the reader is referred to Mr. Macleod's paper.

In the United States, the first act in regard to copyright was passed in Connecticut in January, 1783. This was followed by the Massachusetts act of March, 1783, that of Virginia in 1785, and New York and New Jersey in 1786. These acts were due more particularly to the efforts of Noah Webster, and their first service was the protection of his famous *Speller*. Webster journeyed from State capital to State capital, to urge upon governors and legislatures the immediate necessity of copyright laws, and under his persistency measures had also been promised, and in part framed, in Rhode Island, Pennsylvania, Delaware, Maryland, and South Carolina. The necessity for State laws on the subject was, however, obviated by the United States statute of 1790. In creating a public and legislative opinion which made such a law possible, Webster's writings and personal influence were all-important.

Previous to the adoption of the Federal Constitution, in 1787, a general copyright law was not within the province of the central government, and in order to encourage the States in the framing of copyright legislation, a resolution, proposed by Madison, was adopted in Congress in May, 1783, recommending to the States the adoption of laws securing copyright for a term of not less than fourteen years. The State acts passed prior to this resolution had conceded a term of twenty-one years. The Act of 1790 provided for the shorter time suggested by Madison. The Act of 1831 extended the fourteen years to twenty-eight, with privilege to the

author, his widow, or children, of renewal for fourteen years more. The act of 1834 provided that all deeds for the transfer or assignment of copyright should be recorded in the office in which the original entry had been made. In 1846, the act establishing the Smithsonian Institution required that one copy of the work copyrighted should be delivered to that institution, and one copy to the Library of Congress. This provision was repealed in 1859, by a statute which transferred to the Department of the Interior the custody of the publications and records. In 1865 the copies were again ordered to be delivered to the Library of Congress. In 1861 an act was passed, providing that cases of copyright could, without regard to the amount involved, be appealed to the Supreme Court.

The act now in force in the United States is that of July, 1870 (see Rev. Stat., §§ 4948–4971). This provides that the business of copyrights shall be under charge of the Librarian of Congress; that copyrights may be secured by any citizen of the United States or resident therein; that the term of copyright shall be twenty-eight years, with the privilege of renewal for the further term of fourteen years by the author, if he be still living, and continues to be a citizen or a resident, or by his widow or children, if he be dead; that two copies of the work shall be deposited in the Library of Congress; that the work must first be published in the United States, and that the original jurisdiction of all suits under the copyright laws shall rest with the United States Circuit Courts.

Under the present interpretation of the courts in both the United States and Europe, copyright in published works exists only by virtue of the statutes defining (or establishing) it, while in works that have not been published, such as compositions prepared exclusively for dramatic representation, the copyright obtains through the common law. Copyright by statute is of necessity limited to the term of years specified in the enactment, while copyright at common law has been held to be perpetual. The leading English decisions have before been referred to. The United States decision, which still serves as a precedent on the point of the statutory limitation of copyright, is that of the United States Supreme Court in 1834, in the case of Wheaton *vs.* Peters. This decision involved the purport of the United States law of 1790, and the determination of the same question that had been decided by the House of Lords in 1774, viz., whether copyright in a published work existed by the common law, and, if so, whether it had been taken away by statute. The court held that the law had been settled in England, the act of 8 Anne having taken away any right previously existing at common law; that there was no common law of the United States; and that the copyright statute of 1790 did not affirm a right already in existence, but created one. Justices Thompson and Baldwin, in opposing the decision of the four justices concurring in the decision, took the ground that the common law of England *did* prevail in the United States, and that copyright at common law had been fully

recognized; and that, even if it were admitted that such copyright had been abrogated in England by the statute of Anne, such statute had, of course, no effect either in the colonies or in the United States. "These considerations," says Drone, "deprive Wheaton *vs.* Peters of much of its weight as an authority." In 1880, in the case of Putnam *vs.* Pollard, it was claimed by the plaintiff that the decision in Wheaton *vs.* Peters could in any case only make a precedent for Pennsylvania; that the English common law obtained in the State of New York, and could not have been affected by the statute of Anne; but the New York Supreme Court decided that Wheaton *vs.* Peters constituted a valid precedent.

What may be the Subject of Copyright. In order to acquire a copyright in a work, it is necessary that it should be original. The originality can, however, consist in the form or arrangement as well as in the substance. Corrections and additions to an old work, not the property of the compiler, can also secure copyright. The copyright of private letters, forming literary compositions, is in the composer and not in the receiver. (Oliver *vs.* Oliver, Percival *vs.* Phipps et al., *Story's Com.*)

The English statute, 5 and 6 Vict., defines "book" "to mean and include every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published." The right of property in lectures, whether written or oral, is now confirmed by statute, the most important English decision on the

point being that of Abernethy *vs.* Hutchinson, and American precedents being Bartlett *vs.* Crittenden, Keene *vs.* Kimball, and Putnam *vs.* Meyer. Copyright can be secured for original arrangements of common material or novel presentations of familiar facts. In Putnam *vs.* Meyer the New York Supreme Court held that certain tabular lists of anatomical names, arranged in a peculiar and arbitrary manner for the purpose of facilitating the work of memorizing, were entitled to protection.

Abridgments and abstracts, which can be called genuine and just, are also entitled to copyright. (Lawrence *vs.* Dana, Gray *vs.* Russell et al.) According to English precedent, copyright cannot exist in a work of libelous, immoral, obscene, or irreligious tendency. There is no record in the United States of a case in which the question of copyright in irreligious books has been considered. Drone points out that the uniform construction of the law relating to blasphemy is evidence of the large freedom of inquiry and discussion allowed in religious matters. On this point the opinion of Justice Cooley (People *vs.* Ruggles, 8 Johns. Rep., N. Y.) is worth citing: "It does not follow because blasphemy is punishable as a crime, that therefore one is not at liberty to dispute and argue against the truth of the Christian religion, or of any accepted dogma. Its 'divine origin and truth' are not so far admitted in the law as to preclude their being controverted. To forbid discussions on this subject, except by the various sects of believers, would be to abridge the liberty of speech and of the press on a

point which, with many, would be regarded as the most important of all." In quoting a similar opin. ion of Justice Story, Drone concludes that "there appears to be no good reason why valid copyright will not rest in a publication in which are denied any or all of the doctrines of the Bible; provided the motives and manner of the author be such as not to warrant the finding of a case of blasphemy or immorality."

Several of the questions concerning the status and the defence of literary property in this country are only now beginning to come into discussion. The literature of the country is still so young that as yet but a small portion of it has survived the statute term of copyright. From the present time, however, as the terms of works which have estab. lished a position as classics begin in part or in whole to expire, we can look forward to a larger number of issues and of suits connected with alleged in. fringements of copyright.

The case of Putnam *vs.* Pollard, decided in the New York Supreme Court in 1881, covered some points that appear to have not before received con. sideration. The defendants had reprinted some fragmentary and unrevised portions of the works of Washington Irving, on which the copyright had expired, and offered these for sale under the desig. nation of *Irving's Works.* The plaintiff had for a number of years used this title to describe the au. thorized, complete, and revised writings of this author, in the shape in which he had finally pre. pared them for posterity. The plaintiff sought to

enjoin the sale, under the above title, of the fragmentary work, on the several grounds that it misled the public, caused injury to the literary reputation of Irving, and interfered with the property rights of Irving's heirs. The courts decided, however, that as long as the volumes in question contained nothing but material which had actually been written by Irving, it was not unlawful to designate them as *Irving's Works*, even though the writings should not be complete or in their final form; and the injunction was denied. The question involved was, it will be noted, one of trade-mark, and the decision took the ground that an author's name, combined with the term "works," does not constitute a trade-mark. Under this ruling, it might be proper to add to the title-pages of volumes of "fragments" sold as "works," the caution "*Cavcat emptor*."

The four theories which have resulted from this discussion of a century are thus summarized by Drone: 1. That intellectual productions constitute a species of property founded in natural law, recognized by the common law, and neither lost by publication nor taken away by legislation. 2. That an author has, by common law, an exclusive right to control his works before, and not after, publication. 3. That this right is not lost by publication, but has been destroyed by statute. 4. That copyright is a monopoly of limited duration, created and wholly regulated by the legislature, and that an author has, therefore, no other title to his published works than that given by statute.

The first country to take action in regard to in-

ternational copyright was Prussia, which, in 1836, passed an act conceding the protection of the Prussian statute to the writers of every country which should grant reciprocity. In 1837 a copyright convention was concluded between the different members of the German confederation.

This was followed by the English Act of 1838, 1 and 2 Vict., c. 59, amended and extended by 15 Vict., c. 12. This act provided that her majesty might, by order in council, grant the privilege of copyright to authors of books, etc., first published in any foreign country to be named in such order, provided always that "due protection had been secured by the foreign power so named in such order in council, for the benefit of parties interested in works first published in the British dominions."

Different provisions may be made in the arrangements with different countries. Under the general Copyright Act, no right of property is recognized in any book, etc., not first published in her majesty's dominions. Hence, British as well as foreign authors, first publishing abroad, have no protection in Great Britain unless a convention has been framed, under the International Copyright Act, between Great Britain and the country in which the publication is made. It may be noted here that the condition of "first publication," which obtains in the statutes of nearly all countries, has been held to be complied with by a *simultaneous* publication in two or more countries.

Under this International Copyright Act, Great Britain has entered into copyright conventions with

the following countries: with Saxony, in 1846; France, in 1851; Prussia, in 1855; states of Germany comprised in the German empire: Anhalt, in 1853; Brunswick, in 1849; Hamburg, in 1853; Hanover, in 1847; Oldenburg, in 1847; Hesse-Darmstadt, in 1862; Thuringian Union, in 1847. (It is not clear what effect the absorption of these states into the empire may have had upon their several copyright treaties.) With Spain, in 1857 (temporarily renewed in 1880); Belgium, in 1855; and Sardinia, in 1862 (confirmed in 1867 by the kingdom of Italy).

The conventions with the several German states contain essentially identical provisions, which are as follows: The author of any book to whom the laws of either state (English or German) give copyright, shall be entitled to exercise that right in the other of such states, for the same term to which an author of a similar work would be entitled if it were first published in such other state. The authors of each state shall enjoy in the other the same protection against piracy and unauthorized republication, and shall have the same remedies before courts of justice, as the law affords to the domestic authors. Translators are protected against a piracy of their translation, but acquire no exclusive right to translate a work except in the following case: the author who notifies on the title-page of his book his intention of reserving the right of translation, will, during five years from the first publication of the book, be entitled to protection, in the treaty state, from the publication of any translation not

authorized by him. In order, however, to secure this protection, the author must, within three months of the first publication of his book, register the title and deposit a copy in the proper office in the treaty state; part of the authorized translation must appear within a year, and the whole of it within three years of the deposit and registration of the original; and the translation must itself be duly registered and deposited. When a work is issued in parts, each part shall be treated as a separate book; but notice of the reservation of the right of translation need be printed only on the first page. The importation into either of the two states of unauthorized copies of works protected by the convention is forbidden. A certified copy of the entry in the registry of either state shall *prima facie* confer an exclusive right of republication within such state.

The provisions of the existing conventions between England and France, Spain, Belgium, and Italy, are essentially identical with those of the German treaty. The continental book, on the title-page of which has been duly printed the announcement of the reservation of the right of translation, must be duly registered at Stationers' Hall, London. The English work must be registered for France at the *Bureau de la Librairie* of the Ministry of the Interior, in Paris, and for Spain and Belgium at the corresponding offices in Madrid and Brussels.

The provisions of the treaty between Spain and France, which is based upon the Spanish Copyright Act of 1878, have, in the main, been followed in the conventions between Spain and Italy, Spain and

Portugal, France and Italy, etc. They are as follows: 1. Complete reciprocity between the contracting parties. 2. Treatment of each nation by the other as the most favored nation. 3. Any author or his representative who has legally secured copyright in the one country, to enjoy it forthwith in the other, without further formalities. 4. The prohibition in each country of the printing, selling, importation or exportation of works in the language of the other country, without the consent of the owners of the copyright therein.

The copyright treaty between France and Germany, as framed in 1883, is a step in advance in many ways. By Article 10, authors of the two countries are spared all formalities of registration, and the appearance of the writer's name on the title-page is to be considered sufficient proof of his rights, unless the contrary is proved. In the case of anonymous or pseudonymous works the publisher will be regarded as the author's representative. The knotty point of the right of transiation has been solved by a compromise. The necessity to print a reserve of the right of translation on the book is abolished, as is the registration of translations. The author is to retain his right of translation for ten years, instead of the five hitherto allowed. When a work is issued in parts, the ten years are to be counted from the issue of the last part. Books and acting plays are put on the same footing; and the treaty will apply to works already published.

An international literary association was organ-

ized some years ago, with Victor Hugo as its first president, and has been of service in calling attention to defects in existing enactments and conventions for the protection of property in literature. It has recently called special attention to the exceptional position occupied by the United States toward the literature of other countries.

Between no two countries has the exchange of literary productions been so considerable or so important as between Great Britain and the United States. The interests of authors, of readers, of publishers, of national literature and of national morality, have alike demanded that the exchange should be placed under international regulation, and that this extensive use by the public of each country of the literature of the other should be conditioned upon an adequate acknowledgment of the rights of the producers of such literature.

It is a disgrace that the two great English-speaking people, claiming to stand among the most enlightened of the community of nations, should be practically the only members of such community which have failed to arrive at an agreement in this all-important international issue; and it is mortifying for an American to be obliged to admit that the responsibility for such failure must, in the main, rest with the United States.

The reproduction of British literature in this country has, during the past century, been much more considerable than that of American literature in Great Britain, and the direct loss to the English authors, through the want of an assured and legal-

lzed remuneration from the American editions of their works, has therefore been greater than the corresponding direct loss to American authors. For this and for other reasons, the suggestions and propositions for an international arrangement have been more frequent and more pressing on the part of England. And although it is certainly true, that from an early date the rightfulness and desirability of an international copyright have been maintained in this country, not only by authors, but by leading publishers and many others who have given thought and labor to the matter, it is nevertheless the case that the views of these advocates of a measure have not as yet been successful in securing the legislation required to change the national policy. This policy still persistently refuses to recognize the rights of any alien writers, and, through such refusal, continues to inflict a grievous and indefensible wrong, not only upon such alien writers, but also upon the authors and the literature of our own country.

The history of the efforts made in this country to secure international copyright is not a long one. The attempts have been few, and have been lacking in organization and in unanimity of opinion, and they have for the most part been made with but little apparent expectation of any immediate success. Those interested seem to have nearly always felt that popular opinion was, on the whole, against them, and that progress could be hoped for only through the slow process of building up by education and discussion a more enlightened public understanding.

In 1838, after the passing of the first International Copyright Act in Great Britain, Lord Palmerston invited the American government to co-operate in establishing a copyright convention between the two countries. In the year previous, Henry Clay, as chairman of the joint Library Committee, had reported to the Senate very strongly in favor of such a convention, taking the ground that the author's right of property in his work is similar to that of the inventor in his patent. This is a logical position for a protectionist, interested in the rights of labor, to have taken, and the advocates of the so-called protective system, who call themselves the followers of Henry Clay, but who are to-day opposed to any full recognition of authors' rights, would do well to bear in mind this opinion of their ablest leader.

No action was taken in regard to Mr. Clay's report or Lord Palmerston's proposal. In 1840 Mr. G. P. Putnam issued in pamphlet form *An Argument in Behalf of International Copyright*, the first publication on this subject in the United States of which we find record. It was prepared by himself and Dr. Francis Lieber. In 1843 Mr. Putnam obtained the signatures of ninety-seven publishers, printers, and binders to a petition he had prepared, which was duly presented to Congress. It took the broad ground that the absence of an international copyright was "alike injurious to the business of publishing and to the best interests of the people at large." A memorial, originating in Philadelphia, was presented the same year, in opposition to this petition, setting forth, among other consider-

ations, that an international copyright would prevent the adaptation of English books to American wants.

In the report made by Mr. Baldwin to Congress twenty-five years later, he remarks that "the mutilation and reconstruction of American books to suit English wants are common to a shameless extent."

In 1853 the question of a copyright convention with Great Britain was again under discussion, the measure being favored by Mr. Everett, at that time Secretary of State. A treaty was negotiated by him, in conjunction with Mr. John F. Crampton, minister in London, which provided simply that all authors, artists, composers, etc., who were entitled to copyright in one country, should be entitled to it in the other on the same terms and for the same length of time. The treaty was reported favorably from the Committee on Foreign Relations, but was laid upon the table in the Committee of the Whole. While this measure was under discussion, five of the leading publishing houses in New York addressed a letter to Mr. Everett, in which, while favoring a convention, they advised: 1. That the foreign author must be required to register the title of his work in the United States before its publication abroad. 2. That the work, to secure protection, must be issued in the United States within thirty days of its publication abroad; and 3. That the reprint must be wholly manufactured in the United States.

In 1853 Henry C. Carey published his *Letters on International Copyright*, in which he took the ground that the facts and ideas in a literary production are

the common property of society, and that property in copyright is indefensible.

In 1858 a bill was introduced into the House of Representatives by Mr. Morris, of Pennsylvania, providing for international copyright on the basis of an entire remanufacture of the foreign work, and its reissue by an American publisher within thirty days of its publication abroad. This bill does not appear to have received any consideration.

In March, 1868, a circular letter, headed "Justice to Authors and Artists," was issued by a committee composed of George P. Putnam, S. Irenæus Prime, Henry Ivison, James Parton, and Egbert Hazard, calling together a meeting for the consideration of the subject of international copyright. The meeting was held on the 9th of April, Mr. Bryant presiding, and a society was organized under the title of the "Copyright Association for the Protection and Advancement of Literature and Art," of which Mr. Bryant was made president, and E. C. Stedman secretary. The primary object of the association was stated to be "to promote the enactment of a just and suitable international copyright law for the benefit of authors and artists in all parts of the world." A memorial had been prepared by the above-mentioned committee to be presented to Congress, which requested Congress to give its early attention to the passage of a bill, "To secure in all parts of the world the right of authors," but which made no recommendations as to the details of any measure. Of the 153 signatures attached to this memorial, 101 were those of authors, and 19 of publishers.

In the fall of 1868 Mr. J. D. Baldwin, member of the House from Massachusetts, reported a bill, the provisions of which had in the main received the approval of the Copyright Association, which provided that a foreign work could secure a copyright in this country, provided it was wholly manufactured here and should be issued for sale by a publisher who was an American citizen. The bill was recommitted to the joint Committee on the Library, and no action was taken upon it. Mr. Baldwin was of opinion that an important cause for the shelving of the measure without debate was the impeachment of President Johnson, which was at that time absorbing the attention of Congress and the country. No general expression of opinion was, therefore, elicited upon the question from either Congress or the public, and even up to this date (June, 1883) the question has never reached such a stage as to enable an expression of public opinion to be fairly arrived at. In 1871 Mr. Cox, of New York, introduced a bill which was practically identical with Mr. Baldwin's measure, and which was also recommitted to the Library Committee.

In 1870 a copyright convention was proposed by Lord Clarendon, which called forth some discussion, but concerning which no action was taken on the part of the American government until 1872.

In 1872 the new Library Committee called upon the authors, publishers, and others interested to assist in framing a bill. At a meeting of the publishers, held in New York, a majority of the firms present were in favor of the provision of Mr. Cox's

bill. The report was, however, dissented from by a large minority, on the ground that the bill was drawn in the interests of the publishers rather than that of the public; that the prohibition of the use of foreign stereotypes and electrotypes of illustrations was an economic absurdity, and that an English publishing house could, in any case, through an American partner, retain control of the American market. During the same week a bill was drafted by C. A. Bristed, representing more particularly the views of the authors in the Copyright Association, which provided simply that all rights secured to citizens of the United States by existing copyright laws be hereby secured to the citizens and subjects of every country the government of which secures reciprocal rights to the citizens of the United States. A few weeks later, at a meeting of publishers and others, held in Philadelphia, resolutions were adopted (which will be referred to later) opposing any measure of international copyright.

These four reports were submitted to the Library Committee, together with one or two individual suggestions, of which the most noteworthy were those of Harper & Bros. and of Mr. J. P. Morton, a bookseller of Louisville. Messrs. Harper, in a letter presented by their counsel, took the broad ground that "any measure of international copyright was objectionable because it would add to the price of books, and thus interfere with the education of the people." It is to be remarked, in regard to this consideration, that it is equally forcible against any copyright whatever. As Thomas Hood says: "Cheap *bread*

is as desirable and necessary as cheap books, but one does not on that ground appropriate the farmer's wheat stack." Mr. Morton was in favor of an arrangement that should give to any dealer the privilege of reprinting a foreign work, provided he would contract to pay to the author or his representative ten per cent. of the wholesale price. This suggestion was afterward incorporated in what was known as the Sherman bill. In view of the wide diversity of the plans and suggestions presented to this committee, there was certainly some ground for the statement made in his report by the chairman, Senator Lot M. Morrill, that "there was no unanimity of opinion among those interested in the measure." He maintained further, in acceptance of the positions taken by the Philadelphians, "that an international copyright was not called for by reasons of general equity or of constitutional law; that the adoption of any plan which had been proposed would be of very doubtful advantage to American authors, and would not only be an unquestionable and permanent injury to the interests engaged in the manufacture of books, but a hinderance to the diffusion of knowledge among the people, and to the cause of American education."

The commission appointed by the British government in 1876, to make inquiry in regard to the laws and regulations relating to home, colonial, and international copyright, made reference in the following terms to the present relations of British authors with this country: "It has been suggested to us that this country would be justified in taking steps

of a retaliatory character with a view of enforcing, incidentally, that protection from the United States which we accord to them. This might be done by withdrawing from the Americans the privilege of copyright on first publication in this country. We have, however, come to the conclusion that, on the highest public grounds of policy and expediency, it is advisable that our laws should be based on correct principles, without respect to the opinions or the policy of other nations. We admit the propriety of protecting copyright, and it appears to us that the principle of copyright, if admitted, is of universal application. We therefore recommend that this country should pursue the policy of recognizing the rights of authors, irrespective of nationality." Here is a claim for a far-seeing, statesman-like policy, based upon principles of wide equity, and planned for the permanent advantage of literature in England and throughout the world.

It is mortifying for Americans, possessed of any sensitiveness, not only for their national honor, but for their national reputation for common sense, to see quoted abroad as "the American view of the copyright question" such utterances as the resolutions adopted in the meeting previously referred to, held in Philadelphia in January, 1872. The meeting was presided over by Henry Carey Baird, and may be considered as having represented the opinions of the Pennsylvania protectionists—opinions which, while not, as I believe, shared by the majority of our community, do still succeed in shaping the economic policy of the nation. The resolutions are as follows:

1. That thought, unless expressed, is the property of the thinker; when given to the world, it is, as light, free to all. 2. As property, it can only demand the protection of the municipal law of the country to which the thinker is subject. 3. The author, of any country, by becoming a citizen of this, and assuming and performing the duties thereof, can have the same protection that an American author has. 4. The trading of privileges to foreign authors for privileges to be granted to Americans is not just, because the interests of others than themselves may be sacrificed thereby. 5. Because the good of the whole people, and the safety of republican institutions, demand that books shall not be made costly for the multitude by giving the power to foreign authors to fix their price here as well as abroad.

The first proposition is certainly a pretty safe one, as thought, until expressed, can hardly incur any serious risk of being appropriated.

The second proposition, while admitting for a literary creation its claim to be classed as property, denies to it the rights which are held to pertain to all property in which the owner's title is absolute. The property which would, if it still existed, most nearly approximate to such a definition as above given, is that in slaves. Twenty-five years ago the title to an African chattel, who was worth, in Charleston, say $1,000, became valueless if said chattel succeeded in slipping across to Bermuda. It is this ephemeral kind of ownership, limited by accidental political boundaries, that the Philadelphia protectionists are willing to concede to the creation of a man's mind,

the productions into which have been absorbed the gray matter of his brain, and, possibly, the best part of his life.

In regard to the third proposition, it may be said that the protection accorded to American authors is, according to their testimony, most unremunerative and unsatisfactory; and it is difficult to understand why an European author, who has before him, under international conventions, the markets of his native country and of all the civilized world, excepting belated America, should be expected to give up these for the poor half loaf accorded to his American brother.

The fourth proposition strikes one as rather a remarkable protest to come from Philadelphia. Here are a number of American producers (of literature) who ask for a very moderate amount of protection (if that is the proper term to apply to a mere recognition of property rights) for their productions; but the Philadelphians, filled with an unwonted zeal for the welfare of the community at large, say: "No; this won't do; prices would be higher and *consumers* would suffer."

The last proposition appears to show that this want of practical sympathy with the producers of literature is not due to any lack of interest in the public enlightenment. It may well, however, be doubted whether education as a whole, including the important branch of ethics, is advanced by permitting our citizens to appropriate, without compensation, the labor of others, while through such appropriation they are also assisting to deprive our

own authors of a portion of their rightful earnings. But, apart from that, the proposition, as stated, proves too much. It is fatal to all copyright and to all patent right. If the good of the community and the safety of republican institutions demand that, in order to make books cheap, the claim to a compensation for the authors must be denied, why should we continue to pay copyrights to Lowell and Whittier, or to the families of Longfellow and Irving? The so-called owners of these copyrights actually have it in their power, in co-operation with their publishers, to "fix the prices" of their books in this market. This monopoly must, indeed, be pernicious and dangerous when it arouses Pennsylvania to come to the rescue of oppressed and impoverished consumers against the exactions of greedy producers, and to raise the cry of "free books for free men."

Early in 1880 a draft of an international copyright treaty was prepared, which received the support of nearly all the publishers, including Messrs. Harper, who had found reasons since 1872 to modify their views, and of some authors. The latter, together with the publishing firms which had previously been most active in behalf of a measure, gave their assent to this, not because they thought its provisions on the whole wise or desirable, but because the middle ground that it took between an author's bill, without any restrictions, and the extreme "manufacturing view" of the Philadelphians seemed most likely to secure the general support required; and it was believed that, if a

copyright could once be inaugurated, it ought not to prove difficult to amend it in the direction of greater liberty and greater simplicity.

The proposed treaty provided that copyright should be accorded reciprocally to English and American works, the foreign editions of which should be issued not later than three months after the first publication; the entries for copyright should, however, by means of title-pages, be made simultaneously in the home and the foreign offices of registry, and the several conditions applicable to the national copyright enactments should be duly complied with. It was further provided, in order to secure the protection of the American copyrights, that the foreign work must be printed and bound in this country, the privilege being accorded of importing stereotype plates and electrotypes of the illustrations. It is to be noted that this last clause indicates an advance in liberality of opinion since the suggestions of 1872 and of earlier dates, in nearly all of which it was insisted that the foreign work must be entirely remanufactured in this country. The authors and publishers who gave their signatures, under protest, to the petition in behalf of this treaty, objected principally to the brief term allowed for the preparation and issue of the reprinted editions. Many of the authors believed that there should be no limit of time, while some of the leading publishing houses insisted that the limit ought to be twelve months, and should in no case exceed six months. Attention was especially called to the fact that such a limitation as three months, while a disadvantage to all

authors whose reputations were not sufficiently assured to enable them to make advance agreements for their works, would be especially detrimental to American writers, whose books were rarely undertaken by English or continental reprinters until they had secured a satisfactory home reputation. Chas. Scribner, Henry Holt & Co., and Roberts Bros. united with G. P. Putnam's Sons in a protest against what seemed to them the unwise and illiberal restrictions of the proposed measure. These firms did not, however, think best to withhold their signatures from the petition in behalf of the treaty, being of opinion that even if it might not prove practicable to amend this before it was put into effect, amendments could at a later date be introduced, and that in any case, even a very faulty treaty would be an advance over the present unsatisfactory and iniquitous state of things.

In July, 1880, the American members of the International Copyright Committee, which had been appointed by the association for the reform of the law of nations, addressed to Mr. Evarts, Secretary of State, a memorial in behalf of a treaty practically identical with the measure above specified, with the exception of specifying no limit of time for the issue of the reprint.

In September, 1880, Mr. Lowell, at that time minister in London, submitted to Earl Granville the draft of a treaty based upon the suggestions of American publishers. Lord Granville advised Mr. Lowell, in March, 1881, that the British government would be interested in completing such treaty,

but that an extension of the term for republication from three months to six would be considered essential, while a term of twelve months was thought to be much more equitable.

In March, 1881, the International Literary Association adopted the report of a committee appointed to examine the provisions of the proposed treaty between the United States and England. In this report the two countries were congratulated at the prospect of an agreement so important to the authors of each, and the United States was especially congratulated upon the first steps being taken to remove from the nation the opprobrium of being the only people from whom authors could not secure just treatment. The provisions of the treaty calling for remanufacture, and the brief term allowed for the preparation of the reprint, were, however, sharply criticised. In the spring of 1881 Sir Edward Thornton, the British minister in Washington, received instructions from London to proceed to the consideration of the treaty, provided the term for reprint could be extended. President Garfield had taken a strong interest in the matter, an interest which Mr. Blaine was understood to share, and it was expected that the treaty would be submitted to the Senate in the fall of 1881. The death of Garfield and the change in the State Department appear to have checked the progress of the business, and there has since, to the date of this writing (June, 1883), been no evidence of any interest in it on the part of the present administration.

It appears as if further consideration for the

treaty can be secured only on the strength of a popular demand, based on a correct understanding of the rights and just requirements of authors, American and foreign, and on an intelligent appreciation of the unworthy position toward the question at present occupied by the United States, which alone among civilized nations has failed to give full recognition to literature as property.

This brief historical sketch of the various national and international enactments relating to copyrights, indicates also the lines along which were developed the ideas relating to authors' rights. The conception of property in literary ideas is of necessity closely bound up with the conception of property in material things. In tracing through successive centuries the history of this last, we find a continued development in its range and scope corresponding to the development in civilization itself, of which so large a factor is the recognition of human rights and reciprocal human duties.

It would be beyond the scope of this paper to go into the history of the property idea. It is sufficient to point out that what a man owned appears in the first place to have been that which he had "occupied," and could defend with his own strong arm. Later, it became what his tribe could defend for him. With the organization of tribes into nations, that which a man had occupied, shaped, or created was recognized as his throughout the territory of his nation.

The idea of protection by national law was widened into an imperial conception by the Roman

control of the imperial world. With the shattering of the empire, the former local views of property rights (or, at least, of property possibilities) again obtained, and were only gradually widened and extended by the growth, through commerce, of international relations—a growth much retarded by feudal claims and feudal strifes. The robber-barons of the Rhine, by their crushing extortions from traders, did what was in their power to stifle commerce, and unwittingly laid the foundations of the so-called protective system; and later, the little trading communities, still hampered by the baronial standard, built up at their gates barriers against the admission of various products from the outer world, the free purchase of which by their own citizens would, as they imagined, in some manner work to their impoverishment. Barons and traders were alike fighting against the international idea of property, under which that which a man has created, or legitimately occupied, is his own, and he is free to exchange it; that is, entitled to be protected in the free exchange of it, throughout the civilized world, for any other commodities or products. A man's ownership of a thing cannot be called complete if it is to be hampered with restrictions as to the place where, or the objects for which, he can exchange it.

To that extent the idea of international copyright is bound up with the idea of free trade. They both claim a higher and wider recognition for the rights of property, taking the position that what a man has created by his own labor is his own, to do what he will with, subject only to his proportionate contri-

bution to the cost of carrying on the organization of the community under the protection of which his labor has been accomplished, and to the single limitation that the results of his labor shall not be used to the detriment of his fellow-men. The opponents of free trade would limit the right of the producer to exchange his products, saying, as to certain commodities, that he shall not be permitted to receive them at all, and, as to others, that he must give of his own product, in addition to the open market equivalent of the article desired, an additional quantity as a bonus to some of his favored fellow-citizens. The opponents of international copyright assert that the producers of literary works should be at liberty to sell them only within certain political boundaries. The necessary deduction from such a position is, that the extent of an author's remuneration is made to depend, not upon the number of readers whom he had benefited, but upon the extent of the political boundaries of the country in which he happened to be a resident.

If the recognition of the fact that aliens and citizens of foreign states (the "barbarians" of the Greeks and Romans) possessed rights deserving of respect, had depended solely upon the development of international ethics and humanitarian principles, its growth would have been still slower than has been the case. That growth has, however, been powerfully furthered by utilitarian teachings. When men came to understand that their own welfare was not hampered, but furthered, by the prosperity of their neighbors, reciprocity took the place

of reprisals, and commercial exchanges succeeded Chinese walls.

The same result, in Europe at least, followed the understanding of the fact that the development of national literature, and the adequate compensation of national authors, is largely dependent upon the proper recognition of the property rights of foreign authors: this understanding, added to the widening conceptions of human rights, irrespective of boundaries, and the increasing assent to the claim that the producer is entitled to compensation proportioned to the extent of the service rendered by his production, and to the number of his fellow-men benefited by this, have secured international copyright arrangements on the part of all countries where literature exists, excepting only the great republic, which was founded on the "rights of men."

The question of the proper duration of literary property has called forth a long series of discussions and arguments, the more important of which are referred to in Mr. Macleod's paper in this work. Authors have almost from the beginning taken the position that literary property is the highest kind of property in existence; that no right or title to a thing can be so perfect as that which is created by a man's own labor and invention; that the exclusive right of a man to his literary productions and to the use of them for his own profit is as entire and perfect as the faculties employed and labor bestowed are entirely and perfectly his own. "If this claim be accepted," says Noah Webster, "it is difficult to understand on what logical principle a legislature

or court can determine that an author enjoys only a *temporary property* in his own productions. If a man's right to his own *property in writing* is as perfect as to the productions of his farm or his shop, how can the former be abridged or limited while the latter is held without limitations? Why do the productions of manual labor reach higher in the scale of rights of property than the productions of the intellect?".

It is the case, however, that, notwithstanding the logic of this position, no nation to-day accords copyright for more than a limited term, of which the longest is eighty years. In the only countries in which the experiment of perpetual copyright has been attempted—Holland, Belgium, Sweden and Denmark—a return was speedily made to protection for a term of years. There appears to have been always apprehension on the part of the public and the governments lest an indefinite copyright might result in the accumulation in the hands of traders of "literary monopolies," under which extortionate prices would be demanded from successive generations for the highest and most necessary productions of national literature. It is hardly practicable to estimate how well founded such apprehensions may be, as no opportunities have as yet existed for the development of such monopolies. It seems probable that accumulations of literary property would, as in the case of other property, be so far regulated by the laws of supply and demand as not to become detrimental to the interests of the community. If a popular demand existed or could be

created for an article, it would doubtless be produced and supplied at the lowest price that would secure the widest popular sale. If the article was suited but for a limited demand, the price, to remunerate the producer and owner, would be proportionately higher. A further consideration obtains in connection with literary property which has also influenced the framing of copyright enactments. The possibility exists that the descendants of an author, who have become by inheritance the owners of his copyrights, might, for one cause or another, desire to withdraw the works from circulation. A case could even occur in which parties desiring to suppress works might possess themselves of the copyrights for this purpose. The heirs of Calvin, if converted to Romanism, would very naturally have desired to suppress the circulation of the *Institutes*; and the history of literature affords, of course, hundreds of instances in which there would have been sufficient motive for the suppressing, by any means which the nature of copyrights might render possible, works that had been once given to the world. It will, doubtless, be admitted that, in this class of cases, the development of literature and freedom of thought would alike demand the exercise of the authority of the government on behalf of the community, to insure the continued existence of works in which the community possessed any continued interest.

The efforts in this country in behalf of international copyright have been always more or less hampered by the question being confused with that

of a protective tariff. The strongest opposition to a copyright measure has uniformly come from protectionists.

Richard Grant White said, in 1868: "The refusal of copyright in the United States to British authors is, in fact, though not always so avowed, a part of the American protective system. With free trade we shall have a just international copyright."

It would be difficult, however, for protectionists to show logical grounds for their position. American authors are manufacturers who are simply asking, first, that they shall not be undersold in their home market by goods imported from abroad on which no (ownership) duty has been paid, which have been simply "appropriated;" secondly, that the government may facilitate their efforts to secure compensation for such of their own goods as are enjoyed by foreigners. These are claims with which a protectionist who is interested in developing American industry ought certainly to be in sympathy. The contingency that troubles him, however, is the possibility that, if the English author is given the right to sell his books in this country, the copies sold may be, to a greater or less extent, manufactured in England, and the business of making these copies may be lost to American printers, binders, and paper men. He is much more concerned for the protection of the makers of the *material casing* of the book than for that of the author who created its essential substance.

It is evidently to the advantage of the consumer, upon whose interest the previously referred to Phila-

delphia resolutions lay so much stress, that the labor of preparing the editions of his books be economized as much as possible. The principal portion of the cost of a first edition of a book is the setting of the type, together with, if the work is illustrated, the designing and engraving of the illustrations. If this first cost of stereotyping and engraving can be divided among several editions, say, one for Great Britain, one for the United States, and one for Canada and the other colonies, it is evident that the proportion to be charged to each copy printed is less, and that the selling price per copy can be smaller, than would be the case if this first cost had got to be repeated in full for each market. It is, then, to the advantage of the consumer that, whatever copyright arrangement be made, nothing shall stand in the way of foreign stereotypes and illustrations being duplicated for use here whenever the foreign edition is in such shape as to render this duplicating an advantage and a saving in cost.

The few protectionists who have expressed themselves in favor of an international copyright measure, and some others who have fears as to our publishing interest being able to hold its own against any open competition, insist upon the condition that foreign works, to obtain copyright, must be wholly remanufactured and republished in this country. We have shown how such a condition would, in the majority of cases, be contrary to the interests of the American consumer, while the British author is naturally opposed to it, because, in increasing ma-

terially the outlay to be incurred by the American publisher in the production of his edition, it proportionately diminishes the profits, or prospects of profits, from which is calculated the remuneration that can be paid to the author.

The suggestion, previously referred to, of permitting the foreign book to be reprinted by all dealers who would contract to pay the author a specified royalty, has, at first sight, something specious and plausible about it. It seems to be in harmony with the principles of freedom of trade, in which we are believers. It is, however, directly opposed to those principles. First, it impairs the freedom of contract, preventing the producer from making such arrangements for supplying the public as seem best to him; and, secondly, it undertakes, by paternal legislation, to fix the remuneration that shall be given to the producer for his work, and to limit the prices at which this work shall be furnished to the consumer. There is no more equity in the government's undertaking this limitation of the producer and protection of the consumer in the case of *books*, than there would be in that of bread and beef. Further, such an arrangement would be of benefit to neither the author, the public, nor the publishers, and would, we believe, make of international copyright, and of any copyright, a confusing and futile absurdity.

A British author could hardly obtain much satisfaction from an arrangement which, while preventing him from placing his American business in the hands of a publishing house selected by himself,

and of whose responsibility he could assure himself, would throw open the use of his property to any dealers who might scramble for it. He could exercise no control over the style, the shape, or the accuracy of his American editions; could have no trustworthy information as to the number of copies the various editions contained; and, if he were tenacious as to the collection of the royalties to which he was entitled, he would be able in many cases to enforce his claims only through innumerable law suits, and would find the expenses of the collection exceed the receipts.

The benefit to the public would be no more apparent. Any gain in the cheapness of the editions produced would be more than offset by their unsatisfactoriness; they would, in the majority of cases, be untrustworthy as to accuracy or completeness, and be hastily and flimsily manufactured. A great many enterprises, also, desirable in themselves, and that would be of service to the public, no publisher could, under such an arrangement, afford to undertake at all, as, if they proved successful, unscrupulous neighbors would, through rival editions, reap the benefit of his judgment and his advertising. In fact, the business of reprinting would fall largely into the hands of irresponsible parties, from whom no copyright could be collected. The arguments against a measure of this kind are, in short, the arguments in favor of international copyright. A very conclusive statement of the case against the equity or desirability from any point of view of such an arrangement in regard to home

copyright was made before the British commission, in 1877, by Herbert Spencer.

The recommendation had been made, for the sake of securing cheap books for the people, that the law should give to all dealers the privilege of printing an author's books, and should fix a copyright to be paid to the author that should secure him a "fair profit for his work." Mr. Spencer objected: 1. That this would be a direct interference with the laws of trade, under which the author had the right to make his own bargains. 2. No legislature was competent to determine what was a "fair rate of profit" for an author. 3. No average royalty could be determined which could give a fair recompense for the different amounts and kinds of labor given to the production of different classes of books. 4. If the legislature has the right to fix the profits of the author, it has an equal right to determine that of his associate in the publication, the publisher; and if of the publisher, then also of the printer, binder, and paper maker, who all have an interest in the undertaking. Such a right of control would apply with equal force to manufacturers of other articles of importance to the community, and would not be in accordance with the present theories of the proper functions of the government. 5. If books are to be cheapened by such a measure, it must be at the expense of some portion of the profits now going to the authors and publishers; the assumption is, that book producers and distributers do not understand their business, but require to be instructed by the state how to carry it on, and that the pub-

lishing business alone needs to have its returns regulated by law. 6. The prices of the best books would, in many cases, instead of being lessened, be higher than at present, because the publishers would require some insurance against the risk of rival editions, and because they would make their first editions smaller, and the first cost would have to be divided among a less number of copies. Such reductions of prices as would be made would be on the flimsier and more popular literature, and even on this could not be lasting. 7. For the enterprises of the most lasting importance to the public, requiring considerable investment of time and capital, the publishers require to be assured of returns from the largest market possible, and without such security enterprises of this character could not be undertaken at all. 8. Open competition of this kind would, in the end, result in crushing out the smaller publishers, and in concentrating the business in the hands of a few houses whose purses had been long enough to carry them through the long and unprofitable contests that would certainly be the first effect of such legislation.

All the considerations adduced by Mr. Spencer have, of course, equal force with reference to open international publishing, while they may also be included among the arguments in behalf of international copyright.

It is due to American publishers to explain that, in the absence of an international copyright, there has grown up among them a custom of making payments to foreign authors, which has become, espe-

cially during the last twenty-five years, a matter of very considerable importance. Some of the English authors who testified before the British commission stated that the payments from the United States for their books exceeded their receipts in Great Britain. These payments secure, of course, to the American publisher no title of any kind to the books. In some cases, they obtain for him the use of advance sheets, by means of which he is able to get his edition printed a week or two in advance of any unauthorized edition that might be prepared. In many cases, however, payments have been made some time after the publication of the works, and when there was no longer even the slight advantage of "advance sheets" to be gained from them.

While the authorization of the English author can convey no title or means of defence against the interference of rival editions, the leading publishing houses have, with very inconsiderable exceptions, respected each other's arrangements with foreign authors, and the editions announced as published "by arrangement with the author," and on which payments in lieu of copyright have been duly made, have not been, as a rule, interfered with. This understanding among the publishers goes by the name of "the courtesy of the trade." I think it is safe to say that it is to-day the exception for an English work of any value to be published by any reputable house without a fair, and often a very liberal, recognition being made of the rights (in equity) of the author. In view of the considerable amount of harsh language that has been expended in England

upon our American publishing houses, and the opinion prevailing in England that the wrong in reprinting is entirely one sided, it is in order here to make the claim—which can, I believe, be fully substantiated—that, in respect to the recognition of the rights of authors unprotected by law, their record has, in fact, during the past twenty-five years been better than that of their English brethren. English publishers have become fully aroused to the fact that American literary material has value and availability, and each year a larger amount of this material has had the honor of being introduced to the English public. According to the statistics of 1878, ten per cent. of the works issued in England in that year were American reprints. The acknowledgments, however, of any rights on the part of American authors have been few and far between, and the payments but inconsiderable in amount. The leading English houses would doubtless very much prefer to follow the American practice of paying for their reprinted material, but they have not succeeded in establishing any general understanding similar to our American "courtesy of the trade," and books that have been paid for by one house are, in a large number of cases, promptly reissued in cheaper rival editions by other houses. It is very evident that, in the face of open and unscrupulous competition, continued or considerable payments to authors are difficult to provide for; and the more credit is due to those firms who have, in the face of this difficulty, kept a good record with their American authors.

One of the not least important results to be looked for from international copyright is a more effective co-operation in their work on the part of the publishers of the two great English-speaking nations. They will find their interest and profit in working together; and the very great extension that may be expected in the custom of a joint investment in the production of books for both markets will bring a very material saving in the first cost—a saving in the advantage of which authors, publishers, and public will alike share.

It seems probable that the "courtesy of the trade," which has made possible the present relations between American publishers and foreign authors, is not going to retain its effectiveness. Within the last few years certain "libraries" and "series" have sprung into existence, which present in cheaply printed pamphlet form some of the best recent English fiction. The publishers of these series reap the advantage of the literary judgment and foreign connections of the older publishing houses, and, taking possession of material that has been carefully selected and liberally paid for, are able to offer it to the public at prices which are certainly low as compared with those of bound books that have paid copyright, but are doubtless high enough for literature that is so cheaply obtained and so cheaply printed. These enterprises have been carried on by concerns which have not heretofore dealt in standard fiction, and which are not prepared to respect the international arrangements or trade courtesies of the older houses.

To one of the "cheap series" the above remarks do not apply. The "Franklin Square Library" is published by a house which makes a practice of paying for its English literary material, and which lays great stress upon "the courtesy of the trade." It is generally understood that this series was planned, not so much as a publishing investment, as for purposes of self-defence, and that it would in all probability not be continued after the necessity for self-defence had passed by. A good many of its numbers include works for which the usual English payments have been made, and it is probable that, in this shape, books so paid for cannot secure a remunerative sale. It seems safe to conclude, therefore, that their publication is not, in the literal sense of the term, a *business* investment, and that the undertaking was not planned to be permanent.

A very considerable business in cheap reprints has also sprung up in Canada, from which point are circulated throughout the western states cheap editions of English works, for the "advance sheets" and "American market" of which United States publishers have paid liberal prices. Some enterprising Canadian dealers have also taken advantage of the present confusion between the United States postal and customs regulations to build up a trade by supplying through the mails reprints of *American copyright works*, in editions which, being flimsily printed and free of charge for copyright, can be sold at very moderate prices indeed.

It is very evident that, in the face of competition of this kind, the payments by American publishers

to foreign writers of fiction must be materially diminished. These pamphlet series have, however, done a most important service in pointing out the absurdity of the present condition of literary property, and in emphasizing the need of an international copyright law. In connection with the change in the conditions of book manufacturing before alluded to, they may be credited as having influenced a material modification of opinion on the part of certain publishers who have in years past opposed an international copyright as either inexpedient or unnecessary, but who are now quoted as ready to give their support to any practicable and equitable measure that may be proposed.

We may, I trust, be able, at no very distant period, to look back upon, as exploded fallacies of an antiquated barbarism, the two beliefs, that the material prosperity of a community can be assured by surrounding it with Chinese walls of restriction to prevent it from purchasing in exchange for its own product its neighbor's goods, and that its moral and mental development can be furthered by the free exercise of the privilege of appropriating its neighbor's books.[1]

June, 1884.

[1] For the account of the realization of these prophecies, at least in part, seven years later, the reader is referred to a subsequent chapter in this volume, in which will be found the text of the International Copyright Bill of 1891.

XXII.

DEVELOPMENT OF STATUTORY COPYRIGHT IN ENGLAND.

By R. R. Bowker.

The statute of Anne, the foundation of the present copyright system, which took effect April 10, 1710, gave the author of works then existing, or his assigns, the sole right of printing for twenty-one years from that date and no longer; of works not printed, for fourteen years and no longer, except in case he were alive at the expiration of that term, when he could have the privilege prolonged for another fourteen years. Penalties were provided, which could not be exacted unless the books were registered with the Stationers' Company, and which must be sued for within three months after the offence. If too high prices were charged, the queen's officers might order them lowered. A book could not be imported without written consent of the owner of the copyright. The number of deposit copies was increased to nine. The act was not to prejudice any previous rights of the universities and others.

This act did not touch the question of rights at common law, and soon after its statutory term of protection on previously printed books expired, in

1731, lawsuits began. The first was that of Eyre *vs.* Walker, in which Sir Joseph Jekyll granted, in 1735, an injunction as to *The Whole Duty of Man*, which had been first published in 1657, or seventy-eight years before. In this and several other cases the Court of Chancery issued injunctions on the theory that the legal right was unquestioned. But in 1769 the famous case of Millar *vs.* Taylor, as to the copyright of Thomson's *Seasons*, brought directly before the Court of King's Bench the question whether rights at common law still existed, aside from the statute and its period of protection. In this case Lord Mansfield and two other judges held that an author had, at common law, a perpetual copyright, independent of statute, one dissenting justice holding that there was no such property at common law. In 1774, in the case of Donaldsons *vs.* Beckett, this decision was appealed from, and the issue was carried to the highest tribunal, the House of Lords.

The House of Lords propounded five questions to the judges. These, with the replies,[1] were as follows:

I. Whether, at common law, an author of any book or literary composition had the sole right of first printing and publishing the same for sale; and might bring an action against any person who printed, published, and sold the same without his consent? Yes, 10 to 1 that he had the sole right, etc., and 8 to 3 that he might bring the action.

[1] The votes on these decisions are given differently in the several copyright authorities. These figures are corrected from 4 Burrow's Reports, 2408, the leading English parliamentary reports, and are probably right.

II. If the author had such right originally, did the law take it away, upon his printing and publishing such book or literary composition; and might any person afterward reprint and sell, for his own benefit, such book or literary composition against the will of the author? No, 7 to 4.

III. If such action would have lain at common law, is it taken away by the statute of 8 Anne? And is an author, by the said statute, precluded from every remedy, except on the foundation of the said statute and on the terms and conditions prescribed thereby? Yes, 6 to 5.

IV. Whether the author of any literary composition and his assigns had the sole right of printing and publishing the same in perpetuity, by the common law? Yes, 7 to 4.

V. Whether this right is any way impeached, restrained, or taken away by the statute 8 Anne? Yes, 6 to 5.

These decisions, that there was perpetual copyright at common law, which was not lost by publication, but that the statute of Anne took away that right and confined remedies to the statutory provisions, were directly contrary to the previous decrees of the courts, and on a motion seconded by the Lord Chancellor, the House of Lords, 22 to 11, reversed the decree in the case at issue. This construction by the Lords, in the case of Donaldsons *vs.* Beckett, of the statute of Anne, has practically "laid down the law" for England and America ever since.

Two protests against this action deserve note. The first, that of the universities, was met by an act of 1775, which granted to the English and Scotch universities and to the colleges of Eton, Westminster, and Winchester (Dublin was added in 1801) perpetual copyright in works bequeathed to and printed by them. The other, that of the

booksellers, presented to the Commons February 28, 1774, set forth that the petitioners had invested large sums in the belief of perpetuity of copyright, but a bill for their relief was rejected. In 1801 an act was passed authorizing suits for damages at common law, as well as penalties under statute during the period of protection of the statute, the need for such a law having been shown in the case of Beckford *vs.* Hood, wherein the court had to "stretch a point" to protect the plaintiff's rights in an anonymous book which he had not entered in the Stationers' Register. An Act of 1814 extended copyright to twenty-eight years and for the remainder of the life of a surviving author, and relieved the author of the necessity of delivering the eleven library copies, except on demand. These deposit copies were reduced to five by the Act of 1836.

In 1841, under the leadership of Sergeant Talfourd, a great debate on copyright, in which Macaulay took a leading part in favor of restricted copyright, was started in the Commons, which resulted in the act of 1842 (5 and 6 Vict.), repealing the previous acts, and presenting a new code of copyright. It practically preserved, however, the restrictions of the statute of Anne. The copyright term was made the author's lifetime and seven years beyond, but in any event at least forty-two years. The Judicial Committee of the Privy Council may authorize publication of a posthumous work in case the proprietor of the copyright refuse to publish. Articles in periodicals, etc., have the same copyright term, but they revert to the author after

twenty-eight years. Subsequent acts extend copyright to prints and like art works, designs for manufactures, sculptures, dramas, musical compositions, lectures, for various terms and under differing conditions.

The present law of England as to copyright, says the Report of the Royal Copyright Commission, in a Blue Book of 1878, "consists partly of the provisions of fourteen Acts of Parliament, which relate in whole or in part to different branches of the subject, and partly of common law principles, nowhere stated in any definite or authoritative way, but implied in a considerable number of reported cases scattered over the law reports." The Digest, by Sir James Stephen, appended to this report, is presented by the commission as "a correct statement of the law as it stands." This Digest is, perhaps, the most valuable single contribution yet made to the literature of copyright, but the frequency with which such phrases occur as "it is probable, but not certain," "it is uncertain," "probably," "it seems," show the state of the law, "wholly destitute of any sort of arrangement, incomplete, often obscure," as says the report itself. The Digest is accompanied, in parallel columns, with alterations suggested by the commission, and it is much to be regretted that their work failed to reach the expected result of an Act of Parliament. The evidence taken by the commissioners forms a second Blue Book, also of great value. A new copyright law is now under consideration in England.

It seems possible that, under the precedent of

the acts of 1775 and 1801, the common law rights, practically taken away by the statute of Anne, could be restored by legislation. Its restrictions have not only ruled the practice of England ever since, but they were embodied in the Constitution of the United States, and have influenced alike our legislators and our courts.

December, 1885.

XXIII.

CHEAP BOOKS AND GOOD BOOKS.

By Brander Matthews.

Mr. Lowell has told us that "there is one thing better than a cheap book, and that is a book honestly come by." And Mr. Curtis has put the same thought quite as aptly: "Cheap books are good things, but cheapening the public conscience is a very bad thing." In these sayings, as in a nutshell, we have the ethics of international copyright. But on this side of the question Dr. Van Dyke, with a felicity and a force I cannot hope to rival, has said all that need be said; and I hasten at once to a consideration of the assertion that the effect of the granting of International Copyright will be to raise the price of books.

There are still a few who declare that the People must have cheap books, and that therefore the People will not permit the passage of any bill for International Copyright. Within a few days we have seen declarations like this ascribed to Members of Congress and to Senators of the United States. It is our duty always to acknowledge the good faith of our disputant; and we must assume, then, that these Representatives and these Senators are sincere in holding that the absence of International Copy-

right gives us cheap books in the United States. I am inclined to think that not only the opponents of copyright reform, but even many of its advocates, believe that the existing lawlessness gives us cheaper books than we should have if the rights of foreign authors were legally guarded. It is true, no doubt, that, in consequence of the competing reprints of rival pirates, some few books, mostly in a single department of literature, and generally of inferior literary quality, are to be bought here for very little money. But, with these infrequent exceptions, books are not now cheaper in America because there is free stealing from the foreigner. It may be said, further, that the absence of International Copyright really retards the cheapening of good books in this country.

This may sound like a paradox, but I shall try to prove its exact truth. The books which are made cheaper by piracy are nearly all English novels. The so-called libraries—the Seaside Library, for instance, the Franklin Square Library, and their fellows—contain nearly all the books which are cheap because they are not paid for. I do not mean here to suggest that all the books reprinted in all these libraries are pirated; but piracy is the primary cause of their low prices. These libraries are devoted almost wholly to fiction; by actual count of their catalogues, nine volumes out of ten are novels. To profit by the provisions of the postal laws, these libraries are registered as periodicals; and they appear at regular intervals, once, twice, and even three times a week. A library which issues but one book

a week must publish fifty-two books a year; after allowing for the occasional American book of which the copyright has run out, and for the occasional foreign biography or history which seems popular enough to fit it for the uneducated audience to which these series appeal—after making these allowances, fully forty of the fifty-two annual numbers of any one of these libraries must be English novels. Now, there are not forty novels published in Great Britain in any one year which are worth reprinting in the United States. I do not think there are twenty—I doubt if there are ten. Yet in one of the cheap libraries, issued three times a week, more than a hundred English novels are now published every year.

And this is at a time when there is no great novelist alive in England, and when the English novel is distinctly inferior to the novel of America, of Russia, and of France. But these English novels are almost the only books which are cheapened by piracy. These are the books which the women of America, allured by the premium of cheapness, are now reading almost exclusively, to the neglect of native writers. There is a resulting deterioration of the public taste for good literature; and there is a resulting tendency to the adoption of English social standards. It is not wholesome, nor a good augury for the future of the American people, that the books easiest to get, and therefore most widely read, should be written wholly by foreigners, and chiefly by Englishmen, who cannot help accepting and describing the surviving results of feudalism

and the social inequalities we tried to do away with one hundred and twelve years ago. "Society is a strong solution of books," Dr. Holmes has told us; "it draws the virtue out of what is best worth reading, as hot water draws the strength of tea-leaves." While the privilege of piracy endures, American society is drawing the vice out of what is least worth reading, the machine-made tales of the inferior British novelists of the present day.

Lest this opinion as to the demerits of the mass of the English novels now so freely reprinted here may seem over-severe, attention is drawn to a passage from Mr. Frederic Harrison's incisive essay on the *Choice of Books*—one of the invigorating volumes of essays which England has sent us of late years: "But assuredly black night will quickly cover the vast bulk of modern fiction—work as perishable as the generations whose idleness it has amused. It belongs not to the great creations of the world. Beside them it is flat and poor. Such facts in human nature as it reveals are trivial and special in themselves, and for the most part abnormal and unwholesome. I stand beside the ceaseless flow of this miscellaneous torrent as one stands watching the turbid rush of the Thames at London Bridge, wondering whence it all comes, whither it all goes, what can be done with it, and what may be its ultimate function in the order of providence. To a reader who would nourish his taste on the boundless harvests of the poetry of mankind, this sewage outfall of to-day offers as little in creative as in moral value. Lurid and irregular streaks of imagination, extrava-

gance of plot and incident, petty and mean subjects of study, forced and unnatural situations, morbid pathology of crime, dull copying of the dullest commonplace, melodramatic hurly-burly, form the certain evidence of an art that is exhausted, produced by men and women to whom it is become a mere trade, in an age wherein change and excitement have corrupted the power of pure enjoyment."

It may surprise some readers to be told that almost the only books which are cheaper in America owing to the absence of International Copyright are English novels. But that this *is* the fact I have convinced myself by a careful examination of the statistics of the American book-trade. Pirated books are nearly always issued in a series or library; and, as I have said, nine numbers in ten on the list of these libraries are fiction. The tenth number may be Mr. Froude's *Life of Carlyle*, for instance, or Mr. Justin McCarthy's *History of Our Own Times*, both of them books worth reading and worth keeping, but in this flimsy form almost impossible either to read or to keep, because of the shabbiness of the type, the press-work, and the paper. It is not sound economy to spare the pocket and spoil the eyes. It is not sound economy to pay eighty cents for four evil and awkward pamphlets comprising a book which can be bought for a dollar and a half, decently bound and decently printed on decent paper—a pleasure to read now and a treasure to transmit to those who come after us.

A consideration of the present condition and annual statistics of the American book-trade will show

that the legal right to pirate is not now utilized by most American publishers, and that those who are still privateers seek their booty chiefly, if not solely, among books of one exceptional class. From the figures published annually in *The Publishers' Weekly*, the following table has been prepared to show the different kinds of books published in the United States during the past five years.[1] (The classification is not quite that of the *Weekly*, but has been modified slightly by condensation.)

	1882	1883	1884	1885	1886
Education and language	221	197	227	225	275
Law	261	397	455	431	469
Science (medical, physical, mathematical, political, and social)	406	407	511	443	469
Theology, religion, mental and moral philosophy	347	393	399	469	395
History	118	119	115	137	182
Literary history and miscellany, biography and memoirs, description and travel, humor and satire	559	521	529	501	719
Poetry and the drama	182	184	222	171	220
Juveniles	278	331	358	388	458
Fiction	767	670	943	934	1080
Et cetera	131	265	329	330	379
Total	3472	3481	4088	4020	4670

Taking up these classes in turn, we shall see what will be the effect on each of the passage of the bill of the American Copyright League. On the first class, education and language, there would be no effect at all, as the text-books now used in American schools were written by Americans and are covered by copyright: it is hardly an exaggeration to say that the American school-boy never sees a book of foreign authorship in school-hours; I

[1] This essay was first issued in 1887.

know that I never did until after I had entered college, and then very infrequently. Fortunately for the future of our country, young Americans are brought up on American books. The foundation of American education is the native Webster's Spelling-book. In some respects the making of school-books is the most important branch of the publishing business, and the passage of the Copyright Bill would not influence it in any way; American school-books would be neither dearer nor cheaper.

In the second class, law, are included a tenth of the books published in the United States last year, and from the inexorable circumstances of the case most of these books are of American authorship and are already protected by copyright. All reports and all treatises on practice and on constitutional law, etc., are of necessity national. Now and again an English treatise of marked merit may be edited for the use of American lawyers with references to American cases, but this is infrequent; and not often would the price of any work needed by the American lawyer be increased by the passage of the Copyright Bill.

Of books in the third and fourth classes—science and theology—very few indeed are ever pirated. Once in every three or four years there appears, in England, or France, or Germany, a book like Canon Farrar's *Life of Christ*, the American price of which is lowered by rival reprints. A large majority of books of science and theology published in America are written by American

authors; and in general the minority by foreign authors are published here by an arrangement with the foreign author tantamount to copyright. Although purely ethical considerations ought to have more weight with readers of books of this class than with those of any other, yet it would be infrequently that the price of any book of this class would be raised by giving to the literary laborer who made it the right to collect the hire of which he is worthy.

Taken together, the next three classes on the list —history;—literary history and miscellany, biography and memoirs, description and travel, humor and satire;—and poetry and the drama—include nearly all of what used to be called Belles Lettres (except fiction), and they comprise nearly a quarter of the books published in America. In these and in the preceding classes most of the books are of American authorship, and most of those of foreign authorship are published at just the same price as though they were by native writers. It would probably surprise most readers who imagine that the absence of International Copyright gives us many inexpensive histories and biographies, and books of travel and poems, if they were to consider carefully the catalogues of the paper-covered collections which furnish forth our cheap literature. Among the chief of these collections are the Franklin Square Library and Harper's Handy Series. In 1886 there were issued fifty-four numbers of the Franklin Square Library, one of which was by an American. Of the remaining fifty-three, forty-six

were fiction, and only seven numbers could be classified as history, biography, travels, or the drama—only seven of these books in one year, and they were less than one-seventh of the books contained in this collection. In the same year there were sixty-two numbers in Harper's Handy Series. Deducting four by American authors, we have fifty-eight books issued in cheap form owing to the absence of International Copyright. Of these fifty-eight books fifty-two were fiction, and only six belonged in other branches of Belles Lettres; only six of these books in one year, and they less than one-ninth of the series. In these two cheap collections, then, there were published in 1886 one hundred and eleven books of foreign authorship, and of these all but thirteen were novels or stories. Not one of these thirteen books was a work of the first rank which a man might regret missing. It may as well be admitted frankly that these thirteen books would probably not have been published quite so cheaply had there been International Copyright; but it may be doubted whether, if that were the case, the cause of literature and education in the United States would have been any the worse.

In the class of books for the young there are possibly more works of foreign authorship sold than in any other class that we have hitherto considered, but in most cases they are not sold at lower prices than American books of the same character. Indeed, I question whether many English or French books for the young are sold at all in America. At bottom the American boy is harder

to please and more particular than the American woman; he likes his fiction home-made, and he has small stomach for imported stories about the younger son of a duke. He has a wholesomer taste for native work. No English juvenile magazine is sold in the United States, although several American juvenile magazines are sold in Great Britain. We export books for the young, while we import them only to a comparatively slight extent.

I come now to the one class of books the price of which would be increased by the granting of International Copyright. This is the large and important class of fiction. Of course, American novels would be no dearer; and probably translations from the French, German, Italian, Spanish, and Russian would not vary greatly in price. But English novels would not be sold for ten or fifteen cents each. We should not see five or ten rival reprints of a single story by the most popular English novelists. There would be but a single edition of the latest novels of the leading British story-tellers, and this would be offered at whatsoever price the authorized publisher might choose to ask—sometimes much, generally little. English fiction would no longer cost less than American fiction. The premium of cheapness, which now serves to make the American public take imported novels instead of native wares, would be removed; and with it would be removed the demoralizing influence on Americans of a constant diet of English fiction. That American men and women should read the best that the better English novelists have to offer

us is most desirable; that our laws should encourage the reading of English stories, good and bad together, and the bad, of course, in enormous majority, is obviously improper and unwise.

The evil effect of this unfortunate state of things Mark Twain has most graphically depicted. He asks if it is an advantage to us, the people of the United States, to get all kinds of cheap alien books devoured "in these proportions: an ounce of wholesome literature to a hundred tons of noxious?"

"Is this an advantage to us?" he inquires further; and he answers his own question thus: "It certainly is, if poison is an advantage to a person; or if to teach one thing at the hearth-stone, the political hustings, and in a nation's press, and teach the opposite in the books the nation reads is profitable; or, in other words, if to hold up a national standard for admiration and emulation half of each day, and a foreign standard the other half, is profitable. The most effective way to train an impressible young mind and establish for all time its standards of fine and vulgar, right and wrong, and good and bad, is through the imagination; and the most insidious manipulator of the imagination is the felicitously written romance. The statistics of any public library will show that of every hundred books read by our people about seventy are novels —and nine-tenths of them foreign ones. They fill the imagination with an unhealthy fascination for foreign life, with its dukes and earls and kings, its fuss and feathers, its graceful immoralities, its sugar-coated injustice and oppressions; and this

fascination [illegible]eds a more or less pronounced dissatisfaction with our country and form of government, and contempt for our republican commonplaces and simplicities; it also breathes longings for something 'better,' which presently crop out in diseased shams and imitations of that ideal foreign life. Hence the dude. Thus we have this curious spectacle: American statesmen glorifying American nationality, teaching it, preaching it, urging it, building it up—with their mouths; and undermining it and pulling it down with their acts. This is to employ an Indian nurse to suckle your child, and expect it not to drink in the Indian nature with the milk. It is to go Christian-missionarying with infidel tracts in your hands. Our average young person reads scarcely anything but novels; the citizenship and morals and predilections of the rising generation of America are largely under training by foreign teachers. This condition of things is what the American statesmen think it wise to protect and preserve — by refusing International Copyright, which would bring the national teacher to the front and push the foreign teacher to the rear. We do get cheap books through the absence of International Copyright; and any who will consider the matter thoughtfully will arrive at the conclusion that these cheap books are the costliest purchase that ever a nation made."

International Copyright will perhaps increase the cost of such English novels as may be written in the future; but it is not retroactive; it cannot affect the past; it will not alter the price of Shake-

speare or of Scott, of Macaulay or of Thackeray. It will not make any American author ask more for his book, if, indeed, by expanding his market, it does not tempt him to lower his terms, seeking a wider sale and a smaller profit. Emerson and Irving, Longfellow and Hawthorne, will be as easily accessible hereafter as they are to-day. The books which are cheap now will always be cheap; and with the removal of the sickly flood of stolen English fiction there will come an opportunity for the American publisher to issue good books at low prices.

Here we come to the special point of this paper: the cheapest books to be bought to-day in the United States are mostly inferior stories by contemporary English novelists, while the cheapest books to be bought to-day in England, in France, and in Germany are the best books by the best authors of all times. Those who declaim against International Copyright because they do not wish to deprive the poor boy of the cheap book he may study by the firelight after his hard day's work, would perhaps be surprised to be told that of the "Hundred Best Books" (of which we lately had so many lists), of the books best fitted to form character and to make a man, very few indeed, not more than half a dozen, are to be found in any of the cheap libraries which flourish because of the absence of copyright. Most of these great works are old and consecrated by time; they are nearly all free to be printed by whoso will. In Sir John Lubbock's original list of a hundred best authors only two were American, and only

twelve were recent Englishmen whose works are still protected by English copyright. Eighty-six out of the hundred were classics of ancient and modern literature—Greek and Latin, Italian and French, German and English.

Now, in Germany, in France, and in England, there have been many efforts of late years to supply very cheap editions of these classics at a price within the means of the poorest student. In the United States no such effort has been made; nor is it likely to be made as long as the market for cheap books is supplied by inferior foreign fiction, which not only usurps the place of better literature, but spoils the appetite for it. The cheap books to be bought in England, in France, and in Germany are stimulant and invigorating, mentally and morally; a man is better for reading them; he is richer and stronger, and more fit for the struggle of life. The cheap books to be bought in the United States are only too often the trivial trash of the ladies who call themselves "Ouida" and "The Duchess." How much these may nerve a man or a woman for the realities of existence, how much the wisdom to be got from them may arm us for the stern battle of life, I cannot say.

A consideration of the conditions of book-publishing in Great Britain, in France, and in the German Empire is not without interest in itself; and it may serve further to show that Americans do not enjoy a monopoly of cheap books.

The British are book-borrowers, and not book-buyers; they are accustomed to hire their freshest

reading matter from the circulating library. I remember hearing Professor Sylvester, the eminent English mathematician, who was until recently a member of the faculty of Johns Hopkins University—I remember hearing him express the surprise he felt on his first arrival in this country, when he was staying with Professor Pearce in Cambridge, and happened to hear two of the ladies of the family remark that they had just been in to Boston to buy a book. "To *buy* a book?" repeated Professor Sylvester; "why, in England nobody buys a book!" Perhaps this is an over-statement of the case; but it is true that the British book-trade is in an unhealthy condition, and that the publishers and the public are at opposite sides of a vicious circle—the people refuse to purchase because new books are dear, and the publishers ask a high price because there are but few buyers.

In England a novel, for instance, is generally published in three volumes at half a guinea a volume—say seven dollars and a half for a single story. At this prohibitive price the publisher can hope for no private purchaser, and he relies wholly on the demand from the circulating libraries, which have to meet the wishes of their subscribers, and to which the volumes are sold at a heavy discount. Not only novels, but travels, histories, and biographies are usually brought out in England at absurdly exaggerated prices. If the book succeed, if it be really deserving of a wider sale, popular editions at lower figures soon follow. It is only the first editions, intended solely for the circulating libraries,

which are disproportionately dear. Six months or a year after a novel first appears in three volumes, it will probably be republished in a single volume at a price varying from three shillings and sixpence to six shillings—say, ninety cents to a dollar and a half. Often it also appears a little later in a railway edition at two shillings—fifty cents. The reduction in the price of histories and biographies is not so large; but second-hand copies in excellent condition can be had at a tithe of the original cost from the circulating libraries, which sell off their surplus stock as soon as the pressure of the first demand is relieved.

This system of publishing seems cumbrous and top-heavy. It is peculiar to Great Britain. It has never been adopted by any other nation. It could exist only in an island, or in a country with a compact population having both leisure and means. But apparently it is not altogether unsatisfactory to the English, and it does not make books as dear as at first glance we might suppose. The brand-new book, smoking-hot from the press, is intended to be borrowed and not bought; but commonly, after a year or two, it can be had at a moderate price. Professor Lounsbury, of the Sheffield Scientific School at Yale, after an experience of many years, has recorded it as his deliberate opinion that, in the long run, English books are cheaper than American books.

Of late there have been many efforts made in England to create and to satisfy a popular desire for good books at low prices. There are even signs

that the circulating library system is not as secure as it has seemed, and that the British may become book-buyers instead of book-borrowers. A Bristol publisher having sold several hundred thousand copies of the late Hugh Conway's *Called Back* at a shilling (twenty-five cents), has continued the series with original stories by Mr. Wilkie Collins, Mr. Walter Besant, Mr. Andrew Lang, and others. All of Disraeli's novels are now for sale at a shilling each; and all of Thackeray's writings are being reissued at a shilling a volume by his own publishers, who still own the copyrights. A complete edition of Carlyle's works has just been begun, to be sold at the same low price—twenty-five cents. And it is to be noted that these sets of Thackeray and Carlyle are not ill-made and flimsy pamphlets, badly printed with worn type on poor paper; they are honest books, firmly printed on good paper and substantially bound in cloth.

Mr. John Morley's admirable series of English Men of Letters is now in course of republication at a shilling for each biography. And a shilling is the price asked for each of the well-made, neatly bound, and carefully prefaced volumes of Professor Henry Morley's Universal Library, which is intended to contain the masterpieces of the master minds of all countries and all ages. In this most excellently edited series there have already appeared, month by month, the chief works of Homer, Virgil, Dante, Machiavelli, Rabelais, Bacon, Ben Jonson, Cervantes, Molière, De Foe, Locke, Dr. Johnson, Goldsmith, Goethe, and Coleridge.

Professor Henry Morley is also the editor of another series, perhaps even more important, because the price is lower and the issue more frequent. This is Cassell's National Library, in weekly volumes at threepence each. For six cents a week a man may buy a solid little tome of about two hundred pages, containing Franklin's *Autobiography*, Walton's *Complete Angler*, Byron's *Childe Harold*, and the like. Nothing at once as cheap in price and as good in quality as this National Library has ever been brought out in America.

Crossing the Channel to France, we find the conditions of publishing very different and far more healthy. There was a time once when books in France were expensive, and when authors and publishers alike were content with a small sale and an apparently large profit. The late Michel-Lévy believed that "cheap books are a necessity, and a necessity which need bring, moreover, no loss to either authors or publishers."[1] He converted certain of the leading French writers to his views, and he revolutionized the methods of French publishing. The theory of Michel-Lévy, that the low price of one book will tempt the reader and create a desire for another book, was solidly sustained by the result of his experiment. Thanks to him and to those who followed his example, France is now the country where books are the cheapest and where authors are the best paid. Dignified historical

[1] An account of Michel-Lévy's reform may be found in Mr. Matthew Arnold's acute paper on "Copyright" in his volume of *Irish Essays*.

works generally appear in portly tomes at seven francs and a half each —say, a dollar and a half (the price in America for a volume of the same importance would probably vary from two dollars and a half to five dollars). These volumes at seven francs and a half each are relatively few, as the enormous majority of French books, poems, novels, biographies, essays, and so forth are of the size called the "format Charpentier," and are sold for three francs and a half each—say, seventy cents.

Cheap as these French books are when new, they are often made even cheaper still as their popularity broadens. In imitation of the Michel-Lévy collection, many publishers have series which they sell for one franc a volume—twenty cents—for a seemly and shapely tome containing a complete copyright book, by an author of wide repute. Even lower priced, however, is a later series, the *Bibliothèque Nationale*, founded twenty-five years ago, now extending to several hundred numbers, and containing not only the French classics but also translations of nearly all the classics of other literatures. The tidy little tomes of this series are sold in stitched paper covers at twenty-five centimes each—five cents—and in cloth bindings for nine cents each. Inexpensive as is this *Bibliothèque Nationale*, it has now a new rival —the *Nouvelle Bibliothèque Populaire*—in which the single numbers are sold for two cents each. I believe that nothing cheaper than this has ever been attempted anywhere. Besides the consecrated masterpieces of literature, the books of an impregnable reputation, which ought to furnish forth the

bulk of any collection making an appeal to the very widest circle of readers, the conductor of the ... *velle Bibliothèque Populaire* is wisely selecting ... lations into French of the best books of contemporary authors of other nations. Thus can a pleased American discover on the catalogue the names of Poe, Irving, Longfellow, and Mr. Bret Harte; whether these authors are as pleased to see their works taken without money and without price is another question!

Turning from France to Germany, we ... great difference in the conditions of ... although the Germans cannot make the ... quite as cheap as can the French, since ... is not so large. German books, in the ... which at college we used to call Belles Let... ... be consumed in the home market; there is no fierce demand for export. But French fiction and French criticism are interesting and entertaining throughout the world. A German novel must rely for its readers on the Fatherland and on those who speak the mother-tongue; while French is still the language of courts and of culture, and a French novel may be read with as much avidity in Berlin and Vienna, in London and New York, as in Paris itself.

Whatever may be the price of the new novel in Germany, and however insufficient may be its sale, the Germans are not behind the French in their cheap editions of the great books of the world. The successors of the house which issued Goethe's writings now publish the *Cotta'sche Bibliothek der Weltliteratur*, in which the works of Goethe, Schil-

ler, Lessing, Shakespeare, Molière, Calderon, Dante, and their fellows appear in solid volumes, substantially bound, and sold at one mark each—twenty-five cents. One mark is also the price asked for any volume of *Das Wissen der Gegenwart*, a collection of new books, expressly prepared, well printed, well bound, and most elaborately illustrated. The volumes of this series are written by experts, and they are intended to form a sort of cyclopædia of the results of the latest researches in science and history.

Nor are the Germans lacking in a library of the ancient and modern classics at a still lower price. I believe that it was Herr Reclam's *Universal Bibliothek* which suggested the French *Bibliothèque Nationale* and the English "National Library." The single numbers of this series cost each twenty pfennige—say, five cents; and at this price may be had all the German classics, as well as translations of the best writings in other languages. Alongside the works of Schiller and Sophocles, of Shakespeare and Sheridan, the American finds translations of Cooper, Longfellow, Mark Twain, Mrs. Stowe, Mr. Aldrich, and Mr. Bret Harte—of course we cannot expect Germany to protect the rights of American authors until America protects the rights of German authors. The success of this cheap series has brought out a rival still cheaper—Meyer's *Volksbücher* at ten pfennige a volume—say, two cents and a half for a complete copy of a masterpiece.

In this survey of the conditions of publishing in England, France, and Germany, I have sought to

show that what might seem, at first sight, to be a paradox, is only the exact truth. In America the cheapest books are not good books, for the most part; certainly they are not the best books. *In Europe the best books are the cheapest.* That this unfortunate state of affairs in this country is the result of the absence of International Copyright, and the inevitable instability of the book trade, I maintain; and I assert also that the consequences of the present unhealthy condition are injurious to the character of the American people. We now enjoy the privilege of piracy, as the dwellers on a rocky islet used to enjoy the privilege of wrecking—and we avail ourselves of this privilege only to the perdition of our own souls. We encourage bad books and we discourage good books. And to discourage or injure or retard a good book, as it goes on its mission of making the world better, is to do an evil deed. No one has more nobly spoken of the crime of book murder than John Milton, and with a quotation from him I may fitly conclude:

"For books are not absolutely dead things, but do contain a potency of life in them to be as active as that soul was whose progeny they are; nay, they do preserve, as in a vial, the purest efficacy and extraction of that living intellect that bred them. I know they are as lively and as vigorously productive as those fabulous dragon's teeth: and being sown up and down may chance to spring up armed men. And yet, on the other hand, unless wariness be used, as good almost kill a man as kill a good book. Who kills a man kills a reasonable creature,

God's image; but he who destroys a good book kills reason itself, kills the image of God, as it were, in the eye. Many a man lives, a burden to the earth; but a good book is the precious life-blood of a master-spirit, embalmed and treasured up on purpose to a life beyond life."

NEW YORK, *March* 15, 1888.

XXIV.

AN INTERNATIONAL COPYRIGHT WILL NOT INCREASE THE PRICES OF BOOKS.

ONE of the most frequent objections to the granting of copyright to foreign authors is the impression that any such measure must materially increase the selling price of books. It is pointed out that, in the absence of a copyright, foreign works have been issued in this country at very low prices, and it is assumed that when it becomes necessary to add to the cost of production the amounts to be paid to the authors, and when the sales, now divided between several competing editions, are left under the control of one publisher, the prices paid by the consumer will probably be materially increased.

The supporters of International Copyright take the ground, on the other hand, that when the American people, who are lovers of fair play, are once convinced of the justice of the claim of authors (American and foreign) to control their productions, and to receive compensation from all who are benefited by these productions, this claim will be promptly granted, whether it costs the public something to do so or not.

Those who are familiar with the business of making and selling books assert further, moreover, that a copyright measure will have the effect of lessening the price of all the better classes of books, which are of the most importance for the higher education and cultivation of the people, and of increasing the supplies of these; and that the only publications which will be increased in price are the cheapest issues of foreign fiction; and in support of this conclusion they ask attention to the following considerations:

First. It is in order to bear in mind that the conditions of the literature now in existence can, of course, not be affected by any copyright measure, as no such measure could be made retroactive, and there is, therefore, no foundation for the vague assertion which has occasionally been made, that "the people are to be asked to pay more for their Macaulay and Tennyson."

Second. It is to be remembered that the so-called "Libraries," which have been supplying foreign novels at fifteen and twenty cents, after exhausting the books really worth reprinting, and after including in their lists (under the necessity of a periodical issue) a large mass of indifferent and undesirable material, by no means deserving the attention of American readers, are now in great part being discontinued, partly because of the exhaustion of reprintable material, and partly, also, because they are not profitable undertakings. One reason why these "Libraries" are proving unremunerative is unquestionably because of a change in the taste and in the

judgment of buyers of books, who are beginning to understand that they secure better value in paying fifty cents or seventy-five for a decently printed volume, that can be preserved for the use of a number of readers, than in expending fifteen or twenty cents for a flimsy quarto, fit only to be thrown away after one reading.

Third. A large number of important English and Continental works, American editions of which would prove of material service to American students and readers, it is not practicable, under the present state of things, for American publishers to undertake at all, as, in case their reprints are favorably received, any prospect of profit from these is promptly destroyed by the competition of rival and unauthorized editions, which secure the advantage of their literary judgment and their advertising. Such American readers as are obliged to purchase this class of works must, as a result, pay the cost of the expensive and often unsuitable foreign editions, while (as such editions cannot be adequately advertised) a large number of readers to whom such books would be of service are never even made aware of their existence. An immediate result of an International Copyright would be the reprinting of inexpensive editions, suited for the wants of a large circle of impecunious buyers, of a number of European works now brought into this country only in expensive "limited" editions.

Fourth. An International Copyright will render practicable a large number of international undertakings which cannot be ventured upon without the

assured control of several markets. The volumes for these international series will be secured from the leading writers of the world, American, English, and Continental, and the compensation paid to these writers, together with the cost of the production of illustrations, maps, tables, etc., will be divided between the several editions. The lower the proportion of this first outlay to be charged to the American edition, the lower the price at which this can be furnished; and as the publisher secures the most satisfactory returns from large sales to a wide circle, the lower the price at which it *will* be furnished.

It would not be quite correct to say that these international series would be cheaper than at present, for there are as yet hardly any examples of them; but it is the case that by means of such series (only adequately possible under International Copyright) American readers will secure the best literature of leading contemporary writers at far lower prices than can ever otherwise be practicable.

Fifth. The higher prices of current English books are cited as examples of what American readers would under a copyright be compelled to pay for American editions of similar works. It is, however, easy to show that the selling price of books depends, not upon the conditions of copyright, but upon the requirements of the market. Books are first issued in England in the high-priced editions, because under the English system the first demand for new publications is largely through the circulating libraries, which have encouraged the main-

tenance of prices sufficiently high to hinder the buying of books. There is also the further reason that in England the readers and buyers of books belong in much larger proportions to the wealthy classes than is the case in the United States.

In France and Germany, on the other hand, countries fully under the control of copyright, both domestic and international, the first issues of standard and current publications, both copyright and non-copyright, are cheaper than anywhere else in the world.

In Paris, for instance, a beautifully printed and beautifully illustrated edition of such a book as Daudet's *Tartarin dans les Alpes* is published at seventy cents, and this is one example of many. In Berlin, we find such series as *Das Wissen der Gegenwart*, "The Knowledge of the Present," issued in handsomely printed, well-illustrated, and neatly bound volumes, of which sixty-two are now ready, selling at one mark, twenty-five cents, each. The works in this series are written especially for it by the leading scholars and scientists of the Continent, and this series is one of many. The Leipsic publisher, Tauchnitz, possesses, under the present International Copyright system of Europe, a practical "monopoly" for the sale on the Continent of his cheap reprints, in English, of the works purchased by him from English authors. He does not, however, take advantage of such "monopoly" to attempt to extort high prices from his readers, simply because there would be no profit in making any such attempt. He sells these copyright books, in

complete and well-printed volumes, at one and a half marks, or thirty-six cents, each.

American publishers controlling, under a similar copyright, the sale of similar books for a market of sixty millions of people, would in like manner find it to their advantage to supply this market with low-priced editions planned for popular sale, simply because high-priced editions could not be sold.

It is also the case that, since the establishment of International Copyright between the different states of Germany and the several countries of Europe, there has been a steady decrease in the prices, in these countries, of standard and current literature, copyright as well as non-copyright, and a marked impetus has been given to publishing undertakings of service to the community.

As Mr. Brander Matthews has well pointed out, the cheapest books to be bought to-day in the United States are mostly inferior stories by contemporary English novelists, while the cheapest books to be bought to-day in Europe are the best works by the best authors of all times. In America, where the system, or lack of system, of "open publishing" prevails, the cheapest books are the least important and often the least desirable. In Europe, where International Copyright is in force, *the best books are the cheapest.* The absence of International Copyright encourages bad books or poor books, and discourages good books.

Such examples show that the selling price of a book depends not on the copyright but on the extent of the market that can be assured for it. With-

out an International Copyright no assured market is possible, and no low-priced international series can be planned or prepared for American readers.

Sixth. A reduction can also be looked for in the selling price of certain lines of American fiction and other current literature. Under the present "cut-throat" competition, the publishers of the works of such authors as Howells, James, Aldrich, Bret Harte, and other leading American writers have practically given up the attempt to compete with the unpaid-for reprints of foreign writers. Knowing that they can depend upon certain (comparatively limited) circles of readers, they find it to be more profitable to obtain from these readers the highest prices they are willing to pay. When, on the other hand, the foreign works are put on the same footing as those of American writers, the publishers of the latter will find it to their interest to plan for the widest popular sale, and for this purpose will at once issue their books at popular prices.

The possibility of exporting stereotype plates or editions of standard American works will also lessen the proportion of first outlay to be charged to the American edition, and will enable this to be sold profitably at lower prices than would otherwise be practicable. An example of the advantage given to the American buyer by such an export arrangement is afforded by the great Latin Dictionary lately published by the Harpers. Duplicate plates of this were sold by the publishers for the edition issued by the Clarendon Press, in Oxford, and the saving secured from the proportion of the type-setting and

editorial outlay charged to the English edition has enabled the American publishers to sell the book in this market much more cheaply than would otherwise have been practicable.

To summarize—the selling price of books depends not on the copyright, but on the requirements of the market and the extent of the market that is controlled by the author and his representative.

American buyers are accustomed to cheap books, and will not buy dear books, and the publishers are not likely to throw away their money by making dear books for which they could not find a sale.

The wider the markets and the greater the number of the editions between which the first outlays can be divided, the smaller the cost of each edition and of each copy, and the lower the price at which each copy can be and will be supplied.

With assured markets, and an assured control to authors and publishers of the results of their literary undertakings, there will be a great increase in the publication of international series, which will provide for American readers, at the lowest prices, satisfactory editions of the works of the leading writers of the world, American, English, and Continental.

NEW YORK, *March* 15, 1890. G. H. P.

XXV.

"COPYRIGHT," "MONOPOLIES," AND "PROTECTION."

Reprinted from *The Literary World.*

To the Editor of the Literary World:

The writer of an editorial in *The Literary World* of January 7th (a number which, owing to a mischance, has only to-day reached my desk), in referring to the organization of the Boston Copyright Association, speaks of copyright as a "species of protection." The words used are:

"For what is copyright but a species of protection? and what is international copyright but a bulwark erected by protection against free trade? From this point of view the spectacle of President Eliot presiding [illegible] international copyright meeting one day and appearing the [illegible] as a sympathetic guest at an anti-tariff dinner is one to be pondered."

This "point of view" shows, as it seems to me, a confusion of thought based upon a misconception of the actual meaning of the terms "protection" and "free trade;" and as such misconception has before now stood in the way of a proper understanding of the grounds on which are based the claims of an author to the control of his productions, I think it worth while to ask you to give me space to correct

The difficulty is really due to the poverty of our

language, which uses the term "protection" to express two entirely different things, and the same is true of the terms "free trade" and "monopoly," which also have been largely misapplied in the discussion of questions of copyright. The "protection" for which the author asks is simply his portion of the benefit of the machinery organized by society for the defence of individual property against unauthorized appropriation. He is in the position of a gardener whose labor has produced a crop of strawberries, and who, in order to retain for his own use the results of his labor, asks for his share of the policeman.

In the sense, however, in which it is used in the article in question the term stands for something entirely different. The "protection" to which your writer was referring is the system under which one producer secures through legislation the imposition of a tax upon the labor of another producer, and by this means also secures the privilege of taxing indirectly (to the extent of any increase caused by such taxation in the average selling price) all the consumers of the things produced.

The author, however, asks for no legislation of this kind. In securing copyright for his *History of the United States*, Professor McMaster secures simply the control of the sales of his own work. He does not ask the government to further the sale of his history by putting a tax upon the production or the sale of any other history of the United States, for instance, that written by the foreigner Von Holst. The production of future histories of the

United States, by American or foreign writers, is not going to be impeded by any privilege conceded to or demanded by McMaster. In like manner the conceding to Justin McCarthy, under an international copyright, of the control of his *History of Our Own Times*, would, of course, in no manner have stood in the way of the production of any number of competing histories covering the same period.

Mr. Henry Carey Baird takes the ground that there is no propriety in giving to Von Holst the privilege of making money out of historical facts and records which are the common property of all Americans. Mr. Baird forgets, however, that these facts and records are as much common property after the publication of Von Holst's history as they were before. Von Holst's privilege of copyright (if conceded) has not enabled him to diminish in any way the common stock of facts (as the nation's stock of acres is diminished, for instance, by the grants to the Pacific railroads). The stock of historical facts available for the use of future writers has, indeed, actually been increased by Von Holst's researches and labors. It is evident, therefore, that copyright gives to the writer no property in facts or ideas, but simply permits him to control the special form in which he presents these facts and ideas, and it is for this form only, and not for the ideas themselves, that he asks "protection."

The "free trader," in the accepted signification of the term, and the person who is opposing copyright and talking about "free trade in books," are

two very different individuals. The former claims for each producer the liberty to do what he will with that which he has produced, such liberty including the right to procure in exchange for the same (subject only to the taxes necessary for the support of the government and for his share of the policeman) the products of any other producers, whether fellow-citizens or not. He wishes, for instance, to purchase with money made out of wheat a ship built on the Clyde, and he would be free to apply in this way the results of his labor and thus to secure further proceeds from these results if it were not for the existence of an objecting individual or group of individuals in Maine or Pennsylvania. The man who talks about "free trade in books," however, meaning thereby the right to appropriate what another has produced, aims to obtain certain proceeds which he could not have secured but for the existence and the labor of another man, namely, the author of the material to be appropriated

In like manner the opponent of any international copyright, or the supporter of the misleading Pearsall-Smith scheme of "open publishing" (which may be appropriately classified as "copywrong"), describes as a "monopoly" the right of an author to control the sale of his productions. The dictionary justifies him in such use of the word, which means, of course, "single sale," or sale controlled by a single person. The term is, however, at present, in its general use associated with something very different, and its application to copyright is misleading and unjustifiable.

The popular understanding of the term "monopoly" covers the appropriation, under legislation, by an individual or a group of individuals, of some portion of the property of the community or of the facilities belonging to the community, which, if it were not for such legislation, would remain free to all. In this sense a Pacific railway, to which has been conceded the sole use of a route across the continent and the fee of some thousands of acres of public lands, is a monopoly; a horse railway, with a charter for the exclusive use of certain public highways, is a monopoly; and a telephone company, with a patent under which it prevents the construction of other telephones, and with privileges, thus made exclusive, for the use of its wires, of traversing both public and private property, is a monopoly. The control of a book by the man whose labor has produced the book is not a monopoly, for the existence of such a book does not in any degree stand in the way of the production and sale of any number of books of the same character, and addressed to the same class of readers, and its production has in no degree lessened the extent of the facilities or of the property belonging to the public.

The importance of securing at this time, when international copyright is a matter of pending legislation, the widest possible understanding of the grounds upon which rests the claim of the author to the control of his productions, is my excuse for troubling you with this letter.

NEW YORK, *January* 30, 1888.

XXVI.

SUMMARY OF THE EXISTING COPYRIGHT LAWS OF THE MORE IMPORTANT COUNTRIES OF THE WORLD (January, 1896.)

1. *Argentine Republic.*—No statute for the protection of intellectual property has as yet been enacted. Article 17 of the Constitution of 1860 declares that property is to be held inviolable, and that no citizen shall be deprived of the same except by process of law. The article proceeds to state that each author and inventor is the exclusive proprietor of his production or invention during the term specified by the law, but the law itself is yet to be enacted. In its absence, authors and artists secure a quasi-protection under certain provisions of the civil code. The penal code of 1880 contained a provision for the prohibition of literary piracy, with a penalty for infringement of from $25 to $1000. In the code of 1887 this provision was, however, omitted.

2. *Austria* (Empire).—Law of 1895. Literary and artistic works, published during the life of the author, term, during author's life and thirty years after his death: Works posthumous, or anonymous, or published under a pseudonym, thirty years from the date of the first publication. Publications of learned societies recognized by the Government, fifty years from the date of the first publication; right of the Government reserved to extend this term by special privileges in favor of important works of science and art. Exclusive rights of translation reserved to the author, on condition of the publication being simultaneous with that of the original; in the contrary case, free right of translation permitted after the delay of one year. Free right of arrangement of musical airs, at the expiration of one year. Exclusive right of artistic reproduction reserved

to the artist, but on condition of reproducing the work within two years; in contrary case, free right of reproduction. Dramatic and musical representations, performed during the life of the author: copyright term, during his life and thirty years after his death. Works posthumous, anonymous, collaborated, or published under a pseudonym, thirty years from the date of first representation (term increased, in 1894, from ten years). Interstate conventions, Germany, 1867 and 1870; Italy, 1890; France, 1866; Great Britain, 1893.

3. *Belgium* (Kingdom).—Law of 1886. Works of literature and of art, published during the life of the author, protected for his life and for fifty years thereafter. (The previous term was for life and for twenty years.) Posthumous works, fifty years from date of issue or for works of art, from date of first exhibition. A work of collaboration is protected for fifty years from the death of the surviving collaborator. The author and his representatives have full control of the rights of translation and dramatization. The provisions of the law are applicable to residents as well as to citizens. The condition of printing in Belgium which obtained in the previous law is annulled. Belgium was a party to the Berne Convention, and is in copyright relations with the United States under the Act of 1891. Deposit of three copies—one for the national library and two for the communal administration.

4. *Bolivia* (Republic).—Law of 1879. Term, life of the author and fifty years. Deposit of three copies—one with the Minister of Public Instruction, one with the governor of the district, one with the national library. Concedes copyright to foreigners under reciprocal conditions. Registration without charge. A party, since 1889, to the Convention of Montevideo.

5. *Brasil* (Republic).—Law of 1890 (enacted under the Empire). Terms for literary and artistic works, published during the life of the author, life of author and ten years thereafter. Works published by societies and corporations, ten years from the date of the first publication. A party since 1889, to the Convention of Montevideo.

6. *Canada*.—Term, forty-two years from date of publication. Deposit of two copies. Requirements (with certain noteworthy exceptions) of manufacture within the Dominion. Authority vested in the Minister of Agriculture to license the publication of Canadian editions, under certain conditions. (See further summary on page 467 *et seq.*)

7. *Chili* (Republic).—Act of 1834. Term, for literary and artistic works published during the life of the author, for his life and for five years after his death. Posthumous, ten years from first publication. For works published in Chili by a foreigner, ten years from first publication. Deposit of three copies in the library of Santiago, obligatory. Right of the Government to extend these terms. Term, for dramatic and musical representations performed during the life of the author, for his life, and for five years after his death. Posthumous works, ten years from the date of the first representation. Right of the Government to extend these terms. Has accepted the Interstate Convention of Montevideo.

8. *China.*—In theory, copyright is perpetual. There is, however, no statute on the subject, and in practice the protection of a literary production is hardly practicable. The author of modern times is usually his own publisher. In case of piracy the usual penalty is eighty blows with a stick and confiscation of the piratical production. The protection of the magistrates can however be claimed only for works of "pure literature" or of poetry. Authors of political works or of romances can claim no privileges, and are in fact liable to punishment. The sole dependence for the author is the intelligence and equity of the local magistrates. (Tcheng-Ki-Tong. Cited by Lyon-Caen.)

9. *Colombia.*—Law of 1886, based on that of Spain of 1879. Term, life of the author and eighty years thereafter. Deposit of three copies, one with the Minister of Public Instruction and two in the national library.

10. *Costa Rica.*—This State was represented at the Berne Convention but did not become a party to the same. No copyright statute has yet been enacted. In 1887, a provisional agreement was entered into with the four other States of Central America for the recognition of property in literary and art productions.

11. *Denmark.*—Law of 1868. Term, for literary works published during the life of the author, during his life and for fifty years thereafter. (Formerly life and thirty years.) Anonymous, collaborated works, and works published under a pseudonym, fifty years from date of publication. Art works published during the life of the author, for his life and for thirty years thereafter. Dramatic and musical works first represented during the life of the author, for his life and for thirty years thereafter. The control of the author terminates however, if no representation of the work has been made

during the five years. Interstate conventions. Admission of the principle of reciprocity. Convention with France in 1866, with the United States in 1891.

12. *Ecuador*.—Law of 1887. Term, life of the author and fifty years thereafter. Deposit of three copies, one for the library of the province, one for the national library, and one for the Minister of Public Instruction.

13. *Egypt*.—No general law has yet been enacted. Cases of copyright are decided by the judges "according to the principles of natural art and the rules of equity." On this basis, the Court of Appeals in Alexandria has, since 1887, given several decisions in favor of the protection of productions in art, music, and literature. In these decisions no term of copyright has been specified or referred to. They may, therefore, be compared to the decisions in the English courts, prior to the statute of 1710, under which decisions copyright was assumed to exist under the common law and in perpetuity.

14. *Finland* (Grand Duchy).—Act of 1880. The term is for the life of the author and fifty years thereafter. Privileges of copyright extended not only to citizens but to residents who make publication in the country. Deposit of two copies. The law is in substance identical with that of Russia, but differs in certain details.

15. *France* (Republic).—Act of the Corps-Legislatif (of the Empire), of July 14, 1866, approved by Napoleon, Emperor. The duration of term of copyright, accorded under previous legislation, for the works of authors, artists, and composers, is extended from the lifetime of the author and thirty years, to the lifetime and fifty years, whether for widow, children, direct heirs, indirect heirs, legatees, or assigns. In the cases in which the estate of the deceased author becomes the property of the State, the copyright is terminated with the death of the author, and the work falls into the public domain. Works published posthumously are subject to the same term of copyright as obtains for those published during the lifetime of the author. Authors who are citizens or residents of other States enjoy, for works first published in France, the same rights and term of copyright as those given to French authors. (This provision is met by simultaneous publication.) Two copies of all works copyrighted must be deposited at the Ministry of the Interior, or (for transmission) at the prefectures of the departments. The same regulations and the same term of copyright apply in the cases of works of art.

The term of copyright is also the same for dramatic and musical compositions, and no representation of such compositions can be given without the written permission of the authors or composers. The conditions of international copyright have been, since 1887, regulated by the provisions of the Convention of Berne. In addition to the States with which it is in relation through the Berne Convention, France has entered into literary conventions with the following states which are not parties to the Berne Convention: Austria, Hungary, 1886; Bolivia, 1888; Holland, 1856; Mexico, 1886; Portugal, 1866; Russia, 1861 (this convention was cancelled by Russia in 1887 and has not since been renewed); Salvador, 1880; Sweden and Norway, 1884; United States, 1891.

16. *Germany.*—Law of the Empire, June 11, 1870. This law applied to all the states of the Empire except Bavaria. It was applied to Bavaria January 1, 1872, and to Alsace-Lorraine, January 1, 1873. Registration of copyright is made at Leipsic. Deposit of a single copy. Term, for literary and artistic works published during the life of the author, is for his life and thirty years thereafter. Posthumous and anonymous works and works published under a pseudonym, thirty years from the date of the first publication. Publications of learned societies, thirty years from the date of first publication. Dramatic and musical productions, ten years from the first representation, provided the work represented has not before been printed. No protection is given under this heading for anonymous productions. The Empire is a party to the Berne Convention. On January 15, 1892, a copyright convention was completed with the United States under which Germany accepted the provisions of the American Act of 1891. Under this convention, the citizens of the United States possess in Germany the same privileges that belong under the German act to the citizens and residents of the Empire. In like manner, the privileges possessed in the United States under the American act by American citizens and residents are extended to the citizens of Germany. The criticism was at once made in Germany, and has since been repeated with increasing acerbity, that this arrangement did not constitute an equitable reciprocity, and was much to the disadvantage of the German producers of copyright property. The provisions in the American law making copyright conditional on simultaneous publication and on the manufacturing of the work in the United States, place serious obstacles in the way of German writers desiring to secure for their works American copy-

right. Similar complaints are being made with equal justice on behalf of the authors of France and Italy. The condition of simultaneous publication, while creating occasional differences in the case of English authors, becomes of necessity much more serious when arrangement must be made not only for publication and for printing but also for translating.

17. *Great Britain.*—The law at present in force in Great Britain is in substance that enacted in 1842. While this law has been amended in certain of its details, the main provisions, including the term of protection for literary property, remain as in the original act. A summary of the existing laws together with the digest prepared by Sir James Stephen, will be found in a previous division of this volume. The term of copyright covers the life of the author and seven years thereafter, or a period of forty-two years from the date of publication of the work, whichever term be the longer. A deposit of five copies is required, one for the British Museum, and one for each of the four libraries designated in the Act. Registration is not compulsory. Great Britain is a party to the Berne Convention. In addition to the states with which it is in relation through the Berne Convention, Great Britain has entered into literary conventions with the following, which are not parties to the Berne Convention: Austria-Hungary, 1893; Brazil, 1884; Dominican Republic, 1894; Mexico, 1893; Netherlands, 1884; Netherlands, East India Colonies, 1888; Netherlands, Curaçoa, Surinam, etc., 1890; Paraguay, 1886; Portugal, 1884; Servia, 1884; Sweden and Norway, 1895; Uraguay, 1886; United States, 1891.

18. *Greece* (Kingdom).—Law of 1833; amended in 1867. Literary and artistic works, term, fifteen years from the date of first publication. Right of the Government to extend this term. Admission of the principle of reciprocity. Deposit of two copies.

19. *Guatemala* (Republic).—Law of 1879; copyright is recognized under this law as existing in perpetuity for the author, the heirs of the author, or their assignees.

20. *Hawaii* (Republic).—Law of 1888 (enacted under the kingdom). Term, twenty years from the date of publication. Deposit of one copy. Registration fee of $5 to be paid to the Minister of the Interior.

21. *Hayti* (Republic).—Law of 1885 Term, for the life of the author, and if the copyright be inherited by the children of the author, for twenty years thereafter. If the inheritance goes to heirs

other than children or to assignees of the author, the term is for ten years from the author's death. Deposit of two copies. A party to the Convention of Berne.

22. *Holland* (Kingdom).—Law of 1881. Term, for printed works printed within the lifetime of the author, fifty years from date of publication of first edition (former term, life of the author and twenty years). Obligation to print the work within the kingdom and to deposit two copies with the Minister of Justice. Term, for works not printed during the life of the author, thirty years from the date of his death. Conventions with Belgium, 1858, and with France, 1855, 1860, and 1884.

23. *Hungary* (Kingdom).—Law of 1887. Term, life of the author and fifty years thereafter. Posthumous works, fifty years from the death of the author. Residents other than citizens who make first publication in the country are entitled to the privileges of the law. Deposit of two copies with the Minister of Agriculture.

24. *Honduras* (Republic).—The Civil code of 1880 contains the declaration that the productions or inventions of the mind are the property of the producers. No copyright statute has as yet been enacted.

25. *Italy* (Kingdom).—Law of 1882. Works of literature and art published during the lifetime of the author: term, during his life and forty years from date of first publication. At the close of that term the works are open to publication; but during the second term of forty years, the publishers must pay to the owner of the copyright a royalty of five per cent. Term for musical and dramatic compositions, eighty years from the first presentation. Exclusive right of translation reserved to author, and of reproduction to the artist, for a term of ten years. Deposit of two copies with the Prefect of the Province. Publication of the State and of learned societies: term, twenty years from the date of issue. The term for musical and dramatic compositions, the same as for works of literature; such compositions, are, however, open to any one to produce or present on the payment of a royalty or proportion of profits. International conditions subject to the Convention of Berne. Copyright relations with the United States since October 31, 1892, under the Act of 1891.

26. *Japan* (Empire).—Act of 1887. Term, life of the author and five years thereafter, or thirty-five years from the date of publication (whichever term be the longer), for works of literature, art, and music. Fee for registration, the equivalent of the price of six copies of the work. Term, for photographs, ten years from date of registration.

The Government has under consideration (December, 1895) acceptance of the Convention of Berne.

27. *Luxembourg* (Grand Duchy).—Act of 1817. Term, life of the author and twenty years. Has accepted the Convention of Berne.

28. *Mexico* (Republic).—Act 1871. The copyright of new literary productions is made perpetual (the former term having been life of the author and ten years thereafter), and the author possesses the same rights in regard to its assignment and alienation as obtain in the case of material property. The heirs and assigns succeed to the full rights of the original producers, retaining control in perpetuity. In case the author, having assigned the copy of a work, has later reshaped such work, making changes that are "substantial and material," he will be at liberty, as if it were a new work, to control the copyright of the same, without prejudice, however, to the ownership of the copyright of the work as first issued. The term of a dramatic production, covering stage rights, is for the life of the author and thirty years. Of works of literature and of art a deposit of two copies is required, one in the national library, and one in the archives of the Minister of Instruction. Works of art may be deposited in the form of a photograph or reproduction of the original design. Copyright is granted to residents as well as to citizens. The principle of reciprocity is accepted.

29. *Monaco* (Principality).—Ordinance of 1889. Term, life of the author and fifty years. A party to the Convention of Berne.

30. *Montenegro* (Principality).—Act of 1889. Term, life of the author and thirty years thereafter. Accepts the Convention of Berne.

31. *Norway* (Kingdom).—Act of 1876. Term, for works of literature and art, life and fifty years (former terms, life and twenty years).

32. *Paraguay* (Republic).—The law of 1862, passed under the rule of the Dictator Lopez, has fallen into desuetude, and the record and text of the Act have been lost. No statute is at this time in force.

33. *Peru* (Republic).—Law of 1849. Term, for literature and for art, life and twenty years thereafter. Posthumous works, thirty years from date of publication. Deposit of one copy in the national library.

34. *Portugal* (Kingdom).—Act of 1867. Term, for literature and for art, life of the author and fifty years thereafter. (Formerly, twenty years.) The term for a translation of a work, the original of which is out of copyright, covers (for the translator's version only) thirty years from date of publication. Publications of societies, fifty

years from date of publication. Works published in series, fifty years for each division or volume from date of publication of such division. Of works of literature, a deposit of two copies is required in the royal library in Lisbon; for a work of art one copy of a reproduction must be deposited in the Academy of Fine Arts. The term for posthumous works is twenty-five or fifty years from date of first publication, according to the class. The Government reserves the right to authorize for the service of the public, and in consideration of the payment of an indemnity to the owner, the publication of the abridgment of, or of extracts from, works which are still protected by copyright. Dramatic and musical representations performed during the life of the author, term, during his life and thirty years thereafter. Posthumous works, thirty years from date of first publication. Unless, however, there be stipulation to the contrary, each theatre, after the death of the author, is free to make presentation of his works on payment of a fixed honorarium. A remuneration is due to the Royal Conservatory for representing translated dramatic works which have fallen into the public domain. Admission of the principle of reciprocity. Conventions with Belgium, 1866; France, 1851 and 1860; Spain, 1860; and the United States, 1894.

35. *Russia* (Empire).—Exclusive of Finland. Act of 1857. Works of literature published during the life of the author; term, for his life and fifty years after his death (formerly life and thirty years). Posthumous works, fifty years from the date of the first publication. Learned societies, fifty years from the date of the first publication. Deposit of two copies, one with the Bureau of Censorship and one in the imperial library. The supervision of the copyright regulations rests with the minister or Intendant of the Palace (*Le ministre de la Maison*). The control of the censorship (upon which copyright is conditioned) is placed with the Bureau of Censorship. For scientific books, there is a special provision in the law under which the exclusive right of translation is reserved to the author with the condition that the announcement of the reservation be printed in the original volume, and that the translation be published within three years. Russian authors retain for their works first published in foreign countries the control of the Russian copyright. It is obligatory to make registration of works of art. The reproduction in sculpture of a design originally produced in painting or the converse is not considered to be an infringement of the artist's copyright. The author of a work of literature who prints notice of the reserva-

tion of such rights controls the dramatization of his production. Dramatic and musical representations can be made only with the consent of the authors or composers of the works. Convention with Belgium, 1862. A convention made with France in 1861 was cancelled in 1887. French, English, and German works are "appropriated" at the convenience of Russian publishers. There is, however, a considerable importation of the authorized editions of the current publishers of all three countries.

36. *Salvador* (Republic).—No copyright statute. The civil code of 1880 declares that the productions of the mind are the property of the producers.

37. *Servia* (Kingdom).—Copyright law similar in general terms to that of Austria-Hungary is at this time (January, 1896) under consideration.

38. *South African Republic* (The Transvaal).—Law of 1887. Term, fifty years from date of publication.

39. *Spain* (Kingdom).—Act of 1879. Term, life and eighty years (formerly life and fifty years), provided that the author is, at the time of his death, in possession of his copyrights, and provided, further, that he leaves direct heirs. In case the copyright has been assigned by the author, the assignee retains control for the life of the author and for twenty-five years thereafter, after which term it reverts to the heirs, who have control for a further term of twenty-five years. This term covers the cases of original works in literature and art. collections of discourses and translations (in verse) of original works in modern languages, published during the life of the author. For discourses, sermons, and newspaper articles that are not united in collections published during the life of the author, the term is for his life and twenty-five years thereafter, but with no exclusive privilege of translation. Anonymous works and those published under a pseudonym, term, during the life of the editor, and for fifty or twenty-five years after his death, according to the class of the work, as above. Works of learned societies, fifty years from date of the first publication. Unedited MSS., twenty-five years after the date of the first publication. Posthumous works, fifty or twenty-five years after date of first publication, according to the class. The Government reserves the right to authorize, "for the service of the public," the publication of abridgments of, or extracts from, works constituting private property, in consideration of an indemnity. Deposit of three copies is required, one for the library of the Province,

one for the Minister of Instruction, and one for the national library. Spanish authors retain the right of property in works originally published by them in foreign countries. The term for representations, dramatic and musical, performed during the life of the author, is for his life and twenty-five years thereafter. The term of copyright instituted by Spain is the longest adopted in any State excepting Mexico and Venezuela. Spain is a party to the Berne Convention, and has also entered into international copyright relations with the United States, under the Act of 1891. It has conventions in force with Holland and with Portugal.

40. *Sweden* (Kingdom).—Act of 1877. Term, for works of literature, life and fifty years (formerly life and twenty years); for works of art, life of the producer and ten years.

41. *Switzerland* (Republic).—Act of 1883. Term, life of the author and thirty years (formerly life or thirty years, whichever term were the longer). Swiss authors retain their property rights for Switzerland in works originally issued in foreign lands, on condition of their making registration of the same and of depositing a copy in the national library. Switzerland is a party to the Convention of Berne, and has copyright relations with the United States dating from July, 1891.

42. *Tunis* (Principality).—Law of 1889. Term, the life of the author and fifty years. A party to the Convention of Berne.

43. *Turkey* (Empire).—Firmans of 1872, 1875, 1888. The legislation of Turkey still retains for the protection of literary property the mediæval system of privileges. The author secures on application, a protection for his work for life or for a term of forty years from the date of publication. Copyright for the unexpired term can be assigned or bequeathed. The right to control a translation must be specified. The term for the translation is twenty years from the date of publication. An authorization for publication (constituting a censorship's permit) must be secured from the Minister of Instruction. Deposit of two copies, one for the Minister of Instruction and one for the Government of the Province.

44. *Uruguay* (Republic).—No copyright statute as yet enacted. The civil code of 1868 declares that the productions of the mind are the property of the producer.

45. *United States* (Republic).—Law of July, 1870, and March, 1891, amended, March, 1895. (For details of these statutes see separate chapter.) The term for works of literature and for works of

art is for twenty-eight years from the date of registration and publication. If at the end of that term the author or the author's widow or children be living and an application is made for the purpose, the copyright is extended for a further term of fourteen years, making forty-two years in all. Under the Act of 1891, the United States has entered into copyright relations in July 1891, with Belgium, France, Great Britain, and Switzerland; in 1892, with Italy; in 1893, with Portugal and Denmark; and in 1895, with Spain. In 1892, a copyright convention or treaty was put into effect with Germany.

46. *Venezuela* (Republic).—Act of 1880. The term is in perpetuity for the author and his heirs. (Previous term, life and fourteen years.) If the copyright has been assigned, the control of the producer ceases twenty-five years after the death of the author, and the property reverts to the heirs for perpetuity. A deposit of four copies is required, one for the local institute of the province, one for the Minister of Instruction, one for the library of the University of Caracas, and one for the Academy of Venezuela. A party to the Convention of Montevideo.

It will be noted from the above summary that practically all the literature-producing States of the world have now in force measures for the protection of literary property. The Argentine Republic is in fact the only country with any considerable educated population in which no copyright statute has yet been enacted. The state with the shortest term of copyright is Greece, and next to Greece comes the United States. The states giving protection in perpetuity are Mexico and Venezuela. The states giving the longest statutory term of protection are Spain and Italy. There has been during the past twenty-five years a steady tendency for the increase of the term of the copyright. The term that is now accepted by the majority of the states of Europe is the life of the author and fifty years thereafter. The theory of this term is that it gives to the author an incentive for producing property for the enjoyment of his children and his grandchildren, with the possibility also of future enjoyment by the great-grandchildren. Beyond that term, the interest of the public at large in securing the widest distribution, at the least cost, of literature of permanent value, is assumed to offset such attenuated interest as an author may be supposed to retain in the remote progeny beyond the

generation of his grandchildren. The steps that are now being taken to extend the term of copyright in Great Britain, the country in which, as in the United States, the present term is very much shorter than has been accepted as equitable for the rest of Europe, are specified in a preceding chapter. I trust that it may be practicable in later editions of this volume to make reference to some similar efforts for the extension of literary property in the United States.

XXVII.

THE STATUS OF CANADA, JANUARY, 1896.

THE position of Canada in regard to its copyright relations with Great Britain and with the States with which the British Government has entered into copyright conventions, has for some years been an anomalous one. The authorities of the Home government have heretofore maintained that copyright was a matter belonging to imperial control, and that the British copyright legislation and the British conventions with foreign states were to be held as binding upon all the territories and colonies of the Empire. With this understanding, the representatives of Great Britain at the Convention of Berne accepted the provisions of that Convention for Great Britain and for all the British colonies. The Dominion of Canada has, however, declined to be bound by the action of the Home government. It is the Canadian view that both copyright and patent-right are matters which belong properly within the control of the Dominion. Acting on this contention, the Dominion government gave but a provisional assent to the Convention of Berne, reserving the right to

withdraw after a year's notice, and such notice has since been given.

The House of Lords held in 1868, in the case of Routledge *vs.* Low, that a copyright existing in the United Kingdom, is valid throughout all parts of the British dominions, even though there may be colonial statutes dealing with the same subject. Under the colonial copyright act of 1847, known as the Foreign Reprints Act, it was provided that upon a British possession passing an Act or ordinance sufficient for the purpose of securing to British authors reasonable protection within such possessions, it should be lawful for her Majesty, by an Order in Council, to declare the prohibition against the importation of foreign books suspended for such territory. This provision became applicable to Canada in 1858. After that date, reprints from the United States of English copyright books could be imported into the Dominion on the payment of an import duty of 12½ per cent., the receipts from which duty were to be transmitted to the several authors concerned. According to the testimony of the English authors, however, their receipts from this source have been very inconsiderable. This duty has since been changed to one of 12½ cents per pound.

In 1889, a copyright act was passed by the Legislature of the Dominion of which the main provisions were as follows:

1. The control of the copyright of works of literature or of art was given for a term of twenty-eight years to residents of the Dominion or of any portion

of the British Empire, subject to the conditions specified.

2. The work so copyrighted must be printed or produced within the territory of the Dominion, within one month after the date of production in the country of origin, and must be duly registered in the office of the Minister of Agriculture.

3. In case within this term of one month no Canadian edition should be produced by the author or his representative, the work shall be opened to production by any Canadian resident who shall obtain a license for the purpose from the Minister of Agriculture.

4. A license was to be granted to any applicant who should agree to pay to the author or to his representatives a royalty of ten per cent. on the retail price of each copy printed or issued, and who should give to the Minister of Agriculture satisfactory security for such payments. Such license was to convey no exclusive rights to the work, and was not to prevent the importation of any other authorized editions.

The British authors made strong and continued protests against an Act which would take out of their hands the privilege of selecting their own publishers for the Dominion, and which was likely to work mischief with their relations with the publishers of their authorized editions in the United States. After the American Act of 1891 had secured for British authors copyright in the United States, their opposition became still more determined against a measure which was certain to bring their American copyright

into peril. The Imperial government refused to give its approval to the Canadian Act, and after an acrimonious correspondence between the Canadian authorities and the Colonial office, which extended over a number of years, the Act was, in 1895, finally withdrawn.

In 1895, at the instance of Mr. Hall Caine and of Mr. F. R. Daldy, who came to Canada as the representatives of the Colonial office and of the British Society of Authors, a new act was framed in Ottawa which is expected to secure the approval of the British Government, and which will in that case go into effect in 1896. Its chief provisions are as follows:

1. The work securing Canadian copyright must be printed in the Dominion, but the importation of plates is permitted. (In the American Act such importation is prohibited.)

2. The term is made forty-two years from date of publication.

3. The registration in Ottawa must, for a book not originating in Canada, be made simultaneous with the registration in the country of origin.

4. Three copies of the copyrighted book must be delivered at Ottawa.

5. The Canadian edition must be produced within sixty days of the date of registration, but the Minister of Agriculture may, for sufficient cause, allow an extension to ninety days.

6. From the day of registration, the importation of copies of any edition other than one produced within the United Kingdom must cease. Copies of

a British edition can continue to be imported during the term of sixty or of ninety days within which term the Canadian edition must be in readiness.

7. Copyright can be secured in Canada by the citizens of any country which grants copyright to citizens of the British Empire.

8. The English or foreign author, or his representative (usually, of course, the English, American, or Continental publisher), has the option either of himself producing the Canadian edition, or of leaving such edition to be produced by a Canadian publisher, acting under a license.

9. In case, within the term specified, no edition has been produced by the author's representative, the Minister of Agriculture shall be at liberty to issue a license to a Canadian applicant, but not more than one license shall be in force at any one time. The licensee shall pay to the author through the Department of Inland Revenue, a royalty of ten per cent., making payment in advance on the printing of such edition, the editions thus paid for to comprise not less than 500 copies. Each copy on which royalty has been paid is to be stamped by the Department of Inland Revenue.

10. Copyright books going out of print must be reprinted within sixty days, otherwise a license may be issued.

11. Books published under license are to be printed within thirty days after issue of license, but the Minister may for adequate cause allow an extension of thirty days.

12. An author has the privilege of arranging for

exclusive serial publication in Canada, and if he fail so to do, application may be made to the Minister for a license to publish serially. Serial license carries with it no right to publish the material in any other form.

The draft of the Act which is before me at the time this summary is being prepared for the compositor, makes no specification concerning the status of books for which no Canadian editions may have been arranged, either under the author's instructions, or (in the absence of such instructions) under a license from the Minister of Agriculture. It is evident that, in the ordinary course of trade, but a small percentage of the current publications of each year can be available for Canadian editions, as it is only the exceptional work that can be made to pay in an edition printed for so small a reading public as that of Canada. In the absence of any specific provision for such books, I can only assume that their status will be as at present; and this understanding is confirmed by Mr. Caine's analysis which follows.

If, therefore, no Canadian edition may have been printed under the provisions of this Act, a work which has been copyrighted in Great Britain, or which has secured British copyright under the Berne Convention, under the American act, or under any other interstate convention, will be entitled to copyright protection within the Dominion. For such books, the right to secure a license for a Canadian edition will, however, continue. After the publication of such licensed edition, however long such publication may be deferred, the importation of the

English or American edition must, under the provisions of the present act, be prohibited. I judge, however, that it will in practice prove very difficult to enforce such prohibition in the case of books the importation of which has continued during any successive seasons.

It is probable that the full bearing of the Act will not be understood until the courts have had opportunities of passing upon its provisions.

In January, 1896, a memorial was formulated by representatives of various associations in France interested in literary and artistic copyright, protesting against the approval by the British Government of any Canadian act which made Canadian manufacture a condition of copyright. It was the conclusion of these remonstrants that if such a law should go into force, it would be necessary to exclude Canada from the Berne Convention. This French contention seems to me to be well founded. I judge, however, that Canada will probably elect to be excluded from the provisions of the Berne Convention rather than to give up the right of making printing in Canada a condition of Canadian copyright.

Mr. Caine gives the following analysis of the provisions and of the probable working of the proposed Act:

1. Such an Act would be limited in its operation to the works of the popular authors. This would meet one of the objections of Mr. Goldwin Smith to the clause requiring that a book should be printed in the Dominion.

2. If a book would not pay to print and publish

in Canada, it would not therefore fail of copyright there. The original edition could go into the Dominion, as at present, during the whole term of its copyright in the country of its origin. This would meet the case described in the valuable letter of Mr. Herbert Spencer.

3. Though a new writer might lose his copyright in America by failing to comply with the American Copyright Act, he would not on that ground lose his copyright in Canada, where he would hold it absolutely until the end of his term.

4. Such an Act would not exclude from Canada the English book which had been copyrighted in the United States but never registered or licensed in the Dominion, but it would exclude the American reprint of a book which had been registered or licensed, and it would also exclude the English colonial reprint, which was meant to meet a condition that is gone—the condition of general piracy in the United States—and would then be useless and mischievous; and it would also exclude the English edition after the publication of the Canadian edition.

5. Our understanding with the United States would not be endangered, because American authors would enjoy the same privileges and be under the same obligations as English authors.

6. Such an Act would not imperil the great advantages to English authors of American copyright, because it would put it within the author's control (both under the condition of registration and under the condition of license) to see that his American market could not be injured in Canada.

7. Such an Act should not be inconsistent with the spirit of the Berne Convention. As the excellent report of the departmental representatives (1892) very properly says: "The Convention merely stipulates that foreign copyright owners are to be entitled to the same rights and privileges as British copyright owners, and if the rights of British copyright owners are cut down by such licenses, foreign copyright owners are not entitled to complain of their rights being cut down to a similar extent.

8. Such an Act ought to enable the Dominion Government to withdraw its application to denounce the Berne Convention, and so to remove the danger under which Canadian authors now stand of being put into a position of isolation.

9. The interposition of a Government department (the Department of Agriculture) in the publishing industry of Canada—now perplexed by the uncertainties of the Foreign Reprints Act, and threatened with the intricacies of the proposed legislation of 1889—would be confined to a single and simple transaction, which would probably be the less frequent form of arrangement.

G. H. P.

INDEX.

C

D

Books and Their Makers During the Middle Ages

A Study of the Conditions of the Production and Distribution of Literature from the Fall of the Roman Empire to the Close of the Seventeenth Century.

By GEO. HAVEN PUTNAM, A.M.

Author of "Authors and Their Public in Ancient Times," "The Question of Copyright," etc., etc.

In two volumes, 8°, cloth extra (sold separately), each - $2.50

Volume I. 476-1500. (Ready April, 1896.)

PART I.—BOOKS IN MANUSCRIPT.

I.—The Making of Books in the Monasteries.

Introductory.—Cassiodorus and S. Benedict.—The Earlier Monkish Scribes.—The Ecclesiastical Schools and the Clerics as Scribes.—Terms Used for Scribe Work.—S. Columba, the Apostle to Caledonia.—Nuns as Scribes.—Monkish Chroniclers.—The Work of the Scriptorium.—The Influence of the Scriptorium.—The Literary Monks of England.—The Earlier Monastery Schools.—The Benedictines of the Continent.—The Libraries of the Monasteries and their Arrangements for the Exchange of Books.

II.—Some Libraries of the Manuscript Period.

III.—The Making of Books in the Early Universities.

IV.—The Book-Trade in the Manuscript Period.

Italy.—Books in Spain.—The Manuscript Trade in France.—Manuscript Dealers in Germany.

PART II.—THE EARLIER PRINTED BOOKS.

I.—The Renaissance as the Forerunner of the Printing-Press.

II.—The Invention of Printing and the Work of the First Printers of Holland and Germany.

III.—The Printer-Publishers of Italy.

Volume II. 1500-1709. (Ready September, 1896.)

IV.—The Printer-Publishers of France.

V.—The Later Estiennes and Casaubon.

VI.—Caxton and the Introduction of Printing into England.

VII.—The Kobergers of Nuremberg.

VIII.—Froben of Basel.

IX.—Erasmus and his Books.

X.—Luther as an Author.

XI.—Plantin of Antwerp.

XII.—The Elzevirs of Leyden and Amsterdam.

XIII.—Italy: Privileges and Censorship.

XIV.—Germany: Privileges and Book-Trade Regulations.

XV.—France: Privileges, Censorship, and Legislation.

XVI.—England: Privileges, Censorship, and Legislation.

XVII.—Conclusion: The Development of the Conception of Literary Property.

G. P. PUTNAM'S SONS

New York: 29 West 23d St. London: 24 Bedford St., Strand

Authors and Their Public In Ancient Times

A Sketch of Literary Conditions and of the Relations with the Public of Literary Producers, from the Earliest Times to the Fall of the Roman Empire.

By GEO. HAVEN PUTNAM, A.M.
Author of "The Question of Copyright," "Books and their Makers During the Middle Ages," etc.

Second Edition, Revised, 12°, gilt top - - - - $1.50

NOTICES.

The Knickerbocker Press appears almost at its best in the delicately simple and yet attractive form which it has given to this work, wherein the chief of a celebrated publishing house sketches the gradual evolution of the idea of literary property. . . . The book abounds in information, is written in a delightfully succinct and agreeable manner, with apt comparisons that are often humorous, and with scrupulous exactness to statement, and without a sign of partiality either from an author's or a publisher's point of view.—*New York Times.*

A most instructive book for the thoughtful and curious reader. . . . The author's account of the literary development of Greece is evidence of careful investigation and of scholarly judgment. Mr. Putnam writes in a way to instruct a scholar and to interest the general reader. He has been exceptionally successful in describing the progress of letters, the peculiar environment of those who are interested in the career of the dramatist and the philosopher, and that habit of mind characteristic of Hellenic life.—*Philadelphia Press.*

A most valuable review of the important subject of the beginnings of literary prosperity. The book presents also a powerful plea for the rights of authors. The beginnings of literary matters in Chaldea, Egypt, India, Persia, China, and Japan are exhibited with discrimination and fairness and in a very entertaining way. The work is a valuable contribution upon a subject of pressing interest to authors and their public.—*New York Observer.*

The work shows broad cultivation, careful scholarly research, and original thought. The style is simple and straightforward, and the volume is both attractive and valuable.—*Richmond Times.*

The volume is beautifully printed on good paper. . . . Every author ought to be compelled to buy and read this bright volume, and no publisher worthy of the name should be without it.—*Publishers' Circular*, London.

The book is one that will commend itself to every author, while at the same time it is full of entertainment for the general reader.—*London Sun.*

G. P. PUTNAM'S SONS
New York: 29 West 23d St. London: 24 Bedford St., Strand

A Literary History of the English People

From the Earliest Times to the Present Day.

By J. J. JUSSERAND

Author of "The English Novel in the Time of Shakespeare," etc., etc.

To be complete in three parts, each part forming one volume. *(Sold separately.)*

Part I.—**From the Origins to the Renaissance.** 8°, pp. xxii + 545. With frontispiece in photogravure. $3.50. *(Sold separately.)*

Part II.—**From the Renaissance to Pope.** *(In press.)*

Part III.—**From Pope to the Present Day.** *(In preparation.)*

We may say, without contradiction, that the marvellous story of our literature in its vital connection with the origin and growth of the English people has never been treated with a greater union of conscientious research, minute scholarship, pleasantness of humor, picturesqueness of style, and sympathetic intimacy.—*London Chronicle.*

The most important and delightful contribution to the popular study of English literature since Taine's volumes were published, is to be made by M. J. Jusserand in his "Literary History of the English People." . . . Only the most meagre sketch of the pleasure in store for the readers of M. Jusserand's volume can be given here. No one interested in the beginnings of English literature can fail to be pleased with this delightful study. A thoroughly stimulating book . . . which will arouse fresh interest in the early periods of our literature.—*Literary World.*

M. Jusserand is an investigator of keen insight and indefatigable energy. He has also the quality which gives to him, from his Latin parentage, synthesis and literary tact. . . . He paints a picture. . . . It is unquestionably true that for this generation, M. Jusserand has said the last word on this subject. . . . For the period of Chaucer, he has summarized what is known with admirable skill. . . . His work must be accepted as the authority on the Middle Ages as they were lived in England.—*N. Y. Commercial Advertiser.*

The book bears witness on every page to having been written by one whose mind was overflowing with information, and whose heart was in abounding sympathy with his work. Mr. Jusserand possesses pre-eminently the modern spirit of inquiry, which has for its object the attainment of truth and a comprehension of the beginnings of things and of the causes that have brought about effects.—*N. Y. Times.*

After so many excellent works, of which English literature is the subject, have been issued in England and on the Continent, after even the epic work of Taine, yet M. Jusserand still contrives to be original, fresh, and creative. The history of English literature has been written before, but what he gives us is something new; it is the literary history of the English people, that is to say, he makes us follow the historical evolution of the nation in literature, and what that evolution has created and revealed. He has employed a method which could not be used with success, except by a man with a thorough and correct knowledge of literature and the history of the English people, and of the people themselves, and one who is worthy of serious consideration by all literary historians.—*La Revue de Paris,* July 1, 1894, on the French Edition.

G. P. PUTNAM'S SONS

New York: 27 West 23d St. London: 24 Bedford St., Strand

AMERICAN LITERATURE

1607-1885

BY

CHARLES F. RICHARDSON

Complete in two volumes, octavo, gilt tops $6.00
" " " " bound in one, octavo, gilt top, 3.50

PART I.—THE DEVELOPMENT OF AMERICAN THOUGHT.
PART II.—AMERICAN POETRY AND FICTION.

"Mr. Richardson writes with vivacity and critical intelligence. His fifth, seventh, and ninth chapters, for example, which are monographs on Franklin, Irving, and Emerson, are a fair measure of his powers."—*N. Y. Mail and Express.*

"It will prove a convenient book of reference, and a helpful guide to the general reader and average student."—*Critic.*

"With its opening volume it forms the most intelligently treated and valuable study of American literature, whether for the student or reader, that has appeared."—*Boston Globe.*

"We can heartily commend the work, as a whole, to the attention of our readers as, perhaps, in all respects the most satisfactory review of American literature that has yet appeared."—*Observer.*

"I find it admirably adapted to the uses of a class who will take with me, next semester, a course of lectures on the same subject. Prof. Richardson has the gratitude of all teachers of American literature."—LOUISE MANNING HODGKINS, Professor of English Literature in Wellesley College.

"It is proving to me an instructive and suggestive volume of reference. The author's method of treatment has advantages which I have tested in the work of my department."—S. A. LONGWELL, Teacher of English and Saxon Literature in Smith College, Northampton, Mass.

"One of the few books on literature in which the historical and logical methods are happily combined."—Prof. T. W. HUNT, Princeton, N. J.

"He has shown a discriminating insight and literary judgment in the treatment of our American literary work."—*New Princeton Review.*

"The most thoughtful and suggestive work on American literature that has been published."—*Boston Globe.*

"Nothing approaching it in completeness and broad grasp of the subject has heretofore been produced by any writer."—*New York World.*

"It is not a mere compilation of facts, but enters into philosophical and critical discussion, and becomes a trustworthy guide to those who would learn what American literature is and what it has achieved. It is itself a most desirable contribution to it."—*The Churchman.*

"No class should go out of the American academy or high school that has not had access to this latest, most independent, most enjoyable consideration of *the development of American thought.*"—*New England Journal of Education.*

G. P. PUTNAM'S SONS, NEW YORK AND LONDON.